
(1994) 03 KL CK 0046

In the High Court Of Kerala

Case No : Original Petition No. 7645 of 1990-I

S.M. Fareesa Begum

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 17-03-1994

Acts Referred:

Kerala Agricultural Income Tax Act, 1950 — Section 2, 3, 31(4), 38
Kerala Agricultural Income Tax Rules, 1951 — Rule 25A

Citation : (1994) 3 ILR (Ker) 755

Hon'ble Judges : T.L. Viswanatha Iyer, J

Bench : Single Bench

Advocate : O. Ramachandran Nambiar, for the Appellant; S. Vijayan Nair, Sr. Government Pleader, for the Respondent

Judgement

T.L. Viswanatha Iyer, J.—The question that arises for consideration in this writ petition is whether the findings at an inspection of holdings by the Agricultural Income Tax Officer, could be made use of in completing the assessments for earlier years. According to the petitioner, an assessee to tax under the Agricultural Income Tax Act, 1950 ("the Act"), Kochu Thommen). (as he then was) has held that they cannot be so used, in his decision in Ruby Rubber Works Ltd. Vs. Agricultural Income Tax Officer-I and Others, . But I do not agree.

2. Briefly the facts. The petitioner owned six acres of land planted with cardamom. She was not in the habit of keeping any accounts, though she was an assessee under the Act. Her returns for the assessment years 1977-78 to 1980-81 (accounting years 1976-77 to 1979-80) were rejected and assessments completed to the best of judgment on December 3, 1981. But these assessments were set aside in appeal on January 4, 1983, and remitted back to the Agricultural Income Tax Officer for making fresh assessment after conducting an inspection of the petitioner's holdings. The petitioner did not, however, co-operate in the officer's attempts to conduct an inspection of the holdings--she did not even respond to any of the notices sent to her, with the result fresh

assessments were completed on December 20, 1983, again to the best of judgment. These assessments were also set aside in appeal on January 1, 1985, and the matter remanded to the assessing authority for de novo disposal. Again, there was some non-co-operation and fresh ex parte assessments were completed on October 29, 1985, u/s 18(4) of the Act. These were, however, set aside on application by the petitioner u/s 19. The holdings were then inspected on December 17, 1985, and based on those findings a common order of assessment was completed on January 16, 1987, a copy of which is exhibit P-1. This order was challenged in revision u/s 34 of the Act. Apart from the dispute about the yield, there was another dispute which related to the extent of the petitioner's holdings after June 21, 1978, when she is alleged to have parted with a portion of her land. The Deputy Commissioner set aside the order in so far as it related to the assessment years 1979-80 and 1980-81 and remitted the matter back to the Agricultural Income Tax Officer for fresh consideration of this question. We are not, therefore, concerned with these assessments in this writ petition. So far as the other two years are concerned, the Deputy Commissioner confirmed the estimation of the yield as reasonable, being based on the inspection held on December 17, 1985, and dismissed the revision petitions for those years. A copy of the common order is exhibit P-2. The petitioner sought rectification of this order, the ground for which I am unable to discern and naturally the petition stood rejected.

3. The assessments for 1977-78 and 1978-79 (namely exhibit P-1) and its confirmation by exhibit P-2 are challenged, on the only ground that the findings at the inspection held on December 17, 1985, could not be made use of to arrive at the yield during the years in question. This is stated as an absolute proposition of law and *Ruby Rubber Works Ltd. Vs. Agricultural Income Tax Officer-I and Others*, is stated to have held so.

4. I may even at the outset point out that so far as the petitioner is concerned, her case is concluded on this point by the first appellate order dated January 4, 1983, which directed a fresh assessment to be made after an inspection of the holdings. This order is binding on the petitioner and she cannot now turn round to contend that findings in an inspection made subsequently in compliance with this direction cannot be made use of in completing the assessments in question. She knew even at that time that any such inspection could only be a post-accounting period one, and having invited a direction from the appellate authority, it is not open to her to contend to the contrary when it suits her later.

5. But I shall examine the legal position as well, as I have seen in quite a number of cases that the decision in *Ruby Rubber Works Ltd. Vs. Agricultural Income Tax Officer-I and Others*, , is being misread and misinterpreted. It will, therefore, be advantageous to have the matter clarified.

6. The charge u/s 3 of the Act is on the total agricultural income of the previous year, as defined in Section 2(o). The income taxed is that of the previous year and not of the year of assessment (*Wallace Bros, and Co. Ltd v. CIT* [1948] 16

ITR 240). The return is furnished only after the end of the previous year in which the income is derived and which is brought to assessment. Section 31 provides for an appeal against the assessment. The proviso to Sub-section (4) thereof enables the Appellate Assistant Commissioner to issue a commission on the application of the assessee and at his cost to ascertain and report the yield and the cultivation expenses, or the rent and collection charges, of the properties included in the assessment order. A similar power is given to the Appellate Tribunal also u/s 38(c), when the second appeal is pending before it. Rule 25A of the Agricultural Income Tax Rules, 1951 ("the Rules") lays down the procedure for applying for the issue of a commission, and that to be followed by the Commissioner, and by the appellate authorities subsequent to the receipt of the report.

7. It is clear from the above that any inspection of the holdings could only be after the end of the previous year concerned, either when the assessment is pending finalisation before the assessing authority, or when the assessment is pending in appeal or second appeal before the Appellate Assistant Commissioner or the Appellate Tribunal. The Act itself thus envisages the issue of a commission during the pendency of an appeal or second appeal, the purpose of the commission necessarily being to report on the yield or the expenses or other material details relevant to the assessment in question. Necessarily and having regard to the procedure for assessment, any report of the Commissioner could only be an ex post facto report, made after the "previous year" in which the income was derived and to which the assessment is related. It is not, therefore, possible to accept the extreme proposition urged by the petitioner--which, in my opinion, is not supported by any decision and is, on the face of it, contrary to the above-cited provisions in the Act--that the findings at an inspection cannot be made use of in the assessment for a past year. The Act and the Rules envisage such user. Acceptance of the petitioner's submission will in effect deprive assesseees of the benefit of an inspection and a report, particularly assesseees like the petitioner, who do not keep any accounts at all. In fact the Act and the Rules have made such a report relevant material, as is evident from the provisions mentioned earlier.

8. Ruby Rubber Works Ltd. Vs. Agricultural Income Tax Officer-I and Others, , does not lay down any proposition to the contrary, as contended, though the catchwords of the decision are misleading. What the learned judge observed was as follows (at page 220) :

"The third contention of the petitioner is that on the basis of an inspection report prepared in 1974, the company is sought to be assessed in respect of the previous years relevant to the assessment years 1972-73 and 1973-74. According to the petitioner, the trees had yielded more income as years went by and the income of 1974 was, therefore, not a guide to the income in relation to the previous years. This, again, would depend upon the nature of the growth of the trees and their condition. This fact has to be determined."

9. These observations point only to the necessity of adjusting the findings at the inspection to the state of affairs as they existed previously during the year in question. Naturally so, as the yielding trees or plants do not remain static. They may grow, or they may fade ; their yielding capacity may increase or decrease as the case may be depending upon their age and other factors. The learned judge was only pointing out the necessity to make proper adjustments and allowances while applying the report of an inspection to an anterior year, taking into account the passage of time and the changes that are likely to have occurred. That necessarily is a caution which has to be observed as was noted in Varghese Varghese and Others Vs. Commissioner of Agricultural Income Tax, , and Keethadath Abdulkhader Vs. Agricultural Income Tax Officer and Others, .

10. I overrule the contention of the petitioner put forward broadly, against the user of an inspection report in the assessment for prior years. The officer has determined the yield for the years in question making necessary allowances for the passage of time. No illegality has been pointed out therein except the broad proposition mentioned earlier, which I have overruled.

11. There is no other challenge to the orders, exhibits P-1 and P-2. The writ petition is, therefore, dismissed. No costs.