Supreme Court of India
M/S.Poothundu Plantations ... vs Agricultural Income Tax ... on 15 July, 1996
Equivalent citations: JT 1996 (6), 601 1996 SCALE (5)384
Author: S Sen
Bench: Sen, S.C. (J)

PETITIONER:
M/S.POOTHUNDU PLANTATIONS PRIVATE LTD.

Vs.

RESPONDENT:
AGRICULTURAL INCOME TAX OFFICER,CHITTOOR, KERALA STATE, AND

DATE OF JUDGMENT: 15/07/1996

BENCH:
SEN, S.C. (J)
BENCH:
SEN, S.C. (J)
JEEVAN REDDY, B.P. (J)

CITATION:
JT 1996 (6) 601 1996 SCALE (5)384

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T SEN,J.

Leave granted.

This case arises out of an order of rectification of mistake apparent on the face of record under Section 36 of the Kerala Agricultural Income Tax Act. The Section, as it stood at the material time, was as under:

"36. Rectification af mistake:

(1) The authority which passed an order on appeal or revision may at any time within three years from the date of such order passed by him on appeal or in revision, and the Agricultural Income Tax Officer may at any time within three years from the date of any assessment or refund order passed by him, of his own motion, rectify any

> mistake apparent from the record of the appeal, revision, assessment or refund, as the case may be, and shall within the like period rectify any. such mistake which has been brought to his notice by an assessee:

The short question in this case is whether an Agricultural Income Tax Officer can rectify the order passed by his predecessor in office, on the ground that the assessment order was passed by wrongly construing Section 12 of the Kerala Agricultural Income Tax Act. Section 12 before its amendment stood as under:

> "12. Carrying forward of loss:- Where any person sustains a loss in agricultural income in any year the loss shall be carried forward to the following year and set off against the agricultural income for that year and if it cannot be wholly so set off, the amount of loss not so set off, shall be carried forward to the following year and so on, but no loss shall be carried forward for more than six years."

There can be no doubt that only an apparent error of fact or law can be rectified by an officer. If the mistake of law has to be established by construing the words of a section to find its proper meaning, then such an error cannot normally be a rectifiable error under Section 36. If two views are possible, then obviously the error will not be an error apparent from the record.

It is, however, well-settled that if the Supreme Court has construed the meaning of a section, then any decision to the contrary given by any other authority must be held to be erroneous and such error must be treated as an error apparent on the record.

In the instant case, on the strength of decision of this Court in the case of Anglo-French Textile Company Ltd. v. Commissioner of Income Tax, Madras (1953) 23 ITR 82, the Assistant Appellate Commissioner took the view that his predecessor had committed an apparent error of law in allowing carry forward of losses in the computation of agricultural income tax under the Kerala Agricultural Income Tax Act. The question is whether Section 12 of the Kerala Agricultural Income Tax Act must be interpreted in the manner in which this Court has interpreted Section 24 of the Indian Income Tax Act. This is not an easy question to answer. In fact, the learned Single Judge before whom this question was raised in the writ petition before the Kerala High Court referred the question to a larger Bench for decision. This very fact goes to show that this was not a rectifiable error apparent on the record of the case. The learned Single Judge of the Kerala High Court felt that the question should be examined by a larger Bench.

Moreover, Section 24 of the Indian Income Tax Act and Section 12 of the Kerala Agricultural Income Tax Act are not identically worded. Even if it can be established by a long process of reasoning that the meaning of the two sections is the same, the alleged mistake committed by the Agricultural Income Tax Officer cannot be treated as a mistake apparent on the record.

Section 24 of the Indian Income Tax Act, 1922 provided for setting off of losses incurred under one head against income computed under any other head. Under Section 6 of the Indian Income Tax Act, income had to be computed under various heads. If an assessee incurred loss under one head,

he was entitled to set it off against income computed under any other head. If the entire loss could not be set off in any year, the balance, if any, had to be carried forward to the next year. It was held by this Court in the case of Anglo- French Textile Company Ltd. (supra) that before any question of set off could arise, there must be (1) a loss under one or more of the heads mentioned in Section 6, and (2) income, profit or gain under some other head.

The case of the assessee before us is that the ratio of this judgment cannot possibly apply to the Kerala Act on the ground that the Kerala Act was concerned with only one head of income (agricultural income). Here, there is no question of setting off of any loss arising out of any head against any income under another head. The scope of the two Acts and the content of the two sections are materially different. The judgment of the Supreme Court rendered under the provisions of the Indian Income Tax Act, 1922 could not straightaway be applied to an assessment made under Kerala Agricultural Income Tax Act.

We are of the view that there is considerable force in the contention of the assessee. If any error had at all been committed by the Agricultural Income Tax Officer, it was not an error apparent on the record. The judgment of the Supreme Court explaining the provision of Section 24 of the Indian Income Tax Act, 1922 cannot be applied straightaway to interpret Section 12 of the Kerala Agricultural Income Tax Act. It is not necessary for us in this case to examine Section 12 in depth to decide the question whether it will have to be given the same meaning as was given to Section 24 of the Indian Income Tax Act, 1922 in the case of Anglo French Textile Company Ltd. (supra), but suffice it to say for this case that it is not an error of law apparent on the record.

In that view of the matter, the appeal is allowed. The judgment and order passed by the High of Kerala dated 8.10.1993 is set aside. The impugned order of rectification passed by the Assistant Appellate Commissioner, pursuant to the notice dated 4th August, 1984 under Kerala Agricultural Income Tax Act, is also vet aside.

There will be no order as to costs.