State Of Assam & Anr vs D.C. Choudhuri & Ors on 7 August, 1969

Equivalent citations: 1970 AIR 2057, 1970 SCR (1) 780, AIR 1970 SUPREME COURT 2057, 1970 (1) SCR 780, 78 ITR 705, 1970 2 ITJ 4, 1970 2 SCJ 325

Author: A.N. Grover

Bench: A.N. Grover, J.C. Shah, V. Ramaswami

PETITIONER:
STATE OF ASSAM & ANR.

Vs.

RESPONDENT:
D.C. CHOUDHURI & ORS.

DATE OF JUDGMENT:
07/08/1969

BENCH:
GROVER, A.N.
BENCH:
GROVER, A.N.
SHAH, J.C. (CJ)
RAMASWAMI, V.

CITATION:
1970 AIR 2057 1970 SCR (1) 780
1969 SCC (2) 508
CITATOR INFO :
MV 1975 SC2065 (20,21,74)

ACT:
Assam Agricultural Income-tax Act (Assam Act 9 of 1939), ss. 19, 20 and 30--General notice under s. 19(1)--No individual notice under s. 19 (2)--No initiation of proceedings under s. 30--Best judgment assessment under s. 20(4) beyond 3 years of the financial year--Validity.

HEADNOTE:
The assessee, owners of a tea estate in Assam, after carrying on the business of cultivation, manufacture and sale of tea during the years 1948 to 1953 sold the tea estate on July 9, 1953. In 1961, they received a notice

from the Agricultural Income-tax Officer to furnish returns of their agricultural income for the assessment years 1949-50 to 1953-54 in respect of that tea estate. They did not submit any returns. Thereafter, they received a notice of demand under s. 23 of' the Assam Agricultural Incometax Act, 1939, for payment of the tax assessed on best judgment basis under s. 20(4). The assessees were not served with any notice under s.19(2) which provides for a notice to be served personally on the assessee, during the respective years, nor under s. 30 of the Act which deals with escaped assessment.

The purchasers of the tea estate were served. in 1961, with assessment orders under s. 20(4) in respect of the assessment years 1951-52 to 1955-56 with notices of demand for payment of the tax assessed for each year. These assessees were also not served with any notice under s. 19(2) or s. 30. All the assessees challenged the assessments in writ petitions and the High Court allowed the petitions.

In appeal to this Court, it was contended that the assessment proceedings commenced with the publication of a general notice under s. 19(1)that it was open to the Agricultural Income-tax Officer to make a best judgment assessment under s. 20(4) without any limitation as to time and that it was not necessary to issue any individual notice under s. 19(2) or to initiate proceedings under s. 30.

HELD: Notwithstanding the difference in language between s. 20(4) of the Act and s. 23(4) of the Income-tax Act the principles laid down by this Court in interpreting ss. 22 , 23 and 34 of the Income-tax Act apply in the interpretation of ss. 19, 20 and 30, the corresponding sections of the Assam Agricultural Income-tax Act. [788 A-C]

On those principles the publication of the general notice in any financial year under s. 19(1) of the Assam Act to furnish a 'return o.f one's agricultural income in the previous year, does not initiate proceedings against an assessee unless such assessee files a return. If no return is made pursuant to the general notice under s. 19(1) assessment could be made against an assessee under s. 19(2), serving an individual notice on that assessee during that financial year. Once that financial year is over, and no return has been made in response to the general notice under s. 19(1) and no individual notice has been served under s. 19(2), there would arise a case of escaped assessment; and, the only way to bring that income to tax is to initiate proceedings by a notice in accordance with s. 30 within 3 years of
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the end of that financial year. Since no such proceedings were initiated in the present case, the assessment orders. were rightly quashed. [787 E-H]

The Commissioner of Income-tax, Bombay v. Ranchhodas Karsondas, Bombay, [1960] 1 S.C.R. 114, Ghanshyam Das v.

Regional Assistant Commissioner of Sales-tax, Nagpur, [1964] 4 S.C.R. 436 and The State of Assam v. Deva Prasad Barua, [1969] 1. S.C.R. 698, followed.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 1537 to 1545 of 1968.

Appeals from the judgment and order dated April 4, 1963 the Assam High Court in Civil Rules Nos. 233 to 236 and 238 to 242 of 1961.

Naunit Lal and S.N. Choudhury, for the appellants (in all the appeals).

M.C. Chagla and Sukumar Ghose, for the respondents (in all the appeals).

The Judgment of the Court was delivered by Grover, J. These are nine connected appeals by certificate from a judgment.of the High Court of Assam & Naggland whereby nine petitions filed by the respondents under Art. 226 of the Constitution were allowed and the assessment orders made under the provisions of the Assam Agricultural Income-tax Act, 1939, hereinafter called the 'Act', were quashed.

The facts may be first stated. D.C. Choudhuri and S.C. Dutt petitioners in ,four of the writ petitions owned the Martycherra Tea Estate in the district of Cachar which they had purchased on January 1, 1948. They sold this Estate on July 9, 1953. From January 1, 1948 to July 9, 1953 they carried on the business of cultivation, manufacture and sale of black tea at the said Estate under a partnership of which they were the sole partners. The partnership firm was served with a notice under the Indian Income-tax Act, 1922 hereinafter called the Income-tax Act and was assessed to income-tax for the assessment year 1951-52. Appeals were filed against the assessment order before the Appellate Assistant Commissioner of Incometax and the Income-tax Appellate Tribunal in which substantial reliefs were given to the assessee. After the sale of the Tea Estate these assessees ceased to have any agricultural income. The case of the assessees as laid in the writ petition was that on January 25, 1961, a letter was received by one of them from the Agricultural Income-tax Officer directing both the 'assessees to furnish returns of their agricultural income for the assessment years 1949-50 to 1953-54. Thereafter they received a notice of demand under s. 23 of the Act for payment of a certain amount as agricultural income-tax for the assessment year 1950-51. The assessment order was stated to have been made under s. 20(4) of the Act. Similar orders were made and demands created with regard to the subsequent years, namely, 1951-52, 1952-53 and 1953-54. All these assessment orders were challenged by means of four petitions under Art. 226 of the Constitution. Apart from other points which were raised the main objection taken was that no notice under s. 30 of the Act had been served at any time in respect of the assessment covered by the impugned orders. Such a notice could be served only within three years of the end of the financial year. In the absence of service of the aforesaid notice within the prescribed period the Income-tax Officer had no jurisdiction to make any assessment nor could such an assessment be made after the expiry of a

period of three years from the end of each financial year.

The other set of petitions. under Art. 226 of the Constitution was filed by the company--The Eastern Tea Estate Private Ltd. This company owned two tea estates, the Chandna Tea Estate and the Martycherra Tea Estate. The Chandna Tea Estate was purchased from the Indian Tea and Mill Industries Ltd. in 1950 and the Martycherra Tea Estate was purchased from M/s. D.C. Choudhuri and S.C. Dutt on July 9, 1953. The case of the company was that no notice had been received under s. 19(2) of the Act for the assessment years 1951-52 to 1955-56 and therefore no returns were filed. On October 9, 1959 the company received a letter from the Agricultural Income-tax Officer, Shillong asking it to submit returns in respect of Martycherra Tea Estate for the assessment year 1950-51 onwards. The company addressed a communication to the Agricultural Incometax Officer on November 18, 1959 saying, inter alia, that no notice had been served on it under the Act previously and as it also owned the Chandna Tea Estate it proposed to submit returns for the years in respect of which it was liable under the Act. On October 19, 1959, the company received a notice under s. 19 (2) of the Act directing it to submit the return in respect of the previous year for Martycherra Tea Estate. In response to the notice the company submitted the return for the year ending December 31, 1958 showing the agricultural income from tea estates. A number of notices were served subsequently and there was further exchange of correspondence. It was alleged in the petitions filed by the company that a letter was received dated January 23, 1960 from the Agricultural Income-tax Officer in which it was stated that the company had failed to submit the returns for the years 1950-51 to 1958-59 and it was asked to show cause why the assessments for these years should not be completed summarily. After further exchange of correspondence the company received an assessment order dated June 19, 1961 in respect of the assessment year 1951-52 which was made under s. 20(4) of the Act together with a notice of demand for payment of a certain amount of agricultural income-tax. Similar assessment orders were passed under s. 20(4) and demands created in respect of the assessment years 1952-53, 1953-54, 1954-55 and 1955-56. All these assessments were challenged by means of five petitions under Art. 226 of the Constitution. The main point raised in all these petitions was that unless individual notices under s. 19(2) of the Act had been served no assessment could be made under s. 20(4) except by way of proceedings under s. 30 of the Act. In the returns which were filed by the Agricultural Incometax Officer to all the petitions filed in the High Court it was maintained that the assessees had refused to accept the service of the notices under ss. 19(2) and 30 of the Act. The notice under s. 19(1) had been published in the Assam Gazette and the assessees were bound to make a return pursuant to that notice. It was denied that there was any necessity of serving notices under ss. 19(2) or 30 of the Act and that the assessments which had been made were barred by limitation.

A division bench of the Assam & Nagaland High Court consisting of Mehrotra, C.J. and S.K. Dutta, J. allowed all the petitions but delivered separate judgments. The learned Chief Justice held that where no return had been filed pursuant to a general notice under s. 19(1) the Agricultural Income-tax Officer was bound to proceed under s. 30 and issue a notice under s. 19(2) of the Act within the prescribed period, namely, three years of the end of the financial year. He further held that there was no service of notice on the respondent in respect of the assessment years in question either under s. 19(2) or s. 30 of the Act. S.K. Dutta, J., came to the same conclusion as the learned Chief Justice but he relied on a judgment of the Calcutta High Court in Commissioner of

Agricultural Income-tax v. Sultan Ali Gharami(1) in which a dissent had been expressed from the Bombay judgment in Harakchand Makanji & Co. v.Commissioner of Income-tax, Bombay City(2) on the question as to when proceedings relating to assessment could be regarded as having commenced. According to the learned judge if no return is made in response to a public notice under s. 19(1) of the Act and no individual notice is served under s. 19(2) there would be no pending proceedings and it would be a case of escaped assessment. But this would be so only after the expiry of the financial year. In other words after the publication of the notice under s. 19(1) there would be no escapement of income till the end of the financial year. Once the financial year is over and no return has been made in response to a notice under (1) 20 I.T.R. 432. (2) 16 I.T.R. 119.

L15 Sup. CI/69--6 s. 19(1) and no individual notice has been served under s. 19(2) a case would arise of "escaped assessment for the financial year."

The relevant provisions in Chapter IV of the Act may now be noticed. Sections 19 and 20 contain provisions similar to ss. 22 and 23 of the Income-tax Act. Under s. 19(1) of the Act the Agricultural Income-tax Officer before the specified date shall give notice by publication in the press or otherwise requiring every person whose agricultural income exceeds the limits of taxable income prescribed in s. 6 to furnish within such period not being less than 30 days as may be specified a return in the prescribed form setting forth his agricultural income during the previous year. Sub-section (2) provides that in the case of any person whose total agricultural income is, in the opinion of the Agricultural Income tax Officer, of such amount as to render such person liable to payment of agricultural income tax for any financial year, he may serve in that financial year a notice requiring him to furnish within the prescribed period a return. Sub-section (3) enables a person who has not furnished a return within the time allowed by or under sub- s. (1) or sub-s. (2) to furnish a return or a revised return at any time before the assessment is made. Thus sub-ss. (1), (2) and (3) of s. 19 of the Act are identical with and correspond to sub-ss. (1), (2) and (3) of s. 22 of the Income tax Act.

Under s. 20 of the Act if the Agricultural Income-tax Officer is satisfied that a return made under s. 19 is correct and complete he has to assess total agricultural income of the assessee 'according to it. If he has reason to believe that such a return is incorrect or incomplete he has to serve a notice requiring the person who has made the return to produce any evidence on which he may rely in support of the return. After hearing such evidence as the person making the return may produce and such other evidence as the officer may require on specified points the assess- ment order is to be made. These are the provisions of sub-ss. (1), (2) and (3). Sub-s. (4) is in the following terms :--

> "If the principal officer of any company or other person fails to make a return under sub-section (1) or, sub-section (2) of section 19, as the case may be or having made the return, fails to comply with all the terms of the notice issued under sub-section (2) of this section, or to produce any evidence required under sub-section (3) of this section, the Agricultural Incometax Officer shall make the assessment to the best of his judgment, and determine the sum payable by the assessee on the basis of such assessment Provided....."

Turning to s. 23 of the Income-tax Act, sub-sections (1), (2) and (3) thereof correspond to sub-sections (1), (2) and (3) of s. 20 of the Act. Sub-section (4) of s. 23 reads :--

> "if any person fails to make the return required by any notice given under sub-section (2) of section 22 and has not made a return or a revised return under sub-section (3) of the same section or fails to comply with all the terms of a notice issued under subsection (4) of the same section or, having made a return, fails to comply with all the terms of a notice issued under sub-section (2) of this section, the Incometax Officer shall make the assessment to the best of his judgment and determine the sum payable by the assessee on the basis of such assessment and in the case of a firm may refuse to register it or may cancel its registration if it is already registered".

Provided ....."

Section 30 of the Act which corresponds to s. 34 of the Incometax Act which deals with income escaping assessment may now be reproduced :--

> "If for any reason any agricultural income chargeable to agricultural income-tax has escaped assessment for any financial year, or has been assessed at too/ow a rate or has been the subject of undue relief under this Act, the Agricultural Income-tax Officer may, at any time within three years of the end of that financial year, serve on the person liable to pay agricultural income-tax on such agricultural income or, in the case of a 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 19, 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:
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> Provided ..... ,, The principal contention raised on behalf of the appellant is that for an assessment to be made under s. 20(4) of the Act it is not necessary that proceedings should have been taken under s. 30. The argument is that assessment proceedings commence with the publication of a general notice under s. 19(1) and it is open to the Agricultural Income-tax Officer to make the best judgment assessment under s. 20(4) without any limitation as to time. It is not necessary to issue any individual notice under s. 19(2) or to initiate proceedings under s. 30 in such a situation. Reliance has been placed on the observations in Harakchand Makanji & Co. v. Commissioner of Income-tax, Bombay City(1) that once a public notice is given under sub-s. (1) of s. 22 of the Income-tax Act, which is similar in terms to s. 19(1) of the Act, the assessment proceedings should be deemed to have commenced and there is no obligation on the Income-tax Officer to serve an 'assessee individually as well. But in the same case it was said that "a notice under s. 34 is only necessary if at the end of the assessment year no return has made 'by the assessee and the Income-tax authorities wish to proceed under s. 22(2) by serving a notice individually. It may then be said that as the assessment year had come to an end and as no return had

> been furnished and as the authorities wished to proceed under section 22(2) they should not do so without a notice under section 34".

The above view was approved by this Court in The Commissioner of Income-tax, Bombay v. Ranchhoddas Karsondas, Bombay(2), but the portion which has been extracted does not support the contention which has been pressed on behalf of the appellant. Indeed it has been relied upon more firmly by the counsel for the respondents. If this view is accepted to be correct it follows that a notice under s. 30 of the Act, in the present case, would be necessary if at the end of the assessment year no return has been made by the assessee and the authorities wish to proceed under s. 19(2). The case would be entirely different where he himself chooses voluntarily to. make a return. This he can do after the publication of a general notice under s. 19(1) of the Act. If the return is filed no question arises of any income having escaped assessment. The return under the provisions of s. 19(3) of the Act can be furnished at any time before the assessment is made. This is what this Court held in The State of Assam Anr. v. Deva Prasad Barua & Anr.(3).

The position is altogether different if no return has been made by the assessee and where income has not been assessed at all because for one reason or the other no assessment proceedings were initiated. That would be a case of "escaped assessment" -within s. 30 of the Act. The matter was examined at length by this Court in Ghansyam Das v. Regional Assistant Commissioner of Sales Tax, Nagpur(4) with reference to the provisions . of the Central Provinces & Berar Sales Tax Act, 1947. The (1) 16 I.T.R. 119. (2) [1960] 1 S.C.R. 1l4.

(3) [1969] 1 S.C.R. 698. (4) [1964] 4 S.C.R. 436.

following principles were laid down in that case which are noteworthy :--

> (1) In the case of a registered dealer the proceedings before the Commissioner started factually when a return was made or when a notice was issued to him either under s.

10(3) (under which the Commissioner has to issue a notice if no return is submitted) or under s. 11(4)(which provides for the best judgment assessment) of the Sales Tax Act. The statutory obligation to file a return did not initiate the proceedings.

(2) Once a statutory return was filed pursuant to a notice under s. 10(3) or s. 11 of the Sales Tax Act the proceedings did not come to an end until the final assessment was made. (3) The expression "escaped assessment"in s. 11A of the Sales Tax Act included that of a turnover which had not been assessed at all because for one reason or the other no assessment proceedings were initiated and no assessment was made in respect thereof.

Keeping in view the above principles it must be held that in the absence of a return having been filed by the assessees in the present case pursuant to a general notice under s. 29(1) of the Act assessment could be made only after due notice s. 19(2) or by initiating proceedings under s. 30 of the Act. Section 19(2) requires that an individual notice is to be served in the financial year. If no notice is served under that section proceedings under s. 30 can be initiated by a notice in accordance with

that section within three years of the end of that financial year. In this connection it may also be remembered that s. 43(2)(a) of the Act confers a valuable right on the assessee in the matter of choosing the forum for the assessment. According to that provision an assessee may on receipt of the first notice served on him under s. 19(2) apply to the Agricultural Income-tax Officer by whom such notice is served, to be assessed at the usual place of residence or at the place where the accounts relating to his agricultural income are kept. The Agricultural Income-tax Officer can then make an order that the assessee shall be assessed at the place specified in the application or he has to refer the matter to the Assistant Commissioner of Agricultural Income-tax whose decision shall be final. No such right is conferred on the assessee with reference to publication of a general notice under s. 19 (1). It shows, therefore that the proceedings for assessment under the Act can be initiated only by notice trader s. 19(2) or by having resort to the provisions of s. 30 of the Act.

Counsel for the appellant has sought to make a distinction between the decision given under the provisions of the Incometax Act by pointing out that under s. 20(4) of the Act best judgment assessment can be made on the failure to make a return under sub-section (1) or sub- section (2) of s. 19 whereas under s. 23 (4) of the Income- tax Act such an assessment can be made only where any person fails to make the return required by any notice given under sub-section (2) of s. 22 which is equivalent to s. 19(2) of the Act. This distinction is hardly material when the principles which have been laid down by this Court are kept in view. In support of his contention counsel for the appellant has also called attention to a decision of the Privy Council in Gokuldas Ratanti Mandavia v. Commissioner of Income-tax(1) in which the provisions of the East African Income-tax (Management) Act, 1952 came up for consideration. Those provisions are altogether different and the decision rested on the wording of s. 71 of that enactment. It cannot, therefore, be of any assistance in the present case.

For the reasons given above the appeals fail and they are dismissed with costs. One hearing fee.

V.P.S. Appeals dismissed.

(1) 38 I.T.R. 224 (P.C.)