

Subramanyan Vs. State of Kerala

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Court : Kerala

Decided On : Aug-08-2006

Reported in : 2007(1)KLT125

Judge : C.N. Ramachandran Nair and; K.M. Joseph, JJ.

Acts : Kerala Agricultural Income Tax Act, 1991 - Sections 3(1), 13 and 78;
[Finance Act, 2000](#)

Appeal No. : OTC Nos. 12 to 15 of 2006

Appellant : Subramanyan

Respondent : State of Kerala

Advocate for Def. : V.V. Asokan, Spl. Government Pleader

Advocate for Pet/Ap. : P.V. Jyothi Prasad, Adv.

Judgement :

C.N. Ramachandran Nair, J.

1. These Revision Cases filed under Section 78 of the Kerala Agricultural Income Tax Act, 1991 (hereinafter referred to as 'the Act') arise from the common order of the Tribunal, confirming denial of exemption from liability to pay agricultural income tax to the petitioner/assessee for the four assessment years 1996-96,

1997-98, 1998-99 and 1999-2000. Petitioner has a total extent of 8 acres of land out of which only 7 acres are cultivated and so much so, petitioner is completely exempted from payment of agricultural income tax, under proviso to Section 3(1) of the Act, is the case of petitioner. However, the authorities below including the Tribunal held that the holding limit for getting exemption from agricultural income tax during the relevant years is 3 hectares and since the petitioner has a total holding of more than 3 hectares, he is liable to pay tax.

2. In order to appreciate the contentions raised, we have to refer to the relevant provision of the Statute and in this regard we extract hereunder Section 3(1) of the Act with the proviso thereunder:

3. Charge of Agricultural Income tax -- (1) Tax at the rate or rates specified in the Schedule to this Act shall be charged for each assessment year in accordance with and subject to the provisions of this Act, on the total agricultural income of the previous year of every person.

Provided that no tax is payable by any person other than a company or a firm where the total extent of landed properties, the agricultural income from which is assessable at his hands under the provisions of this Act do not exceed three hectares.

3. The contention of counsel for petitioner is that the total extent of land to be Considered for the purpose of exemption is only the land where from agricultural income is derived. The Special Government Pleader appearing for the respondent, on the other hand, contended that as is evident from the proviso, exemption is available only if the total extended of landed property is within 3 hectares. It is seen that the limit of holding for exemption is increased from 3 hectares to 5 hectares by [Finance Act, 2000](#) with effect from 1.4.2001. Therefore, the issue relevant for the petitioner is only upto the assessment years 2000-01.

4. Counsel for petitioner has relied on Annexure I Certificate issued by the Assessing Officer after conducting inspection of petitioner's holding wherein he has certified that out of 8 acres, only 7 acres are planted area and balance 1 acre consists of cow shed, drying yard, etc. Based on the Certificate, counsel

contended that petitioner is entitled to be treated as having only 7 acres of agricultural land where from agricultural income is derived and so much so, he is entitled to total exemption from tax under the proviso to Section 3(1) of the Act above referred. We find some force in the contention of petitioner because of the qualifying words 'landed properties' contained in the proviso which makes it clear that the landed properties referred to in the first part of the proviso is the land where from the agricultural income assessable is derived by the assessee. In other words, the landed properties referred to in the proviso should be agricultural land. Farmers normally use cattle shed and other buildings besides drying yard and smoke house and such other facilities required for processing of crop. All these lands occupying buildings and other facilities cannot be used for agricultural purpose and so much so, such lands do not constitute landed properties where from agricultural income is derived. Apart from agricultural lands, the assessee may have other properties, say small extents of urban land, not cultivated or even fit for cultivation and we are of the view that such lands also cannot be included in the total extent of land while reckoning total extent of landed properties for the purpose of considering exemption under proviso to Section 3(1) of the Act. It is clear from the scheme of payment of tax at compounded rate under Section 13 of the Act that the extent of land to be considered for eligibility for compounding is the land used for agricultural purposes, and not any other land occupying buildings or not used or fit for cultivation. Moreover, the tax payable under the scheme of compounding is only for the actual extent of planted area. However, it is immaterial for the purpose of inclusion in the total extent of land for considering exemption, whether the assessee is cultivating such land during the relevant year or whether any income is actually derived there from. In other words in our view, the total extent of land to be reckoned for the purpose of considering exemption, is the entire holding of agricultural land of the assessee which certainly does not take in buildings, drying yard, cattle shed and such other facilities, appurtenant land required for use of the buildings and land wherein such facilities are provided by the farmer, making the land unfit and unusable for cultivation. In this view of the matter and in view of Annexure I Certificate issued by the Officer, we allow these Other Tax Cases by declaring that the petitioner is entitled for exemption from payment of agricultural income tax for the extent of land held by him during the

assessment years in question.

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