

(1963) 08 KL CK 0018

In the High Court Of Kerala

Case No : Income Tax R. No. 35 of 1962 (Agrl.)

Smt. G. Thankamal Ravi Nikethan

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 05-08-1963

Acts Referred:

Kerala Agricultural Income Tax Act, 1950 — Section 8(2)

Citation : AIR 1965 Ker 65

Hon'ble Judges : M.S. Menon, C.J;M. Madhavan Nair, J

Bench : Division Bench

Advocate : A.S. Narayanan Asan and A.D. Krishnan Asan, for the Appellant;
Govt. Pleader, for the Respondent

Judgement

M.S. Menon, C.J.—This is a reference by the Kerala Agricultural Income Tax Appellate Tribunal, Trivandrum, u/s 60 (1) of the Agricultural Income Tax Act, 1950. The assessment year concerned is 1958-59; and the accounting period the twelve months ended 31-12-1957.

2. The questions referred are :

"1. Whether on the facts and circumstances of the case Section 8 (2) of the Agricultural Income Tax Act is applicable to the assessment of the Agricultural Income Tax on the agricultural income derived from the land of each of the minor children.

2. Whether on the facts and circumstances of the case the rate applicable to the agricultural income of each of the minors is the rate applicable to the total agricultural income derived from the land of each of the minors plus the total agricultural income of the assessee from her own lands."

3. The assessee executed a gift deed in favour of her minor children. The genuineness and validity of the gift is not in dispute. It is also agreed that under the deed separate items of property were separately allotted to each of her children, and that each child became the full owner of the items allotted to that

child,

4. Section 8(2) of the Agricultural Income Tax Act, 1950, reads as follows:

"(a) Save as provided in Sub-section (1), if a person holds land from which agricultural income is derived partly for his own benefit and partly for the benefit of others or wholly for the benefit of others, agricultural Income Tax shall be assessed on the total agricultural income derived from such land at the rate which would be applicable if such person had held the land exclusively for his own benefit.

(b) Any person holding such land shall be entitled before paying to any beneficiary the amount of agricultural income which such beneficiary is entitled to receive, to deduct the amount of agricultural Income Tax at the rate at which such income is or will be assessed under Clause (a).

Explanation: -- In this Section "beneficiary" means a person entitled to a portion of the income derived from the land."

The contention of the Department is that the mother holds the items of property given to each minor "wholly for the benefit of" that minor and that as a result the sub-section comes into operation.

5. As stated by the Supreme Court in *W.O. Holdsworth and Others Vs. The State of Uttar Pradesh*, , the expressions "for the benefit of" and "on behalf of" are not synonymous with each other. They convey different meanings. The Tribunal has apparently failed to realise this distinction.

6. A trustee, for example, is the legal Owner of the trust property and the property vests in him as such. He no doubt holds the trust property for the benefit of the beneficiaries; but he does not hold it on their behalf.

7. An agent holding property belonging to his principal, or a guardian holding property belonging to a minor, has no rights of ownership in, the property concerned. He cannot be said to be holding the property for the benefit of the principal or minor. He holds then on their behalf.

8. The mother in this case retained no vestige of ownership in the items of property given to her minor children; each child became the full and admitted owner of the items allotted to that child. It follows that the mother does not hold the items for the benefit of her children, that she holds them on their behalf; and that the sub-section is not attracted.

9. In *Province of Bihar v. F. R. Hayes*, AIR 1946 Pat 361, a section similar to Section 8 (2) of the Agricultural Income Tax Act, 1950--section 11 of the Bihar Agricultural Income Tax Act, 1938--came up for consideration. The relevant words in section 11 of the Bihar Act were "partly for his own benefit and partly for the benefit of beneficiaries, or wholly for the benefit of beneficiaries". The Bihar section also embodied an explanation of the expression "beneficiary" in terms identical with the explanation in Section 8 (2) of the Agricultural Income

Tax Act, 1950.

10. Fazl Ali, C. J., delivering the judgment of the Special Bench, said :

"(1) That the definition of "beneficiary" as given in the Explanation to Section 11 must be held to be controlled by its accepted legal meaning otherwise it will be too wide and will cover persons who could not have been intended to be dealt with in that section; and

(2) that the section could not have been intended to apply to income received by full owners of property through their servant or agent or manager". The assessment of each of the minors in this case has to be separate proceeding and the rate applicable to each minor will depend upon that minor's own agricultural income and not that of anybody else.

11. In the light of what is stated above we must hold that Section 8 (2) of the Agricultural Income Tax Act, 1956, is not attracted and that both the questions referred have to be answered in the negative and against the Department. We do so, but without any order as to costs.

12. A copy of this judgment under the seal of the High Court and the signature of the Registrar will be forwarded to the Appellate Tribunal as required by Sub-section (6) of Section 60 of the Agricultural Income Tax Act, 1950.