(1946) 01 PAT CK 0027

In the Patna High Court

Province of Bihar APPELLANT

Vs

Hari Bhajan Das RESPONDENT

Date of Decision : 09-01-1946

Acts Referred:

Bihar Agricultural Income Tax Act, 1938 — Section 25(2)
Income Tax Act, 1961 — Section 4

Citation : AIR 1946 Patna 297

Hon'ble Judges : Fazl Ali, C.J;Sinha, J;Manohar Lall, J

Bench : Full Bench

Judgement

Manohar Lall, J.—This is a reference u/s 25(2), Bihar Agricultural Income Tax Act, (Act 7 [VII] of 1938) by the Board of Agricultural Income Tax, Bihar, for our opinion upon the question whether the assessee is exempt from payment of agricultural Income Tax u/s 8 of the Act. The matter came before this Court in 1942 when this Court was unable to express any opinion on this question because the case stated did not contain sufficient materials.

2. The case was, therefore, sent back to the Board of Agricultural Income Tax, Bihar, for a further statement. That statement has now been received. The facts are not in dispute. The assessee is the present mahant of an asthal which has landed properties yielding agricultural income. The assessee has been found, to be a trustee, and the trust under which he holds is a trust created long before the Act came into force and is for public purposes of a charitable and religious nature. For the year 1845 Fasli the assessee has been assessed to agricultural Income Tax on Rs. 6229 after allowing for a deduction of Rs. 3500 found to have been spent by him on charitable and religious objects. For the year 1346 Fasli, the assessee has been assessed on a sum of Rs. 6106-8-0 after making a deduction for Rs. 8248 found to have been spent by the assessee on charitable and religious objects. The assessee''s contention is that as it has been found he is holding the properties for public purposes of charitable and religious nature, the whole of his agricultural income is free from taxation and not merely the sum found by the agricultural Income Tax authorities to have been actually spent for

religious and charitable purposes in the two previous years.

3. In my opinion, this contention is not sound. The provisions of Section 8(1) of the Act are absolutely clear. It is enacted that where the assessee is a trustee and the trust under which he holds is a trust created before the commencement of this Act, for public purposes of a charitable or religious nature, any income applied, or finally set apart for application, to any public purpose of a charitable or religious nature in accordance with the terms of the trust subject to which he holds the property from which such agricultural income is derived, shall not be included in the total agricultural income of such assessee.

4. It has been found that the assessee has actually applied certain sums towards religious and charitable objects in the years of assessment. That sum has accordingly been deducted from the total agricultural income. The assessee can only claim a further exemption if he could show that any other sum has been finally set apart for application to public purposes of a charitable or religious nature. There is no such finding in the statement of the case nor in any of the orders of the subordinate officers because this was not the case put forward by the assessee. His case on the other hand was--and the same contention was advanced here by Mr. Nawal Kishore Prasad No. II--that the whole of the income from agriculture has been finally set apart by the donor for religious and charitable purposes. But in order to claim exemption under the Act, the assessee must in each year show that he had finally set apart a sum for charitable and religious purposes. The words used in the Act are "finally set apart." Take a case of common occurrence. The assessee is in pos-session of lands yielding Rs. 15,000 per annum as agricultural income which under the terms of the trust he can and must use for religious and charitable purposes. But he may actually use only Rs. 10,000 for religious and charitable purposes, and save the balance for investment in Government securities or in purchasing some land. Can it be said that the sum of Rs. 5000 has been finally set apart in that year for religious and charitable purposes? In my opinion the question admits only of one answer.

5. Mr. Nawal Kishore Prasad No. II drew our attention to the case of the Judicial Committee in AIR 1944 88 (Privy Council) , but that was a case decided upon the terms of Section 4, Income Tax Act, where the relevant provision is that a deduction shall be made if "any income derived from property held in trust or other legal obligation wholly for religious or charitable purposes, and, in the case of property so held in part only for such purposes, the income applied, or finally set apart for application thereto." It will be noticed that the words in the Agricultural Income Tax, Act are different and impose a limitation, which under the Income Tax Act is prescribed only in case of properties held in part only for religious or charitable purposes, to income derived from property held wholly for religious or charitable purposes. That case, therefore, is of no assistance to the assessee.

6. In my opinion, the answer to the question is that the assessee in the present case is not exempt from payment of agricultural Income Tax u/s 8 of the Act,

beyond what he has actually spent on religious and charitable objects consistent with the purpose of the trust. It was suggested that we should call for a finding as to whether the assessee has or has not set apart any sum in these two years for religious and charitable objects, but we are unable to agree to this suggestion as the assessee has never sought to establish that he had actually set a part in the two years of assessment any sum for religious and charitable objects.

7. If he had raised any such question and furnished; materials for its decision, this question would no doubt have been decided properly. The assessee must pay the costs of this reference, hearing fee Rs. 100.

Fazl Ali, C.J.

I agree.

Sinha, J.

I agree.

