

(2005) 12 KL CK 0055

In the High Court Of Kerala

Case No : O.P. No. 1790 of 2001 and connected cases

Tata Tea Ltd.

APPELLANT

Vs

Inspecting Asst. Commissioner

RESPONDENT

Date of Decision : 16-12-2005

Acts Referred:

Constitution of India, 1950 — Article 365, 366

Income Tax Act, 1922 — Section 10(2A)

Income Tax Act, 1961 — Section 10, 41(1), 50, 50(2)

Income Tax Rules, 1922 — Rule 22, 24, 8

Kerala Agricultural Income Tax Act, 1950 — Section 2

Kerala Agricultural Income Tax Act, 1991 — Section 2(1A), 20D, 4, 4(2), 5

Citation : (2006) 203 CTR 353 : (2006) 283 ITR 275 : (2006) 1 KLT 752

Hon'ble Judges : K.T. Sankaran, J;K.S. Radhakrishnan, J

Bench : Division Bench

Advocate : Joseph Markose and Joseph Kodianthara, for the Appellant; Raju Joseph, Special Government Pleader (Taxes), for the Respondent

Final Decision : Allowed

Judgement

K.S. Radhakrishnan, J.—Tata Tea Limited, a public limited Company, along with another are the petitioners in O.P.No 6075 of 1995 which was filed seeking a declaration that Section 4(2) of the Agricultural Income Tax Act, 1991 in so far as it assess tax on deemed agricultural income is arbitrary, illegal and unreasonable and violative of Article 365 of the Constitution of India. Petitioners submit by Sub-clauses (ii) and (iii) of Section 4(2) of the Agricultural Income Tax Act the rule making authority seeks to enlarge the meaning of "agricultural income" by deeming certain receipts which are otherwise not agricultural income within the meaning of Section 2(1A) of the Income Tax Act. Petitioners point out that in view of Article 366 of the Constitution of India rule making authority has no legislative competence, to tax as agricultural income receipts which are incapable of being construed as agricultural income within the meaning of Section 2(1A) of the Income Tax Act/Accordingly Sub-clauses (ii) and (iii) of Section 4(2) of the

Agricultural incometax Act is unconstitutional.

2. Petitioners also submit that in any view Section 4(2) of the Act, if at all, would apply in respect of computation of income made under the Agricultural Incometax Act in respect of agricultural produces other than tea and cannot apply to computation of income made under the Income Tax Act including in relation to the computation of tea income. Petitioners also point out as far as income from tea grown and manufactured is concerned, authorities are empowered to tax only 60% of such income as computed by the Central Incometax Officer under the Income Tax Act and the State and the authorities, by resorting to Section 4(2) of the Act, cannot vary the computation of income from tea grown and manufactured as computed under the Central Income Tax Act. Petitioners further point out that if Section 4(2) of the Act is applied to assessees who derive income from tea grown and manufactured and in respect of matters dealt with in the computation of such income it would directly amount to variation of tea income computed under the Central Incometax Act. They also point out even if certain expenses or allowances claimed and allowed as a deduction in the computation of tea income under the Central Incometax Act is subsequently recovered or obtained by an assessee in a subsequent year such recovery of expenses or allowances cannot be brought to tax u/s 4(2) of the AIT Act.

3. The apex court in Commissioner of Agricultural Income Tax, Trivandrum Vs. Kerala Estate Mooriad Chalapuram, had occasion to consider the question whether the amount of interest, payment of which was waived by the creditor could be assessed as agricultural income for the assessment year 1964-65. The court held in the absence of a deeming provision similar to Section 10(2A) of the Indian Incometax Act, 1922 or Section 41(1) of the Income Tax Act, 1961, the remission could not be considered as amounting to receipt of agricultural income. While disposing of the case, the court opined as follows:

We may point out in regard to Sub-section (2A) of Section 10 of the Indian Incometax Act, 1922, that it has been replaced by an even wider provision as Sub-section (1) of Section 41 of the Incometax Act, 1961. No provision of that nature finds place in the Kerala Agricultural Incometax Act.

We notice that the new Agricultural Incometax Act, 1991 was enacted by the Legislature presumably on the basis of the above observation of the apex court with regard to the deeming provision. For easy reference we may extract Section 4 of the Agricultural Incometax Act 1991 in its entirety.

4. Total Agricultural Income- (1) Subject to the provisions of this Act, the total agricultural income of the previous year of any person comprises of all agricultural income derived from land situated within the State and received by him within or outside the State, but does not include,

(a) any agricultural income derived from land situated outside the State.

(b) any agricultural income derived by cultivation of paddy, tapioca, plantain, ginger, ragi, pulses, sesamum, vegetable, sweet potato, tubers, sugarcane, jack, mango, pineapple, orchid, (or other flowers) vanilla, turmeric and guava.

(c) share income received by a partner from any Firm on which tax has been paid by the firm.

(2) The following income shall be deemed to be agricultural income received in the previous year, namely:-

(i) any amount received in the previous year from the Indian Coffee Board in respect of Coffee delivered in any year for sale in pool auction, excluding any amount on which tax was levied in any previous year;

(ii) when an allowance or deduction has been made in the assessment for any year in respect of loss, expenditure or liability incurred by the assessee; and where the assessee has obtained, either in cash or in any other manner any amount in respect of such loss, expenditure or some benefit in respect of such liability during the previous year the amount obtained by him, or the value of benefit accrued to him;

(iii) any amount received in the previous year in respect of bad debts written off in any previous year regarding which deduction under Clause (j) of Section 5 has been allowed.

The question which is germane for consideration in these cases is whether Sub-section (2) of Section 4 if incorporated as deeming provision would make an inroad into the powers of the Commissioner of Incometax functioning under the Income Tax Act, 1961. The power of the State Legislature vis-a-vis Union as well as the inter-relation between the various provisions of the Incometax Act as well as the Agricultural Income tax Act came up for consideration before the apex court and the court has laid down the law and hence it is unnecessary to examine the legislative competence of the State Legislature.

4. We may first refer to the decision of the apex court in *The Karimtharuvi Tea Estates Ltd., Kottayam and Another Vs. State of Kerala and Others*, . The apex court was dealing with the provisions of the Kerala Agricultural Incometax Act, 1950 vis-a-vis the Indian Income Tax Rules, 1922. Relevant rule of the Indian Incometax Rules 1922 is Rule 24, corresponding to the present Rule 8, interpreting Rule 24 apex court held as follows:

The result of Rule 24 is that the income derived from the sale of tea grown and manufactured by the seller is to be computed in the first instance as if it was income derived from business. Consequently, the income would be computed in accordance with the provisions of Section 10 of the Income Tax Act. Clause (xv) of Sub-section (2) of Section 10 provides that in computing the income any expenditure by the assessee under the clauses (i) to (xiv) inclusive and not being in the nature of capital expenditure or personal expenses of the assessee laid out or expended wholly and exclusively for the purpose of such business, would be deducted. Of

the income so computed, 40 percent is, under Rule 24, to be treated as income liable to Income Tax and it would follow that the other 60 per cent only will be deemed to be "agricultural income" within the meaning of that expression in the Incometax Act. It follows, therefore, that the power of the State Legislature to make a law in respect of taxes on agricultural income arising from tea plantations will be limited to legislating with respect to the agricultural income so determined. The State Legislature is free in the exercise of its plenary legislative power to allow further deductions from such computed agricultural income as it considers fit, but it cannot add to the amount of the agricultural income so computed by providing that certain items of expenditure deducted in the computation of the income from a business under the provisions of the Incometax Act be not deducted and be considered to be a part of the taxable agricultural income.

Further apex court also held that State Legislature is free to provide the method of computation of the taxable agricultural income and is free to allow any particular deductions from the gross income as it considers fit. The court also took the view that the power of the Legislature to enact a law in respect of agricultural income relates only to such agricultural income as is defined in Article 366 of the Constitution. The court held that the provisions of the Incometax Act and the Rules made there under will control the provisions of the Agricultural Incometax Act enacted by the State Legislature. The court declared that Explanation 2 to Section 5 of the Agricultural Incometax Act added by the amendment Act does not cover the expenses incurred in the upkeep or maintenance of immature tea plants from which no income has been derived during an accounting year and that the agricultural income derived from tea plantations would be computed in accordance with the provisions of the incometax Act and the incometax Rules. The above mentioned decision was followed by the apex court in *Tata Tea Ltd. and Another Vs. State of West Bengal and Others*, . The court examined the scope of Rule 8 of the Incometax Rules as well as the Explanation to Section 2(a)(2) of the Agricultural Incometax Act 1950 and held that State Legislature can impose tax only in respect of 60% of the income derived by the assessee but such income has to be computed in the manner laid down under the 1922 Act and thereafter under the Income Tax Act, 1961 for computation of business income. Same is the position with regard to the West Bengal Agricultural Incometax Act.

5. Above mentioned decision was later followed by three Judges bench of the apex court in *Assam Company Ltd. Vs. State of Assam*, . Dealing with the powers of the State Officers and Central Officers with respect to the Assam Agricultural incometax Act, 1939 vis-a-vis Rule 8 of the Income tax Rules, the apex court held as follows:

We have already noticed that the object and scheme of the Act do not contemplate the State authorities being empowered to recompute the agricultural income contrary to the computation made by the Central Officers,

nor do the subjects specified in Sub-sections (2)(a) to (m) of Section 50 provide for making such rules empowering the State Officers to make computation of agricultural income contrary to what is computed by the Central Officers under the Central Act. We have noticed that by virtue of the provisions made by the Legislature in the Explanation to Section 2(a)(2), the second proviso to Section 8 and Section 20D, it is clear that the State Legislature intended to adopt the computation of agricultural income made under the provisions of the Central Act. Having specifically said so in the above sections of the Act, if the Legislature wanted to deviate from that scheme of the Act, it could have in clear terms provided for a power being vested with its Officers in any given case to recompute the income keeping in mind the revenue of the State but the Legislature has not thought it necessary to do so. Even u/s 50, we do not see any provision which specifically authorises the State Government to make any such rules in the nature of the proviso to Rule 5 of the State Rules. It is an established principle that the power to make rules under an Act is derived from the enabling provision found in such Act. Therefore, it is fundamental that a delegate on whom such power is conferred has to act within the limits of the authority conferred by the Act and it cannot enlarge the scope of the Act.

...We have already noticed that none of the provisions of the Act has contemplated any power to be vested in the State Officers to recompute the agricultural income from tea while the proviso to Rule 5 of the Rules in specific terms empowers the State Officers to recompute the agricultural income from tea different from that which is computed by the Central Officers under the Central Act. Thus, it is seen that this rule is not only made beyond the rule making power of the State u/s 50 of the Act but also runs counter to the object of the Act itself, and enlarges the scope of the Act. The same also suffers from the other vices pointed out by us hereinabove, hence such a rule, in our opinion, is ultra vires the Act. Therefore, the proviso to Rule 5 of the State Rules to the extent it empowers the State Officers to recompute the agricultural income already computed by the Central Officers is ultra vires the State Act.

Holding so, apex court expressed the opinion that while examining the records produced or liable to be produced before the taxing authorities administering the Incometax Act, 1961 as contemplated under the proviso to S .49, the State authorities are of the opinion, that the Central assessing authority has not made a proper assessment of the agricultural income of the assessee, as required under the Central Act, then it is always open to the State authorities to invoke the jurisdiction of the appellate or revisional authorities under Chap.XX (E) of the Central Act and if they succeed in any such attempt they can always recompute the agricultural income as contemplated u/s 20 D of the State Act. The court held that the proviso to Rule 5 of the Assam Agricultural Incometax Rules 1939 to the extent it permits recomputation of agricultural income by the State officers was ultra vires and the impugned orders were set aside with direction to the Agricultural Incometax Officers concerned to reassess the agricultural income of the assessees on the basis of the computation of agricultural income from tea

made by the Central Officers, subject to their right to seek relief in the manner aforesaid under Chap.XX (E) of the Central Act. We are of the view, the above course can be adopted so far as these cases are concerned, in the event of which it is unnecessary to examine the constitutional validity of Sub-section (2) of Section 4 of the Kerala Agricultural Income tax Act, 1991.

6. Sri Raju Joseph, Special Government Pleader for Taxes appearing for the State highlighted the reasons for introduction of the deeming provision in Sub-section (2) of Section 4 of the Act. Counsel submitted such a provision was introduced in line with the corresponding provisions in the Incometax Act 1961. It is under such circumstances State Officers had to recompute the income. Admittedly by recomputing the income assessing authority has added more than what was computed by the Central Officers.

7. We are of the view, State officers have no jurisdiction to vary the computation made by the Central Officers. If there is any necessity of varying the computation made by the Central Officers due to any omission in applying the various provisions of the Income tax Act, 1961 or any new facts have to be brought to the knowledge of the Central Officers, the State Officers could bring it to the knowledge of the Central Officers. State officers cannot tinker with the computation already made by the Central Officers. They cannot recompute agricultural income already computed by the Central Officers. If the authorities functioning under the Agricultural Income Tax Act are of the opinion that Central Officers have not made proper assessment of the agricultural income as required under the Central Act then it is always open to the State Officers to invoke the jurisdiction of the appellate or revisional authorities under Chap.XX(E) of the Central Act and if they succeed in their attempt they can recompute the agricultural income as contemplated in the State Act. Further, if the State Officers feel any mistake has been committed by the Central Officers in computing the agricultural income, it is always open to them to bring it to the knowledge of the Central Officers, but they cannot vary the computation made by the Central Officers. That being the legal position, we are inclined to hold that the computation made by the officers functioning under the Agricultural Incometax Act 1991 in respect of the assessment years 1994-1995 and 1995-1996 and other related assessment years is bad in law. Consequently orders passed by the assessing authorities, appellate authorities and the Tribunal contrary to the computation made by the Central Officers are rendered invalid and are accordingly set aside. Assessing authority if so advised, may take up the matter before the Central Officers if they seek any variation of the computation already made by the Central Officers under the Incometax Act, 1961, in accordance with law. Original Petitions and the O.T.Cs are disposed of as above.