

(1979) 04 AHC CK 0026

In the Allahabad High Court

Case No : Agricultural Income Tax Reference No. 824 of 1972

Maharaja Dharmendra Pratap Narain Singh

APPELLANT

Vs

State of Uttar Pradesh

RESPONDENT

Date of Decision : 13-04-1979

Acts Referred:

Uttar Pradesh Agricultural Income Tax Act, 1948 — Section 2(11), 3, 8

Citation : (1980) 121 ITR 806

Hon'ble Judges : C.S.P. Singh, J

Bench : Single Bench

Advocate : Ashok Gupta, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Disposed Of

Judgement

C.S.P. Singh, J.—This is a reference u/s 24 of the U. P. Agrl. I.T. Act, 1949. The Board of Revenue has referred the following questions for the opinion of this court :

- " 1. Whether the sale of timber from the planted groves prior to the introduction of Section 6-A to the U. P. Agricultural Income Tax Act was liable to be assessed as agricultural income under the Act ?
2. If the answer to question No. 1 be in the affirmative, whether on the facts and in the circumstances of the case, the amount representing the sale proceeds of planted grove and trees was a capital receipt and as such not taxable under the Agricultural Income Tax Act ? and,
3. Whether, on the true interpretation of Section 8 of the U. P. Agricultural Income Tax Act, the income from the property which is held under trust wholly for religious and charitable purposes has to be included in the total income and then a relief is to be granted under Sub-section (2) of Section 3 or is it to be excluded altogether from the total income of the assessee ? "

2. The reference relates to the assessment year 1360 Fasli, the relevant accounting period for which is 1359 Fasli. The assessee returned an income of Rs. 21,63,075 u/s 5 of the Act. In this he did not include the income from the sale of grove and scattered trees. His contention was that the sale price of groves and scattered trees represented the price received from the sale of a capital asset, and, as such, was not eligible to tax. The amount received, according to the assessee, from the sale of scattered trees was Rs. 2,58,984 and from the sale of grove trees, Rs. 88,280. The assessing authority found that out of the amount aforesaid an amount of Rs. 78,267 represented the proceeds of sale in 1358 Fasli, and, as such, was not relevant for the accounting period 1359 Fasli. He, therefore, deducted this amount from the aggregate amount of the sale proceeds from scattered trees and grove trees. Taking the view that the particulars given regarding the break-up of the amount received from the sale of scattered trees and grove trees were not reliable, he apportioned the balance amount as under :

Rs. 90,359 from the sale of planted trees and Rs. 88,280 from the sale of groves and other trees.

3. He rejected the assessee's contention that this amount could not be included in the income as it was "an amount received, from the sale of a capital asset. Apart from this the assessee had claimed exemption in respect of trust properties, which was created by a registered trust deed for charitable purposes. The assessing authority allowed exemption in respect of these trust properties as he took the view that they were meant for religious and charitable purposes. An appeal was filed by the assessee before the Commissioner, Faizabad, challenging the inclusion of income from the sale of grove and planted trees, and the State also moved for inclusion of income from trust properties. The case taken up by the State was that the income from the trust properties should have been included in the total income and a proportionate exemption should have been given thereafter. It was contended that the assessing authority erred in excluding the income from the trust properties while determining the taxable income. The Commissioner allowed the appeals and remanded the cases on the view that the cases for the earlier assessment year, i.e., 1359 Fasli had been remanded, and the point raised in the appeal was similar to that raised in the earlier case. He also held that the income from the trust properties should be excluded altogether and, as such, rejected the contention on behalf of the State. The State then filed a revision before the Board. The Board, following its decision in an earlier case, held that the income from the sale of the trees should be included in the taxable income of the assessee. As regards the question as to whether the income from the trust properties should first be included and then exempted, it took the view that the income should be included in the taxable income and then the exemption should be granted in respect thereof.

4. The first two questions are inter-connected, and as such it will be convenient to take them up together. Section 3 is the charging section and brings to tax the

total agricultural income of the previous year. Agricultural income has been defined in Section 2 of the Act and is to the following effect :

" Definitions.--In this Act, unless there is anything repugnant in the subject or context,--

(1) " agricultural income " has the same meaning as is assigned to it in the Indian Income Tax Act, 1922, and which in its adapted form is reproduced below :--

(a) " agricultural income " means any rent or revenue derived from land which is used for agricultural purposes and is either assessed to land revenue in Uttar Pradesh or is subject to a local rate or cess assessed and collected by an officer of the State Government ;

(b) any income derived from such land by...."

5. This Act has also been extended to Vindhya Pradesh with modifications (vide S. R. O. 1474 dated September 5, 1951, Pt. II, Section 3, p. 1632, published in the Gazette of India dated September 29, 1951). For modifications, please see also Appendix A).

6. Section 3, which is the charging section, brings to tax the agricultural income of every person. Thus, before any income can be brought to tax it must be agricultural income as defined in Section 2(1) of the Act. From the facts narrated earlier the prescribed authority had estimated the income received from the sale of planted trees at Rs. 90,359 and from the sale of groves and other trees at Rs. 88,280. Before the amount can be brought within the purview of Section 2(1)(a) it must be, income, and not an amount received from the sale of a capital asset. The question whether sale of planted trees amounts to a capital transaction or revenue transaction has been considered by the Supreme Court and other courts on a number of occasions. It will be useful to refer to those decisions.

7. In *V. Venugopala Verma Rajah Vs. Commissioner of Income Tax, Kerala*, the Supreme Court held that where trees are cut, but the trunk is capable of regeneration, proceeds from sale of trees would be in the nature of income. In another case, *A.K.T.K.M. Vishnudatta Antharjanam Vs. Commissioner of Agricultural Income Tax, Trivandrum*, on appeal *A.K.T.K.M. Vishnudatta Andharjanam* represented by *D.V. Nambudripad Desamangalam Vs. The Commissioner of Agricultural Income Tax, Trivandrum*, in a case arising under the Kerala Agrl. I.T. Act, 1950, it" was held that as the trees were cut and removed completely from the land together with the wood for the purpose of planting the area with rubber, the sale receipts did not constitute the income of the assessee for the purposes of that Act, but were capital in nature. Similarly, in *State of Kerala Vs. Karimtharuvi Tea Estate Ltd.*, , where the company, which was carrying on the business of manufacturing and selling tea, grew grevelia trees which had been planted for purposes of affording shade to the tea bushes, it was held that the sale proceeds of grevelia trees were of a capital nature, as the

trees sold were the capital asset of the assessee and the income did not constitute the agricultural income of the assessee. It is significant to point out that the Kerala Agrl. I.T. Act, 1950, defines agricultural income in the same strain as in our Act. In another case arising under the Kerala Agrl, I. T. Act the Supreme Court held *Commissioner of Agricultural Income Tax, Kerala Vs. Kailas Rubber and Co. Ltd.*, that sale proceeds of old and unyielding rubber trees were capital receipts and not taxable as agricultural income. The Kerala High Court in the case of *Elixir Plantations Ltd. Vs. Commissioner of Income Tax*, held that the sale proceeds of dead and wind fallen trees which were cut and removed from the; land were receipts of a capital nature, as the trees were not capable of further regeneration. In a case of our own court *RAJA JAGDISH PRATAP PD. SAHAI Vs. THE STATE.*, a case arising under this very Act, the zamindar had sold certain trees in a number of groves and stray fruit trees, this court took the view that it was not agricultural income as there was absence of a regularity of receipts. This case was decided on the principle that before an amount could constitute the income of an assessee the monetary return must be of a periodical nature. In the case of *Consolidated Coffee Estates (1943) Ltd Vs. Commissioner of Agricultural Income Tax, Mysore*, the assessee had sold raw timber from jungles, and the question was whether the sale proceeds would be liable to tax under the Mysore Agrl. I.T. Act. The court, proceeding on the principle that before an income could be treated as agricultural income, the land must be actually used for agricultural purposes in the accounting year held that as no agricultural operations had been carried on by the assessee on the land in that year the sale proceeds were not liable to tax. It was also held that sale proceeds of grevelia trees which were also sold and which were maintained for purpose of affording shade to tea bushes constituted capital receipts, and hence, not liable to tax. The Madras High Court in the case of *Commissioner of Income Tax Vs. M.S.P. Nadar Sons*, held that where an assessee had cut sandalwood trees for purposes of planting coffee, etc., the sale proceeds of the trees were not income as, firstly, the transaction was an adventure in the nature of trade, and, secondly, the receipt was of a capital nature. These cases illustrate the correct principles to be applied for determining as to whether an amount received by the sale of trees would constitute a capital receipt or revenue receipt. In my view, on a consideration of these authorities, the proposition that emerges is that where trees have been sold by the assessee, and cut away, in case there are no chances of regeneration the receipt would be a capital receipt, but if the trees have been so cut that they regenerate in course of time the amount of receipt would be a revenue receipt.

8. We will now examine the question as to whether the sale consideration received by the assessee was a capital receipt or a revenue receipt. The sale proceeds received by the assessee were from timber trees and from the sale of grove trees. The Board of Revenue while rejecting the claim of the assessee relied upon an earlier judgment given by it relating to the year 1358 Fasli. That judgment has not been produced before us, but the Board has held that the sale

proceeds were not a capital receipt but the agricultural income of the assessee. However, there is no finding by the lower court that the trees were capable of regeneration. It has not been disputed before us that the trees sold by the assessee have been cut away and removed by the persons, who have purchased them. In the absence of any finding that the trees were capable of regeneration the mere fact that the assessee had received sale consideration for the trees would not convert it into an agricultural income. It is settled that the primary onus of proving that a receipt is liable to be taxed under the taxing statute is on the department. As in the present case, there is no evidence to establish that the trees sold by the assessee were capable of regeneration it is not possible to hold that the sale consideration constituted a revenue receipt. In this view of the matter, the amount received by the assessee is not liable to tax under the Act.

9. So far as the second question is concerned that is answered by the conclusions reached in answering question No. 1, and, secondly, an answer to this question is necessary only in case the first question is answered in the affirmative. As the first question is answered in the negative, and it has been held that the income was not liable to tax the question becomes academic.

10. Coming to the third question, the assessee had created a trust for charitable purposes by a registered trust deed. As will be seen the assessing authorities excluded the income from the trust while calculating the total agricultural income of the assessee. The Commissioner took the same view. The Board took a contrary view, and in doing so it appears to have relied on Section 8 of the Act. Section 8 of the Act runs as under :

" Exclusion of income from trust, etc.--Any income derived from property held under trust or other legal obligation wholly for religious or charitable purposes and, in the case of property so held in part only for such purposes, the income applied or finally set apart for application thereto, shall be exempt from liability to tax under this Act.

Object of the section.--The section provides for the exemption of, liability of the income derived from property held under religious and charitable trust. "

11. As will be seen Section 8 exempts income derived from the property held under trust. u/s 3, which is the charging section, the total agricultural income of a person has to be charged to tax. Section 4A of the Act seeks to include certain income which would be otherwise excluded, in the total agricultural income of an assessee. But Section 4A does not apply to the present case as it has been drafted on the lines of Section 16 of the Indian I.T. Act, 1922. Section 2(16) defines total agricultural income in the following way :

" " Total agricultural income " means the aggregate of the amounts of agricultural income of the different classes specified in Sections 5 and 6 determined respectively in the manner laid down in the said sections and includes all receipts of the description specified in Clauses (a), (b) and (c) of Sub-section (1) of Section 2,"

12. Now, u/s 3, the income of every person is to be calculated. Section 2(11) defines the word " person " as under :

" " person " means an individual or association of individuals, owning or holding property for himself or for any other, or partly for his own benefit and partly for that of another either as owner, trustee, receiver, manager, administrator or executor or in any capacity recognised by law, and includes an undivided Hindu family, firm or company but does not include a local authority."

13. It will be seen that under the definition of the word "person", an individual- and. a trustee are put in separate categories, as every one of them is included in the definition of the word " person ". It is settled law that where a trust is created the property vests in the trustee, and the title does not remain with the individual. As in the present case a charitable trust was created--and there is no dispute that it was a genuine trust--the assessee became a trustee qua trust property and continued to be the owner of the other properties in his individual capacity. None of the provisions noticed contemplate lumping together the trust income with the individual income of the assessee. Section 8 does not purport to do so, and the Board of Revenue was in error in clubbing the trust income with the individual agricultural income of the assessee. Section 3(2) also does not help, for that contemplates a case where the taxable entity is the same. Here the assessee is two distinct persons in law : one, the assessee as an individual in his capacity as the zamindar of his estate, and the other, as the trustee of the charitable trust. In view of the conclusion reached above, the first question is answered by saying that the assessee was not liable to tax for the sale of timber from the planted groves. So far as the second question is concerned that is really academic, but as it refers to the sale proceeds of planted groves and trees, in order to avoid any confusion, it is necessary to answer it by saying that the sale proceeds of planted groves and trees were capital receipts, and as such not liable to tax. So far as the third question is concerned it is answered by saying that the income from property which was held under trust for religious and charitable purposes should not be included in the total agricultural income of the assessee. The assessee is entitled to his costs, which is assessed at Rs. 200. Counsel's fee is assessed at the same figure.