

(1996) 03 KL CK 0001

In the High Court Of Kerala

Case No : Income-tax Reference No's. 74 and 75 of 1990

State of Kerala

APPELLANT

Vs

Mohammed Hassan

RESPONDENT

Date of Decision : 20-03-1996

Acts Referred:

Kerala Agricultural Income Tax Act, 1950 — Section 9

Citation : (1997) 223 ITR 550

Hon'ble Judges : V.V. Kamat, J;G. Sivarajan, J

Bench : Division Bench

Advocate : C.K.A. Rahim, Government Pleader, for the Appellant;

Judgement

V.V. Kamat, J.—These two references relate to the assessment years 1978-79 and 1979-80, in regard to which the Department prays for an answer to the following question :

" Whether, on the facts and in the circumstances of the case, the Agricultural Income Tax Appellate Tribunal, Addl. Bench, Palakkad, is justified in law, in holding that Sub-section (2) of Section 9 of the Agricultural Income Tax Act, 1950, is not attracted in the agricultural Income Tax assessment for the years 1978-79 and 1979-80 in respect of the respondent/ assessee ?"

2. It would be clear that the provisions of Section 9(2)(iii) deal with the aspect of computation of total agricultural income of any individual for the purpose of assessment, with reference to the question involved in these references and the said provisions are to the effect that the inclusion shall be as regards direct or indirect transfer of assets to the wife by the husband otherwise than for adequate consideration or in connection with an agreement to live apart. We are concerned with the application of the above provision only.

3. The proceedings get initiated with the preassessment notice dated June 21, 1988, with regard to the returns for the above accounting years ending on March 31, 1978, and March 31, 1979, respectively. With regard to the declared income

of the assessee's husband of Rs. 1,500 and Rs. 1,600, respectively, in view of the position that the accounts were not produced for verification on the hearing on May 28, 1983, the proceedings were initiated as above. The contents of the notice further place on record that it was urged that the assessee is entitled to only half share of the income from rubber estate and this was rejected in the absence of any evidence relating to the source of income of the wife of the assessee to raise funds for the purchase of the property as per the requirements of the above referred provision of law. The proposed assessment for the years in question was the accompaniment of the preassessment notice.

4. The proceedings before the Agricultural Income Tax Officer, Perinthalmanna, with regard to both the years of assessment u/s 18(2) of the Act ended with the orders -- annexures "A" and "A-1". Perusal of these orders reveals certain facts in the context. The property--re-survey No. 73/1 came to be purchased in the name of the assessee and his wife, Kunjaissu, at a time when the assessee was in Kuwait. It is observed that no evidence was produced relating to the source of income of his wife independently as regards raising the necessary amount for consideration. The order in detail considers this aspect even by referring to the contents of the preassessment notice. The officer has been pertinent to record that even the objection statement dated July 2, 1983, offers no explanation in the context. Therefore, the consequential conclusion on application of Section 9(2)(iii) of the Agricultural Income Tax Act, 1950, was recorded.

5. The appellate authority (Appellate Assistant Commissioner of Agricultural Income Tax and Sales Tax, Kozhikode) has dealt with the contention in the context in the following manner :

" Another contention raised is that the rubber estate was purchased by the wife of the appellant from her own funds so it is not correct to assess the income from rubber at the hands of the appellant. The records made available to me show that the property was purchased by the appellant and his wife. But no records are produced before me to show that the funds raised for the purchase of the estate were the own funds of the wife of the appellant. There is no clear indication in the document to that effect. This contention is also rejected."

6. It must be stated in this connection that the printed copy of the appellate order (annexure "B") does not find mention of the above portion and in regard to this learned Government Pleader preferred to rely on the original thereof because the above portion does not find a place in the printed copy of the paper book before us.

7. In fact this aspect became more obvious when we started reading the order of the Income Tax Appellate Tribunal, Additional Bench, Palakkad, to record that the case of the appellant for consideration to purchase the property really proceeded from his wife and in regard to which the first appellate authority upheld the finding of the trial authority as would be found from the portion quoted hereinbefore.

8. In spite of this situation, that the provisions of Section 9(2)(iii) that the requirement on the part of the assessee to place material on record relating to the satisfaction of the legal requirements and further even during the hearing of May 28, 1983, nothing was produced would be a concluded factual situation which has also been left undisturbed by the Tribunal.

9. Against the order of the first appellate authority also what the Tribunal has done is in the nature of a somersault in the context of the earlier factual situations. The Tribunal after recording the findings as having been upheld also by the first appellate authority observes in the following manner :

" The case of the appellant is that the consideration of legal proposition that there is no presumption in law that the properties standing in the name of a married lady do in fact belong to her husband : the apparent state of affairs is real unless the contrary is proved. The onus of proof squarely shifts on the Revenue to establish with facts and figures that the consideration to purchase the properties in dispute really proceeded from the appellant. There is practically no evidence on record to show that the consideration really proceeded from the appellant."

10. The Tribunal on the basis of the above reasoning observed that the properties standing in the name of the appellant's wife could not be included in the income of the husband in the absence of any evidence to show that the properties were purchased by the appellant in the name of his wife.

11. In our judgment, we have considered the aspect times without number illustratively -- Income Tax Reference No. 56 of 1991 (Controller of Estate Duty Vs. Smt. Sarala Nair and Others,), decided by us only yesterday (March 19, 1996) to observe that certain facts by their very nature can only flow from the person who could be understood to have special knowledge thereof, in regard thereto there is nothing like shifting of the burden much less on the side of the Revenue in any event. It needs to be emphasized that the material on record shows that the assessee was made aware of the statutory requirement and a further requirement to produce evidence in regard thereto. In such a situation, the Tribunal cannot be understood properly when it is observed, as above, that the onus of proof shifted on the Revenue to establish with facts and figures that the consideration to purchase the properties in dispute really proceeded from the appellant. In our judgment, the Tribunal went wrong in the above direction in disturbing the conclusions of the two authorities below and that too erroneously changing the onus of proof when the statutory provisions required concerned facts to be placed on record by the person claiming advantage to get over the statutory provisions.

12. For the above reasons, the order of the Tribunal gets quashed and set aside and as a consequence the common order of the Appellate Assistant Commissioner confirming the two orders of the Agricultural Income Tax Officer get confirmed. In this view of the matter, the question is answered in the

negative, in favour of the Revenue and against the assessee.

13. A copy of the judgment under the seal of this court and the signature of the Registrar shall be sent to the Kerala Agricultural Income Tax and Sales Tax Appellate Tribunal, Addl. Bench, Palakkad, for passing consequential orders.