(1958) 01 AHC CK 0020

In the Allahabad High Court

Case No : Civ. Miscellaneous Application No. 78 of 1955

Maharaja Sukhjit Singh APPELLANT

Vs

State of U.P. and another RESPONDENT

Date of Decision : 10-01-1958

Acts Referred:
Uttar Pradesh Agricultural Income Tax Act, 1948 — Section 44

Citation : (1958) 28 AWR 620

Hon'ble Judges : Randhir Singh, J;Bhargava, J

Bench : Division Bench

Advocate : Sri R.N. Shukla and Sri B.L. Shukla, for the Appellant;

Final Decision : Dismissed

Judgement

Randhir Singh, J.—This is a petition for the issue of a writ for quashing order of opposite party No. 2 assessing the applicant''s deceased father to agricultural income tax in respect of property situate in several districts including Bahraich.

2. It appears that the applicant''s father Maharaja Paramjit Singh of Kapurthala owned estates in the districts of Bahraich, Barabanki and some other districts. His agricultural income was assessed by opposite party No. 2 and the tax was made payable in instalments. It is alleged on behalf of the applicant that opposite party No. 2 had jurisdiction to make the assessment and as such the order of assessment and the order directing payment of the tax in instalments be quashed.

3. The petition has been opposed on behalf of the opposite parties on the ground that opposite party No. 2 had jurisdiction to assess the agricultural income arising out of the estates of the several districts in which the property was situate under a letter of the Board of Revenue dated 26-5-1949. An attested copy of the circular letter mentioned above has been filed. S. 44 of the UP Agricultural Income Tax Act empowered the State Govt, to frame rules with regard to certain matters mentioned in S. 44. In the case of persons who were

permanently residing outside the State of UP but who were liable to payment of agricultural income tax in respect of the property situate in the State of UP the assessment was to be made according to rules framed in this connection. S. 44 (2)(k)(o) empowered the State Govt, to frame rules prescribing the authority as also the mode of assessment of agricultural income tax in respect of persons permanently residing outside the State of UP. R. 18 (2) which was framed u/s 44 of the Act was, therefore, perfectly valid as the State Govt, had power to frame such a rule. R. 18 (2) as it stood till 20-9-1951, was as follows: Where an Assessee permanently resides outsides UP his agricultural income shall be assessed in the district in which such income accrues or where such income accrues in more than one district of the State in any such one of the districts as the Board of Revenue may direct.

4. Under the provisions of this rule the Board of Revenue issued a notification No. 1748/ AIT-5, dated 26-5-1949, which is as follows: With reference to your letter No. 2218/ VII/103-37, dated 7-5-1949, I am directed to state that the Board of Revenue have been pleased to order u/R. 18 (2) of the AIT Rules that the agricultural income of the Kapurthala Estate should be assessed in the Bahraich district. The District Officers of Bara Banki, Kheri, Bijnor and Gonda in which the property of the said estate also lies are being asked to send the necessary papers to you.

5. By means of this notification the assessment of the agricultural income tax in respect of the Kapurthala Estate, i.e. the estate owned by the Petitioner''s father was to be made in the Bahraich district. It is not disputed that the Sub-Divisional Officer who made the assessment had jurisdiction to assess the income in respect of the property situate in the Bahraich district. Learned Counsel for the applicant has, however, pointed out that R. 18(2) was amended on 20-9-1951 and the words "Land Reforms Commissioner" were substituted for the words "Board of Revenue in R 18(2) and the notification made by the Board of Revenue in 1949 should not be held to be operative in 1955 when the assessment was made and when the words "Board of Revenue" no longer existed in R. 18(2). We are, however, unable to agree with this contention. A notification made under a rule by a competent authority will continue to be valid unless withdrawn or superseded by the succeeding authority and it will be deemed that the rule continues in force as if issued by the authority succeeding the earlier authority. The notification made by the Board of Revenue in 1949, therefore, continued to be good and continues to be good till it is superseded. The agricultural income tax in respect of the entire property of the applicant''s father could, therefore, be assessed by the authority competent to make the assessment in respect of the Bahraich district.

6. The assessment made by opposite party No. 2 cannot, therefore be said to have been done without jurisdiction.

7. No other point arises for determination.

8. As a result the petition fails and is dismissed with costs to the opposite parties.

9. The stay order is vacated.

