(2006) 01 KL CK 0013

In the High Court Of Kerala

Case No : O.P. No. 236 of 2002

MSP Family Jain Trust APPELLANT

Vs

State of Kerala RESPONDENT

Date of Decision : 28-01-2006

Acts Referred:
Kerala Agricultural Income Tax Act, 1991 — Section 13, 13(1), 13(7), 14, 16

Citation : (2007) 289 ITR 112 : (2006) 2 KLT 998

Hon'ble Judges : C.N. Ramachandran Nair, J

Bench : Single Bench

Advocate : P.V. Jyothi Prasad, for the Appellant; T.K. Abdul Latiff, Government Pleader, for the Respondent

Judgement

C.N. Ramachandran Nair, J.—Petitioner is challenging Exts. P1 and P2 notices proposing to revise AIT assessments for the years 1991-92 to 1993-94 u/s 41 of the AIT Act 1991 on the ground that the same is arbitrary and without jurisdiction. I have heard counsel appearing for the petitioner and Government Pleader.

2. Petitioner claimed to be a charitable trust and was granted registration as such u/s 16 of the AIT Act. Even though agricultural holding of the petitioner, namely, coffee plantation, was above 20 hectares, the limit provided for payment of tax at compounded rate, the petitioner was granted the benefit of payment of tax at compounding by virtue of Section 13(7) of the Act, which grants eligibility to charitable trust for payment of tax at compounded rate above 20 hectares. Assessments were originally completed for the years 1991-92 to 1993-94 u/s 13 of the Act accepting the position that petitioner as a charitable trust, was eligible for payment of tax at compounding above 20 hectares. However, the question whether petitioner is a charitable trust or not was pending in appeal before the Supreme Court for earlier years and the Supreme Court in the year 1998 held that petitioner was not a charitable trust as it was formed to promote the interests of a single religious community. Consequent upon the judgment of the

Supreme Court the registration granted to the petitioner as a charitable trust was cancelled and the assessing officer issued notices stating that assessments completed at compounded rate for the years 1991-92 to 1993-94 are untenable and therefore he took permission from the Commissioner to reopen assessments u/s 41 of the AIT Act. The Commissioner vide order dated 4.9.2001 issued u/s 41(2) of the Act granted permission to revise the assessments for 1991-921, 1993-94 u/s 41 and the impugned notices are issued under the said provision after getting such sanction.

3. Counsel for the petitioner contended that assessments completed u/s 13 cannot be reopened u/s 41 as there is no escapement of income because scheme of payment of tax at compounded rate u/s 13 is based on area of cultivated land and determination of income did not arise. Government Pleader on the other hand contended that Section 41 applies to escapement of income, whether the assessment is made at compounded rate u/s 13 or whether assessment is made u/s 35. I am in agreement with the contention of Government Pleader because Section 13(1) provides for payment of tax at compounded rate which is in lieu of tax payable under other provisions of the Act. In other words. Section 13(1) is an alternate scheme of assessment as eligible assessees are given option to pay tax under the said scheme which is based on cultivated area. Section 13 has an overriding effect over other provisions of the Act, and it is therefore exception to Section 3, namely, the charging Section which provides for collection of tax at the rates provided in the schedule to the Act. So much so. Section 13 acts as a charging Section in lieu of Section 3 of the Act for those who opt for payment of tax under the scheme of compounding. Therefore what is provided u/s 13(1) is determination of tax payable under the Act, though the same does not involve determination of income, is also agricultural income tax payable under the Act. Moreover. Section 14 of the Act makes Section 41 applicable in respect of assessments u/s 13 involving escapement of tax. Therefore proceedings u/s 41(1) can be initiated to assess escaped tax even in respect of assessments at compounded rate u/s 13 of the Act. In the circumstances, the petitioner''s objection against maintainability of proceedings u/s 41(1) of the Act is overruled. Since limitation is got over by virtue of the order of the Commissioner u/s 41(2) the Assessing Officer is entitled to make assessments u/s 35(2) and (4) read with Section 41(1) of the Act. Even though petitioner has relied on the decisions of this Court in K. Krishna Bhat v. Agricultural Income Tax Officer 1979 KLT 518, Commissioner of Agricultural Income Tax v. Parameswara Bhat 1980 KLT 276 and Cochin Port Trust v. Ernakulam District L.D. & C. Labour Union 1995 (2) KLT 31, I do not find any of the above decisions applies to the facts of the case.

Since no other issue is considered or decided in the impugned notices, there is no need for this Court to decide the questions raised by counsel for the petitioner, such as "status of the assessee, the eligibility for compounding, if assessee is treated as tenants-in-common, etc...". I leave these issues open to be raised by the petitioner before the assessing officer, and assessing officer will consider the same while completing revised assessments. Since the matter is pending for over three years in this Court, assessing officer is directed to complete the assessments for 1991-92 to 1993-94 within two months from the date of production of a copy of this judgment by the petitioner, after considering the objections raised by the petitioner, which the petitioner can raise along with a copy of this judgment without any delay. Accordingly O.P. is disposed of upholding the impugned notices, but with the above directions.

