(1998) 03 GAU CK 0010

Gauhati High Court

Case No: Civil Rule No. 2600 of 1995

A.F.T. Industries Ltd. (M/S)		APPELLANT
	Vs	
Agricultural Income Tax Officer and Others		RESPONDENT

Date of Decision: March 16, 1998

Acts Referred:

- Assam Agricultural Income Tax Rules, 1939 - Rule 5
- Constitution of India, 1950 - Article 14, 19(1), 264(3), 265, 300A
- Income Tax Act, 1961 - Section 80HHC
- Income Tax Rules, 1962 - Rule 8

Citation: (1998) 4 GLT 51

Hon'ble Judges: B. Biswas, J

Bench: Single Bench

Advocate: K.K. Gupta, for the Appellant; None, for the Respondent

Final Decision: Dismissed

Judgement

D. Biswas, J.

This writ petition has been preferred by AFT Industries Limited, a Public Limited Company incorporated under the Companies Act, 1956, challenging the vires of the proviso to Rule 5 of the Assam Agricultural Income Tax Rules, 1939 and the show cause Notice dated 23rd March, 1995 (Annexure-IV) issued by the Agricultural Income Tax Officer, Assam, Guwahati.

2. The Agricultural Income Tax Officer, Assam vide notice dated 23rd March, 1995 directed the writ Petitioner to show cause as to why 60% of the deduction allowed u/s 80HHC of the Indian Income Tax Act, 1961, by the Central Taxing Authority before application of Rule 8 of the Income Tax Rules should not be added to the taxable agricultural income for the assessment year 1986-87.

3. Being aggrieved with the aforesaid notice, the Petitioner has preferred this writ petition praying for reliefs as indicated above.

4. There is no dispute that the Parliament alone has the powers to define agricultural income and to determine, in respect of processed agricultural product like tea, the proportion to be treated as non-agricultural for the purpose of levy of income tax. Accordingly, the percentage which is to be treated as non-agricultural income has been fixed by the Parliament at 40% in accordance with Rule 8 of the Income Tax Rules, 1962. The income derived from sale of tea is first to be treated as if it was income from business in accordance with relevant provisions of the Income Tax Act and the Parliament alone has the powers, competence and jurisdiction to impose tax on 40% of the income so computed and the State Legislature has the authority to levy agricultural Income Tax in respect of the balance 60%. That being the position, it is argued that the vires of the proviso to Rule 5 to the extent it gives powers to the State Agricultural Income Tax Officer to reject the computation made by the Central Taxing Authority has been challenged as offending Articles 14, 19(1)(g), 265 and 300A of the Constitution of India. During the course of argument, learned Counsel for the Petitioner submitted that the question of law involved in this case has been answered by a Division Bench of this Court in Writ Appeal No. 39 of 1995 (in Civil Rule No. 2094 of 1992) M/s. Assam Company Ltd. and Ors. v. The State of Assam and Os., reported in 1996 (1) GLT 232 and the issues involved in this case having been answered by the Division Bench of this Court, the said decision will determine the issues of this case.

5. In M/s. Assam Company Ltd. and Ors. (Supra), the Division Bench of this High Court was seized with the similar question regarding vires of the proviso to Rule 5 of the Assam Agricultural Income Tax Act. The discussion and observation made in paragraphs 14 and 15 of the aforesaid judgment relevant for this case are reproduced below:

Para 14:

... While the State Legislature would have plenary powers to make law in respect of taxes in relation to the aforesaid 60% of the income, derived from manufacture and sale of tea deemed to be agricultural income derived would include all subsidiary and incidental matters such as method of computation of agricultural income and the deductions that would be permissible from such agricultural income. But the State Legislature would have no power to make any law which would have the effect of levying tax. on the aforesaid 40% of such income on which tax is payable under the Income Tax Act by virtue of the provisions of the Income Tax Act. The Apex Court also took the view that the computation of income from tea has to be in accordance with the relevant provisions of the enactments relating to the Indian Income Tax Act and the deductions towards various expenses incurred for the purpose of earning the income as are allowable under the said enactments ating(sic) to Indian Income Tax if disallowed, would result in Agricultural Income Tax being imposed on more

than the aforesaid 60% of income from tea deemed as agricultural income as per the Constitution.

Para 15:

...A plain reading of Rule 5 of the Agricultural Income Tax Rules makes it clear that in respect of agricultural income from tea grown and manufactured by the seller in Assam, the portion of net income worked out under the Income Tax Act and left unassessed as agricultural shall only be assessed under the Agricultural Income Tax Act and the first limb of the proviso to the said Rule 5 further clarifies that the computation made by the Indian Income Tax Officer shall ordinarily be accepted by the Assam Agricultural Income Tax Officer. On a reading of the aforesaid provisions of the Agricultural Income Tax Act and Rule 5 as a whole, we are of the view that the Assam Agricultural Income Tax Officer can reject a computation made by the Indian Income Tax Officer only where the computation of income has not been made in accordance with the Income Tax Act or die Income Tax Rules, and where the Agricultural Income Tax Officer rejects the computation made by the Central Income Tax Authority on the ground that he has not computed the income from cultivation, manufacture and sale of tea in accordance with the provisions of the Income Tax Act and Income Tax Rules, he does not transgress the constitutional limits set out in Article 246(3) read with under Article 366(1) of the Constitution but ensures that no part of the Agricultural Income as defined in Article 366(1) of the Constitution and in Income Tax Act and computed in accordance with the Income Tax Act and the Income tax Rules is left unassessed under the Agricultural Income Tax Act. Hence, the last limb of the proviso to Rule 5 of the Agricultural Income Tax Rules authorising the Agricultural Income Tax Officer to refuse to accept the computation of the Income Tax Officer where such computation has been made contrary to the provisions of the Income Tax Act or the Income Tax Rules is not only consistent with provisions of the Agricultural Income Tax Act but also within the legislative competence of the State Legislature under Article 246(3) read with Article 366(1) of the Constitution.

6. In the case before the Division Bench the same question came up for adjudication whether the proviso to Rule 5 of the Assam Agricultural Income Tax Rules authorising the Agricultural Income Tax Officer to refuse the computation of income made by the Income Tax Officer is within the legislative competence of the State Legislature. The Petitioners in that case were aggrieved by notices served upon them by the Agricultural Income Tax Officer to show cause as to way the deduction of 60% of income made u/s 80HHC of Income Tax Act, 1961 before application of the Rule 8 of the Income Tax Rules would not be computed for the purpose of taxation under Assam Agricultural Income Tax Act. In the impugned notice dated 23rd March, 1995 (Annexure-IV), which is the subject matter of dispute in this case, the Agricultural Officer has given the same reason while proposing to refuse the computation made by the Income Tax Officer in contrary to law.

7. In para 19 of the judgment referred to above, the Division Bench further held as follows:

Bereft of all superfluity, the reason given by the Agricultural Income Tax Officer, Assam in three impugned notices for proposing to compute the agricultural income of the Appellant for the three assessment years in question after refusing to accept the computation made by the Central Income Tax Authority is that the Central Income Tax Authority had allowed deductions u/s 80HHC before application of Rule 8 of the Income Tax Rules which was not permissible under law.

8. Relying on the ratio laid down by the Division Bench of this Court and taking into account the reason indicated in the notice dated 23rd March, 1995 it can be concluded that the Agricultural Income Tax Officer of Assam had jurisdiction to issue the imputed notice. Hence, the Petitioner is not entitled to any relief claimed in this writ petition. The writ petition is accordingly dismissed and the order of stay passed on 30.6.95 stands vacated. There is no order as to costs.