

Pradeep Batra Vs. Inspecting Assistant

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Court : Income Tax Appellate Tribunal ITAT Delhi

Decided On : Sep-05-1991

Reported in : (1991)39ITD406(Delhi)

Judge : R Rattan, M Bakhshi

Appellant : Pradeep Batra

Respondent : inspecting Assistant

Judgement :

1. We are disposing of these three appeals involving identical issues by this consolidated order for the sake of convenience. The facts, being para materia the same, in the case of Shri Sudhir Batra are stated and the decision arrived at would apply to other two cases.

2. In the case of Sudhir Batra, notice under Section 139(2) was issued on 20th August, 1981. The return of income was, however, filed on 20th March, 1984 declaring agricultural income at Rs. 1,33,861. The agricultural income was claimed to be 1/5th share in M/s K.L.

Agricultural Farm. Income and expenditure account along with balance sheet had been filed. Cash book, ledger register, salary register and vouchers had also been filed. On scrutiny of accounts the ITO came to the conclusion that the books of account in the case of K.L.

Agricultural Farm were not correct and complete and as such he resorted to an estimate. He referred to the decision of the ITAT in the case of ITO v. Satya Pal Rawat [IT Appeal Nos. 2360 and 3145 (Delhi) of 1982 and 144 (Delhi) of 1983] wherein the expenses in respect of agricultural receipts had been estimated at 36% of the gross receipts and the agricultural income estimated at 64%. Relying upon that decision he estimated the agricultural income of K.L. Agricultural Farm at 64% of gross receipt of Rs. 8,19,870, i.e., Rs. 5,24,716. The difference between the net agricultural income of Rs. 6,69,303 and Rs. 5,24,716 i.e., Rs. 1,44,585 was treated as income from undisclosed sources. (The figure of Rs. 1,26,585 as against Rs. 1,44,585 is wrongly mentioned in the assessment order). Since the assessee was having 20% share in the case of K.L. Agricultural Farm the income from other sources was assessed at Rs. 28, 197 (1/5th of Rs. 1,44,585) whereas the income from agriculture was assessed at Rs. 1,04,943. Assessee appealed to the CIT(A)-VII, New Delhi claiming that the books of account having been accepted in the case of K.L. Batra, one of the shareholders, the Assessing Officer was wrong in rejecting the books in this case and estimating the income. With regard to the decision of the Tribunal it was pleaded that the same was inapplicable as the facts of each case differ and that the Tribunal has not laid down a universal formula applicable to all. It was further pleaded that the decision of the Tribunal was not made available to the assessee.

3. Dealing with the contention of the assessee that results in the case of K.L. Batra have been accepted the CIT(A) has held that IAC(A) in that case does not appear to have had the benefit of the decision of the ITAT in the case of Satya Pal Singh Rawat (supra) and that the estimation of expenses at 36% was justified.

4. Being aggrieved by the order of the CIT(A) assessee is in appeal before us. The learned counsel Shri O.P. Sapra contended that the only known source of the assessee being income from agriculture, the Assessing Officer was not justified to make an assessment in this case under the provisions of the Income-tax Act, 1961. It was contended that in the case of a person not having taxable income, Assessing Officer has no jurisdiction to make an assessment unless a return of income was filed voluntarily by the assessee. It was pleaded by the learned counsel for the assessee, that the Assessing Officer has the power to determine

the agricultural income for the limited purpose of determining the rate of tax applicable to the income from sources other than agriculture. Since in this case assessee was not having income from any other source than the share income from agricultural operations in M/s K.L. Agricultural Farm, the Assessing Officer had acted without jurisdiction. Learned counsel further contended that there was no justification for treating part of the expenses as income from other sources. According to the learned counsel, assessee had not claimed any investment during the year out of agricultural income: As such Assessing Officer was not justified in assessing the income from other sources without there being anything on record to support that assessee had earned income from any source other than agriculture.

5. The learned D. R., on the other hand, supported the orders of revenue authorities. According to Shri Tandon, assessee has claimed nominal expenses in respect of agricultural operations. The Tribunal in the case of Satya Pal Singh Rawat (supra) have estimated the expenditure in respect of agricultural operations at 36%. Since in this case, according to the learned D. R., the expenditure was far less than 36% the Assessing Officer was justified in estimating the expenditure at 36% and there being no explanation for the source of that expenditure, the Assessing Officer was justified in treating such an expenditure as income from other sources. It was pleaded by the learned D. R., that the Assessing Officer has jurisdiction to determine the income of the assessee and if the source of expenditure is not explained the only course open to him is to treat the same as having been spent out of undisclosed sources.

6. In counter reply, the learned counsel for the assessee contended that the basis for the addition is misconceived. Assessee has incurred the expenditure at 16.8% of the total produce which cannot be considered to be low. The copy of the decision in the case of Satya Pal Singh Rawat (supra) not having been made available, it is not permissible to the revenue to rely upon that decision, it was pleaded.

In any case, Shri Sapra contended, there could be no universal formula for estimating the expenditure for carrying agricultural operations.

According to Shri Sapra the percentage of expenditure vis-a-vis the income would depend on various factors. As such addition is claimed to be unwarranted. It was further contended by Shri Sapra that income from agriculture having been determined in the case of another shareholder it would not be permissible to the Assessing Officer to take a different view in the case of another shareholder. Shri Sapra relied upon the decision of the Punjab and Haryana High Court in the case of *Jaswant Rai v. CWT* [1977] 107 ITR 477 in support of the contention that in the case of Shri K.L. Batra, the books of account have been examined and accepted, it is not open for the revenue to take a different view in the case of other shareholders without there being any material on record for any deviation. It was accordingly pleaded that the appeal of the assessee may be accepted.

7. We have given our careful consideration to the rival contentions. In this case assessee was not having any apparent source of income other than agricultural income. In such a case whether the Assessing Officer has the power to determine the agricultural income is a question writ large before us. If the Assessing Officer has the power to determine the agricultural income then two more issues shall have to be determined. First is as to whether the Assessing Officer has rightly determined the income of the assessee from M/s K.L. Agricultural Farm by estimating the expenditure and if so whether the estimate of expenditure made is reasonable. Secondly, it has to be determined as to whether the Assessing Officer was justified, after having determined the agricultural income, to treat the rest of income as 'income from other sources'.

8. We shall first address ourselves the first question, namely, as to whether the ITO has the power to determine the agricultural income in a case where the assessee does not have any other apparent source of income. The Income-tax Act, 1961 provides for taxation of income.

Income is defined under Section 2(24) of the Income-tax Act, 1961.

Under Section 10 certain incomes are excluded from forming part of total income and agricultural income is specifically excluded from the total income. There is thus no doubt that agricultural income as such is not liable to tax. From assessment year 1973-74 the Finance Act, 1973 provided for inclusion of

agricultural income in total income of those assesseees who were having income from sources other than agricultural as well as income from agriculture. This was, however, for a limited purpose of determining the rate of tax in respect of income other than agricultural income. In other words, agricultural income in such cases was included for rate purposes only. The constitutional validity of inclusion of agricultural income for rate purposes was challenged before the Kerala High Court in the case of K. J. Joseph v. ITO [1980] 121 ITR 178, inter alia, on the ground that the provision for aggregation was violative of scheme of taxation and that it was beyond the legislative competence of Parliament, the domain of legislation in respect of agricultural income being within the purview of the State Legislature. The constitutional validity was upheld by the Kerala High Court by holding that in aggregation of agricultural income and the income from sources other than agriculture for rate purposes the charging of tax is still on non-agricultural income and no part of it is subject to tax. The Hon'ble Judges held that for the purposes of determining the rate at which non-agricultural income is to be taxed, the agricultural income is taken into account. Such taking into account and the differential rates are based on the different sources of income available to the persons concerned. It was further held that it was only in respect of persons who have agricultural income in addition to non-agricultural income that the mode of computation of rate of tax as provided by the Finance Act is adopted. The Karnataka High Court also upheld the constitutional validity of aggregating agricultural income for rate purposes by holding that the agricultural income was not subject to tax by the process of aggregation for rate purposes in respect of non-agricultural income.

9. It is clear from what is stated above that agricultural income as such is not liable to tax. Section 4 of the Income-tax Act which is the charging section provides for charging of income-tax in respect of total income of every person of the previous year. Assessee is defined under Section 2(7) of the Act as under: 'Assessee' means a person by whom any tax or any other sum of money is payable under this Act, and includes - (a) every person in respect of whom any proceeding under this Act has been taken for the assessment of his income or of the income of any other person in respect of which he is assessable, or of the loss sustained by him or any such other person, or of the amount of refund due to him or to such other person;

(b) every person who is deemed to be an assessee under any provision of this Act; and (c) every person who is deemed to be an assessee in default under any provision of this Act.

Under Section 139 every person if his total income or the total income of any other person in respect of which he is assessable under the Act during the previous year exceeds the maximum amount which is not chargeable to income-tax is required to file the return of income.

Under Sub-section (2) of Section 139 as it was before its omission w.e.f. 1-4-1989 the Assessing Officer was empowered to issue a notice calling upon any person to file his return of income if the Assessing Officer was of the opinion that such person was assessable under the Act in respect of his total income or the total income of any other person. Under Section 143/144 the Assessing Officer is empowered to make an assessment of total income or loss of the assessee and determine the sum payable by him on the basis of such assessment.

10. As is evident from the provisions of the Act quoted above and the decision of the Kerala High Court referred to above the assessment of agricultural income is outside the purview of Income-tax Act, 1961. The determination of agricultural income is limited to determination of rate of tax in respect of non-agricultural income. In the case of K.J. Joseph (supra) the Hon'ble Kerala High Court has held as under: Held, that Section 4 of the IT Act read with Section 10(1) shows that agricultural income is excluded from charge of income-tax.

Wherever any income is excluded from chargeability to tax, the exclusion operates in the computation of the total income for the purpose of liability to tax and also for the purpose of determination of the rate of tax. However, this rule would apply only if there is no provision to the contrary. The provisions of the Finance Acts of 1973 and 1974 make such specific provisions and this rule would not render the provisions invalid. Income-tax is a tax on income of the previous year and this rule would not cover something which is not the income of the previous year or made fictionally so.

However, there is nothing to prevent the Legislature from fixing the rate and from permitting the rate to fluctuate in relation to some outside factor but the rate must be applied to the total income under the I.T. Act and the tax that an assessee had to pay must be at a rate in respect of the total income. The Finance Acts of 1973 and 1974 by legislative fiction deem agricultural income to be part of total income for the limited purpose of working out the rate of tax. The impugned provisions do not outrun the embankments provided by Sections 4,66 and 110 of the I.T. Act and the scheme of the provisions for the computation of tax.

It is well established that in considering the true nature and character of a legislation the pith and substance of the legislation must be taken into account. If on the view of the statute as a whole the substance of the legislation the express powers of the Legislature then it is not invalidated if incidentally it affects matters which are outside the authorised field. The legislation must not under the guise of dealing with one matter in fact encroach upon the forbidden field. However, the impugned provisions in pith and substance are within the legislative competence of Parliament under entry 82 of List I of Seventh Schedule to the Constitution and, therefore, valid.

The charge of tax is still on non-agricultural income. No part of the agricultural income is subjected to tax. For the purpose of determining the rate at which non-agricultural income is to be taxed, the agricultural income is taken into account. Such taking into account and the differential rates are based on the different sources of income available to the persons concerned. It is only in respect of persons who have agricultural income in addition to non-agricultural income that the mode of computation of the rate of tax as provided by the impugned provision is adopted. This classification is reasonable and based on intelligible differentia.

It is not unconnected with the objects of the taxing statute.

It is clear from the above decision of the Kerala High Court that by providing for inclusion of agricultural income for rate purposes the Assessing Officers have not been given the powers to assess and determine the agricultural income. Levy of tax and determination of agricultural income for the purposes of taxation is within the competence of the State Legislature and, therefore, it is unimaginable that the

Assessing Officers would get the power of determination of agricultural income under the provisions of the Act for the purposes of taxation. In a case where the only source of income is agricultural income, the Assessing Officer, in our view, is not competent to determine the income from agriculture. However, we may hasten to add that where the ITO has reason to believe that assessee has made investment it would be open to him to put to test the claim of the assessee that the investment made is out of income from agricultural operations. At that time Assessing Officer would be at liberty to determine the income for the limited purpose of considering the claim of the assessee explaining the source of investment. In such eventuality the Assessing Officer would not be acting without jurisdiction as determination of income from agriculture would be for determining the income assessable under the provisions of I.T. Act for the purposes of which it would be necessary to compute the agricultural income. In this case, Assessing Officer has determined the agricultural income of the assessee at less than what has been disclosed by the assessee. As it is, assessee has not been found to have made any investment nor has the assessee claimed to have made any from the agricultural income. Considering the facts and circumstances of this case, we are of the view that the Assessing Officer had no power to determine the income from agriculture. The addition made by the Assessing Officer in the process of determining the agricultural income is uncalled for and is liable to be deleted.

11. We may also consider as to whether the Assessing Officer's determination of agricultural income is reasonable or arbitrary assuming that he had the power to determine the same.

12. We may point out that the basis for determination of expenses at 36% of the gross yield is not supported by any evidence. The revenue has referred to the order of the Tribunal in the case of Satya Pal Singh Rawat (supra), the copy of which has not been made available either to assessee or to us. In any case, the determination of income in each case depends on the facts and circumstances of such case. No uniform formula can be adopted for determining the expenditure in respect of agricultural operations from time to time. The expenditure may vary from case to case, from place to place and from year to year.

We accordingly do not approve of estimation of expenditure without there being any sound foundation for such determination. Even on this ground the addition made by the Assessing Officer is unsustainable in law.

13. We may also deal with the contention raised on behalf of the revenue that the estimated expenditure incurred could justifiably be treated as having been incurred out of undisclosed sources. The Assessing Officer has determined the agricultural income of M/s K.L.

Agricultural Farm at less than what was disclosed. Assuming this action of the Assessing Officer was warranted, there is no basis for treating the difference between the income disclosed by the assessee and the income determined by the Assessing Officer as income from other sources of the assessee. As we have already stated that the assessee has not claimed to have invested agricultural income in any property or tangible asset. At best it could be said that assessee has earned the income determined by the Assessing Officer from agricultural operations and that he would not be entitled to explain the investment in future out of the agricultural income in excess of what has been determined in any case. We do not find any justification for treating the difference between the income determined by the Assessing Officer and the income disclosed by the assessee as income from undisclosed sources. Firstly, no such case has been made out by the revenue authorities. Secondly, there is no justification for such inference. The estimation of expenditure even if it were to be held as reasonable would be a mere estimate in the absence of any positive evidence that expenditure has been incurred. The deemed provisions of treating the investment expenditure as out of undisclosed sources would not operate. Under the Income-tax Act if assessee is found to have invested money for the source of which no satisfactory explanation is furnished, the Assessing Officer is empowered to treat the investment as income from undisclosed sources. However, in order to invoke such provisions of law there must be evidence to show that investment/expenditure has been incurred.

Assessee's obligation to satisfactorily explain the source of investment/expenditure arises only when the revenue has discharged the onus of establishing that such

investment/expenditure has been made. In this case, Assessing Officer has estimated the expenditure and on the basis of an estimate the deeming provisions could not be pressed into service.

14. Considering the facts and circumstances of the case, we are of the view that the Assessing Officer was justified in assessing the income of Rs. 28, 197 in the case of each of the assessee as income from undisclosed sources.

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