

Joseph Vs. Tahsildar, Meenachil

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Court : Kerala

Decided On : Oct-22-1976

Reported in : AIR1977Ker40; [1978]112ITR410(Ker)

Judge : K.K. Narendran, J.

Acts : Kerala Plantations (Additional Tax) Act, 1960 - Sections 3(3), 5(4), 6 and 9(1); Kerala Plantations (Additional Tax) Revision of Assessment Rules, 1965 - Rule 10

Appeal No. : O.P. No. 3969 of 1974

Appellant : Joseph

Respondent : Tahsildar, Meenachil

Advocate for Def. : Government Pleader

Advocate for Pet/Ap. : Jimmy John, Adv.

Disposition : Petition partly allowed

Judgement :

ORDER

K.K. Narendran, J.

1. The vires of Rule 10 (a) of the Kerala Plantations (Additional Tax) Revision of Assessment Rules, 1965 is questioned in this Original Petition. The petitioner's father who was an assessee to plantation tax under the Kerala Plantations Tax Act, 1960, for short the Act, was issued Ext. P-1 notice under Section 3 (3) for the revision of his assessment for the period 1965-66 to 1969-70. The petitioner's father did not file any objections to Ext. P-1 notice and hence he was assessed to plantation tax on the basis of Ext. P-1 notice and Ext. P-2 notice of demand was issued to him on 29-12-1969. As a matter of fact the petitioner's father was having only an extent of 6-01 acres of plantations when he received Ext. P-1 notice even though the extent he was originally having was 42-21 acres. Against the assessment the petitioner's father filed an appeal before the Revenue Divisional Officer, Kottayam. But the same was dismissed by the Revenue Divisional Officer on the ground that the petitioner's father did not file any objections to Ext. P-1 notice issued under Section 3 (3) of the Act. Against the appellate order of the Revenue Divisional Officer, the petitioner filed Ext. P-3 revision before the 3rd respondent, the Board of Revenue, Trivandrum, as the petitioner's father left this world by that time. But the 3rd respondent, the Board of Revenue toy Ext. P-4 proceedings dismissed Ext. P-3 revision on the ground that no appeal will lie against the assessment in question and hence the order of the appellate authority does not call for any interference. The petitioner questions Ext P-2 and Ext. P-4 in this Original Petition over and above the challenge against Rule 10 (a) of the Kerala Plantations (Additional Tax) Revision of Assessment Rules, 1965, for short, the rules.

2. Shri Jimmy John, learned counsel for the petitioner contends that the 3rd respondent, the Board of Revenue has gone wrong in holding that no appeal will lie against the assessment in question which was one under Section 3 (3) of the Act. Learned counsel refers to Section 9 of the Act which deals with appeal against assessment etc. Section 9 (1) reads:

'9, Appeal against assessment etc.--(1) Any assessee objecting to the extent of plantation or the amount of plantation tax assessed under Section 5 or Section 6-A or denying his liability to be assessed under this Act or objecting to any order of the assessing authority under this Act may appeal to the appellate authority

against the assessment or against such order:

Provided that no appeal shall lie in respect of an assessment made under subsection (4) of Section 5 or under Section 6.' According to the learned counsel an appeal shall lie against assessment except assessments made under Section 5 (4) and Section 6 of the Act. Learned counsel points out that this is a case where the petitioner denies the liability to be assessed under the Act and hence irrespective of the fact whether the petitioner's father filed any objections to Ext. P-1 notice under Section 3 (3) of the Act, an appeal will lie against the order of assessment. Learned counsel then refers to Rules 5 (a) and 10 (a) of the Rules, which read:

'5. (a) If the assessee files no objections or produces no evidence in response to the notice under Rule 4, within the time specified in the notice the assessing authority shall straightway assess the party to Plantation Tax on the basis of the revised extent.' '10. (a) An appeal against the decision or orders of an assessing authority shall lie to the appellate authority appointed by the Government by notification issued under Sub-section (2) of Section 2 of the Act: Provided however that no appeal shall lie against an assessment order passed under Sub-rule 5 (a).'

According to the learned counsel, the proviso to Rule 10 (a) which bars an appeal against the assessment order passed under Rule 5 (a) irrespective of the fact whether the assessment order is under Section 5 (4), Section 6 or under any other provision of the Act, is ultra vires of Section 9 (1) of the Act. Learned Govt. Pleader contends that in a case where the assessee does not file objections to the notice Under Section 3 (3), there will be no appeal as the assessee has no objection to the data given in the notice. According to the learned Government Pleader the proviso to Rule 10 (a) is perfectly legal and valid and hence the appellate authority and the third respondent, the Board of Revenue who disposed of Ext. P-3., revision are perfectly right in holding that no appeal would lie in this case.

3. Shri Jimmy John is well founded in his contention. Under Section 9 (1) of the Act an appeal is barred only in respect of assessments under Sections 5 (4) and 6 of the Act. But as per the proviso to Rule 10 (a) of the Rules an appeal against an assessment under Rule 5 (a) also is barred. So against an assessment other than

those mentioned in the proviso to Section 9 (1) also an appeal is barred by the proviso to Rule 10 (a) of the Rules. In this case admittedly the assessment was under Section 3 (3) of the Act and was not under Section 5 (4) of the Act. As per Rule 5 (a) if an assessee does not file his objections to the notice issued under Rule 4 for revising the extent of his plantations under Section 3(3) of the Act, as assessment can be made. As the proviso to Rule 10 (a) of the Rules bars an appeal against an assessment under Section 3 (3) of the Act also, to that extent the proviso is ultra vires of Section 9 (1) of the Act. So it goes without saying that against an assessment under Section 3 (3) of the Act an appeal will lie under Section 9 of the Act. Proviso to Rule 10 (a) of the Rules to the extent that it bars appeals against assessments other than those under Sections 5(4) and 6 of the Act is declared as ultra vires of Section 9 (1) of the Act. Ext. P-4 is set aside. The third respondent, the Board of Revenue is directed to pass fresh orders on Ext. P-3 revision.

The Original Petition is allowed to the extent indicated above. There will be no order as to costs.