

(1999) 07 KL CK 0063

In the High Court Of Kerala

Case No : T.R.C. No's. 91 and 93 of 1999

Shivakantiappa, H.S.

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 14-07-1999

Acts Referred:

Kerala Agricultural Income Tax Act, 1950 — Section 9(2)

Kerala Agricultural Income Tax Act, 1991 — Section 76(2), 9(2)

Citation : (1999) 07 KL CK 0063

Hon'ble Judges : R. Rajendra Babu, J;K.K. Usha, J

Bench : Division Bench

Advocate : T.D. Rajalakshmi, for the Appellant; V.V. Asokan, Govt. Pleader (Taxes), for the Respondent

Judgement

K.K. Usha, J.—These tax revision cases are at the instance of a common Assessee. The relevant assessment years are 1990-91 and 1991-92.

2. The Petitioner was an Assessee under the Kerala Agricultural Income Tax Act, 1950. He filed his return for the assessment years 1990-91 and 1991-92. The assessment proceedings were completed including the income from the property which he had gifted to his wife. For the assessment years 1987-88, 1988-89 and 1989-90 by order dated 8th May 1997 the Kerala Agricultural Income Tax Appellate Tribunal, Additional Bench, Kozhikode held that clubbing of the income of Petitioner's wife with that of the Petitioner u/s 9(2) of the Agricultural Income Tax Act, 1950 is correct. But for the assessment years 1990-91 and 1991-92 the Additional Appellate Assistant Commissioner-II, Agricultural Income Tax and Sales Tax, Kozhikode by his order dated 18th March 1996 upheld the contention of the Assessee that the provisions of Section 9(2) of the Act would apply only to an individual and not a joint Hindu Family and it would apply only to transfer of the individual's own separate property and not to transfer by him of Hindu joint family property. In the present case the property was obtained by the Assessee on partition. Therefore, Section 9(2) of the Kerala Agricultural Income Tax Act

was held not applicable.

3. In the light of the order passed by the tribunal on 8th May 1997 a notice was issued by the Agricultural Income Tax Officer u/s 76(2) of the Kerala Agricultural Income Tax Act, 1991 directing the Assessee to show cause why the assessment proceedings should not be reopened. The Assessee filed a detailed objection. Rejecting the Assessee's contention the Commissioner of Agricultural Income Tax passed order dated 31st August 1998 and the proposals contained in the notice dated 6th June 1998 were confirmed.

4. Aggrieved by the above, the Assessee has filed these tax revision cases. Following questions of law are sought to be raised for decision of this Court:

(i) Whether on the facts and circumstances of the case is not the property transferred could be treated as a Gift u/s 9(2) of the Kerala Agricultural Income Tax Act, 1991?

(ii) Whether on the facts and circumstances of the case was not the transfer of property effected by the Assessee could only be in respect of a Joint Hindu Family property and therefore there is no separate property?

(iii) Whether on the facts and circumstances of the case Section 9(2) of the Kerala Agricultural Income Tax Act would apply to the facts of the case?

(iv) Is the decision reported in 1998 (1) KLT 634 applicable to the facts of the case.

5. It is contended by the learned Counsel for the Appellant that decision reported in Indira Devi v. Deputy Commissioner, Agricultural Income Tax and Sales Tax 1998 (1) KLT 634 on the basis of which the assessment proceedings were reopened, has no application to the facts of the case. Therefore, according to the learned Counsel for the Appellant, the very reopening of the case is vitiated.

6. We do not find any merit in the above contention. In the judgment of this Court in 1998 (1) KLT 634 it has been held that an Assessee who obtained the property in a partition was holding the same as separate property on the day when the Kerala Joint Hindu Family system (Abolition) Act, 1975 came into force and the entire income should be assessed only in his hands as individual. It was also held that when the ancestral property is allotted to the Assessee under a partition and when there was no male member in the joint family, the property will take the character of his separate property. The Assessee's wife is not entitled to a share in the property, as she cannot be treated as a coparcener. Reliance was placed by the Commissioner on the above mentioned decision to support his reasoning to reopen the assessment proceedings. The Assessee had contended that what he had transferred to his wife by way of gift was joint family property and, therefore, it will not be hit by Section 9(2) of the Agricultural Income Tax Act, 1950. According to him, the above provision would apply only to transfer of the individual's own separate property and not joint family property. This contention was rejected by the Commissioner relying on Indira Devi's case

1998 (1) KLT 634. He was fully justified in doing so.

7. Section 9(2) of the Agricultural Income Tax Act, 1950 reads as follows:

(2) In computing the total agricultural income of any individual for the purpose of assessment, there shall be included-

(a) So much of the agricultural income of a wife or minor child of such individual as arises directly or indirectly-

* * *

(iii) from assets transferred directly or indirectly to the wife by the husband otherwise than for adequate consideration or in connection with an agreement to live apart.

8. Transfer of the property by the Assessee to his wife satisfies all the ingredients of Section 9(2). Therefore, the finding of the Commissioner on this issue has only to be accepted as correct. Thus, the income from the property transferred to the wife is to be clubbed along with the income of the Assessee and assessed in his hands.

9. In the result, the tax revision cases are found without any merit and they stand dismissed.