(1961) 01 PAT CK 0018

In the Patna High Court

Case No : Miscellaneous Judicial Case No. 543 of 1959

Tikhan Agricultural Concern APPELLANT

Vs

The State of Bihar RESPONDENT

Date of Decision : 20-01-1961

Acts Referred:

Bihar Sales Tax Act, 1944 — Section 25(1)
Bihar Sugar Factories Control Act, 1937 — Section 29
Income Tax Act, 1961 — Section 66(1)

Citation : (1961) 12 STC 341

Hon'ble Judges : V. Ramaswami, C.J;R.K. Choudhary, J

Bench : Division Bench

Advocate : Harilal Agarwal, for the Appellant; The Government Advocate and L.S. Sinha, for the Respondent

Judgement

Ramaswami, C.J. and Choudhary, J.—u/s 25(1) of the Bihar Sales Tax Act the Board of Revenue has submitted the following questions of law for the opinion of the High Court:-

(1) Whether in view of the provisions for taxing sales of sugar-cane u/s 29 of the Bihar Sugar-cane Factory Control Act, 1937, such sales can also be legally taxed under the Bihar Sales Tax Act, 1947,,and

(2) Whether sugar-cane is a green vegetable within the meaning of item 6 of Notification No. 9884 F. T., dated the 28th August, 1947, and as such exempt from taxation?

2. With regard to the first question, it was submitted by the learned Government Advocate that no such question was argued before the Board of Revenue or before the Deputy Commissioner of Sales Tax and no such question was also dealt with by these authorities in their respective orders. It was, therefore, contended that this question does not arise "out of the order" of the Board of Revenue within the meaning of Section 25(1) of the Bihar Sales Tax Act and the Board of Revenue was, therefore, not competent to refer this question for the

determination of the High Court. In our opinion, the argument of the learned Government Advocate is well founded and must be accepted as correct. The assessee did not raise any such question before the Deputy Commissioner of Sales Tax in his revision application, and the order of the Deputy Commissioner of Sales Tax, dated the 11th July, 1957, does not show that any such question was argued before him. The Board of Revenue dismissed the revision application summarily on the 13th December, 1957, and there was no reference to this question in the order of the Board of Revenue also. In our opinion, the Board of Revenue was not competent, therefore, to refer this question for the decision of the High Court u/s 25(1) of the Bihar Sales Tax Act. Our view is supported by a decision of this High Court in MAHARAJ KUMAR KAMAL SINGH Vs. COMMISSIONER OF Income Tax., where it is pointed out, with reference to the interpretation of Section 66(1) of the Indian income tax'' Act, that the question of law which the assessee seeks to refer u/s 66(1) must be a question of law which has been actually raised before the Tribunal or actually dealt with in its order. Applying this principle to the present case, we hold that the Board of Revenue was not competent to refer the first question of law u/s 25(1) of the Bihar Sales Tax Act. For these reasons we do not propose to furnish any answer to the first question referred by the Board of Revenue to this Court.

3. The second question of law referred by the Board of Revenue is covered by a decision of this High Court in Motipur Zamindary Company Limited v. State of Bihar [1959] 10 S.T.C. 413. It was held in that case by the High Court that in the context of the expression "green vegetables" in notification No. 9884-F.T., dated the 28th August, 1947, and having also regard to the dictionary meaning of "vegetable", sugar-cane cannot be said to be green vegetable within the meaning of item No. 6 of that notification, and is, therefore, not exempt from taxation under the provisions of the Bihar Sales Tax Act, 1947. The principle of this decision applies to the present case, and for the reasons expressed in the previous decision we hold that sugar-cane is not green vegetable within the meaning of item No. 6 of notification No. 9884-F.T., dated the 28th August, 1947, and is not exempted from taxation. We accordingly answer the second question of law against the assessee and in favour of the State of Bihar.

4. We do not propose to make any order as to costs of this reference.

