

(1959) 11 CAL CK 0019
In the Calcutta High Court
Case No : Matter No. 228 of 58

Mooljee Sicka and Co.

APPELLANT

Vs

Second Additional Income Tax Officer V(I) and Others

RESPONDENT

Date of Decision : 26-11-1959

Acts Referred:

Income Tax Act, 1922 — Section 34(I)

Citation : AIR 1960 Cal 492 : (1960) 40 ITR 163

Hon'ble Judges : Sinha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sinha, J.—The facts in this case are shortly as follows: The petitioner firm carries on business, inter alia, in the collecting and selling of Tendu leaves, which are used for the manufacture of Bidis. It has also factories for the manufacture of Bidis. but with this we have no concern in this case. The immediate facts which have given rise to the necessity of making this application are as follows: For the assessment year 1953-54, the petitioner had been assessed to Income Tax. In that assessment year, it was in possession of certain lands at Gondia and Champa in Madhya Pradesh, which were utilised for the growing, collecting and selling of Tendu leaves. In that assessment, the petitioner claimed certain exemptions in respect of Income Tax derived from the above operations on. the ground that it was agricultural income. Exemption was granted and the following is the relevant part of the assessment order:

"The aforesaid profit worked out includes an relement of agricultural income for Tendu leaves grown and sold in view of the Calcutta High Court decision in this case in which it was held that to the extent to which the profit from Tendu leaves can be ascribed to the process of pruning the Tendu leaves, it wa,s an agricultural income within the meaning of Section 3(1) of the Indian Income Tax Act. Since it is not definite to what extent pruning has been resorted to. an estimated amount equivalent to 50 p.c. of the total profit on account of Tendu

leaves is allowed as agricultural income".

2. So far as the assessment of that particular year is concerned there was no appeal. In order to understand what all this is about, it is necessary to refer back to the decision *Mooljee Sicka and Co, MOOLJI SICKA and CO., IN RE.,* . This case related to the petitioner firm, and also related to the same question in respect of lands in Madhya Pradesh, which were utilised for the growing, collecting and selling of Tendu leaves. It was a reference u/s 66(2) of the Indian Income Tax Act, as it then stood. It appears that the Court called upon the Commissioner to have a supplementary statement of the case prepared, so as to answer certain questions formulated by the Court. The answers which are also set out, show that it was found as a fact that the Tendu plants in question were entirely of wild growth, and there was no breaking up of the land nor ploughing nor raising-up of the soil. It was also found as a fact that during some months of the year, the operation of priming took place in order to increase the yield, and in fact had resulted in a higher yield and softer leaves. *Derbyshire, C.J.* who delivered the judgment held that most of the operations were non-agricultural, but to the extent to which pruning of the Tendu shrubs occurred, there was, in a technical and legal sense, a cultivation of the soil in which the Tendu shrubs grew. According to the learned Chief Justice, this "pruning" amounted to an agricultural operation of the land on which the shrubs grew, and it amounted to "agriculture", and the income was therefore subject to a proportionate exemption. It was therefore held that so much of the profit derived from the collection and preparation of the Tendu leaves as could be shown to be produced by the pruning of the Tendu shrubs, should be allowed. This was in connection with the assessment in 1934. Since then, the petitioner firm was being assessed on that footing. We are concerned in this case with the assessment of the year 1953-54. In that year, the very same claim for exemption was made and it was allowed in terms set out above. It is quite obvious from the quotations made above that the Income Tax Officer was granting an exemption on the footing of the judgment of this High Court in *MOOLJI SICKA and CO., IN RE.,* mentioned above. Therefore, he did it on the footing that the exemption was to be granted in respect of a proportionate part of the income which could be attributed to the pruning of Tendu leaves, although the trees were growing wild. This fact will be of importance by reason of the argument that has been advanced in this case. The basic principle upon which rested the case decided by the High Court in *MOOLJI SICKA and CO., IN RE.,* came up for consideration by the Supreme Court in the case, *Commissioner of Income Tax, West Bengal, Calcutta Vs. Raja Benoy Kumar Sahas Roy,* . In that case, the learned judges were considering the question of a forest of spontaneous growth 150 years old consisting of sal and piyasal trees, The question was "whether the operation carried out by the assessee in connection with this forest was of an agricultural nature or not. The decision of *Derbyshire. C. J.* in *MOOLJI SICKA and CO., IN RE.,* came up for consideration and was dissented from. It was held by the Supreme Court that when we are considering as to whether land was used for agricultural purposes,

or agricultural operations were performed on it, we must distinguish- the case where plants were grown on the soil by the assessee or where it was a case of merely tending or improving plants which were already there or of spontaneous growth. It was held that where it was a case of a basic operation, then it would amount to agriculture, but where there was no basic operation, then the taking of various steps, merely to tend or improve existing plants or plants of spontaneous growth, including the operation of pruning, does not amount to an operation that can be called agricultural. Therefore, such operations do not give rise to income which could be said to be agricultural and as such subject to exemption. As I have said, MOOLJI SICKA and CO., IN RE., was expressly dissented from. On or about February, 1958 the Income Tax Officer served the petitioner company with a notice u/s 34(1) (b) of the Income Tax Act, calling upon it to file a return on the ground that he had reason to believe that income for the year 1953-54 had escaped assessment. The ground on which this notice was issued is now admitted to be the information received by the Income Tax Officer viz., a change in the law. At this point of time, the petitioner took up the following position: Firstly, it said that the reopening of the assessment was without jurisdiction and also that the original leases in 1934 had expired and new leases had been taken, one of the terms of which was that the petitioner firm will have the right to plant and grow trees. The question as to whether the petitioner did grow the plants in respect of which the leaves were plucked and sold, then became a question of great importance. If the leaves related to plants which the petitioner itself planted and grew then it would be a basic operation subject to exemption. On the other hand, if the same sort of thing continued as was found to have existed in 1934, then no exemption for pruning could be claimed because it was not a basic operation and did not amount to agriculture. At the hearing if the reassessment, no satisfactory evidence was adduced about this planting of trees. A copy of the assessment order is Annexure "G" to the petition. This is what the Income Tax Officer says:

"The assessee has no doubt been given the right to plant trees in the contract but there is no evidence as to any trees having been planted and no accounts have been produced in proof of the contention that trees were planted and watered by the assessee firm. The trees were entirely of wild growth and propagated themselves by root-suckers and by self-sown seeds.

X X XX X Moreover, the assessee is not able to furnish any particulars of the planting done from year to year. It is accordingly not proved that the assessee had performed any cultivation of the land including tilling of the land, sowing of seeds and other operations involving application of human labour and skill upon the land.

X X X X X The only operation performed by the assessee was the pruning of the plant. Assessee was specifically asked by letter dated 17-7-58 to state categorically if the operations performed for the collection of tendu leaves have changed since the assessment year 1936-37. Assessee has given an evasive

reply stating "We are not in possession of papers of 1935-36 and 1936-37 and consequently not in a position to say either way. But since 1950-51 we have records to show that we have been carrying on operations stated in para 1 which are purely agricultural." I have already observed that there is absolutely no evidence to show that the firm actually performed any operation on the land which could bring the income therefrom within the definition of agricultural income. Actually the assessee did not plant any trees. A mere recital in the lease deed is of no significance and does not prove that the assessee actually planted trees and performed agricultural operations."

3. The Income Tax Officer points out that in a statement filed there were expenses shown for tilling, watering and planting, but there was no evidence given of the plantings and so far as tilling and watering was concerned it could relate to operations which were not basic operations. The result was that the amount which had been exempted in the earlier assessment was held to be taxable. It is against this reassessment order that this application is directed. Before I proceed further, I might mention that the question as to whether a change of law amounted to information received upon which the Income Tax Officer could proceed u/s 34(1) (b) of the Income Tax Act. was a vexed question, there being different decisions in different High Courts. The matter however, has now been finally settled by a decision of the Supreme Court *Maharaj Kumar Kamal Singh Vs. The Commissioner of Income Tax, Bihar and Orissa*, . There, what happened was that the assessee claimed exemption in respect of interest on arrears of rent payable in respect of agricultural land. In other words, this was claimed to be agricultural income and exemption was claimed. The point was decided by the Patna High Court in *RAJA BAHADUR KAMAKSHYA NARAIN SINGH Vs. COMMISSIONER OF Income Tax, BIHAR AND ORISSA*, and it was decided that such income was agricultural income. It was consequently held that the assessee was entitled to the exemption. Against the said decision of the Patna High Court, there was pending an appeal to the Privy Council, and ultimately the Privy Council upset the decision of the Patna High Court and held that such income was not agricultural and therefore not subject to exemption. The result was that the Income Tax authorities reopened the question u/s 34(1) (b) and the ground was that the law on the subject had been altered. It was held that the word "information" in Section 34(1) (b) included information as to the true and correct state of the law, and so would cover information as to a relevant judicial decision. In other words, where an exemption has been granted by the Income Tax authorities on the ground that the law was to be applied in a particular manner, and if it was subsequently held by an authoritative decision that the law applicable was different, then that was sufficient information which would warrant a reopening of the assessment. This basic proposition is not disputed by Mr. Mitter appearing on behalf of the petitioner. His point however is as follows: He says that in order to reopen the assessment of the year 1953-54 u/s 34(1) (b) of the Income Tax Act, the pre-condition was that the Income-Tax Officer had, in consequence of information in his possession, reason to believe that

income, profits or gains chargeable to Income Tax had escaped assessment for any year etc. His argument is that so far as the assessment in 1934 which was the subject matter of the case of MOOLJI SICKA and CO., IN RE., is concerned, it was found as a fact that the Tendu plants were of spontaneous growth. Therefore, if similar facts existed in respect of the assessment of 1953-54, then indeed, under the principle as declared by the Supreme Court, the operation would be non-agricultural, because the pruning would be in respect of plants of spontaneous growth and would therefore not constitute a basic operation. Mr. Mitter however argues that the old leases had long ago expired and new leases had taken their place. Under the new leases, there is prima facie a right to grow plants, and he says that in fact the income was derived from such operation. He says that the Income Tax Officer had no facts in his possession which could have induced him to believe, or give him reason to believe, that the facts continued to be the same, and if he did not believe in that basic fact, then he had no reason to believe that there was any escape of assessment. Consequently, he says that this reopening of the assessment was outside the purview of the power granted u/s 34(1) (b) and in spite of the new elucidation of the law, the pre-conditions were not satisfied. This argument is certainly ingenuous but in the context of the facts of this case, does not appear to be of substance. Let us see what actually happened in his case: In the case of MOOLJI SICKA and CO., IN RE., it was held as a fact that the plants grown were of spontaneous growth and the pruning of such plants constitute an agricultural operation resulting in exemption. The Supreme Court has held that in case of plants of spontaneous growth such pruning would not be an agricultural operation. It has expressly dissented from MOOLJI SICKA and CO., IN RE., upon this point. It is very well to say that the Income Tax Officer had no reason to believe that the facts about the Tendu plants remained the same. Firstly, the exemption that was granted in respect of the years 1953-54 in the original assessment was plainly upon the footing of MOOLJI SICKA and CO., IN RE., . That was the exemption allowed, and that was the exemption accepted, inasmuch as no appeal had been filed on that assessment. It is plain therefore that the basic assumption was that the facts remain the same as in the case of MOOLJI SICKA and CO., IN RE., decided in 1939. It is the law that the assessee must prove all the facts entitling him to exemption (See *Commissioner of Income Tax v. Venkataswami Naidu* (1956) 29 ITR 529: AIR 1958 SC 522. Upon the basis of the decision of this High Court in MOOLJI SICKA and CO., IN RE., the Income Tax authorities calculated the exemption at 50:50 basis. In other words, the calculation that was directed to be effected by that judgment, was inherently so difficult and complicated that it seems that the Parties agreed to the rough and ready formula of a 50% exemption. With regard to the assessment of 1953-54 the calculation was made and exemption granted on that footing. All this however became incorrect, as a result of the elucidation of the law by the Supreme Court. Firstly, if the facts remained the same there would be no exemption at all. If the facts did not remain the same, then the calculation and the basis of the exemption given would be rendered incorrect and would require re-calculation. As I have said, the

exemption that was granted in the assessment of 1953-54 has proceeded on the footing of MOOLJI SICKA and CO., IN RE., and consequently upon the footing of the facts that constituted the foundation of that decision. Since the law has been changed, and if it was the contention of the assessee that the facts had been changed, then the onus was upon it to prove the change of facts. In my opinion, the Income Tax Officer would have, under the circumstances, reason to believe that part of the income had escaped assessment. It will be recollected, and in this respect I cannot go beyond the assessment order, that the assessee did not take advantage of the new proceedings and did not adduce¹ any evidence in respect of its case, Or at least the evidence adduced is not sufficient. Mr. Mitter argued that evidence had been adduced and should have been found satisfactory. However I am not a Court of Appeal upon such points, and I cannot go behind the findings of the Income Tax Officer in respect thereof. If the case of the assessee is that such findings are incorrect, he should appeal in the usual manner. The result is that I find no ground for interference in this case and this application must fail. The rule is discharged. Interim order is vacated. No order as to costs. The operation of this order will be stayed for six weeks from date. But any further stay must be taken from the Court of Appeal if appeal is preferred.