

Pant Enterprises Vs. Additional Agricultural Income Tax and Sales Tax Officer and ors.

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Court : Kerala

Decided On : Feb-28-2005

Reported in : (2005)195CTR(Ker)409; [2007]291ITR363(Ker)

Judge : K.S. Radhakrishnan and; C.N. Ramachandran Nair, JJ.

Acts : Kerala Agriculture Income Tax Act, 1991 - Sections 3, 4(2), 13, 13(1), 13(2), 13(6), 33, 39, 39(3), 40(1), 41, 42 and 78

Appeal No. : OTC No. 37 of 2004

Appellant : Pant Enterprises

Respondent : Additional Agricultural Income Tax and Sales Tax Officer and ors.

Advocate for Def. : George Kutty Mathew, Adv.

Advocate for Pet/Ap. : Premjit Nagendran and; P. Raghunath, Adv.

Disposition : Revision dismissed

Judgement :

C.N. Ramachandran Nair, J.

1. This is a revision filed by the assessee under Section 78 of the . IT Act, 1991 (hereinafter called 'the Act'), against the order in second appeal issued by the Agrl. IT Appellate Tribunal confirming petitioner's assessment for the year 2001-02. The petitioner is a partnership firm engaged in agricultural operations. The crops cultivated are essentially coffee and pepper. The petitioner which was being assessed to tax on coffee income on receipt basis until the asst. yr. 1995-96, opted for payment of tax at compounded rate based on extent of yielding area of plantation in terms of Section 13 of the Act. After availing composition of tax under Section 13 for the asst. yrs. 1995-96 to 2000-01, the petitioner re-opted for payment of tax based on income from the asst. yr. 2001-02 onwards, in terms of Section 39(3) of the Act. Even though the AO originally completed assessment for year 2001-02 by determining net loss at Rs. 5,98,150, the said assessment was reopened and revised assessment was issued vide Annex. VI on the ground that the assessment originally completed by allowing deduction of opening stock of Rs. 20,28,200 and depreciation of Rs. 48,770 was under a mistake and against the provisions of Section 13(6) of the Act. The objection raised by the assessee against reopening of assessment was only against disallowance of opening stock and not against disallowance of depreciation in accordance with Section 13(6) of the Act. Even though the assessee contended that the assessee is following the mercantile system of accounting and there is no scope for assessing value of opening stock in the year in which the assessee re-opted from system of compounding under Section 13(2) to regular assessment, the AO held that until the asst. yr. 1995-96, when the assessee opted for payment of tax at compounded rate under Section 13(1) of the Act, the assessee was following the cash system of accounting and following the same system of accounting the AO disallowed the claim of exemption made by the petitioner on value of opening stock of crops sold by the assessee during the accounting year relevant for the asst. yr. 2001-02 and made revised assessment. The assessee's successive appeals before the first appellate authority and the Tribunal were rejected and, therefore, the assessee has approached this Court with this revision against the order of the Tribunal.

2. Even though several questions are raised for our decision, we feel in substance there are only two issues that arise from the order of the Tribunal calling for decision by us under Section 78 of the Act. We, therefore, redraft the two

questions as follows :

'(i) Whether, on the facts and in the circumstances of the case, the AO has jurisdiction and authority under Section 42 of the Act to rectify and revise original assessment to assess income received on the sale of opening stock of the agricultural crop in the previous year, which was omitted to be assessed in the original assessment, and even if the revised assessment is not authorised under Section 42, whether such assessment can be sustained by virtue of Section 41 of the Act, which provides for income escaping assessment ?

(ii) If the answer to the above question is in the affirmative, was the Tribunal justified in rejecting the assessee's claim of exemption and sustaining the assessment of agricultural income received during the previous year on the sale of opening stock of crop ?'

3. We have heard counsel appearing for the assessee and the Government pleader appearing for the respondents and have also gone through the argument note filed by assessee's counsel. Counsel for the assessee contended that there was no justification for reopening the original assessment completed under Section 42 of the Act, as there was no apparent mistake in the original assessment. We find that reopening is done for correcting the original assessment wherein opening stock of coffee sold in the previous year was not assessed and depreciation was granted in terms of the claim of the assessee. It is seen that on re-opting from composition under Section 13(1) to regular assessment under Section 39, the assessment has to be completed as a new assessment as provided under Section 13(6) of the Act and the assessee shall not be entitled to carry forward of any loss from the preceding year or depreciation. Obviously, the claim of depreciation by the assessee and the deduction allowed in original assessment by the officer was against Section 13(6) of the Act and the assessee has conceded that there is a mistake in the assessment to that extent by not pursuing the claim in appeals or before us in this revision. Therefore, at least for disallowance of depreciation even according to the assessee, the assessment was rightly revised under Section 42 of the Act. So far as the other disallowance is concerned, i.e., claim of exemption of opening stock which was sold in the

previous year relevant for the assessment year concerned, the assessee's contention is that it is a debatable issue which is not a matter for rectification under Section 42 of the Act. On going through the original assessment, we find that the officer has not considered the question as to whether opening stock of crop sold during the previous year has to be assessed or exempted. Moreover, it is stated in the original assessment that the method of accounting followed by the assessee was mercantile system. However, the specific finding in the revised assessment is that the petitioner was following cash system of accounting until it opted for compounding in the asst. yr. 1995-96 and, therefore, the officer proceeded to assess the opening stock of crops sold in the previous year following the cash system of accounting. Section 40(1) of the Act stipulates that agricultural income chargeable to tax shall be computed in accordance with the method of accounting regularly employed by the assessee. Therefore, if there is a mistake in the form of violation of Section 40(1) in adopting the system of accounting in the original assessment, then the officer is certainly entitled to rectify such assessment to bring the assessment consistent with Section 40(1) of the Act by invoking powers under Section 42 of the Act. Moreover, we also find that Section 41(1) of the Act authorises the officer to assess escaped income within ten years from the end of the relevant year. The procedure prescribed for reopening and completion of reopened assessment under Section 42 and for assessing escaped income under Section 41 are one and the same. We have already noted above that there has been a mistake in the original assessment at least in respect of the deduction of depreciation allowed contrary to Section 13(6) of the Act and the assessee has conceded that the AO is entitled to correct the mistake under Section 42 of the Act. So far as the next ground for rectification of assessment under Section 42 is concerned, we have already found that in view of the finding of the officer that the system of accounting based on which original assessment was completed was not the system regularly employed by the assessee and so much so, there was violation of Section 40(1) and such mistake in original assessment could be rectified in proceedings under Section 42 of the Act. In any case it is settled position that misquoting or non-mentioning of a section is not a ground for setting aside an order invalid. We have already found that even if the officer has no jurisdiction to rectify the assessment under Section 42, since he has powers under

Section 41 to revise the assessment as an income escaping assessment, the revised assessment in the absence of allegation of any procedural irregularity has to be upheld. Therefore, we uphold the reassessment under Section 42 r/w Section 41 of the Act and consequently, reject the challenge against the order of the Tribunal in sustaining the reassessment.

4. The next question raised is whether assessee is entitled for exclusion of value of opening stock of crop sold during the previous year relevant for the asst. yr. 2001-02. The assessee is relying on Section 13(6) of the Act which states that on re-option after payment of tax for a few years under the system of compounding under Section 13(1), the assessment has to be treated as a new assessment and, there is no scope for assessment of any opening stock as the opening stock of the previous year is the closing stock of the year before which was assessed under compounding under Section 13(1) of the Act. In order to appreciate the question, we extract hereunder Section 13, Sub-sections (1) and (6) which are the relevant provisions :

'13. Composition of agricultural income-tax.--(1) Notwithstanding anything contained in this Act, any person who holds landed property within the State extending to not more than twenty hectares and deriving agricultural income may apply to the Agrl. ITO for permission to compound the agricultural income-tax payable by him and to pay in lieu thereof a lumpsum at the rates specified in the table hereinunder on the planted area :

(6) When any person who has been permitted to pay under Sub-section (1) re-opts to pay tax in accordance with Section 3 notwithstanding anything contained in any other provisions of this Act, shall be assessed as if it were a new assessment and shall not be eligible to carry forward any loss incurred in any of the previous years or any depreciation.'

5. The real question is as to what consequences follow by treating an assessment as a new assessment in terms of Section 13(6) of the Act. While according to the assessee, a new assessee cannot have opening stock in the previous year relevant for the assessment year. Government pleader contended that Section 13(6) cannot be taken in isolation and once an assessment is switched over from

composition under Section 13(1) to regular assessment under Section 39, the AO has to follow the system of accounting regularly employed by the assessee under Section 40(1) of the Act. The clearcut finding of the authorities below is that until option was exercised by the assessee in the year 1995-96, the assessee was following cash system of accounting and there can be no dispute that opening stock sold in the accounting year has to be assessed on cash basis. In fact it is pertinent to note that Section 4(2)(i) of the Act provides a specific provision for assessment of income from coffee on cash basis as value of coffee pooled with the coffee board was being received by the planters in later years. In fact so far as income from coffee is concerned, cash basis for assessment is statutorily recognised. However, in the year 1994, compulsory acquisition of coffee by coffee board was abolished and planters were free to sell coffee of their own. Of course, after the abolition of compulsory acquisition of coffee by the coffee board, there is no scope for applying Section 4(2)(i) as such, even though assesseees are free to continue cash system of accounting that is, accounting income on sales. Even though an assessee is permitted to pay tax under composition under Section 13(1), is not bound to maintain books of account during such period under Section 33, there is nothing that prohibits the assessee from maintaining proper books of account. In fact assessee being a partnership firm with different partners was bound to maintain books of account for its own purposes. Moreover, when assessee opts for switchover of assessment from composition method to regular assessment, the assessee has to maintain books of account for the previous year relevant for the assessment year. The factual finding of the AO confirmed by the two authorities below is as follows :

'In this case, the assessment of the assessee before 1995-96, were completed in income base and the cash system of accounting was followed. From 1995-96 to 2000-01, the assessee opted for compounding system and assessments were completed on extent base. On 2001-02, the assessee switched over to mercantile system of accounting from cash system of accounting. The assessee in his reply contended that his closing stock were assessed in the previous year. It is baseless and incorrect.'

Against this finding, the assessee's argument is that when composition is allowed under Section 13(1) for a year, there is deemed assessment of the entire crop of the previous year and, therefore, there is no closing stock for that year which is the opening stock for the subsequent year. We do not think any such concept can be evolved from Section 13(1) of the Act which only provides for an alternate system of payment of tax based on cultivated and yielding area instead of tax based on actual income received. Section 13(1) authorising payment of tax at a fixed rate for each crop based on the yielding area only excludes agricultural income of that previous year from further assessment but does not give rise to any presumption that the entire crop received in that previous year is assessed. In other words, the scheme of payment of tax under Section 13(1) only provides for discharge of liability for that assessment year for which option is exercised and it does not interfere with regular assessment for subsequent year, under Section 39 based on system of accounting followed by the assessee. Even when the assessee switches over to regular assessment, the assessment has to be made in accordance with the system of accounting followed by the assessee in terms of Section 40(1) of the Act. Therefore, the opening stock held as on the first day of the previous year relevant for the asst. yr. 2001-02 and sold in the same previous year is rightly assessed by the officer by reopening the assessment originally completed wrongly. We, therefore, answer the questions reframed above against the assessee and dismiss the revision case filed under Section 78 of the Act.