Commissioner Of Agricultural ... vs Kerala Estate Mooriad Chalapuram on 15 July, 1986

Equivalent citations: 1986 AIR 1750, 1986 SCR (3) 161, AIR 1986 SUPREME COURT 1750, 1986 TAX. L. R. 1143, 1986 SCC (TAX) 658, 1986 UPTC 1139, (1986) 27 TAXMAN 339, 1986 UJ(SC) 2 515, (1986) JT 316.2 (SC), 1986 TAXATION 82 (2) 65, 1986 JT 316 (2), (1986) 161 ITR 155, 1986 (3) SCC 584, (1986) 58 CURTAXREP 136

Author: R.S. Pathak

Bench: R.S. Pathak, Sabyasachi Mukharji

PETITIONER:
COMMISSIONER OF AGRICULTURAL INCOME-TAX, TRIVANDRUM

Vs.

RESPONDENT:
KERALA ESTATE MOORIAD CHALAPURAM

DATE OF JUDGMENT15/07/1986

BENCH:
PATHAK, R.S.
BENCH:
PATHAK, R.S.
MUKHARJI, SABYASACHI (J)

CITATION:
1986 AIR 1750 1986 SCR (3) 161
1986 SCC (3) 584 JT 1986 316
1986 SCALE (2)10

ACT:
Kerala Agricultural Income Tax Act, 1950, ss. 4 and 5-Agricultural Income -Deductions allowed under s. 5-Whether subsequent remission thereof could be treated as "agricultural income"-Remission and Refund-Distinction between.

HEADNOTE:
The Kerala Agricultural Income Tax Act, 1950 provides for the levy of tax on agricultural income in the State of Kerala. Section 5 details the deductions to be made in

computing the agricultural income. Clauses (e), (g), (h) and (i) refer to interest paid by the assessee in different kinds of cases. The interest in all these cases, has to be deducted from the agricultural income of a person before the levy is imposed.

The respondents-assessees claimed a deduction of Rs.33,747.09 from their agricultural income under s. 5 of the Kerala Agricultural Income Tax Act 1950 towards interest on a loan of Rs.4 lakhs taken from a creditor. The deduction was allowed. However, in the next accounting period relating to the assessment year 1964-65, the said creditor waived payment of the interest of Rs.33,747,09 and accordingly the amount was credited to the revenue accounts of the respondents-assessees. The Assessing Authority brought the amount to tax. But, the Tribunal as well as the High Court took the view that the case was not one of an actual or constructive receipt or any receipt at all but only one of remission and a remission could not give rise to a credit item in the accounts of the assessees and that what had been given by the creditor in favour of the assessees or returned to them could not constitute the income of the assessees.

Dismissing the appeal of the Revenue,

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HELD: (1) The view taken by the High Court is right. The remis
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sion cannot be considered as amounting to the receipt of agricultural income. What was allowed to be deducted from the total agricultural income of the assesses was interest pursuant to s. 5 of the Act. It was a deduction made permissible by the Act. To be regarded as taxable in the hands of the assessee, the amount which was the subject of remission must be capable of being described as agricultural income. [164F-G]

In the instant case, what was returned to the assessees has nothing to do with the activities of the assessees; it does not arise from business nor does it arise from agricultural operations when the assessee is an agriculturist. [164G-H]

Commissioner of Income-tax, Mysore v. Lakshmamma,[1964] 52 ITR 789, approved.

Mohsin Rehman Penkar v. Commissioner of Income-tax, Bombay City,[1948] 16 ITR 183, referred to.

(2) In order to eliminate such a controversy in cases falling under the Indian Income-tax Act, 1922, sub-s.(2A) was added in s. 10 of that Act, whereby a receipt such as this was expressly made liable to tax by legal fiction as profits and gains of business, profession or vocation. Sub.s.(2A) of s.10 of the Indian Income Tax Act, 1922 has been replaced by an even wider provision as sub-s. (1) of s. 41 of the Income Tax Act, 1961. No provision of that nature finds place in the Kerala Agricultural Income Tax Act . [165A-B;D]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No.1396 of From the Judgment and order dated 28.2.1973 of the Kerala High Court in I.T. Reference No. 84 of 1971.

T.S. Krishnamurthy Iyer, V.J. Francis and N.M. Popli for the Appellant.

S.Balakrishnan for the Respondent.

The Judgment of the Court was delivered by PATHAK J. This appeal by special leave is directed against the judgment of the High Court of Kerala disposing of an Agricultural Income-tax Reference and answering the following question in favour of the assessee and against the Revenue:

> "Whether on the facts and circumstances of the case the Tribunal was justified in holding that the amount of Rs.33,747.09 is not agricultural income for the assessment year 1964-65."

The assessees Kerala Estate Mooriad Chalapuram, is a broad description of seven persons possessing the status of tenants-in-common under the Kerala Agricultural Income-tax Act, 1950. They owned an estate from which they derived agricultural income liable to be assessed in the year 1963-

64. The assessees followed the mercantile system of accounting. In assessment proceedings for the year 1963-64, the assessees claimed a deduction of Rs.33,747.09 from their agricultural income on the ground that it was payable towards interest on a loan of Rs.4,00,000 taken by them from M/s. Associated Planters Ltd., Calicut. The deduction was allowed. During the accounting period relating to the assessment year 1964-65 M/s. Associated Planters Ltd.waived payment of the interest of Rs.33,747.09, and accordingly the amount was credited to the revenue accounts of the assessees. The assessing authority brought the amount to tax. The case was ultimately carried in second appeal to the Tribunal on the question whether the sum of Rs.33,747.09 credited in the relevant previous year could be assessed to tax for the year 1964-65. The Tribunal, by majority, held that it was not agricultural income. As the instance of the Commissioner of Agricultural Income-tax, Kerala, a reference was made to the High Court of Kerala under sub-s. (2) of s. 60 of the Kerala Agricultural Income-tax Act on the question of law set forth earlier, and the High Court has answered the question in the affirmative. The High Court has taken the view that it was immaterial that the assessees followed the mercantile system of accounting, because the case was not one of an actual or constructive receipt or any receipt at all but only one of remission. According to the High Court a remission could not give rise to a credit item in the accounts of the assessees, and that what had been given up by the creditor in favour of the assessees or returned to them could not constitute the income of the assessees. The High Court observed that what was returned to the assessees had nothing to do with the activities of the assessees, and that it did not arise from the agricultural operations carried on by the assessees.

The Kerala Agricultural Income-tax Act, 1950 provides for the levy of tax on agricultural income in the State of Kerala. Section 3 of the Act provides that agricultural income shall be charged for each financial year on the total agricultural income of the previous year of every person at the rates specified in the Schedule. Section 4 defines what 'total agricultural income' is, and s.5 details the deductions to be made in computing the agricultural income. Clauses (e),

(g), (h), and (i) of s. 5 refer to interest paid by an assessee in different kinds of cases. The interest in all these cases has to be deducted from the agricultural income of a person before the levy is imposed. It is not disputed that the interest allowed to be deducted in the assessment of the present assessees falls under one of those clauses and was, therefore, rightly deducted in computing their agricultural income. The question is whether the interest waived by M/s. Associated Planters Ltd. and credited to the revenue accounts of the assessees can be regarded as their agricultural income.

There has been serious controversy through the years on the question whether an amount refunded or remitted constitutes the income of an assessee. In Commissioner of Income-tax, Mysore v. Lakshmama, [1964] 52 ITR 789. the Mysore High Court took the view that a refund received by the assessee in respect of excise fees payable by him amounted to a revenue receipt liable to tax. In that case, however, the High Court specifically made a distinction between cases of refund and cases of remission, and it appears to have taken the position that an amount received as remission of duty could not be treated as a revenue receipt, while an amount received by way of refund could be. In the judgment under appeal, the High Court of Kerala noticed that decision and after exhaustively surveying several decisions came to the conclusion that the remission in the present case could not amount to agricultural income. We think that the view taken by the High Court in the case before us is right. The remission cannot, in our opinion, be considered as amounting to the receipt of agricultural income. What was allowed to be deducted from the total agricultural income of the assessees was interest pursuant to s.5 of the Act. It was a deduction made permissible by the Act. To be regarded as taxable in the hands of the assessees the amount which was the subject of remission must be capable of being described as agricultural income. As the High Court has observed in the present case "what was returned to the assessee has nothing to do with the activities of the assessee, it does not arise from business nor does it arise from agricultural operations when the assessee is an agriculturist."

In order to eliminate such a controversy in cases falling under the Indian Income-tax Act, 1922 sub-s. (2A) was added in s. 10 of that Act, whereby a receipt such as this was expressly made liable to tax by legal fiction as profits and gains of business, profession or vocation. Sub- s. (2A) was inserted in s.10 in 1955. Before that Chagla, C.J., speaking for the Court in Mohsin Rehan Penkar v. Commissioner of Income-tax, Bombay City, [1948] 16 ITR 183 had observed: "It is impossible to see how a mere remission which leads to the discharge of the liability of the debtor can ever become income for the purposes of taxation". This observation was noted by the Mysore High Court in C.I.T. v. Lakshmamma (supra), and appears from what was said by them to have received that tacit approval of the learned Judges. It was made the basis of distinguishing the case before them from that decided by the Bombay High Court.

We may point out in regard to sub-s. (2A) of s. 10 of the Indian Income Tax Act, 1922 that it has been replaced by an even wider provision as sub-s. (1) of s. 41 of the Income Tax Act, 1961. No provision of that nature finds place in the Kerala Agricultural Income Tax Act.

The appeal fails and is dismissed with costs.

M.L.A. Appeal dismissed.