
(1993) 01 KL CK 0049

In the High Court Of Kerala

Case No : T.R.C. No's. 58, 62 and 66 of 1992

P.J. Philip

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 13-01-1993

Acts Referred:

Citation : (1993) 110 CTR 338 : (1993) 201 ITR 591

Hon'ble Judges : K.S. Paripoornan, J;K.P. Balanarayana Marar, J

Bench : Division Bench

Advocate : R.K. Venu Nair, for the Appellant; Vijayan Nair, for the Respondent

Judgement

K.S. Paripoornan, J.—These are connected cases. The revision petitioner is an assessee to agricultural Income Tax. The same assessee is the revision petitioner in all the three cases. The Revenue is the respondent in the revisions. T. R. C. No. 66 of 1992 relates to the assessment year 1983-84, for which the accounting period ended on March 31, 1983. T.R.C. No. 62 relates to the assessment year 1984-85 for which the accounting period ended on March 31, 1984, and T.R.C. No. 58 of 1992 relates to the assessment year 1985-86 for which the accounting period ended on March 31, 1985.

2. Admittedly, the assessee has no accounts. Notices were sent to him u/s 35 read with Section 18 of the. Agricultural Income Tax Act. The assessee filed returns. His returns were not accepted. Based on an inspection report dated December 23. 1986, best judgment assessments were made for all the three years. Income for the assessment year 1983-84 was fixed at Rs. 86,970. For the assessment year 1984-85, the income was fixed at Rs. 97.120 and for the assessment year 1985-86, the income fixed was Rs. 71,670.

3. The assessee possessed 30.40 acres of land, of which 18 acres were planted with coffee and 12 acres were planted with cardamom. While making the best judgment assessments, the assessing authority fixed the yield from coffee at 250 kgs. per acre for all the three years. For cardamom, it was fixed at 495 kgs. for

the year 1983-84, 210 kgs. for the year 1984-85 and 255 kgs. for the year 1985-86. The yield from pepper was also fixed separately. The plea of the assessee all along the line was that so far as coffee is concerned, it is a regulated market commodity and it could be sold only to the Coffee Board. The dividend received by the assessee from the Coffee Board alone could be assessed.

4. As stated, the assessee had no accounts. In the best judgment assessments, the yield as well as the income were fixed. The best judgment assessments were made based on the inspection report dated December 23, 1986. The assessments were modified in the first appeals by a common order dated March 8, 1989. The second appeals were also disposed of by a common order by the Agricultural Income Tax Appellate Tribunal dated February 23, 1991. The appeal for the year 1983-84 was partly allowed. The assessments made for the years 1984-85 and 1985-86 were affirmed. It is aggrieved by the common order of the Agricultural Income Tax Appellate Tribunal dated February 23, 1991, for the years 1983-84, 1984-85 and 1985-86 that the assessee has come up in revision.

5. We heard counsel for the assessee, Mr. R. K. Venu Nair, and also counsel for the respondent-Revenue, Mr. S. Vijayan Nair.

6. Counsel for the assessee plainly submitted that this is a case where a best judgment assessment was warranted. His plea was that even assuming that a best judgment assessment could be made, it should be based on material. It was urged that the yield fixed for coffee and other crops is arbitrary. The price was also fixed arbitrarily. What is more, his grievance was not properly examined either by the first appellate authority or by the Appellate Tribunal. It was argued that the order of the Appellate Tribunal is cryptic and there has been no fair or proper consideration of the various pleas taken up before the Appellate Tribunal while disposing of the appeals.

7. On the other hand, counsel for the Revenue, Mr. Vijayan Nair, argued that in a case of best judgment assessment, it is for the assessing authority to fix the yield and also the income. In this case, there was an inspection on December 23, 1986. The income was fixed on the basis of the inspection report. The price of the products was fixed taking into account the market rate. It is not open to the assessee to complain that the yield fixed is arbitrary or that the income has been inflated. Since the assessee committed default in maintaining accounts, he has to suffer the consequences.

8. We perused the three different assessment orders, the common appellate order passed by the first appellate authority for all the three years and also the common order passed by the Appellate Tribunal for all the three years. We are left with the impression that the first appellate authority as also the Appellate Tribunal have dealt with the matter rather lightly and in a casual manner. It is true that the assessee has no accounts. It is also true that the best judgment assessments were warranted for all the three years. But the best judgment assessment should be reasonable and based on material. It should be fair. It is

stated that an inspection of the properties was conducted on December 23, 1986. The contents of the inspection report are not seen discussed in any one of the orders passed by the statutory authorities. We should remember that the inspection is more than three years after the closure of the accounting year so far as 1983-84 is concerned, more than two years and nine months after the closure of the accounting period for the year 1984-85 and nearly one year and nine months after the closure of the accounting period for the year 1985-86. How far the details noted in the inspection report could be used or relied on and to what extent the inspection report would be useful, etc., are anybody's guess. The contents of the inspection report have not been stated or discussed, either by the assessing authority or by the first appellate authority or by the Appellate Tribunal. We are not in a position to say whether the yield estimated and income fixed is in accord with the only material, which is not seen available in the case, i.e., the inspection report. There is no case for the Revenue that the income was fixed reckoning the previous year's income or on comparable cases. Since the sole material on the basis of which the yield has been estimated and the income determined is not made available and the contents of which are not seen discussed either by the first appellate authority or by the Appellate Tribunal, we are not in a position to say that the best judgment assessments to the extent sustained by the first appellate authority or by the Appellate Tribunal are either fair or rational or based on any material. The Appellate Tribunal is the final fact-finding authority. It should have discussed all materials relevant for the purpose of fixing the yield as also the income in a fair and proper manner. The order of the Appellate Tribunal should disclose that it has dealt with the matter fairly, reasonably and taking into account all facts and circumstances. We would only say that the finding of the Appellate Tribunal should indicate the questions that arose for decision, the evidence pro and contra, the findings of the Appellate Tribunal and the materials or circumstances which were relied on for coming to the conclusion. The decisions reported in *Omar Salay Mohamed Sait Vs. Commissioner of Income Tax, Madras*, and *The Commissioner of Income Tax, Bihar and Orissa, Patna Vs. S.P. Jain*, , will provide ample guidelines as to how the Appellate Tribunal should dispose of an appeal. Since we are of the view that the common order passed by the Appellate Tribunal dated February 23, 1991, is cryptic or laconic and it does not disclose the basis on which the best judgment assessments have been sustained in an understandable form, we hold that the order of the Appellate Tribunal is infirm and is not in accordance with law. We set aside the common order passed by the Appellate Tribunal dated February 23, 1991, and remit the matter to the Agricultural Income Tax Appellate Tribunal for a proper consideration in accordance with law. The appeals shall be disposed of after adverting to all facts and circumstances, including the inspection report or comparable cases, if any, and assessments of the assessee himself for the previous years, etc., as expeditiously as possible.

9. The revisions are allowed. There shall be no order as to costs.