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Court : Kerala

Decided On : May-25-1987

Reported in : (1987)65CTR(Ker)231; [1987]167ITR196(Ker)

Appeal No. : Original Petition No. 10632 of 1983-H

Appellant : J. Kurian

Respondent : Additional Income-tax Officer and Others.

Judgement :

T. L. VISWANATHA IYER J. - Petitioner is a non-resident Indian. He holds agricultural lands in Kerala, in the name of Grace Estate in Amarambalam which is mainly a rubber plantation. Petitioner was employed in Kuwait. According to him, his brothers wife, Marykutty, was looking after the affairs of his estate during the years relevant to the assessment years 1979-80 to 1982-83. He states, however, that the assessing authority, namely, the first respondent, had completed the assessments under the Agricultural Income-tax Act, 1950 ('the Act' for short), on the income from the petitioners lands, without notice to the petitioner but after treating one M. P. George, the 4th respondent, as the petitioners agent for purposes of assessment. This, according to the petitioner, is not correct as he had neither employed the 4th respondent nor received any agricultural income at any time through the 4th respondent. The 4th respondent had nothing to do with the estate of the petitioner, so states the petitioner. Pursuant to these assessments, copies of which have not been produced along with the original petition, an

amount of Rs. 45,448.70 is being demanded and proceedings under the Revenue Recovery Act initiated for recovery. The petitioner challenges the proceedings leading to the issue of the notice under the Revenue Recovery Act and seeks to quash the same.

Petitioners first contention is that M. P. George was not his agent and, secondly, he says that if M. P. George was his agent, the entire amount due should be recovered from him. Section 11 of the Act is referred to in this connection.

Respondents Nos. 1 to 3 have filed counter-affidavits. It is stated there in that the petitioner was a non-resident and that the management of the estate was being done by the 4th respondent who is the brother-in-law of the petitioner. Notice was issued to the petitioner to his estate address in response to which the 4th respondent appeared and made certain disclosures including that he was managing the estate as the agent of the petitioner. Various other items of relevant information were also furnished by him. The first-respondent, assessing authority, therefore, issued notice to George under section 35 of the Act. A notice treating him as the statutory agent under section 11(2) of the Act was also served on him. It is after all this that the assessments were completed treating George as the agent. However, the assessment order and demand notices, when they were dispatched to George were returned by the postal authorities with the endorsement 'addressee refused and returned to sender'. These are the factual aspects of the matter. There is controversy between the parties as to whether the estate was being managed by George or Marykutty. While the Department contends, based on statements and disclosures made by George, that it was George who was managing the estate as the agent of the petitioner, the latter contends that it was Marykutty. Apart from this assertion that it was Marykutty who was managing the affairs, no material has been produced to show that she was the person in management. At any rate, the question as to who was in management is a controversial question of fact into which it is not possible to go at this stage.

Section 11 of the Act prescribes the procedure for assessment of agricultural income due from lands owned by non-residents. In such cases, the charge may be

made either in the name of the owner or in the agent's name and in the latter case, the agent shall be deemed for all purposes of the Act, to be the assessee in respect of such tax. Section 11(2) obliges the assessing authority to cause a notice to be served on the agent of his intention to treat him as the agent of the non-resident. This notice has been issued to M. P. George in this case as stated in the counter-affidavit. The agent is also made liable personally, irrespective of whether he has funds of his principal in his hands or not. If George is the agent of the petitioner, as admitted by him, the assessment made with notice to George is authorised by section 11(1) of the Act and is valid. If the petitioner is aggrieved by those assessments in any manner, it is up to him to resort to the remedies provided by the Act for getting rid of the assessments. Even if George was not the agent and has nothing to do with the estate, that again is a matter which he should agitate before the statutory authorities, where alone this disputed question of agency could be resolved.

I do not, therefore, find any reason to quash the assessments forming the basis of the revenue recovery proceedings, even assuming that it is possible, despite the fact that copies thereof have not been produced as annexures to this original petition.

Petitioner has a further contention that, in any case, the amounts assessed should be recovered only from M. P. George and not from him. He states that by virtue of the fiction created by section 11, the agent shall be deemed to be the assessee for purposes of the Act and the amount assessed shall also be recovered only from him and not from the principal, namely, the landowner, the petitioner in this case. What according to me is the effect of section 11(1) is to deem the agent also as an assessee under the Act. This is required to obviate the necessity of having all proceedings taken against the owner, who is abroad, which will cause delay and difficulties in service of notice and in the initiation of proceedings. For these purposes, the law enables the proceedings to be initiated against the agent as if he himself were the assessee under the Act. As the visible local representatives of the owner, the law has not cast on him an obligation to answer the requirements of the Act and for the demands therein, provided the notice envisaged under section 11(2) is served on him. I am not, however, absolving him from the liability

under the Act. The charge for agricultural income is on the person deriving it. The agent derives it on behalf of the principal. It is as if the income is derived by the principal himself through the medium of the agent. If such be the case, the liability of the principal under the statute continues and is not in any manner taken away by the provisions of section 11(1). What the section provides is only to make the agent also liable for the tax, in addition to the owner. Any other interpretation will also make the charge created by section 40(2) unavailable so far as the principals lands are concerned, which could have been the intention of the Legislature. This, according to me, is the only reasonable way of interpreting section 11(1). If so, the proceedings for recovery as against the petitioner are proper and valid and the petitioner cannot challenge the same for any reason.

No other grounds are urged in this original petition. It is accordingly dismissed without, however, any order as to costs.