

DEPARTMENT OF LAWS  
PANJAB UNIVERSITY, CHANDIGARH

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Before  
THE HON'BLE HIGH COURT ,GUJARAT

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HC No.\_\_\_\_\_/2024

IN THE MATTER OF

Mr Kailash & Ors.

(Appellant)

VERSUS

1. Commissioner of Income Tax

(Respondent)

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Counsel on Behalf of Respondent

Adv. Rajavikrant Sharma

Roll No. 288/22

Section I

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**LIST OF ABBEVIATIONS**

|         |                    |
|---------|--------------------|
| AIR     | ALL INDIA REPORTER |
| U/S     | UNDER SECTION      |
| HC      | HIGH COURT         |
| ORS     | OTHERS             |
| SC      | SUPREME COURT      |
| v.      | VERSUS             |
| HON'BLE | HONOURABLE         |

## INDEX OF AUTHORITIES

### LIST OF JUDICIAL PRECEDENTS CITED

| <u>Name of the case</u>   | <u>Citation</u>     |
|---|---------------------|
| <u>Brihan Maharashtra Sugar Syndicate<br/>Commissioner Income Tax</u>   | <u>2013 SCC 6</u>   |
| <u>K. Lakshmanan Co. v Commissioner of<br/>Income-Tax</u>               | <u>2003 SCC 543</u> |
| <u>Mulkanoor Co-Operative Rural Bank Ltd.<br/>vs Income-Tax Officer</u> | <u>1983 SCC 45</u>  |

### STATUTES

The Income Tax Act, 1961

### WEBSITES

<https://indiankanoon.org/>

<http://www.scconline.com/>

<http://www.manupatra.com/>

<http://www.ebcreader.com/>

### BOOKS REFFERED

1. Income Tax Act, 1961 by Dr Jyoti Rattan

## STATEMENT OF JURISDICTION

The Hon'ble Court of Gujarat has the jurisdiction to hear this matter under Section 260A of the Income Tax Act, 1961.

### **260A: Appeal to High Court.**

- (1) An appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal [ *before the date of establishment of the National Tax Tribunal*], if the High Court is satisfied that the case involves a substantial question of law
- (2) [The Chief Commissioner or the Commissioner or an assessee aggrieved by any order passed by the Appellate Tribunal may file an appeal to the High Court and such appeal under this sub-section shall be—]

(a) filed within one hundred and twenty days from the date on which the order appealed against is [received by the assessee or the Chief Commissioner or Commissioner];

(b) in the form of a memorandum of appeal precisely stating therein the substantial question of law involved.

- (3) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.

- (4) The appeal shall be heard only on the question so formulated, and the respondents shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question :

**Provided** that nothing in this sub-section shall be deemed to take away or abridge the power of the court to hear, for reasons to be recorded, the appeal on any other substantial question of law not formulated by it, if it is satisfied that the case involves such question.

- (5) The High Court shall decide the question of law so formulated and deliver such judgment thereon containing the grounds on which such decision is founded and may award such cost as it deems fit.

- (6) The High Court may determine any issue which—

(a) has not been determined by the Appellate Tribunal; or

(b ) has been wrongly determined by the Appellate Tribunal,by reason of a decision on such a question of law as is referred to in sub-section (1).

[(7) Save as otherwise provided in this Act, the provisions of the Code of Civil Procedure, 1908 (5 of 1908), relating to appeals to the High Court shall, as far as may be, apply in the case of appeals under this section

## **STATEMENT OF FACTS**

Mr. Kailash was a businessman in the state of Gujarat who used to purchase silk-worm eggs available for sale in the market and to rear the worms after the eggs are hatched, by feeding the worms with fresh mulberry leaves grown by Mr. Kailash on the lands belonging to him after cutting them to required size eventually each worm builds a cocoon around itself. The same were then sold to silk rearers who produce silk thread from the cocoons.

Assessment for the years 2001-02 to 2018-19 had been completed on the ground that the entire income arising out of the sale of silk cocoons constitutes the agricultural income and, therefore, exempt from tax under the Act.

It was argued before the Income Tax officer that there was no market at all for mulberry leaves as they have got to be plucked and fed to the silk-worms immediately, the growers invariably are consumers and, therefore, the only known process to make mulberry leaves marketable and to receiving the income from them was to produce silk cocoons by feeding the leaves to the silk-worms.

The above contention was refuted by stating that the silk cocoons produced by silk worms do not bear any character or quality of an agricultural produce and at common parlance they are not considered as an agricultural produce or as a marketable form of mulberry leaves and hence the exemption doesn't extend to Mr. Kailash and his income is taxable.

Mr. Kailash then approached the High Court as to whether the feeding of mulberry leaves to silkworms is a process ordinarily employed by cultivators of mulberry leaves, to make the leaves marketable by converting them into silk cocoons, is exempt under Section 10 of the Income Tax Act 1961 or not?

### **LEGAL ISSUE**

1. **Whether the feeding of mulberry leaves to silkworms is a process ordinarily employed by cultivators of mulberry leaves, to make the leaves marketable by converting them into silk cocoons, is exempt under Section 10 of the Income Tax Act 1961 or not?**



## ADVANCED ARGUMENTS

1. **Whether the feeding of mulberry leaves to silkworms is a process ordinarily employed by cultivators of mulberry leaves, to make the leaves marketable by converting them into silk cocoons, is exempt under Section 10 of the Income Tax Act 1961 or not?**

It is respectfully submitted before this Hon'ble Court that the feeding of mulberry leaves to silkworms is a process ordinarily employed by cultivators of mulberry leaves but converting them into silk cocoons make them marketable, is not exempted under Section 10 of the Income Tax Act 1961 as it does not come under the purview of section 2(1A) which defines agriculture income.

The **Section 10(1)** of the Income Tax Act, 1961 states: Sec.10. *Incomes not included in total income In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included (1) agricultural income;*

Section 2 (1A) of the Income Tax Act, 1961 states:

Sec. 2(1A): "**agricultural income**" means-

(a) *any rent or revenue derived from land which situated in India and is used for agricultural purposes;*

(b) *any income derived from such land by*

*(i) agriculture; or*

*(ii) the performance by a cultivator or receiver of rent-in-kind of any process ordinarily employed by a cultivator or receiver of rent-in-kind to render the produce raised or received by him fit to be taken to market; or*

*(iii) the sale by a cultivator or receiver of rent-in-kind of the produce raised or received by him, in respect of which no process has been performed other than a process of the nature described in paragraph (ii) of this sub-clause;*

(c) *any income derived from any building owned and occupied by the receiver of the rent or revenue of any such land, or occupied by the cultivator or the receiver of the rent-in-kind, of any land with respect to which, or the produce of which, any process mentioned in paragraphs (ii) and (iii) of sub-clause (b) is carried on:*

It is submitted that the section 2(1A)(b)(ii) of the act explicitly provides that the income derived by the cultivator or receiver of rent-in-kind from performing any process which is usually performed by them to make the produce marketable then it will constitute agricultural income. As it is clearly stated in the provision income derived from the land by performing an ordinary

process which is essential to make the produce marketable by cultivator be termed as agricultural income. This part of the section has two aspects that are to be fulfilled to constitute agricultural income, firstly, the performance of the process should be ordinary in nature as the produce might not be saleable in a raw form. Secondly, the process must be performed to make the product fit for the market.

In the present case, the agricultural produce raised and processed by the appellant is different from what he sells. The mulberry leaves grown by the appellant on his land is the agricultural produce but he sells silk cocoons produced by silkworms after feeding them mulberry leaves. The silk cocoons do not possess any quality or character of an agricultural produce as mulberry leaves lose their character when it is sold in another form. Therefore, silk cocoons cannot be regarded as agricultural produce or a marketable form of agricultural produce. It is essential as per the section that agricultural produce taken to market should be raised or made marketable by the cultivator which is clearly not the case here.

Reference must be made to case of **Brihan Maharashtra Sugar Syndicate Commissioner Income Tax**, the Bombay High Court held that *where any process is performed convert sugarcane into sugar or gur will be a non- agricultural process and income from the process of converting sugarcane into sugar or gur will be non-agricultural income. Moreover, the appellant did not perform any process that is ordinary or necessary to make mulberry leaves marketable rather he contended that they can't be sold. So agricultural produce raised by cultivators which can't be made marketable by undertaking a usual process fails to fulfill the essentials of the section and hence should not be constituted as agricultural income.*<sup>1</sup>

Reference must be laid on the case of **K. Lakshmanan Co. v Commissioner of Income-Tax** wherein there were similar facts and the Supreme Court held that *where mulberry leaves are grown by the assessee, which is fed to silkworms, and silk cocoons are obtained from silkworms then income from the sale of silk cocoons would be non-agricultural income. It is further submitted before the Hon'ble Court that as per the above-mentioned, the cultivation of mulberry leaves in order to feed silkworms to produce cocoons which are to be sold in the market is not an agricultural income under section 2(1A). Therefore, income derived from such sale will not be exempted under section 10 of the act.*<sup>2</sup>

<sup>1</sup> Brihan Maharashtra Sugar Syndicate Commissioner Income Tax

<sup>2</sup> K. Lakshmanan Co. v Commissioner of Income-Tax

That Sericulture is the cultivation of silk through the breeding of silkworms. It involves the rearing of silkworms, primarily the domesticated silk moth (*Bombyx mori*), for the production of process typically involves several steps:

1. Mulberry Cultivation: Mulberry trees are grown to provide leaves as food for silkworms.
2. Egg Production: Silkworm eggs are carefully incubated and hatched to produce larvae.
3. Feeding and Rearing: The larvae, or silkworms, are fed mulberry leaves until they reach the cocoon-spinning stage. This stage usually lasts for about 3-4 weeks.
4. Cocoon Formation: The silkworms spin silk fibers to create cocoons around themselves.
5. Harvesting: Cocoons are harvested before the moth emerges by boiling or steaming them to kill the pupae and loosen the silk fibers.
6. Reeling: The silk filaments are unwound from the cocoons, spun together, and wound onto reels to form silk threads.
7. Processing: The silk threads may undergo further processing, such as dyeing, weaving, or knitting, to create various silk products.

Throughout this process, careful attention to environmental conditions, hygiene, and nutrition is crucial to ensure the quality and quantity of silk produced.

Silkworm rearing refers to the process of nurturing silkworms from the larval stage to the cocoon-spinning stage in controlled environments. It involves providing suitable conditions for the silkworms to feed, grow, and spin silk cocoons. Key aspects of silkworm rearing include:

1. Feeding: Silkworms are fed a diet primarily composed of mulberry leaves. The leaves must be fresh, clean, and free from pesticides or contaminants.
2. Temperature and Humidity Control: Silkworms require specific temperature and humidity conditions for optimal growth and silk production. Temperature and humidity levels are carefully regulated throughout the rearing process.
3. Hygiene: Cleanliness is essential to prevent the spread of diseases and ensure the health of the silkworms. Rearing equipment, such as trays or shelves, must be regularly cleaned and sanitized.
4. Monitoring and Care: Silkworms need regular monitoring to ensure they are healthy and thriving. This includes checking for signs of disease, providing fresh food, and removing any dead or diseased silkworms.
5. Cocoon Formation: As silkworms mature, they enter the cocoon-spinning stage, during which they produce silk fibers to create cocoons. Care must be taken to provide the necessary conditions for successful cocoon formation.

Silkworm rearing is a labor-intensive process that requires attention to detail and expertise to achieve high-quality silk production. Silkworms produce silk by secreting a proteinaceous fluid through special glands called spinnerets located in their mouths. When the silkworm is ready to spin its cocoon, it secretes silk proteins through these spinnerets. The silk proteins are in a liquid form when they leave the spinnerets, but they quickly harden upon exposure to air, forming solid silk fibers. As the silkworm moves its head in a figure-eight motion, it wraps the silk fibers around itself in a continuous spiral, gradually forming the structure of the cocoon. The silk fibers adhere to each other due to the presence of a sticky substance called sericin, which acts as a natural adhesive. The silkworm continues to spin until it has completely encased itself in a cocoon, which provides protection during the pupal stage of its life cycle. Inside the cocoon, the silkworm undergoes metamorphosis, transforming into a moth. The cocoon serves as a safe environment for the development of the moth until it emerges from the cocoon as an adult.

Hence, the process of silkworm rearing and formation of silk is a very complex process.

The silk cocoons do not possess any quality or character of an agricultural produce as mulberry leaves lose their character when it is sold in another form.

**Mulkanoor Co-Operative Rural Bank Ltd. vs Income-Tax Officer (1983):** *The court held that there should be a direct connection between the activity and the land. It explored the concept of whether products derived from animal husbandry can be considered agricultural products which were declared taxable.*<sup>3</sup>

There is no direct connection between the land and the cocoon which was the marketable form of mulberry leaves. Hence It shouldn't be considered an agricultural product and must be taxed.

Furthermore, the appellant failed to engage in any typical or essential processes necessary to render mulberry leaves marketable. Instead, the respondent argued that these leaves were unsellable. Thus, agricultural produce cultivated by a farmer, which cannot be made marketable through customary processes, does not meet the criteria outlined in the section and should not be classified as agricultural income.

It is further submitted before the Hon'ble Court that as per the above-mentioned facts and case precedents, the cultivation of mulberry leaves in order to feed silkworms to produce cocoons which are to be sold in the market is not an agricultural income under section 2(1A). Therefore, income derived from such sale will not be exempted under section 10 of the Income Tax act, 1961.

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<sup>3</sup> Mulkanoor Co-Operative Rural Bank Ltd. vs Income-Tax Officer (1983)

**PRAYER**

Wherefore in the light of the facts presented, issues raised, arguments advanced and authorities cited, it is humbly requested that this Hon'ble Court may be pleased to adjudge and declare:

1. To declare the income derived by the appellant from the sale of cocoons produced by silkworms after consuming mulberry leaves is not an agricultural income under Section 2(1A) of the Act and therefore not exempted under section 10 of the Income Tax Act, 1961.

AND/OR

The court may be pleased to pass any other appropriate order, which the Hon'ble court may deem fit in the interests of justice, equity and good conscience.

All of which is most humbly and respectfully submitted.

Place:

Date:

S/D

Counsel for the Respondent  
Advocate Rajavikrant Sharma