
(1976) 11 GAU CK 0009
In the Gauhati High Court
Case No : Civil Rule No. 155 of 1973

P. K. SYAM

APPELLANT

Vs

STATE OF ASSAM AND OTHERS.

RESPONDENT

Date of Decision : 05-11-1976

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1978) 112 ITR 447

Hon'ble Judges : Pathak, C.J.;Ibotombi Singh, J

Bench : Full Bench

Judgement

PATHAK C.J. - By this application under article 226 of the Constitution of India the petitioner has challenged the orders of assessment dated May 27, 1971, passed by the Agricultural Income Tax Officer, Assam, Gauhati, u/s 20(4) of the Assam Agricultural Income Tax Act, 1939, for the assessment years 1959-60, 1960-61 and 1961-62, and the demand notices issued and the recovery proceedings started in pursuance thereof.

The petitioner is the executor of teh estate comprising Tonganagaon Tea Estate in the district of Dibrugarh and Bhubrighat Tea Estate in the district of Cachar left by late P. C. Syam.

It is common case that the petitioner is liable to pay agricultural Income Tax in accordance with law. The petitioner did not file return in accordance with law, and, accordingly, the taxing authority had no other alternative but to pass best judgment assessment as provided under sub-section (4) of section 20 of the Assam Agricultural Income Tax Act, hereinafter referred to as "the Act". After the assessments were made and the petitioner came to know about them, he filed an application u/s 21 of the Act for all the three assessment years for cancellation of the assessments and for fresh assessments as stated in the application. This application u/s 21 of the Act is dated June 18, 1971, that is within one month, as laid down in section 21 itself. The petitioner now contends that application u/s 21 had not been disposed of when the rule was obtained on

April 10, 1973.

It is submitted by the learned counsel for the petitioner that the application u/s 21 of the Act has not been disposed of even today.

It would be convenient to quote the relevant sections of the Act. Section 2 of the Act defines "agricultural income" as follows :

"2. In this Act, unless there is anything repugnant in the subject or context -

(a) agricultural income means -

(1) any rent or revenue derived from land which used for agricultural purposes, and is either assessed to land revenue in Assam or subject to a local rate assessed and collected by officers of the Government as such.

(2) any income derived from such land by -

(i) agriculture, or

(ii) the performance by a cultivator or receiver of rent-in-kind of any process ordinarily employed by a cultivator or receiver of rent-in-kind to render the produce raised or received by him fit to be taken to market, or

(iii) the sale by a cultivator or receiver of rent-in-kind of the produce raised or received by him, in respect of which no process has been performed other than a process of the nature described in sub-clause (ii);

Explanation-Agricultural income derived from such land by the cultivation of tea means that portion of the income derived from the cultivation, manufacture and sale of tea as is defined to be agricultural income for the purposes of the enactments relating to the Indian Income Tax.

(b) agricultural Income Tax means the tax payable under this Act."

The second proviso to section 8 of the Act reads as follows :

"Provided further that in cases of agricultural income from cultivation and manufacture of tea the agricultural income for the purposes of this Act shall be deemed to be that portion of the income from cultivation, manufacture and sale which is agricultural income within the meaning of the Indian Income Tax Act, and shall be ascertained by computing the income from cultivation, manufacture and sale of tea as computed for Indian Income Tax from which shall be deducted any allowances by this Act authorised in so far as the same shall not have been allowed in the computation for the Indian Income Tax Act."

Rule 5 of the Assam Agricultural Income Tax Rules, 1939, reads as follows :

"5. In respect of agricultural income from tea grown and manufactured by the seller in the Province of Assam, the portion of net income worked out under the Indian Income Tax Act, and left unassessed as being agricultural shall be assessed under this Act after allowing such deductions under the Act and the rules made

thereunder so far as they have not been allowed under the Indian Income Tax Act, in computing the net income from the entire operation :

Provided that the computation made by the Indian Income Tax Officer shall ordinarily be accepted by the Assam Agricultural Income Tax Officer who may, for his satisfaction u/s 20 of the Assam Agricultural Income Tax Act, obtain further details from the assessee or from the Indian Income Tax Officer, but shall not without the previous sanction of the Deputy Commissioner of Taxes or when there is no Deputy Commissioner of Taxes the Assistant Commissioner of Taxes empowered by the Commissioner of Taxes in this behalf require under the proviso to section 49 the production of account books already examined by the India Income Tax Officer for determining the agricultural income from tea grown and manufactured in Assam or refuse to accept the computation of the Indian Income Tax Officer."

Rule 8 of the Income Tax Rules, 1962, reads as follows :

"8. Income from the manufacture of tea. - (1) Income derived from the sale of tea grown and manufactured by the seller in India shall be computed as if it were income derived from business, and forty per cent. of such income shall be deemed to be income liable to tax.

(2) In computing such income an allowance shall be made in respect of the cost of planting bushes in replacement of bushes that have died or become permanently useless in an area already planted, if such area has not previously been abandoned, and for the purpose of determining such cost, no deduction shall be made in respect of the amount of any subsidy which, under the provisions of clause (30) of section 10, is not includible in the total income."

Article 366(1) of the Constitution of India is in the following terms :

"366. In this Constitution, unless the context otherwise requires, the following expressions have the meaning hereby respectively assigned to them, that is to say_

(1) agricultural income means argricultural income as defined for the purposes of the enactments relating to Indian Income Tax."

Thus, it is found that 60 per cent. of the tax determined under the Income Tax Act is to be treated as agricutural Income Tax from which allowable deductions are to be made.

In the form of the return to be submitted under the Agricultural Income Tax Act, column 3 of Schedule C is as follows :

"portion of net total income worked out for assessment under the Indian Income Tax Act, 1922, but left unassed as being agricultural."

Mr. P. Choudhuri, the learned counsel for the petitioner, submits that when the assessments were made for the three assessment years u/s 20(4) of the Act, the

assessment under the Central Income Tax Act was not completed and, therefore, the assessee was not in a position to file a complete return as required under the law. That being the position, the assessee filed an application u/s 21 of the Act for cancellation and revision of the assessments made u/s 20(4) of the Act on receipt and consideration of the copies of the Central assessment orders.

Annexure 9 to the petition is a petition dated June 4, 1971, wherein it has been stated as follows :

"Assessment year 1959-60 - The assessment has been set aside by the AAC and the assessment is still pending.

Assessment year 1960-61 - Remanded by the AAC and is still pending.

Assessment year 1961-62 - Since revised by the ITO after giving effect to the order of the Appellate Assistant Commissioner."

It is submitted by the learned counsel for the petitioner that regarding the Central assessment for the assessment year 1961-62, the petitioner could not obtain copy of the assessment order as the file was sent to the Tribunal by the authority concerned. Under these circumstances the petitioner was not able to file the return and, therefore, the petitioner filed the application u/s 21 of the Act for appropriate reliefs.

The relevant assessment years are 1959-60, and 1960-61 and 1961-62 and it may quite reasonably be concluded that the Central assessments have by now been finalised and there may not be any difficulty for the Agricultural Income Tax authority to compute the Agricultural Income Tax in accordance with law if the application u/s 21 of the Act is taken up and disposed of.

In view of the facts and circumstances of the case and the difficulties in obtaining the copies of the Central assessment orders which were not finalised and in view of the fact and complete return cannot be filed without obtaining copy of the Central assessment order, in the best interests of the revenue as well as that of the assessee, the authority concerned should take up the application dated June 18, 1971, u/s 21 of the Act and pass appropriate orders in respect of the three assessment years under the law.

We direct that the petitioner shall submit copies of the Central Income Tax assessment orders within six weeks from the date of this order before the Agricultural Income Tax Officer who will dispose of the application u/s 21 of the Act in accordance with law within a month from the date of receipt of the copies of the Central Income Tax assessment orders.

In the result, the impugned assessment orders are set aside, the demand notice issued and the recovery proceedings started in pursuance thereof are quashed and in attachment is also released. Both the petitioner and the Agricultural Income Tax Officer are directed to comply with the directions given hereinabove promptly and timely; we would also like to make it clear that if the Central

Income Tax assessment orders have already been finalised and if the assessee does not file the copies of the Central Income Tax assessment orders for the three assessment years in question within the time allowed hereinabove before the Agricultural Income Tax Officer, then the impugned assessment orders passed u/s 20(4) of the Act and the demand notices issued and the recovery proceedings started in pursuance thereof will stand valid.

The rule is accordingly disposed of. There will be no order as to costs.

N. IBOTOMBI SINGH J. - I agree.