(1978) 02 KAR CK 0024

In the Karnataka High Court

Case No : Civil Revision Petition No. 1942 of 1974

The State of Karnataka APPELLANT

Vs

C.P. Chandrasekhar RESPONDENT

Date of Decision : 02-02-1978

Acts Referred:

Income Tax Act, 1922 — Section 41, 41 (1)
Mysore Agricultural Income Tax Act, 1957 — Section 10 (1) (a), 10 (2) (a), 3 (3)

Citation : AIR 1978 Kar 190

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 Venkataramiah. 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 Section 10 (1) (a) read with Section 3 (3) of the Karnataka Agricultural Income Tax Act, 1957 ignoring Section 10 (2) (a) of that Act."

Section 3 (3) of the Karnataka Agricultural Income Tax 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. Section 3 (3) of the Act applies only if the persons hold property as tenants-in-common and derive 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.

2. The only other question that requires examination is as to whether Section 10 (1) (a) of the Act applies or Section 10 (2) (a) of the Act applies to the case of a trustee holding agricultural lands and receiving the agric\\\\Infodata\\format\\Manu insertion\\SC-ITR\\Karnataka\\1978\\3780055.htmultural income partly for his own benefit and partly for the benefit of others. For the sake if convenience, we extract the provisions of Section 10 (1) (a) and Section 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.

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10 (2) (a)-- Save as provided in Subsection (1) if a person holds land 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." It is clear from the language" of Section 10 (2) (a) of the Act that the question of application of the said provision arises only if the case does not fall u/s 10 (1) (a) of the Act. If the case falls u/s 10 (1) (a), it will not be necessary to examine as to whether Section 10 (2) (a) applies. The essential question for consideration is as to whether Section 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. Commr. of Income Tax ((1966) 2 Mys LJ 275) 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 Sections 10 (1) (a) and 10 (2) (a) of the Act, with which we are concerned, are similar to Sections 13 and 12 respectively of the Assam Agricultural Income Tax Act, 1939, construed by the Supreme Court in the aforesaid case. It is further pointed out that in the casa of R.T.M. Punja, this Court did not take into account the provisions of Section 10 (2) (a) of the Act

3. The language of Section 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. Section 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, Section 10 (3) (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 the occasion to construe Section 41 of the Indian Income Tax Act, 1922, in G.T. Rajamannar Vs. Commissioner of Income Tax, Mysore, . Though in Section 41 (1) of the Indian I.T. Act. 1922, similar expression has been used, viz., "on behalf of as is used in Section 10 (1) (a) of the Act, their Lordships construed those words as meaning "for the benefit of", as otherwise, Section 41 (1) of the Indian Income Tax Act which relates to trust would be rendered otiose. The decision of this Court in Rajamannar''s case 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 Section 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 Section 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.

4. 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 of 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.

5. 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 Section 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 trusts and receives agricultural income partly for his own benefit and partly for the benefit of others, can be assessed u/s 10 (1) (a) of the

Act and the question of invoking Section 10 (2) (a) does not arise.

6. The case dealt with by this Court in Punja''s case ((1966) 2 Mys LJ 275) was governed by Section 3 (3) of the Act.

But, their Lordships also proceeded to examine as to whether the case also falls u/s 10 (1) (a) of the Act, and came to the conclusion that on the facts of the case it can be brought u/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 Section 10 (1) (a) of the Act were satisfied in that case, their Lordships came to the conclusion that the provisions of Section 10 (1) (a) of the Act applied to the facts of that case. Therefore, the provisions of Section 10 (2) (a) of the Act did not arise for consideration in that case. Therefore, the decision in Punja''s case 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 Section 12 of the Assam Agricultural In-come-tax Act is similar, to some extent, to Section 10 (2) (a) of the Act. But, so far as Section 13 of the Assam Agricultural Income Tax Act is concerned, it is not similar to Section 10 (1) (a) of the Act. Section 13 of the Assam Agricultural Income Tax 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 an agreement: managers who do not fall under the above category are outside the section, and (2) receivers, administrators or the like. But, Section 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 Section 13 of the Assam Agricultural Income Tax Act did not deal with the trustees, that Section was held not applicable. As Section 13 of the Assam Agricultural Income Tax Act did not apply to the facts of that case, their Lordships proceeded to hold that Sec. 12 (1) of the Assam Agricultural Income Tax Act was attracted. But, Section 10 (1) (a) of the Act, with which we are concern-ed covers the case of trustees. Therefore, it is not possible to hold that the decision of this Court rendered in Punja''s case is inconsistent with the rule laid down by the Supreme Court in Handique''s case.

7. 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 Section 10 (1) (a) of the Karnataka Agricultural Income Tax Act, 1957 and not u/s 10 (2) (a) or u/s 3 (3) of the said Act,"

8. Answer accordingly.

