Commr. Of Income-Tax, U.P. And V.P., ... vs Shamsherjang Bahadur on 8 May, 1953

Equivalent citations: AIR1953ALL676, [1953]24ITR1(ALL), AIR 1953 ALLAHABAD 676

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Bench: V. Bhargava

JUDGMENT

Malik, C.J.

1. The assessee was the proprietor of a big estate known as Saharanpur Estate. He was assessed to Income tax on all kinds of Income and as regards several items there was a dispute whether the income derived from those sources was agricultural income which was exempt from Income tax. We are concerned in this case only with a sum of Rs. 12046/-, which the Appellate Assistant Commissioner of Income-tax held was not Agricultural Income and was thus liable to be included in the total income of the assessee for purposes of payment of Income tax. The Tribunal, however, in a short order dated 31-8-1946, held that it was Agricultural Income and was exempt from Income tax. The Commissioner filed an application under Section 66(1), Income-tax Act which was granted and the following question of law was formulated for decision by this Court:

> "Whether in the circumstances of the case, the sum of Rs. 12,046/- being fees collected from owners of cattle for allowing them to graze on forest lands covered by jungle and grass (admittedly of spontaneous growth) is exempt as agricultural income within the meaning of Section 2, Income-tax Act?"

2. The statement of the Case is rather brief and the only facts that appear therefrom are mentioned in the question itself. The appellate order of the Tribunal, dealing with this point, is quoted in full in the Statement of the case and that too does not give the facts in details.

3. All that we can gather from the appellate order and the statement of the case is that the assessee owns a big estate, part of which is forest land, that in the forest land there is grass of spontaneous growth, that owners of cattle are allowed to graze on payment of a fee and that this fee which is known as grazing dues comes to Rs. 12,046/-. On these facts we are asked to decide the question, whether these grazing dues are agricultural income or not.

4. Section 2, Sub-section (1), Income-tax Act, defines 'agricultural income' as follows : "(a) any rent or revenue derived from land which is used for agricultural purposes, and is either assessed to land-revenue in the taxable territories or subject to a local rate assessed and collected by officers of Government as such; (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 Sub-clause (ii); (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 rent-in-kind, of any land with respect to which, or the produce of which, any operation mentioned in Sub-clauses (ii) and (iii) of Clause (b) is carried on :

> Provided that the building is on or in the immediate vicinity of the land, and is a building which the receiver of the rent or revenue or the cultivator or the receiver of the rent-in-kind by reason of his connection with the land, requires as a dwelling house, or as a store-house, or other out-building;" Section 4, Sub-section (3), Clause (viii) exempts agricultural income from being included in the total income of an assessee for purposes of assessment of Income-tax. The result of this exemption of all agricultural income from being included in the total income for purposes of Income-tax has been that there has arisen frequent controversy whether a particular income was agricultural income or not.

5. As regards the income from forest trees of spontaneous growth, without the intervention or human agency, the law has now been settled by a decision of the Judicial Committee in --'Mustafa Ali Khan v. Commr. of Income-tax, U. P. Ajmer and Ajmer Merwara', AIR, 1949 PC 13 (A). The question formulated for the decision of the Oudh Chief Court from whose judgment the appeal went to the Privy Council, was as follows : "Whether income from the sale of forest trees growing on land naturally and without the intervention of human agency, even if the land is assessed to land-revenue, is agricultural income within the meaning of Section 2 (1)(a) of the Income-tax Act, and as such exempt from income-tax under Section 4(3)(viii) of the Act?" (See --'Mustafa Ali Khan v. Commr. of Income-tax, U. P. and C. P.', AIR 1945 Oudh 44 (B)). The Oudh Chief Court having decided against the assessee, the matter was taken up to the Judicial Committee which held that the income was not agricultural income. In the course of the judgment, their Lordships made the following observations, dealing with the question as to the meaning to be ascribed to the word 'agriculture': "(1) that in their opinion no assistance is to be got from the meaning ascribed to the word 'agriculture' in other statutes and (2) that, though it must always be difficult to draw the line, yet, unless there is some measure of cultivation of the land, some expenditure of skill and labour upon it, it cannot be said to be used for agricultural purposes within the meaning of the Income-tax

Act." The income in that case was derived from the sale of trees described as 'forest trees growing on land naturally' and the case had throughout proceeded upon the footing that there was nothing to show that the assessee was carrying on any regular operation in forestry or arboriculture. The jungle from which trees had been cut and sold was of spontaneous growth. Their Lordships held that it was not agricultural income. The second point decided in that case was that "exemption is conferred, and conferred indelibly, on a particular kind of income and does not depend on the character of the recipient." And again " 'the result in their Lordships' opinion is to exclude 'agricultural income' from the scope of the Act howsoever or by whomsoever it may be received."

These observations had been made by the Board in --'Commr. of Income-tax, B. & O. v. Kameshwar Singh', AIR 1935 PC 172 (C). The portions quoted above were quoted by their Lordships from that judgment and their Lordships went on to observe : "Enough has been said to show that the distinction sought to be made between rent received by a mortgagee 'in lieu of interest' and rent received by him but applicable by him, 'inter alia' in satisfaction of interest cannot be maintained."

7. The question whether income from trees of spontaneous growth is or is not 'agricultural income' has, therefore, been set at rest by the decision of the Judicial Committee in 'Mustafa Ali Khan's case (A)' and in several other cases which their Lordships quoted with approval; for example, -- 'Gangadhara Rama Rao v. Commr. of Income-tax, Madras', AIR 1947 Mad 157 (D) -- 'Benoy Ratan v. Commr. of Income-tax, U. P. C. P. and Berar', (1947) 15 ITR 98 (All) (E). In Benoy Ratan Banerji's case (E)' this Court observed :

> "We are entirely satisfied that, being trees of spontaneous growth, to the production of which the assessee has made no contribution by way of cultivation, no question can arise either of the land on which they grew being 'used for agricultural purposes' or of the trees themselves and the income they produced being the result of 'agriculture'."

8. Learned Counsel for the Department has strongly relied on these decisions and has urged that income from grass which spontaneously grew in a forest must be deemed to be of the same nature and there was no real difference between trees of spontaneous growth and grass of spontaneous growth. There is, however, to our minds, a vital difference on which their Lordships of the Judicial Committee were not called upon to pronounce an opinion. Trees, unless they are cultivated, if we may use that phrase, or grown, would not be normally deemed to be a part of agricultural operations of an agriculturist. The sale of timber which entitles the purchaser to cut the trees and remove the wood and sell it is not a part of agricultural operations.

It is possible to conceive of a case where, instead of growing crops, a person undertakes to spend money and labour in growing trees on a plot of land assessed to land-revenue or local rates. This might be an agricultural operation. We, however, do not express any opinion on the point, as the point does not arise in this case & is not a question on which we are called upon to give an answer, but there can be no doubt that trees growing spontaneously on forest land cannot be deemed to be a part of agricultural operations.

9. Rearing of cattle, however, is intimately connected with agriculture and can be deemed to be a part thereof. If land is, therefore, used for pasturage, it cannot be said that it is so divorced from agricultural operations that the income derived therefrom cannot be said to be agricultural income. No doubt the assessee deriving income has not spent either labour or money to grow the grass, but labour and money are certainly spent by the agriculturists whose cattle graze on the land and as the income is derived from them for the right to graze their cattle on the land, according to the observations of their Lordships in 'Maharajah of Darbhanga's case (C)' which was followed in 'Mustafa Ali Khan's case (A)'.

> "The exemption is conferred, and conferred indelibly on a particular kind of income and does not depend on the character of the receipient."

10. The question whether income from pasturage is agricultural income came up for decision before the Calcutta High Court in -- 'Emperor v. Probhat Chandra AIR 1924 Cal 668 (F). No doubt the point was conceded yet both the learned Judges, Rankin J., and Page, J., expressed their opinion. Rankin J., said "The question as Regards income from pasturage is not now in dispute, and I agree with the Commissioner and the learned Vakil who appears for the crown in thinking it to be reasonably plain that income from pasturage is 'derived from land which is used for agricultural purposes' .....In the circumstances that such income is 'derived from fees realised from graziers who graze their cattle in the forest areas and waste lands there is nothing to render inapplicable the definition of 'agricultural income' contained in Clause (a)."

Page, J., said :

> "The Commissioner has held that income derived from pasturage is not assessable to income-tax 011 the ground that it is 'agricultural income' within Sections 2 and 4 of the Income-tax Act. The Crown does not now dispute the correctness of the Commissioners decision on this point with which I agree."

11. The same view was taken by a Full Bench of the Nagpur High Court in -- 'Mahendralal v. Commr. of Income-tax, C. P. and Berar Nagpur', AIR 1952 Nag 205 (G) and we are in full agreement with, the judgment of the Acting Chief Justice, that if the cattle that graze on the land are cattle commonly used for agricultural purposes, the land is being used for agricultural purposes. Dealing with this question the learned Judge said :

> "The cattle eat it, and it is not so much the product of the soil which is the agricultural purpose but the rearing and management of the livestock. I conceive that land which is occupied for a dairy farm in a rulal area would be such land even though nothing is grown on it and only buildings are there. So also would be land leased out to a person who conducts agricultural operations on a large scale, for the housing and tethering of his agricultural livestock.
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> A distinction has to be drawn between the land and the purpose for which the land is used. The land need not be agricultural land in the sense that it must grow a crop. It

> can be any land which is used for an agricultural purpose, and the income can be any rent or revenue derived from such land. When the agricultural purpose is the growing of a crop then there must be some element of skill and labour expended upon it, but when the purpose is the management of livestock we are not concerned with the product of the soil. The human agency element must still be there. There must be skill and labour in the management of the stock but not upon the land. The land in such a case is incidental to the main purpose.'" If we may say so with respect, we are in full agreement with the observation quoted above.

12. Reliance has been placed on behalf of the Commissioner of Income-tax on a decision by this Bench in -- 'Pratap Singh v. Commr. of Income-tax, U. P. C. P., and Berar and Lucknow', AIR 1952 All 845 (H). In that case the question was not about income from pasturage. The income in that case, as in 'Mustafa Ali Khan's case, (A)' was from trees in a forest of spontaneous growth. It was, however, urged that 'Mustafa Ali Khan's case (A)' did not apply as in that case human skill and labour were being used in watering, pruning and protecting the trees and it was said that that amounted to agricultural operations. We pointed out that there was nothing to show that the assessee had been watering, pruning and protecting the trees. All that appeared that the assessee had done was that some weeding operations had been carried on) and we held that mere weeding, care and preservation of the trees of spontaneous growth was not agricultural operation. We followed, as we were bound to follow and quoted the decision of their Lordships in 'Mustafa Ali Khan's case (A)' that "for income to be agricultural income, the essential element that must exist is that there should be 'some measure of cultivation of the land ' or 'some expenditure of skill and labour upon it'."

These observations must, however, be confined to the facts of that case. Income derived from trees would not normally be agricultural income and to bring it in the category of agricultural income it may be necessary for the assessee to establish that such use was being made of the land and human skill, labour and money were being spent on it so that the income may be deemed to be agricultural income, when normally it would not be so.

13. In the case before us, the pasturage or land used for grazing of cattle normally used for agricultural purposes, is an agricultural activity and it is not necessary to spend money, human skill and labour to make it agricultural. We may point out that we do not propose to express any opinion on the question whether income from every kind of trees not of spontaneous growth but on the growth of which labour and money have been spent is 'agricultural income', as the point does not arise in this case.

14. The result, therefore, is that our answer to the question is in the affirmative.

15. The assessee is entitled to his costs which we assess at Rs. 400/-.