

(1967) 08 MAD CK 0060

In the Madras High Court

Case No : Tax Case No. 104 of 1964 (Reference No. 42 of 1964)

State of Madras

APPELLANT

Vs

V. Velayutham Thampy

RESPONDENT

Date of Decision : 24-08-1967

Acts Referred:

Travancore-Cochin Agricultural Income Tax Act, 1950 — Section 35

Citation : (1968) 70 ITR 629

Hon'ble Judges : Veeraswami, J

Bench : Single Bench

Judgement

Veeraswami, J.—The respondent was assessed to agricultural Income Tax for the assessment year 1959-60 under the provisions of the Kerala Agricultural Income Tax Act, 1950. He was allowed rebate on insurance premia of Rs. 3,135.14 nP. On that basis, the net tax payable by him was determined at Rs. 2,226.97. Subsequently, noticing that the rebate was wrongly allowed in view of the second proviso to section 10(e) (i) of the Act, the Agricultural Income Tax Officer initiated proceedings u/s 35 and revised the assessment. The respondents appeal failed but in his further appeal, the Tribunal took the view that this was not a case of income that had escaped assessment or had been assessed at too low at rate. At the instance of the revenue the following question has been referred to us.

Whether an improper allowance of rebate of insurance premium can be revoked by resort to section 35 of the Travancore-Cochin Agricultural Income Tax Act, 1950 ?

2. Before we proceed to consider this question, we may add that the Tribunals reason was that, in order to invoke section 35, there should be a change in the quantum of income as originally determined, by way of an addition or a change with regard to the rate of tax levied in the first instance.

3. At first sight it appeared to us that the Tribunal was right in its conclusion.

Section 35 is sandwiched between revision power u/s 34 and a power for rectification of mistake u/s 36 and in that context it may be that income escaping assessment u/s 35 will not include a case where income was returned but by application of the provisions of the Act to assessment, the assessing authority thought that a part or whole of the income was not chargeable to tax because of its nature or character or because it is partly or totally eligible to exemption or on a consideration of facts a certain rebate or allowance is permissible. To put it differently, where during the process of assessment, the Agricultural Income Tax Officer applied his mind and as a result decided not to bring to charge a certain income or allow a rebate that will be a case which would be subject to the revision power rather than to a power to bring the income to tax as escaped assessment. Of course, there has been quite a divergence of opinion on this question with reference to the particular language employed in the relative section, be it under the Income Tax Act or any other taxing statute as it stood by amendments from time to time.

4. Our task, however, in the present case seems to be very much lightened because, in our opinion, so far as the interpretation of section 35 of the Kerala Agricultural Income Tax Act, 1950, is concerned, it is covered by the decision of the Supreme Court in *Kameshdwar Singh v. State of Bihar*. Section 35 of the Kerala Agricultural Income Tax Act, 1950, reads :

Income escaping assessment. - If for any reason agricultural income chargeable to tax under this Act has escaped assessment in any financial year or has been assessed at too low a rate, the Agricultural Income Tax Officer may, at any time within three years, of the end of that year serve on the person liable to pay the tax or in the case of company on the principal officer thereof, a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of section 17 and may proceed to assess or reassess such income and the provisions of this Act shall, so far as may, be, apply accordingly as if the notice were a notice issued under that sub-section :

Provided that the tax shall be charged at the rate at which it would have been charged if such income had not escaped assessment or full assessment, as the case may be.

5. The Supreme Court was concerned with section 26 of the Bihar Agricultural Income Tax Act which is identical with section 35 of the Kerala Agricultural Income Tax Act. A part of the income was claimed by the assessee and that was conceded by the revenue in that case as capital income according to the tenor of a relevant bond. A formal order was made and a demand notice followed. The assessee paid two installments of the tax due. A couple of months later, the Agricultural Income Tax Officer changed his mind and revised his own order on the view that what was considered by him earlier as capital income was really not so and that it was chargeable to tax under the Bihar Act. In making that order, he purported to act u/s 26 of that Act. The assessee succeeded in his appeal before the Commissioner of Agricultural Income Tax, who reversed the

decision on the view that as the assessee had not only returned the income but it was held to be exempt, it could not be said to have escaped assessment so as to bring it u/s 26. The Province of Bihar (as it was then called) moved the High Court of Patna on a reference and successfully. The assessee thereafter went up to the Supreme Court by special leave. Hindayatullah J. who spoke for the court, held at page 1309 :

.... we are of opinion that the Agricultural Income Tax Officer was competent u/s 26 of the Act to assess an item of income which he had omitted to tax earlier, even though in the return that income was included and the Agricultural Income Tax Officer then thought that it was exempt.

6. On that view the appeal was dismissed. In the course of the judgment reference was made to section 34 of the Income Tax Act as it originally stood before the several amendments it went through and to the divergence of opinion as to the scope and ambit of the power under that provision, and the opinion was expressed that the words "any reason" used in the section were of wide import and the word "escaped" was not confined to escarpment by inadvertence but also would cover a deliberate error committed in the process of application of the mind by the assessing officer to the provisions of the Act in the course of assessment proceedings.

7. Learned counsel for the respondent sought to distinguish the decision of the Supreme Court on the ground that it only related to the nature of the income and contended that where rebate, as in this case, had been wrongly allowed, that would not be a case of income escaping assessment. We are unable to agree. Section 35 of the Kerala Agricultural Income Tax Act, having regard to the interpretation placed by the Supreme Court on section 26 of the Bihar Act will cover a case like the one before us as well. The escapement of income from charge, as we mentioned earlier, may be due to the assessee not returning a part of the income or having returned the full income, a part of it was being considered as not chargeable to tax in view of its character or the income not being assessed to tax because it is eligible to a certain allowance directly or in the form of a rebate. Even in cases of allowance or rebate found later to be wrongly allowed it is income that eventually is left out of charge and in that sense, such income chargeable to tax under the Act escapes assessment.

8. We answer the question in favour of the revenue, but with no costs.