

V.V. George Vs. Commissioner of Agricultural Income-tax

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Court : Kerala

Decided On : Jun-27-1984

Reported in : [1987]163ITR356(Ker)

Judge : K.S. Paripoornan, J.

Acts : Kerala Agricultural Income Tax Act, 1950 - Sections 18(4), 25, 26 and 34

Appeal No. : O.P. No. 414 of 1983

Appellant : V.V. George

Respondent : Commissioner of Agricultural Income-tax

Advocate for Def. : Government Pleader

Advocate for Pet/Ap. : T.L. Viswanatha Iyer, Adv.

Judgement :

Paripoornan, J.

1. The petitioner is an ex-partner of a firm. The firm was constituted by a deed of partnership dated July 25, 1968. It was an assessee to agricultural income-tax on the files of the 2nd respondent--Agricultural Income-tax Officer, Vythiri. It is alleged that the firm was dissolved by a deed of dissolution dated June 2, 1980, exhibit P-II. After such dissolution, assessments were made on the income derived by the

firm for the assessment years 1974-75, 1975-76, 1976-77 and 1977-78. For the first two years, it was so made on January 2, 1981, and for the later-two years on December 18, 1981. According to the petitioner, the assessments were made without evidence or material or even without affording proper opportunity to the petitioner. The petitioner filed revision petitions before the 1st respondent, Commissioner of Agricultural Income-tax, Trivandrum. By a consolidated order passed, the 1st respondent by exhibit P-3, dated December 16, 1982, set aside all the four assessments with certain observations and ordered a remit for de novo disposal according to law for all the four years. The petitioner assails exhibit P-3 order.

2. Petitioner's counsel, T.L. Viswanatha Iyer, assails exhibit P-3 order on the ground that the firm stood dissolved on June 2, 1980, and the assessments were completed for all the four years in the status of an unregistered firm. This, according to counsel, is unauthorised. Counsel for the Revenue, Divakaran Pillai, sought to sustain the four assessments made assigning the status of an unregistered firm by placing reliance on sections 25 and 26 of the Agricultural Income-tax Act Exhibit P-3 was also sought to be justified. A detailed counter-affidavit dated June 16, 1983, has also been filed.

3. The only question is whether there was a proper disposal by exhibit P-3 order passed in revision by the Commissioner of Agricultural Income-tax. The Commissioner referred to sections 25 and 26 of the Act. He was exercising the powers of revision under Section 34 of the Act. Sections 25(1), 26 and 34 of the Agricultural Income-tax Act may be usefully quoted :

'25. Assessment in case of discontinued business of company, firm or association.
-- (1) Where agricultural income is received by a company, firm or association of persons and the business through which such income is received is discontinued in any year, an assessment may be made in that year on the basis of the agricultural income received during the period between the end of the previous year and the date of such discontinuance, in addition to the assessment, if any, made on the basis of the agricultural income received in the previous year.

26. Liability in case of discontinued business of firm, or association. --Where agricultural income is received by a firm or association of persons and the business of such firm or association is discontinued or such firm or association is dissolved, every person who was at the time of such discontinuance or dissolution a partner of such firm or member of such association shall be jointly and severally liable to assessment on such agricultural income and for the amount of agricultural income-tax payable under this Act by such firm or association and all the provisions of this Act shall, so far as may be, apply to such assessment.

34. Revision.-- The Commissioner may of his own motion or on application by an assessee, call for the record of any proceeding under this Act which has been taken by any authority subordinate to him and may make such enquiry or cause such enquiry to be made and, subject to the provisions of this Act, may pass such orders thereon as he thinks fit:

Provided that he shall not pass any order prejudicial to an assessee without hearing him or giving him a reasonable opportunity of being heard : Provided further that an order passed declining to interfere shall not be deemed to be an order prejudicial to the assessee.'

4. Section 25 does not directly deal with a case of a firm which is dissolved. It only deals with the discontinuance of a business. Section 26 of the Act is more relevant. Where the agricultural income is received by a firm and such firm is dissolved, every person who was at the time of such dissolution a partner of such firm shall be jointly and severally liable to assessment on such agricultural income and also for the amount of agricultural income-tax payable by such firm. The statutory provision is clear in the case of a firm, which is dissolved, that every person who was a partner of the firm at the time of such dissolution is jointly and severally liable to assessment. It appears that the assessment itself should be on all the partners jointly and severally. It is seen from the files that the assessment notice has been sent to all the partners for all the four years. In the assessment orders, the name of the assessee is given as that of the firm 'M/s. Jai Hind Agencies'. The assessment orders are seen sent to all the partners--To the assessee and then the names of all the four partners appear. The notice of

demand is addressed in the name of the firm. The assessments were made under Section 18(4) of the Act since the partners did not file the returns. Nor did they comply with any of the notices. All the assessments were default assessments. The partners who are jointly and severally liable to assessments as provided under Section 26 of the Act and who had notice all through did not raise any objection at the time when the assessments were made by the assessing authority. They did not avail themselves of the opportunity afforded to them. The objection regarding the completion of the assessments in the status of 'unregistered firm' seems to have been urged for the first time only in the revisions filed before the 1st respondent. The 1st respondent has disposed of the matter rather summarily in exhibit P-3 order. It is stated in exhibit P-3 that the contention urged that the status as an 'unregistered firm' is not correct has no legality since sections 25 and 26 enable the assessing authority to make the assessments on discontinued and dissolved firms. N.N. Divakaran Pillai, Senior Government Pleader, submitted that the Commissioner of Agricultural Income-tax should be deemed to have borne in mind various material and relevant factors stated above in exercising the revisional jurisdiction and simply because all or some of them have not been stated in the order, exhibit P-3, this court should not review the said order as if it were sitting in appeal. It is so. But, it should be stressed that none of the factors which are relevant and germane to the question at issue and in particular in the exercise of revisional power now urged seem to have been adverted to. There is no proper application of the mind by the Commissioner in passing exhibit P-3 order. The import of sections 25 and 26 that Section 26 postulates that all the partners are jointly and severally liable to assessment, the effect of the pre-assessment notices to all the partners, the non-participation and failure to raise the objections now raised before the assessing authority by the parties concerned, though they had a chance to demur the sending or serving of all the assessment orders on all the partners individually, the nature of the description of the assessee as the firm which stood dissolved and the status as an unregistered firm whether there was any prejudice to the partners in the description of the name of the assessee and the status in the assessment orders, were never adverted to. These factors are of vital importance. It is true, as contended by the Revenue, that the exercise of power by the Commissioner is

revisional and that it is a discretionary jurisdiction. It is further true, as contended by the Revenue, that the Commissioner can look into the conduct of the persons who filed the revisions and consider whether the conduct is such entitling them to any relief. But the Commissioner of Agricultural Income-tax is exercising a quasi-judicial function. Recently, I had occasion to consider the duty of the assessing authority who is discharging a quasi-judicial function to pass 'speaking orders'. I do not propose to restate the law. It will be sufficient to refer to the decision in O. P. No. 3006 of 1983 dated June 25, 1984. There should be a proper consideration of all matters. The Commissioner should act in accordance with law. The order passed should be a speaking order. I am constrained to state that exhibit P-3 has been passed rather summarily and without advertence to all the facts and circumstances, which were very forcefully urged by the Government Pleader, the scope and content of sections 25 and 26 of the Act, the events and proceedings at the assessment stage and thereafter, and the scope of the revisional powers exercised by the Commissioner under Section 34 of the Agricultural Income-tax Act and other matters referred to hereinabove.

5. In the result, I hold that exhibit P-3 is not in accordance with law. I quash exhibit P-3. I direct the 1st respondent to consider the revisions in accordance with law and in the light of the observations contained herein.

6. The original petition is disposed of as above. No costs.