

(2006) 08 GAU CK 0085

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 4592 of 2001

Methoni Tea Co. Ltd.

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 09-08-2006

Acts Referred:

Assam Agricultural Income Tax Act, 1939 — Section 20D, 20D(6), 23, 36(3), 39

Citation : (2006) 206 CTR 638 : (2006) 286 ITR 511

Hon'ble Judges : Ranjan Gogoi, J

Bench : Single Bench

Advocate : A.K. Saraf, K.K. Gupta, S. Saikia and S.K. Agarwal, for the Appellant; R. Dubey, for the Respondent

Final Decision : Dismissed

Judgement

Ranjan Gogoi, J.—Five identical demand notices, each dated June 21, 2001, issued u/s 23 of the Assam Agricultural Income Tax Act, 1939 (hereinafter referred to as "the Assam Act"), in respect of the assessment years in question, details of which will be noticed later, are the subject matter of challenge in the present writ application. Another notice dated February 28, 2001, issued u/s 36(3) of the Assam Act proposing levy of penalty is a related aspect of the challenge made in the present writ application.

2. The petitioner company which is engaged in the manufacture and sale of tea has assailed the aforesaid demand notices as well as the notice proposing to levy penalty on two principal grounds. Firstly, it is contended that the assessments under the Income Tax Act (hereinafter referred to as "the Central Act") following which the assessments under the Assam Act are required to be made, though finalised by the primary authority, appeals have been filed either by the petitioner-assessee or by the Revenue wherein orders have been passed requiring revision of the assessments under the Central Act as made by the primary authority. In such circumstances, it is sought to be contended that the assessments under the Assam Act are liable to be correspondingly revised. The

impugned notices in question are, therefore, not legally sustainable. Secondly, it is contended, on behalf of the petitioner, that the refunds under the Assam Act for different assessment years are due and payable to the petitioner. Consequently, the demand raised by the impugned notices, in a situation where excess tax paid under the Assam Act is due to the petitioner, will not be justified.

3. Having noticed the broad features of the challenge made in the present writ application it will be necessary to unravel the detailed facts as placed before the court by Dr. A. K. Saraf, learned Counsel for the petitioner, so as to understand the precise nature of the challenge made in the writ petition.

4. The assessment years for which tax has been demanded by the impugned notices are 1989-90, 1990-91, 1991-92, 1992-93, 1993-94 and 1994-95. Relying on the relevant provisions of the Income Tax Act of 1961 and the Assam Act, Dr. Saraf, learned Counsel for the petitioner, has contended that in so far as the assessment of agricultural income derived from the business of manufacture and sale of tea is concerned, under the provisions of the two statutes noted above, it is first necessary to compute the business income from the activity of manufacture and sale of tea by following the provisions laid down in the Income Tax Act. 60 per cent. of such income computed under the provisions of the Income Tax Act constitutes agricultural income of the assessee to which income the provisions of the Assam Act will have to be applied to determine the taxable agricultural income and the tax to be levied thereon. Dr. Saraf, by referring to the averments made in the writ petition, has submitted that in so far as the assessment of the petitioner to Income Tax for the assessment year 1989-90 is concerned, against the assessment made by the primary authority, the petitioner had filed an appeal before the Commissioner of Income Tax (Appeals) who by order dated July 7, 1994, granted some relief to the petitioner. On a further appeal being made by the petitioner before the Income Tax Appellate Tribunal, the learned Tribunal by order dated November 27, 1998, had remitted the matter to the Commissioner of Income Tax for a fresh decision. In so far as the assessment year 1990-91 is concerned, Dr. Saraf has submitted that the assessment of the petitioner to Income Tax stands on a similar footing inasmuch as the learned Appellate Tribunal by its order dated November 27, 1998, had remitted the matter to the first appellate authority, i.e., the Commissioner of Income Tax (Appeals) for a de novo decision. For the assessment year 1991-92 the position is the same and the matter is presently pending before the Commissioner of Income Tax (Appeals). In so far as the assessment years 1993-94 and 1994-95 are concerned, according to Dr. Saraf, the correctness of the assessments made by the primary authority is presently pending in second appeal before the Income Tax Appellate Tribunal. On the said facts Dr. Saraf has contended that the Central assessment; i.e., the assessment under the Income Tax Act not having been finalized as yet and the assessments made by the primary authority having been interfered with by the appellate authority in some of the assessment years in question, the assessments under the Assam Act cannot be understood to have attained finality in law in order to justify the

demand notices issued. The fundamental basis on which the assessment of the petitioner under the Assam Act is required to be made, i.e. the assessment(s) under the Central Act not having attained finality, according to learned Counsel for the petitioner, the impugned demand notices are wholly without jurisdiction and/or authority of law.

5. In support of the second limb of the arguments advanced, Dr. Saraf, learned Counsel for the petitioner, has placed before the court the letters written on behalf of the petitioner-assessee dated October 6, 1999, January 18, 2001 and September 14, 2000 (annexures I, J and K to the writ petition), to contend that for the assessment years 1999-2000, 2000-01 and 2001-02 refund of tax under the Assam Act is due and payable to the petitioner. The said refunds have not yet been tendered or paid. In such a situation, according to Dr. Saraf, learned Counsel for the petitioner, the demand for the earlier assessment years as made by issuing the impugned notices u/s 23 would be wholly illegal, without jurisdiction and authority of law and therefore appropriate intervention of the court may be made. In support Dr. Saraf has placed before the court a decision of the apex court in the case of N.C. Mukherjee and Co. Vs. Union of India and Another, and a decision of the Kerala High Court in the case of Gandhi Sons v. Asst. Commr. [1994] 95 STC 205. A decision of this Court reported in Kamrup Construction Co. P. Ltd. v. State of Assam [2006] 144 STC 50 has also been relied upon by the learned Counsel for the petitioner.

6. Opposing the contentions advanced on behalf of the petitioner, Sri Dubey, learned State counsel, has argued that on finalization of the assessment proceedings under the Central Act, the assessments of the petitioner to agricultural Income Tax under the Assam Act for the assessment years in question have been made by the assessing authority. As the petitioner had defaulted to pay the tax due, the demand notices have been issued. Arguing further, Sri Dubey, learned Counsel for the respondents, has contended that while it may be correct that the assessments made under the Central Act have been appealed against by the petitioner-assessee and some orders have been passed by the appellate authority, the assessments of the petitioner under the Central Act have not been revised so as to call for any revision in the assessments under the Assam Act. In this regard the averments made in the affidavit filed on behalf of the State to the effect that no revisions in the assessments of the petitioner under the Income Tax Act have been made has been placed before the court by Sri Dubey. Sri Dubey has further contended that, according to the petitioner, the appeal proceedings against the assessments made under the Central Act are still pending and no final orders have been passed in such proceedings. If that be so the assessments made under the Central Act by the primary authority will not call for any revision/rectification. According to Sri Dubey, unless the appeal proceedings are finalised and revisions, as may be required to be carried out in the assessments under the Central Act are actually made the assessments under the Assam Act will continue to hold the field.

7. Sri Dubey, learned Counsel for the respondents, has further argued that in so far as the second limb of the arguments advanced on behalf of the petitioner is concerned, it cannot be understood that merely because refunds under the Assam Act are pending for subsequent assessment years no demand of tax for the preceding assessment years can be raised. In this regard, Sri Dubey has contended that each assessment year has to be construed separately and the tax payable for one assessment year cannot be made contingent on a claim for refund for a subsequent assessment year. That apart, Sri Dubey, learned Counsel for the respondents, by pointing out to the letters enclosed to the writ petition on the basis of which the petitioner contends refund to be due and payable to him, has argued that the said documents do not prove and establish that any refund is due and payable to the petitioner-assessee under the Assam Act.

8. Having noticed the arguments advanced by learned Counsel for the respective parties, this Court would like to take note of the details pertaining to the assessment of the petitioner under the Income Tax Act in respect of the assessment years in question. A consideration of the assessment orders available on record would go to show that in so far as the assessment years 1989-90, 1990-91 and 1991-92 are concerned, the said assessments had been taken in appeal to the Income Tax Appellate Tribunal either by the assessee or by the Department, as the case may be, and in all the three assessment years, on the basis of the orders passed by the learned Appellate Tribunal, the appeals were remitted to the learned Commissioner of Income Tax (Appeals) for fresh consideration. Such orders were passed by the learned Tribunal way back in the year 1998. What had happened thereafter, i.e., whether the Commissioner of Income Tax (Appeals) had disposed of the appeals in the light of the directions issued by the Tribunal and whether there has been any further appeal has not been indicated in the writ petition filed. Similarly whether acting on the basis of the appellate orders, that may have been passed in the meantime, rectifications/revision of the assessments of the petitioner have been made or are required to be made by the primary authority has also not been indicated.

9. In so far as the assessment years 1993-94 and 1994-95 are concerned, a consideration of the assessment orders passed by the primary authority would go to show that some relief had been granted to the petitioner by the Commissioner of Income Tax (Appeals) by allowing certain deductions which were refused by the primary authority. No appeals against the reliefs granted by the learned Commissioner of Income Tax (Appeals) have been filed by the Revenue. On the other hand, the petitioner, not being satisfied with the relief granted by the learned Commissioner of Income Tax (Appeals), had approached the learned Tribunal in second appeal for further relief. Such approaches to the learned Tribunal were made in the years 1998 and 1999. What has happened thereafter is not known.

10. An order of assessment passed by the primary authority if modified in appeal is liable to correction/rectification in the light of the appellate order. The Income

Tax Act and the rules framed thereunder do not contemplate any particular stage at which such correction/rectification is required to be made. In other words what is being sought to be emphasised is that under the statute necessary correction/rectification may be required to be made after completion of each stage of the appeal proceedings as contemplated under the Act. Such a situation envisaged by the statute not only has the effect of keeping an assessment in a constant state of flux but also has its own repercussions on consequential assessments that may be required to be made as, in the present case, under the Assam Act. However, as the matter pertains to the sphere of legislative wisdom, the court does not consider it appropriate to dilate any further on the aforesaid aspect of the matter. However, from the narration of facts with regard to the appeal proceedings taken out by the petitioners as against the assessment made under the Central Act, it is clear that as far back as in the year 1998 the assessments of the petitioner for the assessment years 1989-90, 1990-91 and 1991-92 were pending finalisation at the level of the Commissioner of Income Tax (Appeals). For the assessment years 1993-94 and 1994-95 some relief was granted to the petitioner by the first appellate authority against which no appeal has been filed by the Revenue. However, the entitlement of the petitioner to further relief was pending before the learned Tribunal at the instance of the petitioner. This was, again, the position in the year 1999. As already observed, what had happened thereafter and what is the precise position with regard to the assessments of the petitioner under the Central Act as on date has neither been indicated nor has the petitioner brought on record the connected documents showing that any correction or rectification of the assessments under the Central Act has been made necessitating a corresponding revision in the assessments under the Assam Act. If any such rectification had been made, surely, it was the duty of the petitioner to place the same on record. On the other hand, if no such rectification was carried out and the initial order of assessment under the Income Tax Act remained intact the authority under the Assam Act will have no option but to proceed on the said basis to recover the dues under the Assam Act. This is precisely what has been stated in the affidavit of the State Government wherein the stand taken is that as the Central assessments of the petitioner have not been modified or rectified in any manner the authorities under the Assam Act have no option but to proceed on that basis and to hold the tax, as demanded, to be due.

11. The provisions of Section 20D of the Assam Act may also be taken note of at this stage. Section 20D contemplates that in case the income of an assessee under the Central Act is revised leading to enhancement or reduction of agricultural income, the assessee is required to submit a revised return of the agricultural income for the purposes of reassessment. While Section 20D(6) contemplates payment of interest by the assessee in case the agricultural income gets enhanced by virtue of the revision of the income under the Income Tax Act, the provisions for refund contained in Section 39 of the Assam Act may apply to the reverse situation. The petitioner in the present case does not appear to have

resorted to the provisions contained in Section 20D of the Assam Act. For all the aforesaid reasons, in the facts stated above, the first argument advanced on behalf of the petitioner-assessee cannot have the approval of the court.

12. Coming to the second argument advanced, the same would hardly need to detain the court. I have read and considered the several communications enclosed to the writ petition on the basis of which the petitioner contends refund to be due to it under the Assam Act in respect of certain subsequent assessment years. The provisions for refund are contained in Chapter VI of the Assam Act and refunds are to be granted on completion of a proceeding in this regard as contemplated by the Act. The documents enclosed by the petitioner contain mere assertions made by it to the effect that excess tax has been paid under the Assam Act and refund is due. No order of refund as contemplated by the Act has been placed before the court to enable the court to consider as to whether a direction similar to what was considered appropriate in *Kamrup Construction Co. P. Ltd. v. State of Assam* [2006] 144 STC 50 (Gau) would be called for in the present case.

13. For the aforesaid reason, I am of the opinion that this writ petition will not justify grant of any relief to the petitioner. Consequently and for the reasons stated this writ petition has to be dismissed which I hereby do. However, in the facts and circumstances of the case, I make no order as to costs.