(1978) 02 KAR CK 0017

In the Karnataka High Court

Case No : Civil Revision Petition No. 1942 of 1974

State of Karnataka — APPELLANT

Vs

C.P. Chandrasekhar — RESPONDENT

Date of Decision : 02-02-1978

Acts Referred:

Mysore Agricultural Income Tax Act, 1957 — Section 10 (1) (a), 10 (2) (a), 2 (1) (p), 3 (3)

Citation : (1978) ILR (Kar) 1229 : (1979) 116 ITR 84 : (1978) 2 KarLJ 105

Hon'ble Judges : V.S. Malimath, J;S.R. Range Gowda, J;M.N. Venkatachaliah, J

Bench : Full Bench

Advocate : K. Shivashankar Bhat, for the Appellant; U.L. Narayana Rao, for the Respondent

Judgement

Malimath, J.—The Division Bench consisting of Venkataramaiah J. and Venkatachala J. has referred the following question of law for the opinion of the Full Bench :

"Where a person holds the agricultural land in question as a trustee and receives the agricultural income partly for his own benefit and partly for the benefit of others, can assessment be made in accordance with s. 10(1)(a) read with s. 3(3) of the Karnataka Agrl. I.T. Act, 1957, ignoring s. 10(2)(a) of that Act ?"

2. S. 3(3) of the Karnataka Agrl. I.T. Act, 1957 (hereinafter referred to as "the Act"), will have no application to a case where a person holds agricultural lands as a trustee and receives the agricultural income partly for his own benefit and partly for the benefit of others. S. 3(3) of the Act applies only if the person holds property as tenants-in-common and derives agricultural income. If a person holds agricultural lands as a trustee and receives agricultural income partly for his own benefit and partly for the benefit of others, it is impossible to say that the property is held as tenants-in-common.

3. The only other question that requires examination is as to whether s. 10(1)(a)

of the Act applies or s. 10(2)(a) of the Act applies to the case of a trustee holding agricultural lands and receiving the agricultural income partly for his own benefit and partly for the benefit of others. For the sake of convenience, we extract the provisions of s. 10(1)(a) and s. 10(2)(a) of the Act :

"10(1)(a). In the case of agricultural income taxable under this Act, which the Court of Wards, Administrator-General or Official Trustee or any receiver, administrator, executor, trustee, guardian or manager appointed by or under any law or by an order of court or by written agreement, is entitled to receive on behalf of any person, the tax shall be levied upon and recoverable from the Court of Wards, Administrator-General, Official trustee, or from such receiver, administrator, executor, trustee, guardian or manager, as the case may be, in the like manner and to the same amount as it would be leviable upon and recoverable from the person on whose behalf such agricultural income is receivable and all the provisions of this Act shall apply accordingly.

10(2)(a). Save as provided in sub-section (1), if a person holds lands 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."

4. It is clear from the language of s. 10(2)(a) of Act that the question of application of the said provision arises only if the case does not fall under s. 10(1)(a) of the Act. If the case falls under s. 10(1)(a), it will not be necessary to examine as to whether s. 10(2)(a) applies. The essential question for consideration is as to whether s. 10(1)(a) applies to the case of a person holding agricultural lands as a trustee and receiving agricultural income partly for his own benefit and partly for the benefit of others. The Division Bench which made the reference has proceeded on the assumption that the rule laid down by this court in R. T. N. Punja v. CIT [1966] 2 Kar LJ 275 [reported as B.T.R. Punja and Others Vs. Commissioner of Agricultural Income Tax, Mysore and Another, is inconsistent with the view expressed by the Supreme Court in K.K. Handique Vs. Member, Board of Agricultural Income Tax, Assam, . It has been pointed out in the order of reference that ss. 10(1)(a) and 10(2)(a) of the Act, with which we are concerned, are similar to ss. 13 and 12 respectively of the Assam Agrl. I.T. Act, 1939, construed by the Supreme Court in the aforesaid case. It is further pointed out that in the case of R. T. N. Punja [reported as B.T.R. Punja and Others Vs. Commissioner of Agricultural Income Tax, Mysore and Another, this court did not take into account the provisions of s. 10(2)(a) of the Act.

5. The language of s. 10(1)(a) of the Act makes it clear that in the case of agricultural income taxable under the Act which the trustee appointed by written agreement, is entitled to receive on behalf of any person, the tax shall be levied upon and recoverable from the trustee, in the like manner and to the same amount as it would be leviable upon and recoverable from the person on whose

behalf such agricultural income is receivable and all provisions of the Act shall apply accordingly. S. 10(1)(a) of the Act refers to receipt of income by the trustee on behalf of any person. But, under the law of trust, the trustee cannot be regarded as receiving income of the trust property on behalf of any person. The legal title vests in the trustee and he is entitled to receive the income of the trust property for the benefit of the beneficiaries. But, it appears to us that, having regard to the context in which the expression "is entitled to receive on behalf of any person" is used, it has to be understood as meaning "entitled to receive for the benefit of any person". If the expression is not so understood, s. 10(1)(a) of the Act, so far as trustees are concerned, cannot be given effect to and the provision to that extent becomes otiose. This court had occasion to construe s. 41 of the Indian I.T. Act, 1922, in G.T. Rajamannar Vs. Commissioner of Income Tax, Mysore, . Though in s. 41(1) of the Indian I.T. Act, 1922, similar expression has been used, viz., "on behalf of" as is used in s. 10(1)(a) of the Act, their Lordships construed those words as meaning "for the benefit of", as, otherwise, s. 41(1) of the Indian I.T. Act which relates to trust would be rendered otiose. The decision of this court in G.T. Rajamannar Vs. Commissioner of Income Tax, Mysore, has been affirmed, with approval, by the Supreme Court in Commissioner of Wealth-tax, Bihar and Orissa Vs. Kripashankar Dayashanker Worah, . If the words "on behalf of any person" used in s. 10(1)(a) of the Act are understood as meaning "for the benefit of any person" as laid down by this court and the Supreme Court in the cases referred to above, it follows that s. 10(1)(a) will apply to the case of a person who holds agricultural lands as a trustee and receives agricultural income for the benefit of others.

6. It was maintained by Sri Shivashankar Bhat, learned High Court Government advocate appearing for the department, that though the expression "is entitled to receive on behalf of any person" may be construed as meaning "entitled to receive for the benefit of any person", the trustee who receives the income not only for the benefit of other beneficiaries but also for the benefit of himself, cannot be regarded as receiving income for the benefit of any person or persons. In other words, he maintained that if the trustee receives part of the income for the benefit of himself, he cannot be regarded as a person receiving the entire income from agricultural lands for the benefit of any other persons.

7. It is not possible to accede to the above contention of Sri Shivashankar Bhat, because when the trustee receives income partly for his benefit and partly for the benefit of other beneficiaries, he receives the said income in his capacity as a trustee. Besides, under the definition of the word "person" occurring in s. 2(1)(p) of the Act, "person" means a person among others who holds property partly for his own benefit and partly for another. Therefore, a person who holds agricultural lands as trustee and receives agricultural income partly for his own benefit and partly for the benefit of others, can be assessed under s. 10(1)(a) of the Act and the question of invoking s. 10(2)(a) does not arise.

8. The case dealt with by this court in B.T.R. Punja and Others Vs. Commissioner

of Agricultural Income Tax, Mysore and Another, was governed by s. 3(3) of the Act. But their Lordships also proceeded to examine as to whether the case also falls under s. 10(1)(a) of the Act, and came to the conclusion that on the facts of the case it can be brought under s. 10(1)(a) of the Act as well. That was a case in which the manager received the income from the agricultural lands on behalf of others. As the conditions of s. 10(1)(a) of the Act were satisfied in that case, their Lordships came to the conclusion that the provisions of s. 10(1)(a) of the Act applied to the facts of that case. Therefore, the provisions of s. 10(2)(a) of the Act did not arise for consideration in that case. Therefore, the decision in B.T.R. Punja and Others Vs. Commissioner of Agricultural Income Tax, Mysore and Another, cannot be regarded as being inconsistent with the decision of the Supreme Court in K.K. Handique Vs. Member, Board of Agricultural Income Tax, Assam, . It is, no doubt, true that s. 12 of the Assam Agrl. I.T. Act is similar, to some extent, to s. 10(2)(a) of the Act. But, so far as s. 13 of the Assam Agrl I.T. Act is concerned, it is not similar to s. 10(1)(a) of the Act. S. 13 of the Assam Agrl. I.T. Act as construed by the Supreme Court deals only with two categories of persons, viz., (1) common manager appointed under any law for the time being in force or under as agreement : managers who do not fall under the above category are outside the section; and (2) receivers, administrators or the like. But s. 10(1)(a) of the Act, with which we are concerned, also deals with other categories of persons such as "trustees", etc. The Supreme Court construed the document in question as creating a trust and vesting the properties in the trustees for the benefit of the trustees as well as others. As their Lordships came to the conclusion that the document created a trust and as s. 13 of the Assam Agrl. I.T. Act did not deal with the trustees that section was held not applicable. As s. 13 of the Assam Agrl. I.T. Act did not apply to the facts of that case, their Lordships proceeded to hold that s. 12(1) of the Assam Agrl. I.T. Act was attracted. But, s. 10(1)(a) of the Act, with which we are concerned, covers the case of trustees. Therefore, it is not possible to hold that the decision of this court rendered in B.T.R. Punja and Others Vs. Commissioner of Agricultural Income Tax, Mysore and Another, is inconsistent with the rule laid down by the Supreme Court in K.K. Handique Vs. Member, Board of Agricultural Income Tax, Assam,

9. For the reasons stated above, we answer the reference as follows :

"Where a person holds an agricultural land as a trustee and receives the agricultural income partly for his own benefit and partly for the benefit of others, assessment can be made in accordance with s. 10(1)(a) of the Karnataka Agrl. I.T. Act, 1957, and not under s. 10(2)(a) or under s. 3(3) of the said Act."

