(1960) 11 AHC CK 0039

In the Allahabad High Court

Case No : Agr. I.T. Ref. No. 7 of 1953

Raj Kumar Girraj Singh APPELLANT

Vs

State RESPONDENT

Date of Decision : 08-11-1960

Acts Referred:

Citation : (1961) 31 AWR 314

Hon'ble Judges : Upadhya, J;Gurtu, J

Bench : Division Bench

Advocate : S.K. Abbas, for the Appellant;

Final Decision : Disposed Of

Judgement

Gurtu, J.—The Agricultural income tax Board, Uttar Pradesh, as made these three references u/s 24 of the Agricultural income tax Act. The question which arises in all the three references is the same and is as follows:-

Whether income from Khair trees is agricultural income falling u/Cl. (a) or Cl. (b) of S. 2(1) of the AIT Act?

2. It appears that the Assessees at whose instance the reference has been made to this Court, effected sales of Khair trees of village Solanpur and derived income therefrom, and the question arose whether that income fell within Cl. (a) or Cl. (b) of S. 2(1) of the Act. The view taken by the AITB was that the income fel u/ Cl. (a) aforesaid and not Cl. (b) and therefore had to be determined in accordance with S. 5 of the Act and was not to be computed u/s 6 of the Act.

3. Before we quote the relative provisions, it may be stated that it was not in dispute before the AIT Board that the income derived from the sale of the Khair trees in question was agricultural income. It appears from the order of the Board that Kaththa is made from Khair tries. It appears that the trees sold were not of spontaneous growth, but were planted.

4. S. 2, Sub-section (1) of the Act defines "agricultural income" and is as follows:-

2 (1) "Agricultural income" has the same meaning as is assigned to it in the Indian IT Act, 1922, and which in its adapted form is reproduced below:-

Agricultural income" means-

(a) any rent or revenue derived from land which is used for agricultural purposes and is either assessed to land revenue in the U.P. or is subject to a local rate or cess assessed and collected by an Officer of the Provincial Government;

(b) 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-Cl. (ii).

(c) any income derived from any building owned and occupied by the receiver of the rent or revenue of any such land, or occupied by the cultivator or the receiver of rent-in-kind of any land with respect to which, or the produce of which, any operation mentioned in paragraphs (ii) and (iii) of sub-Cl (b) is carried on:

5. Provided that the building is on or in the immediate vicinity of the land and is a building which the receiver of the rent or revenue or the cultivator or the receiver of the rent-in-kind by reason of his connection with the land, requires as a dwelling-house or as store-house, or other out-building."

6. S. 5 lays down how "agricultural income" mentioned in Cl. (a) of Sub-section (I) of S. 2 of the Act is to be determined and is to the following effect:-

5. The agricultural income mentioned in Cl. (a) of Sub-section (1) of S. 2 shall be deemed to be the sum realised in the previous year on account of agricultural income mentioned in the said Cl. (a), after making the following deductions;

(a) any sums paid in the previous year on account of land revenue, rents, local rates and cesses and municipal taxes in respect of the entire land from which agricultural income may be derived ;

(b) collection charges on the sum realised in the previous year at the following rate:

On first Rs. 10,000 12 per cent.

On next Rs. 90,000 11 per cent.

On any amount above Rs. 1 lakh 10 per cent.

(c) any sums paid in the previous year in respect of the land from which sum agricultural income is derived in accordance with the provisions of the Northern India Canal and Drainage Act;

(d) any expense incurred in the previous year on the construction or maintenance of any irrigation productive or protective work constructed for the benefit of the land from which such agricultural income is derived ;

(e) any interest paid in the previous year on any mortgage or other capital charge incurred for the purpose of acquiring the property from which such agricultural income is derived ; and

(f) any Malikana paid by the Assessee in respect of the land from which such agricultural income is derived.

7. S. 6 of the Act lays down how agricultural income mentioned in Cls. (l), (2) and (3) of Sub-section (1) of S. 2 shall be computed and is as follows:-

6. (1) The agricultural income mentioned in sub-Cls. (i), (ii) and (iii) of Cl. (b) of Sub-sections (1) of S. 2 shall, at the option of the Assessee, be computed in accordance with Cl. (a) or Cl. (b) of Sub-section (2):

Provided that an assessee who has once exercised his option shall not be entitled to vary the method of computation except with the permission of the Board of Revenue.

(2) (a) Subject to such deduction in respect of agricultural calamities as may be prescribed, the income shall be deemed to be such multiple, not exceeding 7 1/2 of the rent of the land, calculated at the latest sanctioned rent rates applicable to hereditary tenants of similar class of soil as the Board of Revenue may fix for each district or portion thereof:

Provided that the Board of Revenue may direct that the multiple for calculating income from land newly brought under cultivation shall for the specified number of years be such lower figure as may be specified, or

(b) the income shall be the gross proceeds of sale of all the produce of the land subject to the following deductions:

(i) any sum paid in the previous year on account of land revenue, local rates and cesses and municipal taxes ;

(ii) any rent paid in the previous year, to a landlord in respect of the land from which the agricultural income is derived ;

(iii) any sums paid in the previous year in respect of land from which such agricultural income is derived in accordance with the provisions of the Northern India Canal and Drainage Act;

(iv) the expenses incurred in the previous year in raising the crop from which the agricultural income is derived, in making it fit for market and in transporting it to market, including the maintenance or hire or agricultural implements and cattle required for these purposes ;

(v) any expenses incurred in the previous year on the construction or maintenance of any irrigation productive or protective work constructed for the benefit of the land from which the agricultural income is derived:

(vi) any sum paid in the previous year in order to effect the insurance against loss or damage of crops or property from which the agricultural income is derived:

Provided that any amount received in respect of such insurance in any year shall be deemed to be agricultural income for the purposes of this Act and shall be liable to agricultural income tax after deducting the portion thereof, if any, which has been assessed to income tax under the Indian income tax Act, 1922.

(vii) any expenses incurred in the previous year on the maintenance of any capital asset if such maintenance is required for the purpose of deriving the agricultural income;

(viii) the cost incurred in the previous year of replacement or of repairs in respect of any capital asset which was purchased or constructed not earlier than two years before the commencement of this Act, for the benefit of the land from which the agricultural income is derived ;

(ix) any interest paid in the previous year on any amount borrowed and actually spent on any capital expenditure incurred not earlier than two years before the commencement of this Act, for the benefit of the land from which the agricultural income is derived ;

(x) where the land from which the agricultural income is derived is subject to a mortgage or other capital charge, any interest paid in the previous year in respect of such mortgage or charge ;

(xi) any interest paid in the previous year on any secured or unsecured debt incurred for the purpose of acquiring the property from which the agricultural income is derived ;

(xii) any interest paid in the previous year in respect of loans taken under the Land Improvement Loans Act, 1883, or the Agriculturists Loans Act, 1884, and

(xiii) such other deductions as may be prescribed:

Provided always that no deduction shall be made under this clause if it has already been made u/s 5.

(3) If the assessing authority is satisfied that the proceeds of sale have not been correctly shown by the Assessee or that any portion of the produce has not actually been sold, he may assess the value of the produce for purposes of Cl. (b) of Sub-section (I) of S. 2 by determining, to the best of his judgment the amount of produce and the market value thereof.

8. S. 44 of the AIT Act gives power to the Provincial Government to make Rules. Under the rule making power granted u/s 44 the UP AIT Rules, 1949, have been framed. These Rules are, ancillary to Sections 5 and 6 whereunder agricultural income is to be determined and computed. To the Rules are attached certain Forms. Form No. AIT 3 is the Form of return of total agricultural income to be filed u/s 15 of the Act in order to enable assessment to be made. To this Form there are several Annexures, being Annexures A to G, a reference to which will be made later.

9. The view of the AIT Board is that the word "revenue" in S. 2(1)(a) of the Act means yield or income, and that the word "rent" in S. 2(1)(a) means not only rent within the meaning of the Tenancy Act, but anything in the nature of rent. The Board is also of the view that the sale price of the Khair trees in question was agricultural income which fell within S. 2(1)(a) of the Act, and had to be computed in accordance with S. 5. It was of the view that the income from the sale of Khair trees was in the nature of Sayar income and so fell within S. 2(1)(a) and had to be determined u/s 5. The Board also expressed the view that the expression "by agriculture" in S. 2(1)(b) could only mean the usual process of growing crops by ploughing and tilling and that as Khair trees once planted were cut after several years and then cutting was done every second or third year without any plantation and that as Khair trees did not require any labour or attention as is necessary in the case of crops ordinarily grown, income derived from Khair trees could not be said to be income derived "by agriculture" within the meaning of S. 2(1)(b).

10. We will now consider what answer we should return to the question propounded.

11. We will assume that the words "rent" or "revenue" have a wider connotation than that given to those words under the UP Tenancy Act or under the UP Land Revenue Act and that the sale price of the trees received by these Assessees was such agricultural income as could also be described as being rent or revenue. The question, however, . which has to be determined is whether this agricultural income was derived from land within the meaning of S. 2(1)(a) or was income derived "by agriculture."

12. After the decision of their Lordships of the Supreme Court in the case of Commissioner of Income Tax, West Bengal, Calcutta Vs. Raja Benoy Kumar Sahas Roy, it is now well settled that arboriculture is also agriculture and that products, such as timber, which are raised from the land by basic and subsequent operations which involve the expenditure of human labour and skill in the subsequent operations as well as in the basic operation of planting into the soil constitute "agriculture."

13. The viewpoint of the Board that the expression "agriculture" was limited to the usual process of growing crops by ploughing and tilling and did not apply to the plantation of the Khair trees, therefore is incorrect. The question is whether

the income which has been derived in this case from the products of arboriculture can be considered to be income derived "by agriculture," or whether it is merely income derived from land which has been used for agricultural purposes. It would appear from an analysis of S. 2 that Sub-clause (b) of S. 2(1) is attracted where produce of the land yields the income, because the produce comes into existence as a result of agricultural operations on the land, in either words, "by agriculture." On the other hand, Cl. (a) of S. 2, Sub-section (1) appears to apply when rent or revenue is merely derived from land by an Assessee, without the land being subjected to agricultural operations by the Assessee himself but on the contrary by some person deriving his title to carry on agricultural operations from the Assessee by virtue of the cultivatory right conferred on the former by the latter. The term "rent" even though it may be given an amplified meaning, would still convey the idea of a return for the use of the land by another. The word "revenue" even though it may be given a more extended meaning than land revenue and may possibly include other types of income such as payments by under-proprietors to superior proprietors or Sayar income, cannot be a proper description of income made from the sale or produce of the land which has come into existence "by agriculture" carried on by the Assessee within the extended meaning of the word agriculture as laid down by their Lordships of the Supreme Court; nor can the word "rent" be a proper description of that income. "Sayar" moreover has been defined in the UP Tenancy Act as including whatever is to be paid or delivered by Assessee or licensee on account of right of gathering produce, forest rights, fisheries and use of water for irrigation from artificial sources. The sale of the trees in this case could not be considered to be Sayar income as that income has to be received from lessees or licensees.

14. Help may be taken from the language of Ss. 5 and S. 6 in determining whether the income in this case from the sale of Khair trees is income to which S. 2(1)(a) is attracted or is income to which Section 2(b)(1) is attracted. Income to which S. 2(1)(a) is attracted is determined u/s 5. In determining agricultural income u/s 5 collection charges have to be deducted. There is no provision under this section for deduction of any expenses incurred in connection with the raising of the produce as there is u/s 6 which relates of computation of agricultural income falling under sub-Cls. (1), (2) and (3) of Cl. (b) of Sub-section (1) of S. 2. The words "collection charges" would not be appropriate to any charge effected to recover sale price of produce. An examination of S. 5 clearly shows that the income to which S. 5(1)(a) is attracted is not income which constitutes the proceeds of the sale of the produce brought into existence "by agriculture." It will be observed, on the other hand, that S. 6 provides for alternative and optional methods of calculation of income and one of the methods for determining the agricultural income u/s 6 is to multiply by a certain multiple the rent of the land on which the produce is produced. The other method is to arrive at the net profits on the basis of accounting and in doing so the expenses incurred in raising the crop has to be Excluded.

15. The Board has referred to Form AIT 3 and has relied upon Annexure A of that Form which is applicable to incomes mentioned in S. 6 Col. 6 thereof requires that income from sale of fruits of trees not forming groves or orchards should be entered therein. The entry under this description has not to be in respect of trees but in respect of the sale of fruits of trees which trees are not in the nature of groves or orchards. Obviously what is intended to be filled in here is the income from the sale of fruits of such trees as are of spontaneous growth. In Col. 7 has to be filled in income from pasturage, and in Col. 8 income from Sayar or other sources not included in Cols. 6 and 7. In Col. 5(a) has to be entered the cash rent collected. In the complementary Annexure B are to be filled in the details of deductions claimable u/s 5. There are no deductions claimable in respect of expenses incurred in raising the produce. When we come to Annexure D, however, we find that it relates to income derived or obtained from land mentioned in Section 6(2)(b) and in Col. 11 has to be entered income from the sale of timber or trees, if any. And Form F relates to the deductions permissible and provides for an entry in respect of expenses incurred.

16. It would therefore appear from a study of the relevant provisions of the Act and the Rules made thereunder that S. 2, Sub-Section 1(a) is not attracted where the income relates to produce which is raised upon the land "by agriculture." Upon the facts stated the Khair trees sold in this case are products of arboriculture and therefore S. 2(1)(b) would be attracted. In our view therefore the answer to the question must be that that the income from the Khair trees sold by the Assessees is agricultural income falling u/Cl.(b) of S. 2(1) of the AIT Act. The Assessee will have his costs of these references which we assess at Rs. 200 in each case.