

(1957) 02 AHC CK 0021

In the Allahabad High Court

Case No : Misc. Agricultural I.T. Ref. No. 37 of 1954

Mohd. Abdul Jalil Khan

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 18-02-1957

Acts Referred:

Mussalman Wakf Validating Act, 1913 — Section 5

Trusts Act, 1882 — Section 6

Uttar Pradesh Agricultural Income Tax Act, 1948 — Section 2(11), 3, 9

Citation : AIR 1958 All 38

Hon'ble Judges : V. Bhargava, J; Upadhyaya, J

Bench : Division Bench

Advocate : Hari Swarup, for the Appellant; Standing Counsel, for the Respondent

Judgement

V. Bhargava, J.—The Revision Board under the Agricultural Income Tax Act has referred the following question for our opinion :

"Whether an assessee should be assessed separately on the income of his personal property and the income of the wakf property held by him as a Mutawalli of Wakf Alal-aulad or there should be one assessment of both the properties taken together?"

According to the statement of the case, the assessee Abdul Jalil Khan is Mutawalli of a wakf created by his wife Musaratunnisa Begam in respect of property from which agricultural income is derived. In addition, Abdul Jalil Khan has his own property from which agricultural income accrues to him. The Commissioner of Agricultural Income Tax by his order directed that the income received by the assessee from both the sources should be added together and agricultural Income Tax should be assessed on the total income received by the assessee. The assessee thereupon came up in revision before the Revision Board. The Revision Board expressed its opinion to the effect that the income from each separate source should be assessed separately but, in view of the general importance of this question, made this reference to the High Court for

opinion.

2. As mentioned by the Revision Board, a specific provision has been made for assessing the agricultural income of a trust governed by Section 5, Muslim Wakf Validating Act, 1913 commonly known as Wakf Alal-aulad. Prima facie, in the absence of any specific provision, the income derived from such a trust would, after distribution between the beneficiaries, be the income of each beneficiary and should be assessed as his income. Section 9, Agricultural Income Tax Act, however, lays down a special principle for assessing income derived from such a trust directing that this income shall be assessed as income of one individual. The provision u/s 9 thus indicates that, irrespective of the fact as to who is to enjoy that income, the assessment of that income is to be made as one unit treating it as income of one individual.

In such circumstances, it would not be the intention of the Legislature that that income should be treated as the personal income of the Mutawalli and added to his other personal income. There may be cases where the Mutawalli is not a beneficiary at all. He would then hold the income only temporarily for the purpose of distributing it to the beneficiaries. He himself would derive no benefit at all from the income. This being the position, it could not have been intended that that income should be added to his personal income and assessed to agricultural Income Tax treating it as his personal income. The language of Section 9, Agricultural Income Tax Act, indicates that the income of a trust referred to in that section, is to be assessed as the income of a separate individual.

Had it been the intention of the Legislature that it should be treated as the income of the Mutawalli and added to his personal income, specific provision could easily have been made not only to the effect that the income was to be assessed as the income of an individual but making it clear that the income is to be assessed as income of the Mutawalli himself. We, consequently, agree with the opinion expressed by the Revision Board that, in the case of a trust governed by Section 9, Agricultural Income Tax Act, the income received from the trust property should be assessed separately j from the income received as his personal income by the Mutawalli.

3. In this connection we may take notice of one other aspect. A Mutawalli of a trust referred to in Section 5, Muslim Waqf Validating Act, 1913, does not stand on the same footing as an ordinary trust governed by Trust Act. In the case of a trust governed by the Trust Act, the trust property as well as the income derived from the trust property vest in the trustee who is to be deemed owner of the property as well as the income. A Mutawalli of a Waqf Alal-aulad is, on the other hand, merely the manager of the trust property. The property and its income vest not in the Mutawalli but in God though, according to the provisions of the trust, a part or the whole of that income may be divisible amongst the beneficiaries to be enjoyed by them. When neither the property nor the income vest in the Mutawalli and he holds them merely as a manager, that income

cannot be treated as his personal income and added to his personal income from other sources for the purpose of assessing agricultural Income Tax. The income received by him as a mere manager of the trust property must, therefore, be assessed separately from his personal income.

4. Section 3, Agricultural Income Tax Act, is the charging section and provides for agricultural Income Tax being charged on the total agricultural income of every person. "Person" as defined in Section 2 (11) of the Act is an individual or association of individuals owning or holding property for himself or for any other, or partly for his own benefit or 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.

A Mutawalli when receiving the income from a trust property receives it in his capacity as manager of that property and is another person when he derives his agricultural income from his personal property. He derives it in an entirely different capacity and is, consequently, a different person. u/s 3, Agricultural Income Tax Act, therefore, he is deemed to be two different persons in his two capacities and the assessment of the income from the two different sources must be separate. This is an additional reason why we consider that the opinion expressed by the Revision Board is correct.

5. Our answer to the question referred, therefore, is that the assessee should be assessed separately on the income of his personal property and on the income of the waqf property held by him as Mutawalli under the deed of Waqf Alal-aulad.

6. The assessee will be entitled to his costs which we fix at Rs. 100/-.