
(1984) 08 KL CK 0025

In the High Court Of Kerala

Case No : Income-tax References No's. 57 to 62 of 1980

L. Kunhamu Haji

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 30-08-1984

Acts Referred:

Kerala Agricultural Income Tax Act, 1950 — Section 4(1), 4(3), 9(2)

Citation : (1985) 155 ITR 516

Hon'ble Judges : T. Kochu Thommen, J; K.P. Radhakrishna Menon, J

Bench : Division Bench

Advocate : T.L. Viswanatha Iyer, for the Appellant; Govt. Pleader, for the Respondent

Judgement

Kochu Thommen, J.—In completing the reassessment for the years 1972-73 to 1975-76 and the assessment for the years 1976-77 and 1977-78, the Agrl. ITO included in the computation of the total agricultural income of the assessee, the income derived from an immovable property transferred by the assessee to his wife under a deed of trust dated July 24, 1969 (Document No. 626/1969--annex. C). The assessee's contention that, being a property held under trust, the income arising therefrom was not liable to be so added was rejected. His appeals to the AAC as well as to the Agricultural Income Tax Appellate Tribunal, Addl. Bench, Kozhikode, were unsuccessful. The Tribunal held that the trust in question was hit by Clauses (a) and (b) of Sub-section (3) of Section 4 of the Kerala Agrl. I.T. Act, 1950.

2. At the instance of the assessee, the Tribunal has now referred to us the following questions:

"1. Whether, on the facts and in the circumstances of the case, the Tribunal is justified in law in holding that no valid trust has been created as per document No. 626/1969 of the Sub-Registry Office, Nileswar, or even if it is held that there is a valid trust, it is only an indirect transfer of assets to the wife through the medium of a trust ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal is justified in law in including the income from the trust properties scheduled in the trust deed No. 626/1969 in the Sub-Registry Office, Nileswar, in the other income of the petitioner for assessing him to agricultural Income Tax ?"

3. It appears to be the common case that there was a transfer of right, title and interest from the assessee to his wife in respect of the immovable property covered by the deed of trust (annex. C). The stand of the Revenue has been that, notwithstanding the transfer of the asset, the income from the property has to be included in the computation of the total income of the assessee by reason of Section 9(2). The contention of the assessee that the income, being income from the trust property, is not includible in the income of the assessee was rejected for the reason that Clauses (a) and (b) of Sub-section (3) of Section 4 do not recognise, for the purpose of exclusion under Sub-section (1) of that section, the kind of trust said to have been created under the deed in question. We shall now examine the provisions of Sections 9 and 4 in so far as they are material.

4. Section 9(2) reads :

"In computing the total agricultural income of any individual for purpose of assessment there shall be included--

(a) so much of the agricultural income of a wife.....of such individual as arises directly or indirectly--.....

(iii) from assets transferred directly or indirectly to the wife by the husband otherwise than for adequate consideration or in connection with an agreement to live apart; or....."

5. This section shows that income derived from the asset transferred to the wife (otherwise than for adequate consideration or in connection with an agreement to live apart) is deemed to be income derived by the husband, notwithstanding the transfer.

6. Section 4(1) reads :

"Total agricultural income.--(1) Subject to the provisions of this Act, the total agricultural income of any previous year of any person comprises all agricultural income derived from land situated within the State and received by him within or without the State, but does not include--.....

(b) any agricultural income derived from property held under trust wholly for charitable or religious purposes, to the extent to which such income is applied to such purposes in the State;....."

7. The section thus provides for complete exemption of agricultural income derived from property held under trust wholly for charitable or religious purposes, to the extent to which such income is applied to such purposes within the State. There appears to be no dispute in this case that the income in

question has been derived from property held under trust wholly for charitable or religious purposes. The application of the income to these purposes within the State also does not appear to be a matter of dispute. But, according to the Revenue, the income in question is not exempt under Clause (b) or (c) of Sub-section (1) of Section 4 for the reason that the trust has been created for private religious purposes and it does not enure for the benefit of the public, but only for the benefit of a particular religious community.

8. Income derived from property held under trust for private religious purposes which does not enure for the benefit of the public or under a trust for charitable purposes or by a charitable institution which has been created for the benefit of a particular religious community or caste is specifically excluded by Sub-section (3) of Section 4 from the exemption allowed under Clauses (b) and (c) of Sub-section (1) of Section 4. Sub-section (3) of Section 4 reads as follows :

"(3) Nothing contained in Clause (b) or Clause (c) of Sub-section (1) shall operate so as to exclude from the total agricultural income of the previous year of the person in receipt thereof-

(a) any part of the agricultural income from the property held under trust for private religious purposes which does not enure for the benefit of the public;

(b) in the case of a trust for charitable purposes or a charitable institution, any agricultural income thereof, if the trust or institution is created or established for the benefit of any Particular religious community or caste ;....."

9. The deed of trust indicates that the trust is intended to benefit only the members of a particular religious community. No person outside the community will derive any benefit from the trust. The ban under Clause (b) of Sub-section (3) of Section 4 is, therefore, clearly attracted. This being the position, income derived from property transferred by the assessee to his wife under the deed of trust is income which is not exempt u/s 4(1) and has, therefore, to be included in the computation of his total agricultural income in terms of Section 9(2).

10. In the circumstances, we answer the second question referred to us in the affirmative, that is, in favour of the Revenue and against the assessee. In the light of this answer, it is unnecessary for us to answer question No. 1. Accordingly, we decline to answer question No. 1. We direct the parties to bear their respective costs in these tax referred cases.