

(1968) 11 AHC CK 0005

Allahabad High Court

Case No: Agricultural Income Tax Reference No. 143 of 1964

Gauri Shanker Sahi

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision: Nov. 6, 1968

Citation: (1970) 77 ITR 827

Hon'ble Judges: R.S. Pathak, J; R.L. Gulati, J

Bench: Division Bench

Advocate: G.N. Varma, for the Appellant; Standing Counsel, for the Respondent

Final Decision: Dismissed

Judgement

Pathak, J.

This is a reference made u/s 24(4) of the U.P. Agricultural Income Tax Act, 1948.

2. On the death of the Raja of Tamkohi, the court of wards entered into the management of the estate on behalf of his widow, Rani Jagdishwari Kunwari. During the year 1359 Fasli (corresponding to the year commencing 1st July, 1951, and ending 30th June, 1952) with which we are concerned here, the court of wards was in possession of the estate. Rani Jagdishwari Kunwari died on 15th October, 1950, but the court of wards continued in possession of the estate until 3rd October, 1952, when the estate was released in favour of Maharani Padam Kunwari, mother of the late Raja, who was appointed as administrator of the estate by the Patna High Court. Maharani Padam Kunwari died on 18th March, 1953, and Bhagwati Prasad Singh was appointed as administrator by the Patna High Court. Subsequently, by an order of that court dated 8th May, 1956, he was removed and Gauri Shanker Sahi was appointed receiver of the estate on 9th May, 1956.

3. The Collector of Deoria took assessment proceedings under the U.P. Agricultural Income Tax Act against the court of wards for the assessment of the agricultural income of the estate for the year 1359 Fasli and made an assessment order on 6th November, 1952. That assessment was set aside in appeal. A second assessment

order was made by the Collector on 5th November, 1956, against the court of wards. This assessment was also set aside in appeal and the case was remanded. Thereafter, an assessment u/s 16(3) of the Act was again made by the Collector on 2nd April, 1957, but this time the assessment order was made against the receiver, Gauri Shanker Sahi. The receiver filed an appeal before the Commissioner, Gorakhpur Division, against the assessment order contending that he was not liable to assessment, inasmuch as the agricultural income of the year J359 Fasli had been received by the court of wards and not by him. The plea was rejected and the appeal was dismissed. Gauri Shanker Sahi then applied in revision before the revision board and again objected to the assessment order. The revision was also dismissed. Then he applied to the revision board for a reference to the High Court u/s 24(1) of the U.P. Agricultural Income Tax Act and, that application having been rejected, he moved this court u/s 24(4) of the Act. The court, being of the opinion that a question of law arose in the case, made an order requiring the revision board to state the case and to refer it. Accordingly, the revision board has made this reference.

4. The statement of the case submitted by the revision board does not set out the question of law raised by it. But after hearing the learned counsel for the parties and perusing the record before us, it appears that the following question of law arises in the case :

"Whether, on the facts and in the circumstances of the case, the assessment order u/s 16(3), U.P. Agricultural Income Tax Act, in respect of the agricultural income of the year 1359 Fasli could be made against the receiver, Gauri Shanker Sahi ?"

5. The U.P. Agricultural Income Tax Act is, as its long title states, "an Act to provide for the imposition of a tax on agricultural income." Section 3 of the Act charges agricultural Income Tax and super-tax for each year at specified rates on the total agricultural income of the previous year of every person. A "person" has been defined by Section 2(11) as :

"An individual or association of individuals, owning or holding property for himself or for any other, or partly for his own benefit or for that of another either as owner, trustee, receiver, manager, administrator or executor or in any capacity recognised by law and includes an undivided Hindu family, firm or company but does not include a local authority."

6. It appears, therefore, that the charge has been laid on the total agricultural income of a person whether that person owns or holds property for himself or for any other. Such person may own or hold the property for himself. But he may also own or hold it in a representative capacity for another. He may be a trustee, receiver, manager, administrator or executor or occupy any other representative capacity. But whether he owns or holds the property for himself or for another it is the total agricultural income accruing to him which has been made the subject of charge. Section 3 clearly speaks of "the total agricultural income of every

person." That it is the person to whom the income accrues who bears the burden of the liability is borne out by the other provisions of the Act. Section 4 declares that agricultural Income Tax shall be payable by a person whose total agricultural income of the previous year exceeds Rs. 4,200. Payment of the tax is contemplated by the person to whom the income can be said to belong. Section 4A provides for the computation of the total agricultural income of an individual in certain cases. Section 10 deals with the agricultural income accruing to or received by an undivided Hindu family. Section 11(1) deals with a case where a common manager, receiver, administrator or the like holds lands from which agricultural income is derived on behalf of persons jointly interested in such land or in the agricultural income derived from it. The common manager, receiver or administrator or a like person is deemed to be the assessee in respect of the agricultural Income Tax payable by the persons jointly interested in the land or in the agricultural income and the mode of computing the tax liability is set out in the sub-section. Section 11(2) reads :

"Court of Wards, etc.--In the case of agricultural income taxable under this Act which is received by the Court of Wards, the Administrator-General or the Official Trustee, the tax shall be levied upon and recoverable from such Court of Wards, Administrator General or Official Trustee, in the like manner and to the same extent as would be leviable upon and recoverable from any person on whose behalf such agricultural income is received, and all the provisions of this Act shall apply accordingly."

7. Sub-sections (1) and (2) of Section 11 deal with cases where an individual or body of individuals is treated as the assessee, namely, the person by whom the tax is payable, in respect of income received by them although they receive it only in a representative capacity on behalf of persons who are interested in the land or in its agricultural income or who enjoy the beneficial interest in the income.

8. The assessment of a person, who may more aptly be described as a "representative assessee", is not unknown to the world of taxation laws. Provisions such as Sub-sections (1) and (2) of Section 11 of the U.P. Agricultural Income Tax Act are often made for the purpose of facilitating the ready and convenient assessment and collection of tax. Corresponding provisions were enacted in Sections 40 to 42 of the Indian Income Tax Act, 1922, and similar provisions have been made in the Income Tax Act, 1961. Section 160 of the Income Tax Act, 1961, classifies "representative assessee" in different categories, one of them being Clause (iii) of Sub-section (1) of Section 160, which reads :

" For the purposes of this Act, "representative assessee" means--. . .

(iii) in respect of income which the Court of Wards, the Administrator-General, the Official Trustee or any receiver or manager (including any person, whatever his designation, who in fact manages property on behalf of another) appointed by or

under any order of a court receives or is entitled to receive, on behalf or for the benefit of any person, such Court of Wards, Administrator-General, Official Trustee, receiver or manager."

9. Section 161(1) declares that every representative assessee, as regards the income in respect of which he is a representative assessee, shall be subject to the same duties, responsibilities and liabilities as if the income were received by or accruing to or in favour of him beneficially, and shall be liable to assessment in his own name in respect of that income. Any such assessment shall be deemed to be made upon him in his representative capacity only. Sub-sections (1) and (2) of Section 11 of the U.P. Agricultural Income Tax Act and Sections 160 and 161 of the Income Tax Act, 1961, are merely enabling sections. They enable the revenue to make an assessment on the representative assessee instead of a direct assessment on the person beneficially entitled to the income. An option is given to the revenue in the matter, whether to assess directly the person who is the beneficial owner of the income or instead to assess the representative assessee who initially receives the income. The scheme expressed in the U.P. Agricultural Income Tax Act, as in the Indian Income Tax Act, 1922, and the Income Tax Act, 1961, provides for charging the tax in the hands of the person who is in actual receipt and control of the income. Speaking with reference to similar provisions in the Income Tax Acts, of the United Kingdom, Viscount Cave pointed out in *Williams v. Singer* [1921] 7 T.C. 387; [1921] 1 A.C. 65 "The object of the Acts is to secure for the State a proportion of the profits chargeable, and this end is attained (speaking generally) by the simple and effective expedient of taxing the profits where they are found. If the beneficiary receives them, he is liable to be assessed upon them. If the trustee receives and controls them, he is primarily so liable. If they are under the control of a guardian or a committee for a person not *sui juris* or of an agent or receiver for persons resident abroad, they are taxed in his hands."

10. The Supreme Court in Executors of The Estate of J.K. Dubash Vs. Commissioner of Income Tax, Bombay City, has applied the same principles when construing the provisions of the Indian Income Tax Act, 1922. Patanjali Sastri J. observed:

"The Income Tax Act directs its attention primarily to the person who receives the income, profits or gains rather than to the ownership or enjoyment thereof. The assessee is defined in Section 2(2) as the person by whom the Income Tax is payable and by Section 10 the tax is payable by an assessee who carries on the business, profession, or vocation. The statute thus fastens on the person who carries on the business, etc., the liability to pay the tax on the profits earned by him regardless of their destination or enjoyment. It is also worthy of note that in several instances persons who have no proprietary or other right in the income charged to tax are made liable to pay the tax for no other reason than the convenience of assessment and collection. Such instances are to be found in Section 26(2) proviso, Section 18(7), Section 23A(3), Section 25A and Section 42(1)."

11. I have said Sub-sections (1) and (2) of Section 11 of the U.P. Agricultural Income Tax Act confer an option on the assessing authority to tax the representative assessee instead of directly taxing the owner of the beneficial interest. That the owner of the beneficial interest may be taxed directly is clearly borne out by Sub-section (3) of Section 11 which reads :

"Notwithstanding anything contained in Sub-section (1) the appropriate assessing authority may, in his discretion, assess the tax directly on the person on whose behalf the agricultural income is received by such Court of Wards or Administrator-General or the Official Trustee."

12. Corresponding provision is to be found in Section 41(2) of the Indian Income Tax Act, 1922, and Section 166 of the Income Tax Act, 1961.

13. Reverting to the provisions of the U.P. Agricultural Income Tax Act we find that Section 12 provides for the exemption from assessment of agricultural Income Tax in certain cases of sums received by the person who otherwise would be liable to pay tax in respect thereof. It clearly contemplates that it is the person who receives the income who is liable to pay the tax and not the person who comes on to the estate in some subsequent year. The position is further confirmed upon an examination of Sections 15 and 16 of the Act which provide for the return of income and assessment. u/s 15(1), the Collector is empowered to publish a notice requiring every person whose total agricultural income during the previous year exceeds the maximum amount not chargeable to tax, to furnish a return of his total agricultural income during the previous year. Section 15(3) provides for individual notice to persons whose total agricultural income is such as to render them liable to payment of tax. Section 15(3B) requires the assessing authority to send, along with the individual notice, a statement showing a provisional estimate of the agricultural income which in his opinion "accrued to the person during the previous year". Section 16 provides for assessment of the income and determination of the sum payable in respect of it. Section 17 provides for imposition of penalty where an assessee is found to have concealed particulars of his agricultural income or has deliberately furnished inaccurate particulars of such income.

14. From all these provisions of the U.P. Agricultural Income Tax Act, it appears clear to me that it is the person to whom income accrues or by whom it is received in the previous year who is liable to be assessed in respect of that income.

15. In ASIT KUMAR GHOSE Vs. COMMISSIONER OF AGRICULTURAL Income Tax, WEST BENGAL., a reference arising under the Bengal Agricultural Income Tax Act, 1944, it was held that the person liable to assessment was the person who had received the agricultural income which was to be assessed, and that Asit Kumar Ghose who had subsequently been appointed a receiver of the estate was not liable to assessment because he was not a receiver during the year in which the income in question was received. So also in Court Court Receiver Vs. Commissioner of Income

Tax, Bombay City.. the Bombay High Court observed that u/s 41 of the Indian Income Tax Act, 1922, the receiver who is sought to be assessed must be the person who has in fact received the income in the previous year relevant to the assessment year or was a person who was entitled to receive the income in that year. The court held that as the court receiver was not a receiver during the previous year when the income was received no assessment could be made against him in relation to that income.

16. In the case before us, Gauri Shanker Sahi was not the receiver of the Tamkohi Estate during the year 1359 Fasli. He did not manage the estate or receive its income. On the contrary, the court of wards was in the management and possession of the estate during that year and must have received the income arising from the estate. If any person could have been assessed in respect of that income, it may be possible to say it was the court of wards or the person on whose behalf it received the income. It certainly was not Gauri Shanker Sahi who entered upon the scene as receiver some years later.

17. It is urged on behalf of the revenue that the receiver, Gauri Shanker Sahi, was in the line of successors to the court of wards and as the income of the estate had to be assessed, he as successor of the court of wards was liable to be assessed. It is necessary to point out as was pointed out by Bachawat J. in Asit Kumar Ghose:

"The estate of the deceased as such is not assessed to Income Tax. The Appellate Tribunal was in error in thinking that the estate of the deceased was the assessee. In Income Tax law the estate of the deceased as such is not a separate juristic entity or a corporation sole represented from time to time by managers and receivers."

18. What was said by that learned judge in respect of the position under the Bengal Agricultural Income Tax Act applies, in my opinion, with equal force to the position under the U. P. Agricultural Income Tax Act.

19. In my judgment, the receiver, Gauri Shanker Sahi, was not liable to assessment in respect of the agricultural income of the year 1359 Fasli. The question is answered in the negative. The receiver, Gauri Shanker Sahi, is entitled to his costs which I would assess at Rs. 150. Counsel's fee is assessed in the same figure.".