The Commissioner Of Income-Tax,Bihar ... vs Sri Ramakrishna Deo on 14 October, 1958

Equivalent citations: 1959 AIR 239, 1959 SCR SUPL. (1) 176, AIR 1959 SUPREME COURT 239, 1959 35 ITR 312, 1959 CALLJ 59, 1959 SCJ 308

Bench: P.B. Gajendragadkar, A.K. Sarkar

PETITIONER:
THE COMMISSIONER OF INCOME-TAX,BIHAR AND ORISSA

Vs.

RESPONDENT:
SRI RAMAKRISHNA DEO

DATE OF JUDGMENT:
14/10/1958

BENCH:
AIYYAR, T.L. VENKATARAMA
BENCH:
AIYYAR, T.L. VENKATARAMA
GAJENDRAGADKAR, P.B.
SARKAR, A.K.

CITATION:
1959 AIR 239 1959 SCR Supl. (1) 176
CITATOR INFO :
R 1965 SC 568 (12)

ACT:
Income Tax-Forest trees-Income from sale of-Whether agricultural income-Exemption from taxation-Burden of proof-Findings of the Tribunal-When binding on High Court-Indian Income-tax Act, 1922 (XI Of 1922), SS. 2(1), 4(3) (viii), 66(1).

HEADNOTE:
The respondent, the proprietor of an estate, derived income from the sale of trees growing in his forests and claimed that it was agricultural income as defined in s. 2(1) of the Indian Income-tax Act, 1922, and that it was exempt from payment of income-tax under s. 4(3)(viii). The Appellate Tribunal found that the evidence to show that there was plantation by the estate authorities was meagre and unsubstantial, that the trees in question must have been of

spontaneous growth and that the respondent had failed to establish facts on which he could claim exemption. On reference, the High Court took the view that though trees in the forest had not been planted by the estate authorities, the latter had performed subsequent operations of a substantial character for the maintenance and improvement of the forest, and that the income was, therefore, agricultural income. It also held that the onus was on the income-tax authorities to prove that the income derived from the sale of trees was not agricultural income and that they had failed to show that the income fell outside the scope of the exemption mentioned in s. 4(3)(viii) Of the Act.

Held, that the High Court erred in placing the burden on the income-tax authorities to prove that the income sought to be taxed was not agricultural income. The principle has been well established that where a person claims the benefit of an exemption under the provisions of the Act, he has to establish it.

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Commissioner of Income-tax v. Venkataswamy Naidu, [1956] 291.T.R. 529, followed.

The question whether the trees were of spontaneous growth or were products of plantation was essentially a question of fact and the finding of the Tribunal on this point was binding on the High Court in a reference under s. 66(1) of the Act.

Held, further, that the income received by the respondent by the sale of trees in his forests was not agricultural income as the trees had not been planted by him, and that it was immaterial that he had maintained a large establishment for the purpose of preserving the forests and assisting in the growth of the trees.

The Commissioner of Income-tax, West Bengal, Calcutta v. Raja Benoy Kumar Sahas Roy, [1958] S.C.R. 101, explained and followed.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No.426 of 1957. Appeal from the judgment and order dated April 21, 1955, of the Orissa High Court at Cuttack in Special Jurisdiction Case No. 179 of 1951.

A. N. Kripal, R. H. Dhebar and D. Gupta, for the appellant.

A. V. Viswanatha Sastri, M. S. K. Sastri and R. Jagannatha Rao, for the respondent.

1958. October 14. The Judgment of the Court was delivered by VENKATARAMA AIYAR, J.-This is an appeal against the judgment of the High Court of Orrissa in a reference under s. 66(1) of the Indian Income-tax Act, 1922, hereinafter referred to as the Act, and the point for decision is whether

income received by the respondent by the sale of trees growing in his forests is agricultural income exempt from taxation under s. 4(3)(viii) of the Act.

The respondent is the proprietor of the impartable zamin of Jaipur in Koraput District. The estate is of the area of 12,000 sq. miles of which 1540 sq. miles are reserve forest and 100 sq. miles, protected forest. The respondent derives income from the forests by the sale of timber such as teak, salwood, lac, myrabolam, tamarind, cashewnuts and firewood. There is no dispute either as to the receipt of such income or as to its quantum. All tat appears in the account books of the respondent. The point in controversy is as to whether this income is chargeable to tax. It is the contention of the respondent that this is agricultural income as defined ins. 2(1) of the Act, and that it is, in consequence, exempt under s. 4(3)(viii). By his 31, 1943, the Income-tax order dated January Officer held that the forests in question had not been proved to have been planted by the respondent, that the trees were of spontaneous growth, and that the income therefrom was not within the exemption under s. 4(3)(viii); and this order was confirmed on appeal by the Appellate Assistant Commissioner. The respondent took the matter in further appeal to the Appellate Tribunal, and there put forward the contention that the Incometax Officer had failed to take into account a letter of the Dewan dated June 3, 1942, which gave a detailed account of the operations carried on by the estate in the rearing and maintenance of forests and that on the facts mentioned in that letter, his finding that there had been no plantation of trees was errolieous. By its order dated April 9, 1946, the Tribunal accepted this contention, and directed a fresh enquiry into the facts mentioned in the said letter.

Pursuant to this order, the Income-tax Officer again enquired into the matter. He observed that though he gave ample opportunities to the respondent to prove that there was plantation of trees by the estate, no materials were placed in proof of that fact and that neither -plantation books nor any working plans for timber plantation had been produced. He accordingly held that the forests had grown naturally, and that the income therefrom was assessable to tax. On this report, the appeal again came up for hearing before the Tribunal. The main contention urged by the respondent at the hearing was that the facts showed that the forests which had yielded income during the year,' of account could not have been the virgin forests which had originally grown spontaneously on the hills, because they had been periodically denuded by the hill tribes in the process of Podu cultivation carried on by them. What this Podu cultivation means is thus stated in the]District Gazetteer, Vishakapatnam, 1907:

> " This consists in felling a piece of jungle, burning the felled trees and undergrowth, sowing dry grain broadcast in the ashes (without any kind of tilling) for two years in succession, and then abandoning the plot for another elsewhere."

The argument of the respondent was that as a result of the Podu cultivation, the original forests should have disappeared and that the trees that had subsequently grown into forest and sold as timber must have been planted by human agency and their sale proceeds must accordingly be agricultural income. Dealing with this contention, the Tribunal observed that though there had been extensive destruction of forests in the process of Podu cultivation, nevertheless, considerable areas of virgin forests still survived, that the evidence of actual cultivation and plantation by the zamin

authorities was meagre and unsubstantial, that no expenses were shown to have been incurred on this account prior to 1904, that the amount shown as spent during that year was negligible, that the trees planted then could not have been the trees sold as timber during the assessment years, and that the respondent bad failed to establish facts on which he could claim exemption. It should be mentioned that this order covered the assessments for five years from 1942-43 to 1946-47, the facts relating to the character of the income being the same for all the years. On the application of the respondent, the Tribunal referred the following question for the decision of the High Court :

> " Whether on the facts and in the circumstances the income derived from forest in this case is taxable under the Indian Income-tax Act."

The reference was heard by Panigrahi, C. J., and Misra, J., who answered it in the negative. They observed :

> " It appears to us that the cases as set out by both parties have been put too high. The department takes the view that unless there is actual cultivation of the soil the income from the forest trees cannot be regard. ,led as agricultural income. The fact that the assessee has spent some money and planted valuable trees in some areas is not sufficient to free the income out of the extensive forests which owe their existence to spontaneous growth, from its liability to taxation. The assessee on the other hand seeks to create an impression that there is not a single tree of spontaneous growth, in these forests, and such trees as now constitute forests have sprung up out of the stumps left by the hillmen as a result of the system of I Podu' cultivation adopted by them. It appears to us that neither of these claims can be regarded as precise or correct."

The learned Judges then observed that the forests in the Koraput area had been under Podu cultivation for a long period, and that as the result of that cultivation they had practically disappeared even by the year 1870, that the trees had subsequently grown into forests and they had also been destroyed by about the year 1901, and that therefore there could not have been any virgin forest left surviving. Then they referred to the fact that the respondent had been maintaining a large establishment for the preservation of the forests, and that there had been organised activities (1) " in fostering the growth of the trees and preserving them from destruction by man and cattle; (2) in cultivation of the soil by felling and burning trees from time to time; (3) in planned exploitation of trees by marking out the areas into blocks; (4) in systematic cutting down of trees of particular girth and at particular heights; (5) in planting new trees where patches occur; and (6) in watering, pruning, dibbling and digging operations carried on from time to time ". And they stated their conclusion thus:

> " All these and similar operations which have been undertaken by the assessee through his huge forest establishment, show that there has been both cultivation of the soil as well as application of human skill and labour, both upon the land and on the trees themselves. It cannot be assumed therefore that all the trees are of spontaneous growth. The indications, on the other hand, appear to be that most of

> them are sprouts springing from burnt stumps. There is no basis for the assumption made by the Income-tax Department that all the trees are forty years old and that they owe their existence to spontaneous growth. Apart from that it will be noticed that what distinguishes the present case from all the reported decisions is that practically the whole of the forest area has been subjected to process of 'Podu' cultivation spreading over several decades so that it is impossible to say that there is any virgin forest left. The onus was certainly upon the department to prove that the income derived from the forest was chargeable, to tax and fell outside the scope of the exemption mentioned in Section 4(3)(viii)."

In this view, they held that the Department had failed -to establish that the income derived from the sale of trees was not agricultural income, and answered the reference in favour of the respondent. The learned Judges, however, granted a certificate to the appellant under s. 66(A)(2) of the Act, and that is how the appeal comes before us. At the very outset, we should dissent from the view expressed by the learned Judges that the burden is on the Department to prove that the income sought to be taxed is not agricultural income. The law is well settled that it is for a person who claims exemption to establish it, and there is no reason why it should be otherwise when the exemption claimed is under the Income-tax Act. The learned Judges were of the opinion that their conclusion followed on the principle of the law of Income-tax that " where an exemption is conferred by a statute, the State must not get the tax either directly or indirectly ", and support for this view was sought in the following observations of Lord Somervell, L. J., in Australian Mutual Provident Society v. Inland Revenue Commissioners (1):

> " The rule must be construed together with the exempting provisions which, in our opinion, must be regarded as paramount. So far as the rule, if taken (I) [1946] 1 All E.R. 528.

in isolation, would have the effect of indirectly depriving the company of any part of the benefit of the exemption, its operation must be cut down, so as to prevent any such result, and to allow the exemption to operate to its full extent."

These observations have, in our opinion, no bearing on the question of burden of proof. They merely lay down a rule of construction that in determining the scope of a rule, regard must be had to the exemptions engrafted thereon, and that the rule must be so construed as not to nullify those exemptions. No such question arises here. There is ample authority for the view that the principle that a person who claims the benefit of an exemption has to establish it, applies when the exemption claimed is under the provisions of the Income-tax Act. Vide the observations of the Lord President and of Lord Adam in Maughan v. Free Church of Scotland (1) and the observations of Lord Hanworth, M. R., in Keren Kayemeth Le Jisroel Ltd. v. The Commissioners of Inland Revenue (2) at p. 36 that " the right to exemption under Section 37 must be established by those who seek it. The onus therefore lies upon the Appellants ", and of Lord Macmillian at p. 58 that, " In my opinion, the Appellants, have failed to bring it within any one of these categories and consequently have failed in what was essential for them to make out, namely, that this Company is a body of persons established for charitable purposes only."

The decisions of Indian Courts have likewise ruled and quite rightly that it is for those who seek exemption under s. 4 of the Act to establish it. Vide Amritsar Produce Exchange Ltd. In re (3) and Sm. Charusila Dassi and others, In re (4). So far as exemption under s. 4(3) (viii) is concerned, the matter is concluded by a decision of this Court given subsequent to the decision now under appeal. In Commissioner of Income-tax v. Venkataswamy Naidu (5), this Court held, reversing the judgment of the High Court of Madras, that it (1) (1803) 3 Tax Cas. 207, 21 O. (2) (1931) 17 Tax CaS. 27. (3) [1937] 5 I.T.R. 307, 327. (4) [1946] 14 I.T.R. 362,

370. (5) [1956] 29 I.T.R. 529, 534.

was for the assessee to prove that the income sought to be taxed was agricultural income exempt from taxation under s. 4(3)(viii). Bhacgwati, J., delivering the' judgment of the Court observed:

> " ... the High Court erroneously framed the question in the negative form and placed the burden on the Income-tax Authorities of proving that the income from the sale of milk received by the assessee during the accounting year was not agricultural income. In order to claim an exemption from payment of incometax in respect of what the assessee considered agricultural income, the assessee had to put before the Income-tax Authorities proper materials which would enable them to come to a conclusion that the income which was sought to be assessed was agricultural income. It was not for the Income-tax Authorities to prove that it was not agricultural income. It was this wrong approach to the question which vitiated the judgment of the High Court and led it to an erroneous conclusion."

On the inerits, the question what is agricultural income within s. 2(1) of the Act is the subject of a recent decision of this Court in The Commissioner of Income-tax, West Bengal, Calcutta v. Raja Benoy Kumar Sahas Roy (1). There, it was held that before an income could be held to be agricultural income, it must be shown to have been derived from land by agriculture or by one or the other of the operations described in cls. (i) and (ii) of s. 2(1)(b) of the Act, that the term St agriculture " meant, in its ordinary sense, cultivation of the field, that in that sense it would connote such basic operations as tilling of the land, sowing of trees, plantation and the like, and that though subsequent operations such as weeding, pruning, watering, digging the soil around the growth and removing undergrowths could be regarded as agricultural operations when they are taken in conjunction with and as continuation of the basic operations mentioned before, they could not, apart from those operations, be regarded as bearing the character of agricultural operations.

(1) [1958] S.C.R. 101, 155, 158, 160.

It is only " observed Bhagwati, J., delivering the judgment of the Court, " if the products are raised from the land by the performance of these basic operations that the subsequent operations attach themselves to the products of the land and acquire the characteristic of agricultural operations..."

> " But if these basic operations are wanting the subsequent operations do not acquire the characteristic of agricultural operations."

Dealing with trees which grow wild, Bhagwati, J., observed :

> " It is agreed on all hands that products which grow wild on the land or are of spontaneous growth not involving any human labour or skill upon the land are not products of agriculture and the income derived therefrom is not agricultural income. There is no process of agriculture involved in the raising of these products from the land."

The law being thus settled, in order to decide whether the income received by the respondent by the sale of trees in his forests was agricultural income or not, the crucial question to be answered is, were those trees planted by the proprietors of the estate, or did they grow spontaneously ? If it is the latter, it would be wholly immaterial that the respondent has maintained a large establishment for the purpose of preserving the forests and assisting in the growth of the trees, because ex hypothes, he performed no basic operations for bringing the forests into being. Now, the Tribunal has clearly found that there were no plantations of trees by the estate authorities worth the name, and that the trees, the income from which is the subject matter of the assessments, must have been of spontaneous growth. That is a finding of fact which is binding on the Court in a reference under s. 66(1) of the Act. The learned Judges declined to accept this finding, because they considered that the Tribunal had not appreciated the true significance of Podu cultivation. That, in our opinion, is a misdirection. If the point for decision had been whether the forest was a virgin forest or whether it had subsequently sprung up, the evidence relating to Podu cultivation would have been very material. But the point for decision is not whether the forests were ancient and primeval, but whether they had been planted by the estate authorities, and on that, the Podu cultivation would have no bearing. As a result of the Podu cultivation, the original forests would have disappeared. But the question would still remain whether the forest which again sprang up was of spontaneous growth, or was the result of plantation. Now, there is no evidence that as and when the jungle had disappeared under Podu cultivation, the estate intervened and planted trees on the areas thus denuded. On the other hand, the learned Judges themselves found that after the destruction of the original forests in the process of Podu cultivation, there was a fresh growth of forests from the stumps of the trees which had been burnt. If that is the fact, then the new growth is also spontaneous and is not the result of any plantation.

In fairness to the learned Judges, it must be observed that at the time when they heard the reference there was a conflict of judicial opinion on the question whether subsequent operations alone directed to the preservation and improvement of forests would be agricultural operations within s. 2(1) of the Act; and the view they took was that such operations when conducted on a large scale as in the present case would be within s. 2(1) of the Act. It was in that view that they observed that "it is therefore idle to regard tilling as the sole and indispensable test of agriculture ". The decision of the learned Judges was really based on the view that though trees in the forest had not been planted by the estate authorities, the latter had performed subequent operations of a substantial character for the maintenance and improvement of the forest, and that, in consequence, the income was agricultural income. This view is no longer tenable in view of the decision of this Court in The Commissioner of Income-tax, West Bengal, Calcutta v. Raja Benoy Kumar Sahas Roy (1).

It is contended by Mr. Viswanatha Sastri for the (1) [1958] S.C.R. 101, 155, 158, 160.

respondent that on the facts established in the evidence, the proper conclusion to come to is that the trees sold by the respondent had been planted by the estate authorities, and that the decision of the High Court that the income thus realised is within the exemption under s. 4(3)(viii) could be supported even on the view of law taken in The Commissioner of Income-tax, West Bengal, Calcutta v. Raja Benoy Kumar Sahas Roy (1). The argument was that there was unimpeachable evidence that the old forests had disappeared under Podu cultivation, that the estate had been regularly engaged in planting trees at least from the year 1904 as is shown by the accounts of the zamin, that it was a reasonable inference to make that there had been similar plantations even during the years prior to 1904 notwithstanding that no accounts were produced for those years, because it would not be reasonable to expect that such accounts would now be available, that though the amount shown as spent for plantation might not be considerable, that was understandable when regard is bad to the fact that the agricultural operations were conducted on the hills and not on the plains, that, on these facts, it would be proper to conclude that the forests were in their entirety the result of plantation. It would be ail erroneous approach, it was argued, to call upon the assessee to prove tree by tree that it was planted. Now, these are matters of appreciation of evidence on what is essentially a question of fact, viz., whether the trees were of spontaneous growth or were products of plantation. On this, the Tribunal has given a clear finding on a consideration of all the material evidence, and its finding is final and not open to challenge in a reference under s. 66 (1) of the Act. Even the learned Judges of the High Court who considered themselves free to review that finding-and, as already pointed out, without justification, could only observe that the trees must have mostly grown from the slumps left when the forests were burnt for purposes of Podu cultivations finding which is fatal to the contention now urged for the respondent that they (I) [1958] S.C.R. 101, 155, 158, 160.

were the result of plantation. We are of opinion that there are no grounds on which the finding of the Tribunal could be attacked in these proceedings.

It remains to deal with one other contention urged on behalf of the respondent, and that is based on the fact that the amounts spent in the upkeep of the forrests were large in comparison with the receipts therefrom. The following are the figures relating to the forest receipts and expenses for the years with which the present assessments are concerned:

> Years Receipts Expenses 1942-43 Rs. 438,894 Rs. 174,437 1943-44 Rs. 407,447 Rs. 209,895 1944-45 Rs. 552,122 Rs. 228,830 1945-46 Rs. 372,971 Rs. 247,216 1946-47 Rs. 689,366 Rs. 460,369 The argument is that from the high proportion of the expenses in relation to the receipts it could be inferred that the income from trees planted by the estate formed a substantial portion of the income derived from the forests. And support for this conclusion is sought in the following observations in The Commissioner of Income-tax, West Bengal, Calcutta v. Raja Benoy Kumar Sahas Roy (1):
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> " The expenditure shown by the assessee for the maintenance of the forest is about Rs. 17,000 as against a total income of about Rs. 51,000. Having regard to the

> magnitude of this figure, we think that a substantial portion of the income must have been derived from trees planted by the proprietors themselves."

To appreciate the true import of these observations, we must have regard to the context in which they occur. The facts found in that case were that portions of the forest which was originally of spontaneous growth had gradually been denuded, that the propritor had planted trees in the areas so denuded, that this had gone on for a period of over 150 years, and that therefore " the whole of the income derived from (1) [1958] S.C.R. 101, 155, 158, 160.

the forest cannot be treated as non-agricultural income ". It was then observed that " If the enquiry had been directed on proper lines, it would have been possible for the Income- tax authorities to ascertain how much of the income is attributable to forest of a spontaneous growth and how much to trees Planted by the proprietors ", but that, in view of the long lapse of time, it was not desirable to remand the case for enquiry into the matter. Then follow the observations on which the respondent relies, and when read in the light of the findings that the plantations made by the proprietors were not negligible, they mean nothing more than that out of the total income a substantial portion was likely to be agricultural income, and that it was therefore not a fit case for ordering fresh enquiry These observations do not lay down that if considerable amounts are expended in the maintenance of forests, then it must be held that the trees were planted by the proprietors. They only mean that if a considerable portion of the forests is found to have been planted, a substantial portion of the forest income may be taken to have been derived therefrom. And this too, it must be remarked, is only a presumption of fact, the strength of which must depend on all the facts found. In the face of the clear finding in the present case that the forests with which the assessment years are concerned were of spontaneous growth, the observations quoted above can be of no assistance to the respondent. It is scarcely necessary to add that the observations " If the enquiry bad been directed on proper lines, it would have been possible for the Income-tax authorities to ascertain how much of the income is attributable to forest of spontaneous growth and how much to trees planted by the proprietors " quoted above cannot be read, as was sought to be done for the respondent, as throwing on the Department the burden of showing that the income sought to be taxed was not agricultural income. That, in their context, is not the true meaning of the observations, and the law is as laid down in Commissioner of Income-tax v. Venkataswamy Naidu (1) [1956] 29 I.T.R. 529, 534.

In the result, this appeal is allowed, the order of the Court below is set aside and the reference is answered in the affirmative. The respondent will pay the costs of the appellant here and in the Court below.

Appeal allowed.