

(1957) 08 MAD CK 0025

In the Madras High Court

Case No : Writ Petitions No's. 749 of 1956 and 48 of 1957

Puthuthottam Estates (1943) Limited

APPELLANT

Vs

Agricultural Income Tax Officer, Coimbatore

RESPONDENT

Date of Decision : 06-08-1957

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1922 — Section 34, 35

Citation : (1958) 34 ITR 764

Hon'ble Judges : rajagopalan, J

Bench : Single Bench

Judgement

rajagopalan, J.—Section 3 of the Madras Plantations Agricultural Income Tax Act, 1955 (Madras Act V of 1955), hereinafter referred to as the Act, provided for the levy of a tax on agricultural income as defined by the Act, on and after 1st April, 1955. In the case of the petitioner, the previous year, the income that was received during which was liable to be assessed in the assessment year 1955-56 ended on 31st March, 1955. The assessment was completed by the Agricultural Income Tax Officer on 21st March, 1956. It became final, as the assessee, the petitioner company did not appeal. That assessment was based on the application of rule 10 of the Madras Plantations Agricultural Income Tax Rules, 1955 (hereinafter referred to as the Rules). The relevant portion of rule 10 ran :

The agricultural income from coffee for a particular year for purposes of assessment shall be (a) the proceeds of the coffee crop of the previous year realized by the auction of the crop by the Indian Coffee Board.

... the proceeds of the coffee crop treated by the Indian Coffee Board as the crop of earlier years shall be excluded.

It was common ground, that the petitioner received from the Coffee Board during the relevant year of account 1954-55 an amount of Rs. 2,39,206-8-6, which represented in part the sale proceeds of the years anterior to 1st April, 1954, namely, 1952-53 and 1953-54. The petitioner adopted the mercantile system of

accounts. It was, however, not disputed by the learned counsel for the petitioner, that this amount was brought to account in the books of the assessee only in the year of account 1954-55 though the coffee produce itself had been delivered in the prior years in compliance with the provisions of the Coffee Market Expansion Act (VII of 1942).

2. In exercise of the powers vested in the Government by section 61 of the Act, the Government amended the Rules on 10th April, 1956, directing the deletion (repeal) of rule 10 with effect from 1st September, 1955, itself, on which date the Rules as originally promulgated came into force. The effect of this notification was as if rule 10 had never formed part of the Rules.

3. On 1st May, 1956, the Agricultural Income Tax Officer issued a notice to the petitioner u/s 35 of the Act, in effect calling upon the petitioner to show cause why the amount received by the petitioner during the year of account 1954-55 from the Coffee Board, towards the coffee produced during 1952-53 and 1953-54 and delivered to the Board in those years should not be taxed. The Agricultural Income Tax Officer called for additional information. On 26th May, 1956, the petitioner replied :

We object to your notice and the proposed action. The same is illegal and invalid.

2. The deletion of rule 10 after the assessment has become final cannot and does not affect the position.

3. Under protest we are giving the information available in the annexed statement, and

4. We reserve our further objection.

4. The quantum itself was never in dispute, and the accounts of the petitioner were accepted as correct. On 31st May, 1956, the Agricultural Income Tax Officer treated the amount in question Rs. 2,39,206-8-6, as income that had escaped assessment in the assessment year 1955-56 and levied tax at the prescribed rate on that amount also.

5. W.P. No. 749 of 1956 is the application preferred by the petitioner under article 226 of the Constitution for the issue of a writ of certiorari to set aside the order of the Agricultural Income Tax Officer, dated 31st May, 1956. It was conceded by the learned counsel for the petitioner that the petitioner also availed himself of the statutory right to appeal to the prescribed appellate authority against the order, dated 31st May, 1956.

6. The assessment for the next assessment year 1956-57 was completed on 23rd December, 1956. There was no occasion to invoke any jurisdiction u/s 35 of the Act. The petitioners objection, that a sum of Rs. 68,827-6-6, which represented the amount received by the petitioner in the relevant year of account 1955-56 as the value of the coffee produced by the petitioner and delivered to the Board in 1953-54 was not taxable was overruled, and this amount was included in

computing the total agricultural income of the petitioner for 1955-56. I need not concern myself now with the other item to the inclusion of which also in its assessable income, the petitioner objected. The petitioner appealed against the order of the Agricultural Income Tax Officer, dated 23rd December, 1956, to the prescribed appellate authority.

7. In W. P. No. 48 of 1957, the petitioner applied for the issue of a writ of certiorari to set aside the order of assessment dated 23rd December, 1956, principally on the ground that the order was vitiated by the inclusion of the sum in dispute Rs. 68,827-6-6.

8. I shall reserve for consideration the preliminary objection of the learned Additional Government Pleader, that the rule nisi in each of these petitions should be discharged without any further investigation as the petitioner company availed itself of an alternative and statutory remedy and has exercised its right of appeal.

9. The question that is common to both the petitions is whether the sale proceeds received by the petitioner from the Coffee Board in the relevant years of account towards the price of coffee produced and sold before 1st April, 1954, could be assessed to tax as agricultural income. The question arises independently of the application of section 35, which is an additional issue for determination in W.P. No. 749 of 1956.

10. In the case of the petitioner the first year of account was 1954-55 and the first year of assessment under the Act was 1955-56. Rule 10 in express terms exempted from the scope of taxation the proceeds of the coffee crop of any period anterior to the commencement of the first year of account, anterior to 1st April, 1954, in the case of the petitioner. I am unable to accept the contention of the Additional Government Pleader, that the exclusion for which rule 10 provided could only apply to the cases covered by rule 10(b) and not to cases that fall within the scope of rule 10(a). Had rule 10 stood, the sale proceeds of the coffee crop of 1952-53 and 1953-54 would have had to be excluded from the computation of the total agricultural income of the relevant years of account. Rule 10 was deleted, and, as I pointed out, the effect of the notification, dated 10th April, 1956, was as if rule 10 had never been part of the Rules. For purposes of assessment even in the first of the assessment years 1956-57, coffee had to be treated like any other agricultural crop grown in a plantation. The liability for assessment in the year of assessment 1955-56 also I shall have to consider, as if rule 10 had never been in existence.

11. That question of liability will have to be decided mainly with reference to the language of the charging section, section 3, and that section 4. The intention of the Legislature has to be gathered from the language of the sections and not on considerations of justice or equity. Being a fiscal enactment, the terms of the sections have to be construed as not to read into it a liability which has not been imposed. There is no scope for exclusion or inclusion except on the basis of the

language of the relevant sections of the Act.

12. Coffee alone was singled out for special treatment in rule 10. The reason for it may not be far to seek. The sale of coffee and the receipt of the sale proceeds were regulated by Act VII of 1942. An agriculturist who grew coffee on his plantation had no control himself over the contract for the sale of coffee grown by him or over the payment of the price for that coffee. Normally one expects the prompt sale of agricultural produce and the equally prompt realization of the sale proceeds. It is unusual for the sale proceeds to be realized two and sometimes even three years after the sale. The Legislature should have been aware of that, when it enacted sections 3 and 4 among the relevant sections 1 have to consider. The special treatment of coffee was not the result of section 3 or section 4 but rule 10. That basis disappeared. I shall examine the scope of sections 3 and 4 among others freed even from these considerations. The relevant portion of section 2(a) of the Act runs :

agricultural income means -

(2) any income derived from such plantation in the State by -

(i) agriculture, or

(ii) The performance by a cultivator... of any process ordinarily employed by a cultivator... to render the produce raised or received by him fit to be taken to market;

Explanation II. - Agricultural income derived from such plantation by the cultivation of coffee...means that portion of the income derived from the cultivation, manufacture and sale of coffee...as may be defined to be agricultural income for the purpose of the enactments relating to the Indian Income Tax.

13. Section 2(x) runs :

Total agricultural income means the aggregate of all agricultural income mentioned in section 4 computed in accordance with the provisions of section 5....

14. Section 3(1), the main charging section, runs :

Agricultural Income Tax at the rate or rates specified in Part 1 of the Schedule to this Act shall be charged for each financial year commencing from the 1st April, 1955, in accordance with and subject to the provisions of this Act, on the total agricultural income of the previous year of every person.

15. What is liable to be assessed to tax is thus the total agricultural income of the previous year. "Previous year" was defined by section 2(t), which it may not be necessary to set out. The previous year of the petitioner in relation to the first of the assessment years ended on 31st March, 1955. I have already referred to section 2(x) which defined the total agricultural income. That only takes us to the terms of section 4 to find out what was the total agricultural income of the petitioner.

16. Section 4 runs :

Subject to the provisions of this Act, the total agricultural income of any previous year of any person comprises all agricultural income derived from a plantation situated within the State and received by him within or without the State but does not include -

(a) any agricultural income derived from a plantation situated without the State.

17. I am omitting clause (b) and the Explanation as they may not be relevant for our present purposes.

18. Section 5 provides for the computation of the total agricultural income and for the items to be excluded. I shall also set out section 12, to the scope of which I shall have to refer later.

19. Section 12 runs :

Where any person sustains a loss in agricultural income in any year, the loss shall be carried forward to the following year and set off against the agricultural income for that year and if it cannot be wholly so set off, the amount of loss not so set off shall be carried forward to the following year and so on; but no loss shall be carried forward for more than six years :-

Provided that, in the case of loss sustained before the commencement of this Act, this shall apply only to such loss as was sustained in the previous year immediately before such commencement.

20. In the case of the petitioner anything before 1st April, 1954, would be the period anterior to the first of the previous years as defined by section 2(t). The previous year may vary from assessee to assessee. When I say in the rest of the judgment any period anterior to 1st April, 1954, I really mean any period anterior to the first of the "previous years."

21. The real question is, whether there is anything in the language and scheme of the statutory provisions to which I have referred to exclude from the total agricultural income, which has been really defined by section 4 and which is what is subjected to tax by section 3, the sale proceeds of agricultural crops grown and gathered by an assessee from his plantation before 1st April, 1954, and also sold before 1st April, 1954, but the sale proceeds of which were received by the assessee and brought to account only subsequent to 1st April, 1954.

22. There appears to be no basis for importing what was referred to during the arguments as the "time factor" in considering the scope of the definition of agricultural income in section 2(a) of the Act. None of the factors, the year of produce, the year of sale or the year of receipt of the sale proceeds is relevant in interpreting the scope of agricultural income as defined by section 2(a). I have said that "total agricultural income", despite the definition attempted in section 2(t), is really explained only in section 4 of the Act. Section 4 explains what is the total agricultural income of the previous year in relation to the relevant year

of assessment. Three conditions have to be satisfied : (1) The total agricultural income must be of the previous year; (2) It should be agricultural income derived from a plantation situated within the State; and (3) agricultural income should have been received by the assessee whether that receipt was within or without the State. I see no basis in the language of section 4 for imposing the limitation of the time factor on the second of these requirements (items). Item 3 makes receipt of income the basis of liability to tax. What constitutes receipt, especially where the system of accounting is mercantile, it is not necessary for me to discuss or decide in these proceedings. Since receipt of income is made the basis of liability to be assessed, the receipt must necessarily be in the previous year to make the income taxable as the income of this previous year; it really gets linked up with item 1. But there is no such limiting factor for the second item, which requires that the agricultural income must have been derived from a plantation situate within the State. The Privy Council pointed out in *Commissioner of Income Tax, Bihar and Orissa v. Kamakhya Narayan Singh* 1 :

The word derived is not a term of art. Its use in the definition indeed demands an enquiry into the genealogy of the product. But the enquiry should stop as soon as the effective source is discovered.

23. Judged by this test, the sale proceeds of agricultural produce certainly constitute income derived from a plantation within the meaning of section 4. The use of the expression "derived" by itself does not postulate that the income must have been derived in the previous year in question. To take an illustrative example, agricultural produce gathered towards the end of a year of account may be sold, and the sale proceeds realized early next year. The sale proceeds may not be liable to tax as part of the total agricultural income since the amount was not received in the year in which this produce was gathered. It does not cease to be agricultural income "derived" from a plantation merely on the ground that the receipt of the income is in a year subsequent to the year in which the produce was raised and gathered for sale.

24. The learned counsel for the petitioner urged that the scheme underlying section 4 should be gathered also with reference to section 5 and section 12 among others. It is true that section 4 itself is subject to the other provisions of the Act. So is section 3. They expressly say so. But I am unable to accept the contention, that section 5 or section 12 or both compel the requirement, that the agricultural income must have been derived in the previous year, in the sense that the income must relate to the produce of the previous year. Section 4, in my opinion, does not prescribe such a condition.

25. Section 5 provides for the deductions to be made in computing the total agricultural income to arrive at the assessable income. Some of the items that could be deducted are the expenses incurred in the previous year. Section 5 provides for a notional or statutory concept of assessable income. Except to the extent it provides, either in express terms or by necessary intendment, it cannot control the liability declared by section 3 read with section 4. Neither does

section 12 affect that liability except to the extent it makes a provision for carrying forward the loss incurred on and after 1954-55 the first of the previous years for the purposes of the Act. I shall deal later with the alternative argument of the learned counsel for the petitioner, that whatever might be the position in relation to a "previous year" after the Act came into operation, the sale proceeds of the agricultural produce of the periods anterior to 1st April, 1954, must be left out of account in computing the total agricultural income.

26. Mr. Viswanatha Ayyar, the learned counsel for the petitioner, next relied on rule 9 which runs :

Where no method of accounting has been regularly employed by the assessee or where the method employed is such that, in the opinion of the Agricultural Income Tax Officer, the agricultural income cannot be properly deduced therefrom, the Agricultural Income Tax Officer shall after making such enquiry as he considers necessary, compute the agricultural income of the assessee based on the value of the quantity of produce raised, if possible, and if not, to the best of his judgment.

27. Rule 9 is consistent with section 7 of the Act which runs :

Agricultural income shall be computed for the purpose of sections 5 and 6 in accordance with the method of accounting regularly employed by the assessee :

Provided that, if no method of accounting has been regularly employed by the assessee, or if the method employed is such that, in the opinion of the Agricultural Income Tax Officer, the agricultural income cannot properly be deduced therefrom, then the computation shall be made upon such basis and in such manner as may be prescribed.

28. Rule 9 does not really help. The value of the quantity of produce raised is what has to be computed. That computation is for purposes of computing the total agricultural income, which takes us back to section 4. The use of the expression "the value of the quantity of produce raised" does not necessarily imply the value of the quantity of the produce raised in the previous year. These additional words cannot be read into rule 9 any more than into section 4.

29. For the proper construction of the scope of section 3 read with section 4, let me consider first the period subsequent to 1st April, 1954, which marked in the case of the petitioner the commencement of the first previous years. If the sale proceeds of agricultural produce raised and gathered in 1956-57 are received in the year of account 1957-58, they would be part of the total agricultural income to be assessed in 1958-59. That, in my opinion, is the true scope of section 3 read with section 4.

30. Is the position any different if the produce was of a period anterior to 1st April, 1954, is the next question. I can see no difference.

31. No doubt the Act made total agricultural income taxable for the first time

only on and after 1st April, 1955. It is equally true that the first year, the total agriculture income of which was made taxable, was the "previous year" in relation to the first of the assessment years 1955-56. If considerations of the year of produce are not relevant for computing the total agricultural income of any year subsequent to the commencement of the Act, I am unable to see how they could become relevant in computing the total agricultural income of the first of the previous years, 1954-55.

32. The learned counsel for the petitioner urged that, if the proceeds of the years antecedent to 1st April, 1954, were taken into account on the only ground that the sale proceeds of the produce were received in the years of account subsequent to 1st April, 1954, the true income of none of these years of account could be ascertained. It was pointed out that neither the expenses incurred to earn that income in the year of produce anterior to 1st April, 1954, nor the losses, if any, sustained in that period could be taken into account. Section 5 of the Act barred the first, and section 12, the other. That no doubt is true. But then section 12 cannot limit the scope of section 4 except to the extent for which section 12 provided. If the losses cannot be wiped off in six years -that is the limit specified by section 12 - that again should affect the as ascertainment of the real profits or income of the concern as a whole. The statutory limit imposed by section 5(k) for instance cannot be justified on any logical basis, if the object is to ascertain the true income. Ascertainment of the true income or the difficulty thereof may not be the test to apply in considering the scope of section 3 read with section 4 of the Act.

33. In summing up this portion of the case, I am of opinion that, though the amounts in question were paid towards the produce of coffee gathered and sold prior to 1st April, 1954, as the amounts were received only in the relevant years of account 1954-55, and 1955-56, they were liable to be taken into account for computing the total agricultural income of the petitioner of those years.

34. What I have recorded above should suffice to dispose of the real question at issue in W. P. No. 48 of 1957.

35. The further question that arises for consideration in W.P. No. 749 of 1956 is, whether the sum of Rs. 2,39,206-8-6 was income that escaped assessment and as such liable to be taxed on a re-assessment u/s 35 of the Act.

36. Section 35 of the Act runs :

If for any reason agricultural income chargeable to tax under this Act has escaped assessment in any financial year or has been assessed at too low a rate, the Agricultural Income Tax Officer may, at any time, within three years of the end of that year serve on the person liable to pay the tax or, in the case of a company, on the principal officer thereof a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of section 16 and may proceed to assess or re-assess such income, and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice

issued under that sub-section :

Provided that the tax shall be charged at the rate at which it would have been charged if such income had not escaped assessment or full assessment, as the case may be.

37. Section 35 adopts the phraseology of section 34 of the Income Tax Act as it stood before it was amended in 1939. The ambit of the expression "for any reason" is very wide indeed. The real question is, is it wide enough to cover the case of the petitioner with reference to the assessment year 1955-56.

38. When the assessment was completed on 21st March, 1956, the receipt of this sum of Rs. 2,39,206-8-6 in the year of account 1954-55 was shown in the books of the petitioner. It was not shown in the return submitted by the petitioner company before it was assessed on 21st March, 1956. The petitioner was entitled to exclude this sum under rule 10 as it stood then. The receipt of that amount in the year of account was known to the Agricultural Income Tax Officer who examined the accounts of the petitioner. The same was not assessed to tax in 1955-56, but only because rule 10 was in operation on the date of assessment, 21st March, 1956. On that date there was certainly no escape from assessment, because as the law stood then, the amount was not liable to be taxed. The implied decision rendered on 21st March, 1956, excluding this amount from the computed total agricultural income, was a correct decision. Within a month thereafter the law was changed and rule 10 stood repealed. The basis of what really amounted to an exemption granted to coffee disappeared. It was as if that basis never existed in the eye of law, as rule 10 was repealed with retrospective effect. The sum was liable to be taxed as part of the total agricultural income of 1954-55, but factually it was not taxed. In that sense it did escape assessment. The reason for that escape was no doubt the application of rule 10, which subsequently was treated as never having had any existence. Did that come within the scope of "for any reason" is the question for determination. In my opinion it did.

39. The learned counsel for the petitioner submitted that section 35 of the Act did not permit a re-assessment to correct even an erroneous decision at the time of the original assessment, and if that was the correct position, it could not possibly permit a re-assessment when the decision was correct on the date it was rendered under the law as it stood then.

40. An erroneous decision based, for instance, on a misconception of the law on the subject would appear to come within the scope of the requirement of section 35 of the Act, "for any reason". "If for any reason", was what section 34 of the Income Tax Act postulated before it was amended in 1939.

41. In Commissioner of Income Tax v. Raja of Parlakimedi, a Divisional Bench of this court observed :

It is said that escaped assessment must mean, not that the question has been

considered and decided in favor of the assessee but that the Income Tax Officer has omitted to consider the question at all and that it does not apply to cases where the Income Tax Officer on consideration came to the conclusion, ex hypothesis, an erroneous conclusion, that the property in question was not assessable. It seems to me that that construction is forbidden by the alternative case put in the section. Where the income..... has been assessed at too low a rate that cannot be a matter of mere inadvertence; that must refer to a deliberate assessment made by the Income Tax Officer in the preceding year with knowledge of the facts and circumstances. It appears to me that a similar view must be taken of the previous words escaped assessment and that it applies to cases where the Income Tax Officer has deliberately adopted an erroneous construction of the Act just as much as to a case where the Officer has not considered the matter at all, but simply omitted the assessable property from his view and from his assessment.

42. Similarly in Commissioner of Income Tax, Bombay v. D. R. Naik, Beaumont, C.J., observed :

So that the mistake, which resulted in the original assessment, was a mistake of law, for which the learned Commissioner of Income Tax had some justification. The words of section 34 are very wide and say that if for any reason the assessment is too low. I think those words are wide enough to cover such a mistake as existed in the present case, and I see no reason, therefore, why a fresh assessment should not be made u/s 34.

43. The principle laid down in Commissioner of Income Tax, Bombay v. D. R. Naik was approved of by a Divisional Bench of the Calcutta High Court (Derbyshire, C.J., and Nasim Ali, J.) in P. C. Mallick and D. G. Aich, In re.

44. In Chimanram Motilal v. Commissioner of Income Tax, (Central), Bombay, Beaumont, C.J., observed at page 58 :

Again, it cannot, I think, be disputed that as this court held in Commissioner of Income Tax, Bombay v. P. N. Contractor 4, if an assessment is based on a view of the law held to be correct by High Courts in India but subsequently, within the year allowed by the section 34, held by the Privy Council to be incorrect and by reason of that revealed change in the law it appears that some income has escaped assessment, that is a good ground for serving a notice u/s 34, and re-assessing the assessee. But if one accepts that view, it is very difficult to say that the case would not have fallen within section 34, if the decision of the higher tribunal had been given before the assessment though the Income Tax Officer did not know of the decision, or had failed to appreciate it. It seems to me very difficult on the language of section 34 to say that in order to hold that income may have escaped assessment, there must have been either some fresh facts brought to the notice of the Income Tax authorities or some change in the law and to hold that a mere change of opinion by the Income Tax Officer will not be sufficient to found a case under the section.

45. Apart from the fact that even the change of opinion could apparently come within the scope of the requirement "if for any reason" it should be clear that the learned Chief Justice had no doubt, that a change in the law subsequent to the assessment, when a given amount of income was not assessed to tax, was sufficient to bring the case within the scope of the expression "escaped from assessment for any reason."

46. The learned counsel for the petitioner relied on *Bombay Dyeing and Manufacturing Co. v. M. K. Venkatachalam*. That case, however, dealt with a case of rectification, the requirement for which as per section 36 of the Act -analogous to section 35 of the Income Tax Act - is a mistake apparent from the record of assessment. Obviously the scope of that is far more restricted than the requirement of section 34. "for any reason". I can see no justification to extend the principle laid down in *Bombay Dyeing and Manufacturing Co. v. M. K. Venkatachalam* 5, to the present case which had to be and was dealt with u/s 35 of the Act.

47. In my opinion, the Agricultural Income Tax Officer had jurisdiction to reopen the assessment u/s 35 of the Act and to treat the amount in question as part of the total agricultural income of 1954-55, that had escaped assessment on 21st March, 1956, in the year of assessment 1955-56.

48. The question that I reserved for, consideration last was whether the rule nisi in these cases should be discharged on the ground, that the petitioner had availed himself of the statutory right of appeal in both the cases. Since the petitions fail even otherwise, it may not be necessary to rest my decision on this feature of the case. The rule nisi is discharged in each of the cases and the petitions will stand dismissed. No order as to costs.