

(1961) 08 MAD CK 0032

In the Madras High Court

Case No : Tax Cases No's. 118 of 122 of 1958

State of Madras

APPELLANT

Vs

Davershola Tea Company (Private) Ltd.

RESPONDENT

Date of Decision : 30-08-1961

Acts Referred:

Citation : (1963) 47 ITR 190

Hon'ble Judges : Srinivasan, J

Bench : Single Bench

Judgement

Srinivasan, J.—These are revisions by the Commissioner of Agricultural Income Tax. The assessee, the Davershola Tea Co. Ltd., leased out a plantation to the Madras Tea Estates Ltd. There were two separate leases, one covering the actual plantation and the other, the buildings, machinery, furniture, etc. For the two assessment years 1955-56 and 1956-57, the rental by way of lease of the plantation itself was Rs. 24,000. In respect of the buildings, machinery, furniture, etc., the rental stipulated in the lease was Rs. 89,999 for the first year and Rs. 95,000 for the second year. The Agricultural Income Tax Officer estimated the rental value of the buildings alone at Rs. 59,749 and Rs. 65,471 for the two years respectively. After making certain allowances, the net agricultural income in relation to the buildings alone was taken as Rs. 16,033 for the first year and Rs. 19,722 for the second year. Sixty per cent of these amounts was brought to tax. These assessments were taken up in appeal to the Assistant Commissioner who confirmed the finding of the Agricultural Income Tax Officer. In the further appeal to the appeal to the Appellate Tribunal, it was contended that no part of the income covered by the second of the leases, that is, the lease in respect of the buildings, machinery and furniture, could be regarded as agricultural income. The Tribunal accepted the contention of the assessee. It purported to interpret section 2(a)(3) of the Agricultural Income Tax Act and reached the conclusion that the owner of the buildings in question and that he would not come within the scope of the above provisions as, in the present case, he did not occupy the buildings. The Tribunal observed :

The cultivator is the occupier, but this is not the assessment of the agricultural income of the cultivator.

2. The present revision petitions are directed against the finding of the Tribunal.

3. It seems to us that the conclusion reached by the Tribunal is wholly erroneous. There seems to be a confusion in the mind of the Tribunal between the charging section and the definition section. In so far as agricultural income is concerned, section 3 lays the charge on the total agricultural income of the previous year of every person. Every person, whether he is the owner or the receiver of rent or the cultivator, would accordingly be liable to agricultural Income Tax on the total agricultural income of the previous year. What is agricultural income is defined in section 2. Section 2 is clearly not the section which lays the charge or indicates which person is to be made liable for the tax on concerned, section 2(a)(3) is the relevant provision. It states :

Any income derived from any building owned and occupied by the receiver of the rent or revenue of any such land or occupied by the cultivator or the receiver of rent-in-kind of any land with respect to which or the produce of which any operation mentioned in sub-clauses (ii) and (iii) of clause (2) is carried on :

Provided that the building is on or in the immediate vicinity of the land, and is a building which the receiver of the rent or revenue or the cultivator or the receiver of the rent-in-kind, by reason of his connection with land, requires as a dwelling-house or as a store-house or other out-building.

4. As stated already, Davershola Tea Co. Ltd. is owner of the plantation, building, machinery, etc. The owner leased out the plantation, buildings, etc., to the Madras Tea Estates Ltd. The Madras Tea Estates is the cultivator who also occupies these buildings. It is nor denied that these buildings conform to the requirements of the proviso in that they are situated in the plantation itself and are buildings which the cultivator requires in connection with the land and in which buildings the operations referred to in sub-clauses (ii) and (iii) of clause (2) are carried on. These requirements are, therefore, satisfied and indeed the Tribunal finds that to be so. The Tribunal also rightly found that the first part of this provision is not applicable because the assessee, the owner, though he owns, does not occupy the buildings from which the income is derived. The second part of this provision in so far as it is relevant may be separately extracted in this manner :

Any income derived from any building... occupied by the cultivator... of any land with respect to which or the produce of which any operation mentioned in sub-clauses (ii) and (iii) of clause (2) is carried on.

5. It is quite clear from the wording of the above that this provision only supports to define what is agricultural income without reference to the person who is in receipt of such income. In a case like this, what has to be enquired first is whether the conditions required in the proviso are satisfied. The further

condition that the building should be occupied by the cultivator is also satisfied. That being so, the next question is whether the income is derived from the building. Those parts of the section which relate to the occupation by the cultivator or the performance of the operations mentioned in sub-clauses (ii) and (iii) or the location of the building with respect to the land, described the nature of the building. When any building conforms to these requirements and any income is derived from such building, such income is defined to be agricultural income. The section does not purport to indicate whether it is the agricultural income of the cultivator or the receiver of the rent-in-kind who occupies it or the owner who may or may not occupy it. The definition section was not intended for that purpose nor do we find anything therein to suggest that the person by whom the income referred to is received is at all relevant for the purpose of determining the class of the income. In the present case, if the building conformed to the requirements of the section, it follows that the income derived from such building is agricultural income and we have to look elsewhere for the purpose of determining who is the person who is liable to the charge u/s 3 of the Act in respect of that agricultural income.

6. The Tribunal does not find that the income which has been brought to tax is not agricultural income. But what it purported to hold is made clear in the following passage :

No doubt, the building in dispute in the present appeal is occupied by the cultivator, viz., the Madras Tea Estate Ltd., but the income which is now assessed is not income derived by the cultivator, viz., the Madras Tea Estate Ltd., from the building. What is now sought to be taxed is the notional value of the lease amount paid by the cultivating lessee to the owner of the building. In our opinion, the second portion of the definition in section 2(a)(3) explains how the income from plantations-buildings has to be dealt with in the course of the assessment on the cultivator or the receiver of the rent-in-kind.

7. Proceeding further the Tribunal held :

... the two portions of section 2(a)(3) should be taken disjunctively, the first portion for assessing income from buildings owned and occupied by the receiver of the rent or revenue, the second portion for assessing income from buildings which are occupied by the cultivator or the receiver of the rent-in-kind without any reference to the ownership of it. The former category of the income will be included in cases of assessment of the receiver of the rent or revenue and the latter category in cases of assessment of the cultivator or the receiver of the rent-in-kind. The present case is one not covered by the above provision. The owner is now sought to be assessed. But he does not fall within the definition because he does not occupy the building. The cultivator is the occupier, but this is not an assessment of the agricultural income of the cultivator.

8. In the view of the Tribunal, therefore, the assessment of the owner is possible only when he both cultivates the land and occupies the buildings of the kind

referred to. But where the cultivator cultivates the land and occupies the buildings, in relation to the buildings, there would be an agricultural income only in the hands of the cultivator and not in the hands of the owner; that is to say, where the owner of a plantation leases both the plantation and buildings to a lessee and receives rental income in respect of the buildings as well, no part of such income received by him would be agricultural income taxable in the hands of the owner. The Tribunal proceeds further to take the view that there is perhaps some anomaly, but that the language of the section leads to that anomaly.

9. We are unable to accept the above view of the Tribunal. What section 2(a)(3) is intended to specify is only what is agricultural income in relation to buildings. Where any income is derived from buildings coming within the description referred to in the section, such income is defined by this provision to be agricultural income. The section does not attempt anything further. If the section had been worded some-what differently, such as "any income derived from any building by the cultivator or the receiver of rent-in-kind, etc., etc.", perhaps the view of the Tribunal could be supported to some extent. But what the section clearly says is that it is income which should be derived from a building and the building from which such income is derived is further specified to be one occupied by the cultivator of the land with respect to which or the produce of which, certain operations are carried on. This part of the provision is descriptive of the nature of the building that is agricultural income. The section was not intended to and does not, in our opinion, indicate the person who is to be charged in respect of that income.

10. When once it is found that the income derived from this building to the extent determined by the Agricultural Income Tax Officer is agricultural income, it goes without saying that it is the assessee who is in receipt of that income. u/s 3 he is liable to agricultural Income Tax. The revision petitions are allowed. The assessee will pay the costs of the department. Counsels fee Rs. 150 (one set).