(1956) 01 OHC CK 0009

In the Orissa High Court

Case No : Original Judicial Case No. 10 of 1954 (Petition under article 226 of the Constitution of India for quashing an order levying agricultural Income Tax on the petitioner.)

RAMAKRISHNA DEO — APPELLANT

Vs

AGRICULTURAL Income Tax OFFICER. — RESPONDENT

Date of Decision : 16-01-1956

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (1956) 30 ITR 248

Hon'ble Judges : Panigrahi, C.J;Mohapatra, J

Bench : Full Bench

Judgement

MOHAPATRA, J. - This is a petition under article 226 of the Constitution for quashing an order levying agricultural Income Tax on the petitioner in the following circumstances :

The assessment year in question is 1953-54, the accounting year being 1st July, 1951, to 30th June, 1952. The present petitioner is the adopted son of late Maharaja Vikram Deo Varma, the ex-proprietor of Jeypore estate. Vikram Deo Varma died on 15th April, 1951, after which the petitioner succeeded as the proprietor of Jeypore estate in accordance with the custom of lineal primogeniture prevailing in the estate. The petitioner was accordingly recognised as the rightful successor to the above estate and was registered as the holder of the estate. On the death of the petitioners father the petitioner not having completed his 21 years of age, by a notification in the Gazette of Orissa, the Court of Wards assumed charge of the estate on 24th May, 1951. The petitioner asserts that he had completed his 21 years of age on 2nd December, 1951; but nevertheless the estate still continued to be in the management of the Court of Wards till 16th March, 1953, when a release order was passed. In the meantime under the provisions of the Orissa Estates Abolition Act, 1951 (Act No. I of 1952), the estate vested in the State of Orissa on 29th December, 1952. The Agricultural Income Tax Department issued a notice on the petitioner to file return of the agricultural income of the accounting year ending on 30th June, 1952. The petitioner raised objection before the Department that he was not liable for payment of tax as the estate was under the management of the Court of Wards. The objection was overruled and ultimately tax was levied on the petitioner. The petitioner filed an appeal against the order of assessment which was ultimately dismissed and a demand notice having been served upon the petitioner for payment of tax, he has sought protection of this Court under the provisions of article 226.

2. The only contention of Mr. A. L. J. Rao, appearing on behalf of the petitioner, is that the order of assessment against the petitioner personally is illegal and without jurisdiction as it is in contravention of the previous section 13 of Orissa Agricultural Income Tax Act, 1947 (Orissa Act No. XXIV of 1947). Under the provisions of this section, the Department is to proceed against the Court of Wards only and not against the petitioner personally as for the entire period of accounting the estate was under the management of the Court of Wards and the Court of Wards had received the agricultural income for the said year. From the dates mentioned above, that is, during the entire period from 1st July, 1951 to 30th June, 1952, the estate was under the management of the Court of Wards - this position is not controverted. It is not controverted also that the Court of Wards, while in the management of the estate, had received the agricultural income for the said period. But Mr. B. Mohapatra, appearing on behalf of the Department, strongly relies upon the position that double remedy is available to the Department either to proceed against the petitioner personally or against the Court of Wards. I should mention here that it is admitted that in fact for the year in question the Department had proceeded only against the petitioner personally and not against the Court of Wards.

3. The simple question therefore that requires determination by us is whether under the provisions of the Orissa Agricultural Income Tax Act, 1947, the Department can pursue the double remedy as against the petitioner personally and also against the Court of Wards or, as contended by the petitioner, against the court of Wards alone. Section 13 of the Orissa Agricultural Income Tax Act runs thus :

"In the case of agricultural income chargeable under this Act, which is received by the Court of Wards, the Administrator-General, or the Official Trustee, the tax shall be lived upon and recoverable from such Court of Wards, Administrator-General, or Official Trustee, in the like manner and to the same amounts as it would be livable upon and recoverable from any person on whose behalf such agricultural income is received, and all the provisions of this Act shall apply accordingly."

As I have mentioned above, the agricultural income for the period question had admittedly been received by the Court of Wards. the terms "the tax shall be levied upon and recoverable from such Court of Wards" etc. indicate that the provisions are mandatory. Mr. Mohapatra, however, contends that there is nothing in the section which confines the remedy as against the Court of Wards only. The words "would be" in the clause "in the like manner and to the same amounts as it would be livable upon and recoverable from any person on whose behalf much agricultural income is received" are significant to indicate that the power of taxation contemplated is only against the Court of Wards. But that apart, we are to examine the taxing power from the other angle of vision as to if really the statute empowers the Department in such circumstances to proceed also against the ward personally. In our view, on a plain reading of section 13, in cases coming under the contemplated circumstances, that is, if the agricultural income chargeable is received by the Court of Wards, Administrator-General, or the Official Trustee, the taxing power is provided for in that section only and that the Department is to pursue the Court of Wards, Administrator-General, or the Official Trustee, if they had received the agricultural income for the year under their management. The position would be made clear by reference to some parallel sections of other similar Acts.

4. Our attention has been drawn to the provisions of section 41(2) of the Indian Income Tax Act running as follows :

"(2) Nothing contained in sub-section (I) shall prevent either the direct assessment of the person in whose behalf income, profits in gains therein referred to are receivable, or the recovery from such person of the tax payable in respect if such income, profits or gains."

Here, apart from the Department proceeding against the Court of Wards, Administrator-General, or Official Trustee, it is specifically provided that they can directly assess the person on whose behalf income, profits or gains are receivable. The provision in the Income Tax Act, was in the statute book long before our Agricultural Income Tax Act came into force. If the Legislature clearly intended to empowers the Department to assess the person directly even though the estate was in the management of the Court of Wards etc., they must have embodied clear provision of the like nature as in the Income Tax Act. The absence of such a clear provision is very and strengthens our view that the Department can assess the Court of Wards alone and not the petitioner personally. Our view gathers strength by reference to similar provisions in the Agricultural Income Tax Act of Uttar Pradesh. The provisions of section II of the U.P. Act are similar to the provisions of section 13 of our Act. In sub-section (3) of the said section, they have practically copied the provisions of sub-section (2) of section 41 of the Income Tax Act providing for the power to assess the ward "personally", even though the Department may proceed against the Court of Wards or the Administrator-General etc. It is needless to repeat the very well recognised rules of interpreting a taxing statute which has got to be strictly construed; it is essential that the power to tax must appear clear from the plain terms of the statute itself.

5. In conclusion, therefore, this petition must succeed. The order of assessment against the petitioner is quashed as being illegal and without jurisdiction. The

petitioner is entitled to costs. Hearing fee is assessed at one hundred rupees (Rs. 100).

PANIGRAHI, C.J. - I agree.

Petition allowed.

