

(1956) 03 PAT CK 0012

In the Patna High Court

Case No : Misc. Judicial Case No. 305 of 1954

Mahanth Ram Swaroop Das

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 16-03-1956

Acts Referred:

Bihar Agricultural Income Tax Act, 1948 — Section 20(4)

Citation : AIR 1956 Patna 456 : (1956) 30 ITR 640

Hon'ble Judges : Choudhary, J; Banerji, J

Bench : Division Bench

Advocate : R. Prasad, for the Appellant; Government-Adv., for the Respondent

Judgement

Banerji, J.—This is a reference u/s 28(2), Bihar Agricultural Income Tax Act, 1948 (Bihar Act 32 of 1948) in the circumstances mentioned below.

2. The petitioner was assessed to agricultural income tax for the year 1358 Fasli on 20-3-1953. As he failed to make a return and to produce any evidence required u/s 20, Sub-section (3) of the Act, the Agricultural Income Tax Officer made the assessment to the best of his judgment. The assessee thereafter appealed, but his appeal was dismissed after hearing on 16-6-1953. The assessee then moved the Board of Revenue by an application which, too, was rejected by Board's resolution dated 22-8-1953.

The assessee then asked the Board to make reference to the High Court on some points of law and, out of three points formulated, two have been referred to us for our opinion. The questions of law referred to us are as follows:

"(1) Whether in the facts and circumstances of the case, the assessing officer was justified in making the best judgment assessment?

(2) Whether in the facts and circumstances of the case the assessing officer was justified in law in basing his estimate to the best judgment on the assessment for the years 1356 and 1357 Fasli without making any further enquiry especially

when the assessment order for the 1357 Fasli which was based on the assessment order of the year 1353 Fasli has been remanded by the Board."

3. It may be stated here that the learned Advocate appearing on behalf of the assessee-peti-tioner has not pressed the first point of law referred to us. For an answer to the second question, a few more facts are necessary to be stated. It appears that best of judgment assessment was made by the Agricultural Income Tax Officer in the year 1356, but, on appeal, the matter was remanded to make an estimate by enquiry, which was done and from which the assessee did not file any appeal or revision.

For the year 1357 Fasli also assessment was made to the best of judgment of the assessing officer and, in making the assessment for the year 1358 Fasli according to the provisions of Section 20, Sub-section (4), the assessing officer took into account the assessments made for the years 1356 and; 1357 Fasli. It appears that the Board, so far as the assessment for the year 1357 Fasli is concerned, has remanded the master for further enquiry and re-assessment.

It has been argued, therefore, on behalf of the assessee that the very foundation of the assessment for the year 1358 Fasli being gone, the assessment to the best of judgment in the present case is illegal. In other words, it is contended that, after the success of the assessee with respect to the assessment of 1357 Fasli, the authorities under Bihar Act 32 of 1948 were bound to stay their hands and re-assess the petitioner for the income of the year 1358 Fasli after that of the year 1357 Fasli had been decided by enquiry.

This argument though a little attractive, does not appear to have merit on closer inspection. The question to be decided is whether the Agricultural, Income Tax Officer on the facts and circumstances as obtained before him at the time of the assessment was in a position to give effect to the present contention of the assessee. He could not, as at that time there was no order of the Board of Revenue setting aside the assessment for the year 1357 Fasli and remanding the case for reassessment after enquiry.

The foundation of assessment made by the Agricultural Income Tax Officer was valid and there was no other material before him to follow any other course except by assessing the petitioner to the best of judgment. In the facts and circumstances of the case, it is hardly possible to argue that the assessing officer acted arbitrarily or capriciously in assessing the petitioner for the year 1358 Fasli to the best of his judgment in absence of any return or production of materials. The question, therefore, cannot but be answered against the assessee.

4. The result is that the question No. (1) is not answered as it is not pressed on behalf of the petitioner. Question No. (2) is answered against him on the finding that the assessing officer was justified in law in basing his estimate to the best of judgment on the assessment for the years 1356 and 1357 Fasli as fixed by him then. The assessee will pay a sum of Rs. 64/- as hearing fee,

Choudhury, J.

5. I agree.