(1939) 06 CAL CK 0002

In the Calcutta High Court

Case No : Reference No. 5 of 1938

MOOLJI SICKA and CO., IN RE.

Date of Decision : 21-06-1939

Acts Referred:
Income Tax Act, 1922 — Section 2(1)

Citation : (1939) 7 ITR 493

Hon'ble Judges : Derbyshire, C.J;Nazim Ali, J;Nasim Ali, J

Bench : Full Bench

Judgement

DERBYSHIRE, C.J. - The facts are stated in full in the Case and the Supplementary Case; details appear in the annexed documents.

Shortly, the position is as follows : the assessee make biris which are cigarettes composed of tobacco wrapped in tendu leaves. The tobacco is purchased by the assessee; tendu leaves are gathered by the assessee agents from the tendu tree or shrub, made into bundles of 60 to 150, the bundles are dried in the sun for about 10 days, then made up into larger bundles for transport to the factory, sometimes after watering.

According to the Supplementary Case, the tendu plant is entirely of wild growth and propagates itself by root-suckers or by self sown seed; it is never planted by human agency and grows in jungle or waste lands; there is no breaking up of the land nor ploughing nor raising up of the soil; there is no watering nor manuring. No fencing nor other protection is afforded. Occasionally patches of tendu occur in cultivated holdings but the land on which the plants actually stand is not cultivated. In the cold whether dead leaves, broken twigs and thorns may be burnt. This is not essential and is not done in many areas. The effect is said to be to promote the growth of softer leaves but some hold that burning retards the growth of plants for a year or so and hence it is not always done. The burning of the thorns where they exist is done in order to maintain easy access to the trees. The lopping of old trees is prohibited, but between midFebruary and the end of March the young plants are usually cut back and this results in new shoots which yield larger and softer leaves. Plucking the leaves takes place in April and May.

This is done by the local villagers who are paid piece rate wages.

We are told from the Bar during the arguments that the tendu varies in size from a small shrub to a tree about 10 feet high.

The assessee have entered into a number of agreements styled "leases" with various landowners in the Central Provinces which give them the right to collect tendu leaves in the areas specified in the leases. The leases do not give a right to occupy the land. There are 150 or more of such leases; one lease alone covers 284 villages. The leases vary in themselves. The specimen lease exhibited Annexure B provides :

Paragraph 3 : that the assessees shall not for 4 1/2 years from April 1932 interfere with the rights of tenants to collect tendu leaves from trees standing in their holdings.

Paragraph 5 : that the assessees shall collect tendu leaves from trees standing in the forest, waste land, and cultivated area, without cutting, damaging or injuring the twigs, branches and trunks of the trees.

Paragraph 6 : that the lessor may collect grazing dues on cattle grazing in the forest and sell the produce thereof except the tendu leaves sold to the assessees.

"Lease" Annexure "C" was for five years and gave the assessees the right "to collect and sell tendu leaves from plants growing on the lands of the village" (Mouza Taraimar).

"Lease" Annexure "D" (above referred to) was for five years and entitled the assessees to "collect tendu leaves from the cultivated, uncultivated and waste land of all the zemindari village (284 in number)."

"Lease" Annexure "E" was for 12 years and covered ten villages. It gave the lessees "absolute possession and control of tendu leaves" and provided that the lessees are "entitled to make tendu graft plant 3 feet high and of 1 inch girth".

The assessees use most of the tendu leaves in their own business (which is a large one) but they also sell bundles of tendu leave to other makers of biris.

In the income tax return make on February 10, 1937, for the assessment year 1936-37 the assessees showed for the previous year a profit of Rs. 3,94,592 from which they claimed to make deductions as follows :

(1) Actual profit at Calcutta Sale of tobacco and leaves

...

78,318 0 0

Less pro rata expense at Calcutta

...

15,416 0 0

62,902 0 0

(2) Agricultural profit on tobacco used in Gondia and Champa at 10 per cent. on Rs. 3,09,730

...

30,970 0 0

(3) Agricultural profit on tendu leaves from Gondia jungles used in biri manufacture

...

51,491 0 0

(4) Agricultural profit on tendu leaves from Champa jungles on sale and use in biri manufacture

...

30,176 0 0

1,75,539 0 0

The assessees contended that the Rs. 1,75,539 was agricultural income and so exempted from income tax u/s 4 (3) (vii) of the Act of 1922. The Income Tax Authorities repelled this contention and the Commissioner in the case formulated the following question :

"Whether in the fact and circumstances as given above the sum of Rs. 1,75,539 or any portion thereof can be said to be agricultural income within the meaning of Section 2 (1) of the Indian income tax Act (Act XI of 1922)" ?

In the argument before us it was not contended that item (1) Rs. 62,902 and (2) Rs. 30,970 were agricultural income. Obviously they were profits on the sale of tobacco like any other raw material : they were an ordinary trading profit and not agricultural income. The question remains as to the other items of profit (3) Rs. 51,491 and (4) Rs. 30,176 attributable to the tendu leaves. The burden is upon the assessees to show that these items come within the exceptions of Section 4 (3) (vii).

The assessees must, u/s 2(1) show that the income sought to be excepted is :

(a) rent or revenue derived from land which is used for agricultural purposes and is either assessed to land revenue in British India or subject to a local rate assessed and collected by the officers of the Crown as such :

Obviously these two items of income are neither rent nor revenue; they are profit due to certain manual operations involved in the collection (and it may be production) of tendu leaves, or

(b) income derived from such land as is mentioned in (a), i.e., land which is used for agricultural purposes and is either assessed to land revenue in British India or subject to a local rate assessed and collected by officers of the Crown as such by :

(i) agriculture,

(ii) the performance by a cultivator of any process ordinarily employed by a cultivator to render the produce raised fit to be taken to market, or

(iii) the sale by a cultivator of the produce raised by him in respect of which no process has been performed other than a process of the nature described in (ii).

It is necessary here to consider what the word "agriculture" means. The broadest definition I have seen is that in the large Oxford Dictionary, Vol. I, p. 191 : "The Science and art of cultivating the soil; including the allied pursuits of gathering in the crops and rearing live stock, tillage, husbandry, farming (in the widest sense)".

Do the assessees operations here amount to agriculture within that definition ?

Cutting back or pruning the wild tendu clearly contributes to the growth of the leaves in that shrub and I am prepared to hold that the pruning of the shrub is a cultivation of the shrub and as the a shrub grows in the soil and as a part of it, is a cultivation of the soil in a legal and technical sense. How mush such pruning contributes to the growth of the crop gathered as a whole is difficult question of fact which the income tax Officer must determine as best he can from such evidence as he has at his disposal including such evidence as the assessees provide him with. Not the whole crop, nor even all the leaves in the shrub pruned are due to pruning or "cultivation", wild nature makes a large contribution.

As regards the collecting of dead leaves, broken twigs and thorns in the cold whether and burning them, doubt is expressed in the case as to whether this is good for the growth of the tendu leaves. It may be done for the purpose of keeping clear paths and general tidiness. Although it may be good for the countryside generally that dead leaves and twigs should be burned it may not be good for the tendu leaves. I am not prepared to hold that in connection with the gathering of tendu leaves the collecting and burning of dead leaves and twigs is cultivating the land or agriculture.

To the extent to which pruning of the tendu shrub occurs there is in a technical and legal sense a cultivation of the soil in which the tendu shrub grows; there is an agricultural operation and the land on which the shrub grows (but not necessarily beyond it) is land used for the purpose of agriculture.

In my opinion the question asked should be answered as follows :-

So much of the items (3) Rs. 51,491 and (4) Rs. 30,176 of the total profit of Rs. 1,75,539 is to be deemed agricultural income within Section 2 (1) of the Indian income tax Act, 1922, as the assessee can show to be profit derived from the collection and preparation so as to make them fit of the taken to market of tendu leaves produced by the pruning of tendu shrubs provided that the shrubs are growing on land either assessed to land revenue in British India or subject to a local rate assessed and collected by officers of Crown as such.

No order is made as to costs in this Reference.

NAZIM ALI, J. - I agree.

Reference answered accordingly.

