Commissioner Of Income Tax, Madras vs R. Venkataswamy Naidu on 17 February, 1956

Equivalent citations: AIR1956SC522, [1956]59ITR529(SC), AIR 1956 SUPREME COURT 522

JUDGMENT

Bhagwati, J.

1. This appeal was filed by the Commissioner of Income- tax, Madras, against the judgment and order of the High Court of Judicature at Madras delivered on a reference by the Income-tax Appellate Tribunal under section 66(2) of the Indian Income-tax Act (XI of 1922) with a certificate under section 66A(2) of the Act read with articles 133 and 135 of the Constitution.

2. The assessee, a Hindu undivided family, owned about 70 acres of agricultural land at Perur near Coimbatore. It also maintained in the estate 65 cows and 10 pairs of bulls. During the accounting year 1945- 46, it received Rs. 28,000 from the Co-operative Milk Supply Union at Coimbatore to which it sold the milk of these cows. For the assessment year 1946-47 it claimed that the profits from the sale of milk constituted agricultural income and as such were exempt from payment of income-tax. As no material had been placed before the Income-tax Officer in support of this claim, it was granted an adjournment for furnishing complete materials and thereupon a letter dated February 26, 1947, signed by the auditors was filed the relevant portion whereof reads :

> "The cows are purely pasture-fed and not stall-fed. It is not being run as a commercial proposition. The cows are maintained purely for manuring and other purposes connected with agriculture and only surplus milk after satisfying assessee's needs is sold to outsiders. In this connection, we would refer to you the decided case of Commissioner of Income-tax, Burma v. Kokine Dairy."

3. The Income-tax Officer, by his order dated February 28, 1947, rejected the claim of the assessee and, in the absence of any accounts regarding the matter, estimated the profits from the sale of milk in the year of account at Rs. 4,000 and assessed it to income-tax.

4. An appeal was taken by the assessee to the Appellate Assistant Commissioner who confirmed the order of the Income-tax Officer. An appeal to the Income-tax Appellate Tribunal also met with the same fate. The assessee thereupon applied to the Tribunal for referring the question of law arising out of its order but the Tribunal refused to state the case. The assessee then applied to the High court of Madras and the High Court directed the Tribunal to refer the following question under section 66(2) of the Act for its decision :

> "Whether on the facts and circumstances of the case, the income from the sale of milk received by the assessee during the accounting year is not 'agricultural income' within the meaning of the Income-tax Act."

5. The said reference was heard by the High Court and judgment was delivered on April 15, 1953, whereby the High Court held that there was no material available to the Tribunal to hold that the income received from sale of milk by the assessee during the accounting year was not "agricultural income" within the meaning of the Act and allowed the appeal. The Commissioner of Income-tax, Madras, applied for and obtained from the High Court the requisite certificate for leave to appeal to this Court and hence this appeal.

6. The facts which were not in dispute between the parties were that the assessee owned 70 acres of land which was used for agricultural purposes. Some part of the land was used for agriculture and produce of the value of Rs. 32,220 was raised on it and some part of the land was used as pasture. 65 cows and 10 pairs bulls were maintained on the land and milk of the value of Rs. 28,000 was sold by the assessee to the Co-operative Milk Supply Union at Coimbatore during the accounting year and a sales tax of Rs. 235 was paid by the assessee for the year ended March 31, 1946. The assessee did not produce any materials before the Income-tax Officer to show that the income received by it from the sale of milk was "agricultural income". It did not produce any materials showing that was the portion of land which was used for agricultural operations and what was the portion of the land which was used as pasture, what was the food given to the 65 cows by way of chaff, grain or oil-cakes apart from their grazing on the land used as pasture, what was the expenditure incurred on the 65 cows such as the number of servants employed to look after them, etc., and what was the quantity of manure actually required for the agricultural operations for which only the 65 cows were alleged to have been maintained by it, but contended itself by alleging that the cows were purely pasture-fed and not stall-fed and that they were maintaining pu rely for BBCH manure and other purposes connected with agriculture. The sale of milk, it was further alleged, was not a commercial proposition but was only the sale of surplus milk after satisfying the assessee's needs. In regard to these allegations also no proof was furnished by the assessee to the Income-tax Officer and the matter rested with the bare allegations contained in the letter of its auditors dated February 26, 1947.

7. Reliance was particularly placed by the assessee on the position in law as enunciated in Commissioner of Income-tax, Burma v. Kokine Dairy, Rangoon, and the passage in the judgment of Robert, C.J., at page 509 therein :

> "What is exempted from tax by the Income-tax Act is agricultural income and for the purpose of considering the position of a dairy farm and the milk which is derived from it, it is necessary to enquire whether the cattle are kept in an urban area and stall-fed or whether they are pastured upon the land..... where cattle are wholly stall- fed and not pastured upon the land at all, doubtless it is trade and no agricultural operation is being carried on; where cattle are being exclusively or mainly pastured and are none the less fed with small amounts of oil-cake or the like, it may well be that the income derived from the sale of their milk is agricultural

income."

8. Reliance was also placed on the dicta of Lord Wright in Lord Glanely v. Wightman :

> "..... equally it is obvious that the rearing of animals, regarded as they must be as products of the soil - since it is from the soil that they draw their sustenance and on the soil that they live - is a source of profit from the occupation of land, whether these animals are for consumption as food (such as bullocks, pigs or chickens) or for the provision of food (such as cows, goats or fowls), or for recreation (such as hunters or racehorses), or for use (such as drought or plough horses). All these animals are appurtenant to the soil, in the relevant sense for this purposes, as much as trees, wheat crops, flowers or roots, though no doubt they differ in obvious respects" :
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> on the observations of Viswanatha Sastri, J., in Commissioner of Income-tax Act, Madras v. K. E. Sundara Mudaliar :
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> "In my opinion the word 'agriculture' is used in section 2 of the Income-tax Act in a wide sense so as to denote the raising of useful or valuable products which derive nutriment from the soil with the aid of human skill and labour. It would include horticulture, which involves intensive cultivation of land as garden in the production of fruits, flowers or vegetables. It would also includes growing of trees or plants whose growth is effected by the expenditure of human effort, skill and attention in such operations, as those of ploughing, sowing, planting, pruning, manuring, watering, protecting, etc., as held by Spencer, J., in Panadai Pathan v. Ramaswami Chetty. The word 'agriculture' applies to the cultivation of the soil for food products or any other useful or valuable growth of the field or garden and is wide enough to cover the rearing, feeding and management of livestock, which live on the land and draw their sustenance from the soil";

9. and also on the following passage from the referring judgment of Bose, Acting C.J., in Mahendralal Choudhary v. Commissioner of Income-tax C.P. and Berar :

> "I do not conceive that the term "agriculture" has been used as a term of art in the Act. It must therefore bear its ordinary meaning. I find it defined in Webster' Dictionary as 'the art or science of cultivating the harvesting of crops, I and the rearing and management of livestock; tillage, husbandry, farming'" :
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> and it was urged that the 56 cows in this case were appurtenant to the soil and drew their sustenance from the soil and the milk which was given by these 65 cows stood on the same footing as the fruit of trees, the milk of goats or eggs laid by fowls and was income "derived from land by agriculture" within the meaning of section 2(1)(b)(i) or was income derived from such land "by the sale by a cultivator..... of the produce raised..... by him in respect of which no process has been performed other than a process of the nature described in sub-clause (ii)" within the meaning of

section 2(1)(b)(iii) of the Act.

10. This contention was rejected by the Income-tax Officer, the Appellate Assistant Commissioner as well as the Income-tax Appellate Tribunal. They were of the opinion that the assessee had failed to furnish proper materials and had failed to discharge the burden which lay on it to prove that the income derived by it from the sale of milk during the accounting year was agricultural income. They rightly place the burden of proof on the assessee but 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 income-tax 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.

11. We are not called upon in the facts and circumstances of the case before us to express any opinion as to whether the word "agriculture" is synonymous with "husbandry" or whether the opinions expressed in the several passages cited above are correct because we are of the opinion that the assessee failed to put before the Income-tax authorities the proper materials which it was incumbent upon it to do to enable them to decide whether the income from the sale of milk during the accounting year was agricultural income as claimed by the assessed. The bare allegations unsupported as they were by any evidence of the nature specified above or by any books of account in connection with the maintenance of the 65 cows and marketing of what according to the assessee was the surplus milk after satisfying its needs were not sufficient to discharge the burden which lay upon the assessee of proving that the income derived by it from these sales was agricultural income. On the contrary, the regularity with which the sales of milk were effected by it to the Co-operative Milk Supply Union at Coimbatore, the quantity of milk sold by it which was of the average value of Rs. 2,500 per month and the payment of the sales tax of Rs. 235 for the year ended March 31, 1946, showed that what the assessee carried on was a regular business of producing milk and selling it as a commercial proposition and was, therefore, a business and not agricultural operations.

12. The assessee was solely responsible for the paucity of these materials inasmuch as it did not furnish any materials to the Income-tax Officer in spite of the latter having given it an adjournment for the purpose. Counsel for the assessee, as an ultimate resort, appealed to us that we should send back the case to the High Court for calling a further statement of case from the Income-tax Appellate Tribunal but we declined to entertain the application at that late stage, the assessee having not availed itself of the opportunity given by the Income-tax Officer to it in the earlier stages of the enquiry and having rested merely on position in law as emerging from the judgment of Robert, C.J., in Commissioner of Income-tax, Burma v. Kokine Dairy, Rangoon.

13. The result, therefore, is that the appeal will be allowed and the answer given by the High Court will be set aside. The correct answer to the question referred will be that the income mentioned therein is not agricultural income within the meaning of the Income-tax Act. The order for costs,

however, as agreed by the Commissioner of Income-tax as a condition the requisite certificate from the High Court will be that the appellant will pay the respondent its costs of this appeal.

14. Appeal allowed.