(1955) 04 AHC CK 0030

In the Allahabad High Court

Case No : Agricultural Income Tax Miscellaneous Case No. 202 of 1952

Sri W.O. Holdsworth and Another APPELLANT

Vs

The State of Uttar Pradesh RESPONDENT

Date of Decision : 19-04-1955

Acts Referred:
Uttar Pradesh Agricultural Income Tax Act, 1948 — Section 11(1)

Citation : (1955) 25 AWR 475 : (1958) 33 ITR 472

Hon'ble Judges : Mootham, C.J;V. Bhargava, J

Bench : Division Bench

Advocate : R.S. Pathak, for the Appellant;

Final Decision : Dismissed

Judgement

Mootham, C.J.—This is a reference u/s 24 of the U.P. Agricultural Income Tax Act, 1949, the question propounded being--

Whether on the facts and in the circumstances of the case the trustees can be said to be holding land on behalf of beneficiaries and can the beneficiaries be said to be jointly interested in the land or in the agricultural income derived therefrom within the meaning of Section 11(1) of the U.P. Agricultural Income Tax Act, 1948?

2. The relevant facts can be briefly stated. One John Joseph Holdsworth died on the 29th June, 1920, leaving a will whereunder, after making provision for certain pecuniary and other bequests, he devised and bequeathed all his immovable property in the United Provinces together with certain movable property in British India (collectively referred to as his ''said Estates'') to trustees upon the trusts thereinafter set out. Under Clause 10 of the will the trustees were directed to stand possessed of the net rents and profits of the said Estates upon trust to pay thereout annuities of varying amount to twelve persons. We are informed that of those persons five only are now alive, their names and the annuities payable to them being as follows:

Mrs. J.C. Holdsworth ? 2500 perannum

Mr. W.O. Holdsworth ? 1000 " "

Miss. L.N. Holdsworth ? 50 " "

Lt. Col. L.R.J.C. Wilkinson ? 500 " "

H.C. Holdsworth ? 400 " "

3. Under Clause 13 the trustees are further directed to stand possessed of the said Estates (in the events which have happened)upon trust for the said W.O. Holdsworth during his life and after his disease upon trust for all or any of his children or child who being a son or sons attain the age of 21 or being a daughter or daughters attain that age or marry, and in the event of no child attaining a vested interest, upon trust for the said W.O. Holdsworth, his heirs, executors and administrators absolutely.

4. The trustees have been assessed to agricultural income tax on the total agricultural income received by them. They dispute the correctness of the assessment and contend that they can only be called upon to pay the aggregate of the sums payable as agricultural income tax by each of the five annuitants. This contention has been rejected by the Department and the question we have to determine accordingly involves a consideration of the meaning and effect of Section 11 of the Act.

5. The purpose of this Act, as its flame implies, is to impose a tax on agricultural income. The tax is payable by every person whose total agricultural income of the previous year exceeds Rs. 3,000, or in the case of any society, trust, or other association of individuals, such higher figure as may be prescribed. ''Person'' is defined in Sub-section (11) of Section 2 as meaning--

an individual or association of individuals, owning or holding property for himself or for any other, or partly for his own benefit and partly for that of another, either as owner, trustee, receiver, manager, administrator or executor or in any capacity recognised by law, and includes an undivided Hindu family, firm or company but does not include a local authority;

6. Provision is made in Sections 8 and 9 of the Act for the exemption from tax of property held upon certain trusts or other legal obligations for religious or charitable purposes, and in Section 10 for the assessment of the income of an undivided Hindu family. Section 11 is in these terms:

(1) Where any person holds land, from which agricultural income is derived, as a common manager appointed under any law for the time being in force or under any agreement or as receiver, administrator or the like on behalf of persons jointly interested in such land or in the agricultural income derived therefrom, the aggregate of the sums payable as agricultural income tax by each person on the agricultural income derived from such land and received by him, shall be assessed on such common manager, receiver, administrator or the like, and he

shall be deemed to be the Assessee in respect of the agricultural income tax so payable by each such person and shall be liable to pay the same.

(2) In the case of agricultural income taxable under this Act which is received by the Court of Wards, the Administrator General or the Official Trustee, the tax shall be levied upon and recoverable from such Court of Wards, Administrator General or Official Trustee, in the like manner and to the same extent as would be leviable upon and recoverable from any person on whose behalf such agricultural income is received, and all the provisions of this Act shall apply accordingly,

(3) Notwithstanding anything contained in Sub-section (1), the appropriate assessing authority may, in his discretion assess the tax directly on the person on whose behalf the agricultural income is receivable by such Court of Wards or Administrator General or the Official Trustee.

7. The section, it will be observed, makes provision not only for the person who, in the circumstances mentioned therein, is to be assessed but as to the manner in which the tax payable by the Assessee is to be computed.

8. In order that Sub-section (1) may have application it is necessary that a person

(a) holds land from which agricultural income is derived,

(b) as a common manager or "as receiver, administrator or the like",

(c) On behalf of persons who are jointly interested,

(i) in such land or

(ii) in the agricultural income derived therefrom.

9. In the present case it is denied by the Respondent that any of these conditions has been fulfilled.

10. It is not in dispute that the Petitioners hold land from which agricultural income is derived, but it is contended that the Act makes a distinction between owning and holding, and that a person does not ''hold'' land within the meaning of this Sub-section if in addition to holding he also owns it. The only provision of the Act to which our attention has'' been invited in support of this submission is Section 2(11) which defines a ''person'' as an individual or association who either owns or holds property in one of the capacities mentioned in the definition. We can see no substance in this argument nor any ground for thinking that, when it is here used, ''holds'' means "holds but does not own".

11. It is then strongly argued on behalf of the Respondent that the phrase "or the like" is this Sub-section will not include a trustee on the ground that had in been the intention of the legislature that the class of persons referred to in this Sub-section should include a trustee, the word ''trustee'' would have been specifically mentioned, as it is in the definition of ''person'' in Clause (11) of

Section 2. There is undoubted force in this contention but the argument is not in our opinion conclusive. "Administrator" is not defined in the Act, and the term, in the absence of any express limitation as to its meaning, will clearly include a person to whom letters of administration have been granted under the Indian Succession Act; and such an administrator will be the legal owner of the property of the deceased person. So also is a trustee (including of course the Official Trustee) the legal owner of the property comprised in the trust of which he is appointed the trustee. In each of these instances the legal ownership of property is vested in one person for the benefit of some other person or persons; and although we entertain some doubt whether it was the intention of the legislature that Section 11 should apply to owners of land., we think that the inclusion of an administrator makes it impossible to exclude a trustee. In our opinion therefore the phrase "receiver, administrator or the like" will include a trustee, the official Trustee and the Administrator General. This view finds some support from the terms of Sub-section (3) of this section. The opening words of Sub-section (3)--"Notwithstanding anything contained in Sub-section (1)" --appear to indicate that, inter alias, the Administrator General and the Official Trustee will come within the ambit of that Sub-section, and power is therefore given to the assessing authority to assess the tax directly on the person on whose behalf the agricultural income is received by either or these officials It must however be admitted that it is difficult to reconcile the provisions of this Sub-section with those of Sub-section (2) which lay down that the tax upon agricultural income received, inter alias, by the Administrator General and the Official Trustee shall be levied upon and recoverable from those officials; for such a provision appears to imply that they are not such persons who are capable of coming within the ambit of Sub-section (1), for otherwise Sub-section (2) would, so far as they are concerned, appear to be unnecessary. Reading the section as a whole, however, we do not think it was the intention of the legislature to place upon the words ''or the like'' the restricted meaning for which the Respondent contends.

12. The questions then arise whether the Petitioners hold the land "on behalf of" the annuitants and whether the latter are "jointly interested" in the agricultural income arising therefrom. On the first of these points the argument of the Respondent is that the phrase ''on behalf of implies the existence of a legal relationship such as that of principal and agent; one person must be acting in the place of another.

13. The requirement that the person claiming to be the Assessee must hold land on behalf of persons interested in such land is easy to understand, but not so the alternative requirement that the Assessee must hold the land on behalf of persons who are not interested in the land but only in the income arising out of it. We find it difficult to understand how land can be held on behalf of another person who has no interest in it. If a trustee holds land upon trust to pay the income derived therefrom to A during his lifetime, and upon A''s death upon trust for B, A has no interest in the land and the trustee cannot be said to be holding it on his behalf. It appears to us that the only way to give effect to the words

"holds land...on behalf of persons jointly interested...in the agricultural income derived therefrom" in Section 11(1) is to construe them as meaning "is in possession of land and holds the agricultural income derived therefrom on behalf of persons jointly interested therein." If this be the manner in which this provision should be construed the expression ''on behalf of can in our opinion mean only ''for the benefit of''.

14. On the second point it is contended that the expression "jointly interested" means that each of the beneficiaries must have an undivided share in the land or in the agricultural income arising therefrom; and that as each of the annuitants in the case now before us is separately interested only in the amount of his own specific annuity the section has no application. That however is not strictly the case, for under Clause 12 of the will the annuities of the last three of the five annuitants will abate proportionately on the happening of either of the events mentioned in that clause; and it is clear that the annuities payable to Mrs. J.G. Holdsworth and Mr. W.O. Holdsworth will necessarily abate if the rents and profits are insufficient to pay both in full.

15. It appears to be assumed in the Statement of the Case that the entire income which comes into the hands of the trustees is agricultural income; whether this is really so seems doubtful, but we must proceed on the basis that it is.

16. It is a commonplace that in construing an enactment due weight must be given to every word used by the legislature. The difficulty which we find in construing the words "persons jointly interested" either in the land or in the agricultural income derived therefrom, is that, unless these words mean that each person concerned must have an interest which is joint with that of each other person, it is hard to attribute to those words, and particularly to the word "jointly" any precise meaning. If it does not mean ''jointly'' in the legal sense, what does it mean? Where is the line to be drawn? To take a simple illustration: Certain land yielding agricultural income is vested in trustees upon trust to pay the income in equal shares to X and to a charity. X and the charity are (in our view) jointly interested in the income and Section 11(1) will be applicable. Suppose now that under the terms of the trust the trustees are to pay Rs. 5,000 a year to X and the remainder of the income to charity. X''s only interest in the income received by the trustees is that it shall not amount to less than Rs. 5,000. The charity is directly interested in the amount; but can it be said that interest is joint with that of X? We do not think it can. We find it difficult to substitute in Section 11(1) any other word for the word ''jointly'' or to find justification for reading that Sub-section as though the word ''jointly'' were not there. To take the illustration one stage further. In order to produce the agricultural income a number of labourers are employed who are paid wages; the amount of which is dependent upon the gross income of the property. In one sense these labourers are interested, and jointly interested, in the agricultural income derived from the property, but in our opinion Section 11(1) has no

application in their case for we do not think they can be said to be in receipt of agricultural income. What they receive is not agricultural income but wages, although no doubt the former is the source of the latter.

17. Each of the beneficiaries in the present case is entitled to receive from the Petitioners a fixed sum annually the Petitioners are under no obligation to pay such annuities exclusively from the agricultural income received by them, and if the agricultural income is insufficient (although that is not the case here) to meet the cost of the annuities the Petitioners will have to make up the deficiency, if they can, from income received from other sources. We doubt whether in such circumstances a beneficiary''s right to receive an annuity amounts to an interest in agricultural income; but in any case we are unable to hold that the beneficiaries are "jointly interested" in the agricultural income derived from the land within the meaning of Section 11(1). We accordingly answer the first part of the question referred to us in the affirmative and the latter half in the negative.

18. The Respondent is entitled to its costs which we assess at Rs. 250.

