

(1963) 09 AHC CK 0009
In the Allahabad High Court
Case No : A.I.T. Ref. No. 402 of 1959

Mahabir Sugar Mills Ltd.

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 24-09-1963

Acts Referred:

Uttar Pradesh Agricultural Income Tax Act, 1948 — Section 22, 24(7), 6(2)
Uttar Pradesh Agricultural Income Tax Rules, 1949 — Rule 13

Citation : AIR 1964 All 439 : (1964) 52 ITR 745

Hon'ble Judges : M.C. Desai, C.J.; R.S. Pathak, J

Bench : Division Bench

Advocate : Brij Lal Gupta, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

Desai, C.J.—This is a statement of a case submitted to this Court by the Revision Board u/s 24 (4) of the U. P. Agricultural Income Tax Act; this Court is called upon to answer the following questions:

(1) Whether the revision application moved by the State on 15-9-1951 against the order passed by the Assessing Authority on 20-7-1950 was belated or not within the meaning of Section 22 of the U. P. Agricultural Income Tax Act?

(2) Where the amounts spent on the following items;

(1) Farm Manager's pay

(2) Cashier's pay

(3) Time Keeper's pay

(4) Fieldman's pay

were permissible items of expenditure u/s 6 (2) (b) (iv), U. P. Agricultural Income Tax Act and Rule 13, U. P. Agricultural Income Tax Rules?

2. The facts as they emerge from the statement are that on 20-7-1950 the assessing authority passed an assessment order holding that the total agricultural income of the assessee was less than the taxable minimum and directing refund of the tax already realised from it under its earlier assessment order. On 8-9-1951 the State applied for revision of the order u/s 22 which reads as follows: "The Revision Board may, on their own motion or on art application, call for the record, of any proceeding and may pass such orders as they think fit." There is a proviso to this provision with which we are not concerned. No period of limitation for an application for revision u/s 22 is laid down in the section or in any other provision. The Revision Board entertained the application and allowed it on 10-11-1951. It assessed the income u/s 16 (3) after disallowing certain deductions claimed by the assessee. It is evident from the order passed by the Revision Board that the assessee did not at all raise before it the question that the application for revision filed by the State was a belated one and should not have been entertained by the Board. Subsequently it applied u/s 24 (2) for a case being stated to this Court and the Board refused to do so and this Court u/s 24 (4) ordered the Board to state the case.

3. Question No. 1 does not arise from the order passed by the Revision Board u/s 22 at all and could not be required by this Court to be referred by the Board to it. This Court's jurisdiction u/s 24 (7) is confined to deciding questions of law arising out of the Revision Board's order passed u/s 22 and referred by it. Since no question, not even of law, not arising out of the order passed by the Board u/s 22 can be referred by it to this Court at all, this Court has no jurisdiction to decide such a question.

4. The question referred to this Court is also not a "question of law. Section 22 does not prescribe any period of limitation within which an application for revision u/s 22 be made to the Board and, there- fore, no application is bound to be rejected on the ground that it was made after the expiry of a certain, time. Since the revisions jurisdiction of the Board is discretionary it is open to it to refuse to exercise it on the ground that the application was moved after undue delay. This is a matter of its discretion and not of law. If it in exercise of its discretion decides to revise an order even-though the application u/s 22 was made after undue delay it cannot be said to infringe any law and. no question can be said to arise out of the order passed by it u/s 22. Section 22 does not deal with the question when an application for revision can be said to be belated or when it can be said to be not belated and, therefore, there is nothing like an application being "belated within the meaning of section"; "Belated or not within the meaning of Section 22" assumes that Section 22 itself states which application is belated or which application is not belated; when it does not in fact say which application is belated or which application is not belated the question whether an application is "belated or not within the meaning of Section-22" is impossible.

5. The question is, therefore, left unanswered and even if it were answered, the

answer would be that the application could not be said to be "belated within- the meaning of Section 22" and thus against the assessee.

6. It is not disputed that the deductions claimed by the assessee are u/s 6 (2) (b) (iv), e. g. "expenses incurred in the previous year in raising the crop from which the agricultural income is derived, in making it fit for market and in transporting it to market, including the maintenance or hire of agricultural implements and cattle required for these purposes". The statement of the case does not mention what duties are performed by the farm manager, the cashier, the time keeper and the fieldman employed by the assessee and whether they have any connection whatsoever with the raising of the crop or making it fit for market or transporting it to market. It was for the assessee to prove that the salaries paid to these servants were expenses incurred in raising the crop or in making it fit for market or in transporting it to market; unless it did so it was not entitled to deduct the salaries paid to them in the previous year. Since in the statement of the case there is nothing to show that their duties were connected with the acts of raising the crop, making it fit for market and transporting it to market it is not possible for this Court to answer the question in the affirmative and, therefore, it must be; answered in the negative.

7. Sri Ambika Prasad relied upon Rule 13 of the Agricultural Income Tax Rules, 1948, (1949 ?) made by the Governor in exercise of the powers conferred by Section 44 of the Act. Sub-section (1) of Section 44 describes the general power of making rules "for carrying out the purposes of this Act" and Sub-section (2) mentions the particular rules that may be made by the State Government in exercise of the general power. Rule 13 is as follows :

"For purposes of allowing deductions under Sub-clause (iv) of Clause (b) of Sub-section (2) of Section 6, all amounts actually paid by the assessee on account of the following operations shall be taken into account:

(a) Ploughing and hoeing

* * * * * (m) Customary annuities paid in cash or kind to artisans and other persons whose services are ordinarily required in connection with cultivation:

Provided that nothing in this rule shall be deemed to authorize deductions in respect of expenses for which deductions have already been allowed to the assessee under any other rule or any payment of religious or charitable nature."

Thus what this rule lays down is that certain expenses incurred by an assessee are to be treated as expenses within the meaning of Section 6 (2) (b) (iv). The State Government had no power to make this rule, which is nothing "but interpreting the provisions of Section 6 (2) (b) (iv}., It is for the assessing authority to decide whether the operations stated in Rule 13 come within the scope of Section 6 (2) (b) (iv) or not. If they do not, the assessing authority cannot deduct from the agricultural income any expenses incurred on them. It cannot deduct the expenses incurred on them merely because under Rule 13

they are required to be taken into account. The assessing authority is bound by the provisions of Section 6 (2) (b) (iv) and not by Rule 13 if it is in conflict with the former. The State Government had no power to interpret any provision of the Act and interpreting provisions of the Act cannot be said to be carrying out its purposes. What are the purposes of the Act have to be found, where necessary, by the assessing authority from the Act itself and cannot be laid down by the State Government in the form of a rule. Rule 13 is, therefore, ultra vires the State Government and cannot be relied upon by the assessee.

8. In the result our answer to question No. 2 is in the negative.

9. We direct that a copy of this judgment shall be sent under the seal of the Court and the signature, of the Registrar to the Revision Board as required by Section 24 (7) of the U. P. Agricultural Income Tax Act. The assessee shall pay the costs of the State assessed at Rs. 100/-. The fee of the counsel for the State is also assessed at Rs. 100/-.