Mooljee Sicka and Co. Vs. Second Addl. Income-tax Officer, Dist. V(i) and anr.

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Court : Kolkata

Decided On : Mar-05-1964

Reported in : AIR1964Cal486

Judge : H.K. Bose, C.J. and ;U.C. Law, J.

Acts : Income Tax Act, 1922 - Sections 2(1) and 34(1); ;Constitution of India - Article 226

Appeal No. : A.F.O.O. No. 88 of 1961

Appellant : Mooljee Sicka and Co.

Respondent : Second Addl. Income-tax Officer, Dist. V(i) and anr.

Advocate for Def. : Debi Paul, Adv.

Advocate for Pet/Ap. : Sachin Choudhary and ;Sabyasuchi Mukerji, Advs.

Disposition : Appeal dismissed

Judgement :

Law, J.

1. This appeal is directed against the judgment and order of Sinha, J. passed on 26 November 1954 in an application under Article 226 of the Constitution of India whereby he discharged, the Rule and vacated the interim order.

2. The facts out of which this appeal arises are these:

The appellant Is a manufacturer of bidis for which tendu leaves are required. It cannot be disputed that tendu plants are entirely of wild growth and propagate themselves by rootsuckers and by self-sown seeds without human agency in jungle and waste lands and the appellant has been obtaining such leaves from certain lands in Madhya Pradesh for many many years.

3. The appellant's case is that for the purposes of growing and obtaining tendu leaves for its manufactory and for sale it entered into certain leases of land in 1950-51, in Gondia and Champain Madhya Pradesh. The said leases inter alia provided as follows:

'The lessee shall have the sole right on the tendu leaves that exist at present and those that will grow in future in this land.... and be entitled to cut and sort out the tendu trees and shrubs and/or burn and plant all or any of them for improving the quality of tendu leaves.... have the sole right to plant and grow Tendu trees. . also have the sole right to pluck, gather and take away the tendu leaves that exist at present and that will grow in future.....'

4. A specimen of the lease will be found at page 16 of the Paper Book.

5. For the assessment year 1953-54 for which the appellant was assessed to income-tax, it claimed certain exemption in respect of income-tax on the amount received from sale of tendu leaves which the applicant had grown on the lease-hold land, on the ground that it was agricultural income. The Income-tax Officer (Dist. V Calcutta) who dealt with this assessment case allowed the exemption to the extent of 50% of the total profit on tendu leaves as agricultural income. The relevant portion of the original assessment order reads as follows :

'Agricultural income :

The aforesaid profits worked out includes an element of agricultural income for tendu leaves grown and sold. In view of the Calcutta High Court decision in this case in which it was held that to the extent to which the profit from tendu leaves could be ascribed to the process of pruning the tendu leaves, it was agricultural income within the meaning of Section 2(1) of the Indian Income-tax Act. Since it is not definite to what extent pruning has been resorted to an estimated amount equivalent to 50% of the total profit on account of tendu leaves is allowed as agricultural income.....

The assessee claims that the entire income as shown above should be allowed a deduction. The practice has been to allow 50% of profit as agricultural income. I do not see any reason to deviate from the same and as such I allow 3/2 of the above amount as agricultural income.'

6. There was no appeal from this assessment order.

Reading the above-quoted order it is clearly manifest that exemption was granted to the appellant on the authority and on the footing of the judgment of Derbyshire C. J. in In re. Mooljee Sicka and Co. : [1939]7ITR493(Cal) . This case also related to the appellant firm in connection with its assessment for 1934 in respect of the same land in Madhya Pradesh of which the appellant were in possession as lessee in 1950-51 being the assessment year under consideration, and it was held that

'to the extent to which pruning of the tendu shrubs occurs there is in a technical and legal sense a cultivation of the soil in which the tendu shrub grows; there is an agricultural operation and the land on which the shrub grows (but not necessarily beyond it) as land used for the purpose of agriculture.'

7. This decision of Derbyshire C. J. in : [1939]7ITR493(Cal) (Supra) came up for consideration before the Supreme Court in the case of Commissioner of Income-tax, West Bengal v. Raja Benoy Kumar Saha Roy : [1957]32ITR466(SC) and was expressly dissented from. The Supreme Court held that agriculture is the basic idea underlying the expressions 'agricultural purpose' and 'agricultural operation.' The primary sense in which the term agriculture is understood is agerfield and

cultura-cultivation i.e., the cultivation of the field and if the term is understood in that sense agriculture would be restricted only to cultivation of land in the strict sense of the term meaning thereby tilling of the land, sowing of the seeds, planting and similar operations on land. They would be the basic operations and would require the expenditure of human skill and labour upon the land itself. There are, however, operations which are to be performed after the produce spurts from the land e.g., weeding, digging the soil around the growth, removal of the undesirable undergrowths and all operations which foster the growth and preserve the same riot only from insects and pest but also from depredation from outside, tending, pruning, cutting, harvesting and rendering the produce fit for the market. The latter would all be agricultural operation when taken in conjunction with the basic operations above described ..... The mere performance of these subsequent operations on the products of land where such products have not been raised on the land by the performance of the basic operations which we have described above would not be enough to characterise them as agricultural operation. In order to invest them with the character of agricultural operation these subsequent operations must necessarily be in conjunction with and a continuation of the basic operations which are the effective cause of the products being raised from the land. The same view was also expressed by the Supreme Court in Kameshwar Singh v. Commr. of Income-tax B. and O. : AIR 1957 SC667 and Commr. of Income-tax v. Jyotikana Chowdhurani : [1957]32ITR705(SC) .

8. In other words where there is no basic operation then the taking of various steps necessary to tend or improve existing plant or plants of spontaneous growth including the operation of pruning does not amount to an operation that can be called agricultural and therefore such operations do not give rise to income which would be agricultural income and subject to exemption. After this judgment in Raja Benoy Kumar Saha Roy's case was published, the Income-tax Officer served upon the applicant a notice Under Section 34(1)(b) of the Income-tax Act on 14 February 1958 thereby calling upon it to file a return on the ground that he had reasons to believe that income for the year 1953-54 had escaped assessment. The appellant did not file a fresh return but to make technical compliance with the notice Under Section 34(1)(b) submitted the return Under Section 34 in accordance with the assessment originally made. The appellant also made a

written representation in the proceedings Under Section 34(1)(b), I. T. Act, which is to be found at p. 42 of the Paper Book.

9. It also appears from paragraph 8 of the Order dated 24th November 1958 made by the 2nd Additional Income-tax Officer that the appellant had also filed a statement of account giving an analysis of the expenses incurred for the tendu leaves. No fresh evidence was given by the appellant in the proceedings Under Section 34(1)(b), I. T. Act. The Income-tax Officer was not satisfied with the analysis of the statement of account submitted by the appellant and came to the conclusion that the expenses incurred were not for agricultural opera-tions because the operations performed were on trees and not operations performed on the land. He was also not satisfied that the appellant had actually planted any new trees and obtained any leaves from such trees as the appellant did not furnish any particulars of the extent of planting of trees carried out by him. There being no evidence of expenses for basic operations on land or for agricultural operations he held that the amount of Rs. 5,03,979/- previously excluded from assessment was not agricultural income but was taxable. On 9th December 1958 the appellant obtained a rule against the respondent in an application made by him under Article 226 of the Constitution of India. This rule was heard by Sinha, J., who by his judgment dated 26th November 1958 discharged the rule and vacated the interim order. The present appeal is from this judgment as stated before.

10. The appellant has conceded that the word 'information' in Section 34(1)(b) of the Income-tax Act includes information as to the true and correct state of law and so would cover information as to relevant judicial decision -- the question having been finally settled by the decision of the Supreme Court in Kamal Singh v. Commissioner of Income-tax B. and O. : [1959]35ITR1(SC) . This case also decided that decision of the Court of the highest authority was 'information' within the meaning of Section 34(1)(b) and that such decision justified the belief of the Income-tax Officer that part of the assessee's income had escaped assessment.

11. The main point urged by the appellant however, was that the re-opening of the assessment by the 2nd Additional Income-tax Officer Dist. V(I) Calcutta was without jurisdiction in as much as by the original assessment order dated 10 June

1958 the Income-tax Officer concerned, found as a fact that 'the profit worked out includes an element of agricultural income for Tendu leaves grown and sold.' Much emphasis was laid on the word 'grown' and was contended that it was a finding of fact that the assessee since 1950-51 grow Tendu leaves as he was entitled to do under the new leases which provided that the assessee would have the sole right to plant and grow Tendu trees. It was further urged that the 2nd additional Income-tax Officer in paragraph 9 of his order dated 24 November 1958 virtually confirmed that the assessed had performed agricultural operation on the land by stating 'that the operation of the surface tillage and inundating channels are only on a very small scale' and thus it was argued that tillage of surface being an agricultural operation it is established that the assessee had carried out basic operations on the land which was found as fact and therefore it was beyond the jurisdiction of the and Additional Income-tax Officer to re-open the assessment.

12. I am not prepared to accept this contention as it is clearly manifest from the original assessment order that the Income-tax Officer did not find as a fact that there was any basic operation on the land by the assessee. All that he found was that the profits included 'an element of agricultural income for tendu leaves grown' and not tendu plant or shrubs grown. His finding was entirely based on the judgment of Derbyshire C. J. in (1939) 7 ILR 493 (Cal) (supra) where it was held that 'cutting back or pruning the wild tendu clearly ontributes to the growth of the leaves in thatshrub' and that 'the pruning of the shrub is acultivation of the shrub and as shrub grows in thesoil and as a part of it, is a cultivation of thesoil in a legal and technical sense'. This judgment has now been clearly dissented from by theSupreme Court as stated above and no longer goodlaw. It cannot be controverted however, that whenthe Income-tax Officer stated in his assessmentorder that the profit included an element of agricultural income for tendu leaves grown he wasonly referring to pruning of the shrub which contributed to the growth of tendu leaves in the shrub.There was no finding that any basic operation onland or any agricultural operation was carried onby the assessee. This contention is therefore rejected.

13. As regards surface tillage and inundating channels, by themselves they do not amount to agriculture, that is, cultivation of the field. In order to constitute

cultivation there must be tilling of the land, sowing of the seeds, planting and similar operations on the land. They would be the basic operations and would require the expenditure of human skill and labour upon the land itself. Mere surface tillage and inundating channels is not cultivation or agricultural operation. It is only when there is basic operation on land that the subsequent operations on the plant or shrubs like cutting, pruning, tending, weeding and digging the soil -- surface tillage and different other operations which foster the growth and preserve the produce that spurts from the land become agricultural operations in conjunction with the basic operation on the land itself. In this case the basic operation on land was neither established nor found by the Income-tax Officer by his original assessment order dated 10 June 1958.

14. In Family of Sankaralinga Nadar v. Commissioner of Income-tax Madras : [1963]48ITR314(Mad) a Division Bench of the Madras High Court held (at p. 322) that

'information' and 'reasonable belief' constitute the essential requisite and basic foundation to set in motion the machinery of re-assessment under Section 34(1)(b) of the Act..... While complete absence of information might knock the bottom out of the jurisdiction of the Officer, so long as there is some information in his possession upon which a belief of escapement of assessment could be said to be not unreasonably entertained, the jurisdiction is well founded.....The Income-tax Officer may rightly commence Section 34 proceedings, if he has in consequence of particular information in his possession, reason to believe that income has escaped assessment and may, even if that particular information proves to be ill founded at the conclusion of the enquiry yet bring to tax such escaped income as comes to light as a result of the enquiry.'

15. Lastly it has been argued that there is error apparent on the face of the record and the Court should therefore quash' the assessment order dated the 24th November 1958 by issue of a Writ of Certiorari. Now the limits of jurisdiction of a Court to issue a Writ in the nature of Certiorari are well settled. A Certiorari can be issued for correcting errors of jurisdiction as when an inferior Court or Tribunal acts without jurisdiction or in excess of it or fails to exercise it. It can also be issued

when the Court or Tribunal acts illegally in the exercise of its jurisdiction as when it decides without giving an opportunity to the parties to be heard or violates the principles of natural justice. It is equally well settled that the Writ can be issued not only in cases of illegal exercise of jurisdiction but also to correct errors of law apparent on the face of the record. But errors of fact though they may be apparent on the face of record cannot be corrected. As to what is an error of law apparent on the face of the record it is said that it is only errors which are self-evident that is to say which are evident without any elaborate examination of the merits that can be corrected and not those which can be discovered only after an elaborate argument. But the last mentioned test of determining what is an error of law apparent on the fact of the record has not worked satisfactorily, because judicial opinions have differed as to whether a particular error in a given case is self-evident or not.

16. Now the contention on behalf of the appellant was that the Income-tax Officer who had made the assessment order dated the 24th November 1958. having found that the appellant had carried out certain operations of surface tillage and inundating channels though on a small scale, should have come to the conclusion that these operations were agricultural operations within the meaning of the principle as laid down by the Supreme Court in the case of : [1957]32ITR466(SC) . It appears from the assessment order that the Income-tax Officer came to the finding that although the asseesee firm had no doubt been given the right to plant trees by the leases which it had entered, into, there was no evidence as to any trees having been planted and no accounts had been produced in proof of the contention that trees were planted and watered by the assessee firm. The change in the form of the leases which were taken by the assessee firm since 1950-51 had been made, according to the Income-tax Officer, in order to obviate possible difficulties after the Privy Council decision in the cases of Mohan Lal Hargovind v. Commr. of Income-tax C. P. and Berar Nagpur and Mustafali Khan v. Commr. of Income-tax, U. P. Ajmer . Then in dealing with the items of expenditure shown in the books of accounts produced by the assessee, under the heading -- tilling, watering and planting etc. -- Rs. 29,939/.-, the income-tax Officer observed:

'From this analysis it is seen that out of the total expenses of Rs. 9,39,705/- incurred in respect of collection of Tendu leaves, expenses of surface tillage, inundating channels, coppicing, ploughing; and sowing of seeds are only Rs. 29,939/- which too are not fully supported by vouchers, and the book entries by themselves do not furnish sufficient materials for ascertaining the real nature of the expenses..... The operations of surface tillage and inundating channels are only on a very small scale and the performance of these operations alone cannot make the income agricultural. The object of surface tillage as stated by the assessee itself; is to clear the surface in order to enable plants to draw fresh oxygen from the air and the object of inundating channels is to drain out excess or remature rain water in order to allow the old shrubs and new plantations' resistance from decay. These operations are only of an ancillary and unsubstantial character intended merely to enable the assessee to collect as much leaves as possible from the Tendu trees in existence on the land at the time the leases were entered into. The coppicing operations also cannot be considered to be agricultural operations because the coppicing operations are not performed on the land but only on the trees.'

17. Then in a subsequent part of the order the Income-tax Officer has made this further observation:

'It is, therefore, extremely unlikely that the assessee had actually planted any new trees and obtained any leaves from such trees. The assessee has not been able to furnish any particulars of the extent of planting of trees carried out by it.'

18. It will thus be clear that the Income-tax Officer was of the view that the operations as to surface tillage and inundating channels that had been carried out by the assessee could not be characterised as basic agricultural operations so as to make income derived from the sale of Tendu leaves agricultural income within the meaning of the principle as laid down by the Supreme Court in Raja Benoy Kumar Saha Roy's case, : [1957]32ITR466(SC) . If this finding of the Income-tax Officer is challenged, the proper course for the assessee is to have it corrected by a departmental appeal as provided in the Income-tax Act. It is not open to the assessee to have recourse to the jurisdiction exercised by the Court under Article

226 of the Constitution for the purpose of having such an error corrected and obtaining relief on that basis. The Court issuing a Writ of Certiorari acts in exercise of a supervisory and not appellate jurisdiction and the consequence of this is that the Court will not review findings of fact reached by the inferior Court or Tribunal even if they be erroneous, on the principle, that a Court or Tribunal which has jurisdiction over a subject-matter has jurisdiction to decide wrongly as well as rightly and when the Legislature has not thought fit to confer upon any Court a right of appeal against that decision, the Superior Court exercising only a supervisory jurisdiction will not be justified in rehearing the case on the evidence and substitute its own findings in Certiorari proceedings. The error, if any, committed by the Income-tax Officer in the assessment order is not an error of law apparent on the face of the record and so cannot be corrected by the issue of a Writ of Certiorari.

19. This disposes of all the points raised on behalf of the appellant.

20. In the light of the above discussions I am of the opinion that the 2nd Additional Income-tax Officer acted clearly within his jurisdiction which was well founded by reason of the information received by him as to the change of law and upon which a belief of escapement of assessment was reasonably entertained by him. I entirely agree with the conclusions of Sinha, J. which was rightly arrived at.

21. The appeal is dismissed with costs.

22. Certified for two Counsel.

Bose, C.J.

23. I agree.