

(1994) 01 MAD CK 0050
In the Madras High Court
Case No : Writ Petition No. 4043 of 1989

M.S. Haneefa

APPELLANT

Vs

Agricultural Income Tax Officer and another

RESPONDENT

Date of Decision : 19-01-1994

Acts Referred:

Citation : (1994) 210 ITR 921

Hon'ble Judges : Bhakthavatsalam, J

Bench : Single Bench

Advocate : V. Radhakrishnan, for the Appellant; M.C. Govindan, for the Respondent

Judgement

Bakthavatsalam J.

1. Having felt aggrieved by the best judgment assessment u/s 17(4) of the Agricultural Income Tax Act, the petitioner filed a revision before the second respondent. After hearing learned counsel appearing for the petitioner and after going through the records, the revisional authority confirmed the order of the assessing authority holding that the petitioner has derived an income of Rs. 1,05,445 during the assessment year 1987-88 and has incurred expenses of Rs. 61,845 and after deducting the expenses the net agricultural income of the petitioner being Rs. 43,600 and the tax payable is Rs. 14,730. Aggrieved by the said order, the petitioner has come up to this court for the issuance of a writ of certiorari to call for and quash the proceedings of the second respondent in R. B. No. 66 of 1988; dated March 11, 1989. In the affidavit filed in support of the above writ petition, it is stated that during the assessment year 1987-88, the petitioner has not realised any income, but incurred loss, that while arriving at

the total income of the petitioner, the first respondent has taken into account the cost of 25 lorry loads of fuel trees stored in the estate, that the first respondent has arrived at a conclusion that the petitioner has realised an income of Rs. 62,500 for 25 lorry loads of fuel trees and that the first respondent cannot take into consideration the alleged fuel trees stored in the estate for the purpose of computing agricultural Income Tax. It is further stated in the affidavit that apart from the fact that the sale proceeds of fuel timber cannot be called agricultural income, as the trees were forest trees of spontaneous growth, the fuel trees which are stored could not be even sold, in view of certain proceedings pending before the forest authorities and that if the amount of Rs. 62,500 is excluded, there is no taxable income and that, therefore, the impugned order of the second respondent confirming the order of the first respondent is liable to be set aside on the short ground that it is not sustainable in law.

2. With regard to the income from cashew trees, it is pointed out in the affidavit that the first respondent has taken into account that there are only 3,200 yielding cashew trees in the estate and has concluded that the petitioner has realised an income of Rs. 8,000 during the assessment year 1987-88 on the said head and that the entire estate has been abandoned and the cashew trees are not yielding any income due to the fact that they were abandoned long back and as such the first respondent erred in arriving at an income of Rs. 8,000 from cashew trees. As regards silk cotton, it is stated in the affidavit that the first respondent has taken into account 1,200 trees and the income derived therefrom as Rs. 18,000 and that though there are a few silk cotton trees in the estate, they are well spread all over the estate and it is practically not possible to realise any income therefrom. So far as arecanut trees are concerned, it is pointed out in the affidavit that the first respondent has not taken into consideration any income, and that factually there are no arecanut trees in the estate. If it is further alleged in the affidavit that before proceeding to take action u/s

17(4) of the Act, the Agricultural Income Tax Officer should have made a personal local inspection of the estate to find out the actual state of affairs and that in the absence of local inspection of the estate, the first respondent erred in holding that there was income and has passed the impugned order of assessment which was also confirmed by the revisional authority. It is also alleged in the affidavit that the second respondent has

not considered the question raised before it and has accordingly rejected the contention that the second respondent has not seriously adverted to

these aspects at all in his impugned order while rejecting the revision petition; that the estate is not capable of fetching any income and it has got

timber value only as the estate has a large number of spontaneously growing timber trees, that even in the previous assessment years, when the

petitioner was assessed to Income Tax and that even though the petitioner has brought to the notice of the respondent, the above facts, they were

not considered by the revisional authority.

3. A counter-affidavit has been filed on behalf of the respondents. It is stated that the assessee had not filed the return of agricultural income and

expenditure in conformity with the provisions as required u/s 16(1) of the Tamil Nadu Agricultural Income Tax Act relating to the assessment year

1987-88 and a notice u/s 16(2) of the Act was served on the assessee on June 30, 1987, directing the assessee to file the return of his agricultural

income and expenditure statement in the prescribed form, that the assessee neither took efforts seeking time for filing returns nor filed returns within

the stipulated time, and that, therefore the assessing authority had made the assessment under the best judgment u/s 17(4) of the Act, after a

personal inspection by the Agricultural Income Tax Officer on February 21, 1987, and the gross agricultural income of the assessee has been

determined at Rs. 1,05,445 allowing for reasonable expenditure. It is further stated in the counter-affidavit that the averment made in the affidavit

that the petitioner has not realised any income and that he has incurred heavy loss is not correct, that the petitioner has not maintained any day-to-

day accounts of agricultural income and expenditure, that therefore the inspection of the Agricultural Income Tax Officer on February 21, 1987, to

estimate the income was taken into account to pass an order u/s 17(4) of the Act, that during inspection the Agricultural Income Tax Officer

determined the income from twenty-five lorry loads of various kinds of trees stored in the estate for sale as Rs. 62,500 and that the agricultural

produce of twenty-five lorry loads of fuel timber produced out of agricultural operations were not sold/consumed by the assessee for the purpose

of his business. Reference to the decisions in State of Kerala Vs. Karimtharuvi Tea Estate Ltd., and V. Venugopala Verma Rajah Vs.

Commissioner of Income Tax, Kerala, has also been made in the counter-affidavit. It is further stated in the counter-affidavit that the petitioner has no material evidence to show from which trees the fuel timber has been collected and stored and that, therefore, the action taken by the Agricultural Income Tax Officer in computing the value of the timber stored as income is correct and valid in law.

4. After hearing counsel appearing on either side and after going through the affidavit, the counter-affidavit, the impugned order and the file

produced by the learned Government advocate, I am of the view that there is no merit in this writ petition. The conclusion arrived at by the

assessing authority cannot be interfered with. Further, it has also been held by the Supreme Court that it is not for this court to interfere with a best

judgment assessment unless it is so perverse or unreasonable. The petitioner has also been given an opportunity to put forth his contention before

the authorities. But, unfortunately, the petitioner has not chosen to do so. That apart, the petitioner has not even produced any material before the

revisional authority to substantiate his contention that the best judgment assessment is erroneous in law. In the absence of any assistance from the

petitioner/assessee, the first respondent himself has inspected the estate personally and then only arrived at the net income of the

petitioner/assessee and levied the tax for the assessment year 1987-88. I do not find any illegality or infirmity in the impugned order of the second

respondent, confirming the order of the first respondent.

5. This writ petition fails and it shall, therefore, stand dismissed. No costs.