(1952) 08 GAU CK 0003

Gauhati High Court

Case No: Agricultural Income Tax Ref. No. 1 of 1951

Senairam Doongarmall	APPELLANT
Vs	
The State of Assam	RESPONDENT

Date of Decision: Aug. 19, 1952

Acts Referred:

- Assam Agricultural Income Tax Act, 1939 - Section 2

Citation: AIR 1953 Guw 65

Hon'ble Judges: Ram Labhaya, J; Deka, J

Bench: Division Bench

Advocate: S.K. Ghose, K.R. Baruah and B.C. Barua, for the Appellant; S.M. Lahiri, General and R.K. Goswami, Jr. Govt. Advocate, for the Respondent

Judgement

Deka, J.
This is a reference u/s 28 (2), Assam Agricultural Income Tax Act, 1939, (Assam Act 9 of 1939) for a decision on the question of law framed as follows :

"Whether the compensation received from the Military authorities for loss of crop, etc., is agricultural income within the meaning of Section 2 (a) (2) of the Assam Agricultural Income Tax Act."

2. The relevant facts will appear from the statement of facts made by the Member, Assam Board of Agricultural income tax:

"Messrs. Senairam Doongarmall (hereinafter referred to as the assessee) are the proprietors of Sewpur Tea Estate in Lakhimpur District. The factory and some other buildings of this Tea Estate were requisitioned by the Military authorities in 1942 under the Defence of India Rules. As a result of this, the assessee was prevented from performing any agricultural operation as well as from manufacturing any tea during the year 1943-44. The Military authorities however, paid to the assessee a sum of Rs. 60,000 as compensation on account of ''loss of crop'' etc., the Central

Income Tax Officer at Dibrugarh determined the total income of the said Tea Estate for the assessment year 1944-45 at Rs. 60,000 only, assessed to tax on Ks. 24,000 (40 per cent, of Rs. 60,000) under the Indian income tax Act, 1922 and left out Rs. 36,000 as ''agricultural income''.....The Agricultural Income Tax Officer accepted, under Rule 5 of the Assam Agricultural Income Tax Rules, 1939, the computation made by the Central Income Tax Officer and made the assessment accordingly u/s 20 (1) of the Act demanding a tax of Rs. 4,460-15-0, vide order, dated 25th March, 1949. The assessee objected to the assessment and filed an appeal u/s 24 of the Act on 23rd May 1949 before the Appellate Assistant Commissioner of Agricultural Income Tax, Assam, claiming exemption from the tax assessed on the ground that the compensation received from the Military authorities was not liable to taxation under the Act....."

3. The Commissioner of Excise whom the Government specially empowered for the purpose heard the appeal and dismissed the same. Thereafter the assessee moved the Member, Assam Board of Agricultural Income Tax, to refer the matter to the Hon''ble High Court for a decision on the point of law referred to above--and the Board referred the point accordingly.

4. For deciding the point under reference we have to examine what is agricultural income under the Assam Agricultural Income Tax Act, 1939 (which will be referred to hereafter as the Act) and whether the sum of BS. 36,000 classed as ''agricultural income'' by the Central Income Tax Officer can be considered to be agricultural income within the meaning of the ''agricultural income'' as denned in the Act,--because it is only then that the agricultural Income Tax can be assessed on this sum--as is evident from Section 2 (b) of the Act which defines what is agricultural Income Tax.

5. Agricultural income is defined in the Act in Section 2 as follows :

"(a) "agricultural income" means :

(1) Any rent or revenue derived from land which is used for agricultural purposes, and is either assessed to land revenue in Assam or subject to a local rate assessed and collected by officers of the Crown as such.

(2) Any income derived from such land by :

(i) agriculture, or

(ii) the performance by a cultivator or receiver of rent-in-kind of any process ordinarily employed by a cultivator or receiver of rent-in-kind to render the produce raised or received by him fit to be taken to market, or

(iii) the sale by a cultivator or receiver of rent in-kind of the produce raised or received by him, in respect of which no process has been performed other than a process of the nature described in Sub-clause (ii).

Explanation,--Agricultural income derived from such, land by the cultivation of tea means that portion of the income derived from the cultivation, manufacture and sale of tea as is defined to be agricultural income for the purposes of the enactments relating to Indian Income Tax."

6. We have, therefore, to examine whether the amount of Rs. 36,000/- can be said to be agricultural income derived from land u/s 2 (a) (2) (i) of the Act read with the ''Explanation'' above quoted. The proportion of assessment under the Income Tax Act on the total income of the Tea Estate is not a subject-matter of dispute,--but the contention on behalf of the assessee is that the compensation paid by the Military authorities can in no sense be said to be agricultural income under the Assam Agricultural Income Tax Act, 1939.

7. Mr. S.K. Ghose appearing for the assessee has raised the following points in support of his case--(1) that the compensation given by the Military authorities is not income under the Assam Agricultural Income Tax Act;--it was a solatium or an ex gratia payment which is not assessable; (2) that there was no cultivation or manufacture of tea during the period under assessment--and there was, therefore, no income from agriculture derived by the assessee which alone is assessable and (3) that casual profit or a windfall cannot be termed to be an income whether under the Assam Agricultural Income Tax Act or under the Income Tax Act.

8. The first and the third contentions of Mr. Ghose are adapted in the light of decided cases relating to the Income Tax Act--and provisions of the Act itself. Section 4 (3), Income Tax Act lays down that any income, profits or gains falling within the following classes shall not be included in the total income of the person receiving them and items (vii) and (viii) thereof run as follows:

"(vii) Any receipts (not being capital gains chargeable according to the provisions of Section 12 B and) not being receipts arising from business or the exercise of a profession, vocation or occupation, which are of a casual and non-recurring nature, or are not by wav of addition to the remuneration of an employee."

"(viii) Agricultural income"

9. Mr. Ghose has laid much stress on the point that the amount of compensation received was of a casual and non-recurring nature and given as a solatium for the loss sustained by the proprietor of the garden not only for being able to run the garden but for capital loss as well--and in support of this contention relied on the decision of the Privy Council reported in--Commr. of Income Tax, Bengal v. Shaw-Wallace & Co.'', 59 Ind App 206 (PC) and two of the Income Tax cases reported in-- Calcutta Electric Supply Corpn. Ltd. Vs. Commr. of Income Tax, and the case of--(1951) 19 ITR 361

10. The learned Advocate General, Mr. S.M. Lahiri appearing for the State has sought to distinguish--''Shaw, Wallace case'', reported in 59 Ind App 206 (PC) , 9n

facts and has relied on a decision reported in-- RAI BAHADUR H. P. BANNERJI Vs. COMMISSIONER OF Income Tax, BIHAR AND ORISSA., and sought to make out that the sum received as compensation was a trade receipt or profit received in lieu of loss in agriculture which the assessee was not permitted to carry on when the property was under military occupation. He supported the reasonings given by the Member of the Assam Board of Agricultural income tax--and contended that the temporary sterilisation of the source of income did not involve a capital loss but only loss of its use as a crop earning source.

He contended further that damages which go to fill a ''hole'' in profits are income and hence the compensation received from the Military authorities could be held to be income derived from cultivation, manufacture and sale of tea. Mr. Lahiri in this connexion drew our attention to page 126 of the Halsbury''s Laws of England, Vol. XVII--(Hailsham Edition) wherein it is stated (in para. 236) that when an amount is received by way of damages or compensation for the sterilisation of a capital asset, it is not a trade receipt but is an item on capital account; (in para. 237) where, however, the amount is received in lieu of and takes the place of an item which, if received, would have been a trade receipt,--the amount so paid is ''prima facie'' a trade receipt. But it is pointed out at the bottom of page 125 (of the same volume)--where--''Shaw Wallace Co.''s case'', reported, in 59 Ind App 206 (PC), is discussed,--that the Income Tax Act differs materially from United Kingdom. Law. The comment in the Halsbury''s Laws of England is, therefore, no sure guide for the purpose of adjudication of the present ease.

11. Mr. Lahiri drew our attention to page 203 of Sampath Iyengar''s Income Tax Act--(para 201)--where the case of--''Ensign Shipping Co. v. Inland Revenue Comrars.'' (1928) 12 Tax Cas 1169, was discussed What happened in that case was that during a coal strike two ships belonging to a company which were ready to proceed to sea with cargoes of coal were detained in port by an order of Government for a certain number of days and they proceeded on their voyage only later. The Company claimed and obtained compensation from the Government for loss of use of the ships and for wages. Held, the same was one paid in consequence of an interruption in business caused by a paramount right of the Government. It was not a windfall or an exgratia payment or one made for the sterilisation of assets. But it was one made on trading account in lieu of the profits which would have been made by the ship company. The original report was not placed before us--nor is it available here. Assuming that the? principle is correct--we cannot say that it applies on all fours to the circumstances of the present case.

12. In para. 202 of the same page to which our attention was drawn, there is a reference to an English case--''Renfrew Magistrates v. Inland Revenue Commrs.'' (1935) 19 Tax Cas 13 wherein it was held that if a railway passenger met with an accident and was permanently disabled, any damages awarded would be capital receipt, but if he was only knocked down temporarily--say for six months,--during

which period he incurred loss of his professional income,--damages paid in respect of the same would be revenue receipt. The reason is stated to be that there is a ''hole'' in his profits in the latter event and; damages recovered to fill that ''hole'' should figure in the profit and loss account--referred: to--''Burmah Steamship Co., Ltd. v. Inland Revenue Commrs.'' (1932) 16 Tax Cas 67.

13. The learned Advocate General has confined himself to arguing that the compensation paid to the assessee by the military authorities is an income or a trade profit but has not tried to show that it is an income coming; within the definition of agricultural income as defined under the Assam Agricultural Income tax Act which alone is the point for our decision.

14. The Indian Income Tax Act bears no analogy to the Assam Agricultural Income Tax Act--and the income assessable under the Income Tax is not the same as is liable to be taxed under the Assam Agricultural Income Tax Act; rather the one is exclusive of the other and the Agricultural income is not assessable under the Income Tax Act. Under the Income Tax Act, subject to the provisions of the said Act, the total income of any person includes all incomes, profits and gains from whatever source derived and the main heads of chargeable income are given in Section 6 of the said Act--which over and above describing the sources from which income might flow--gives an all covering head as "income from other sources". In the Assam Agricultural Income Tax Act, there is no corresponding provision--and we must, therefore, examine strictly whether we can bring the compensation received or the portion thereof under any of the heads of agricultural income given in the Act.

15. It is admitted that in the year under assessment there was no cultivation, manufacture or sale of tea, nor was there any agriculture as is commonly understood. Whether we can hold by implication or by operation of law that there was either agriculture or cultivation of tea etc. (sic.). The taxing authorities gave emphasis on the fact--that the compensation was paid by the military on the basis of ''loss of crop''--or in lieu of damage sustained by the owner of the tea garden for not being able to raise and manufacture the crop for the year under assessment. We can understand that this might make up a loss sustained by the proprietor but cannot say that it is an income derived either from agriculture or from cultivation or manufacture or sale of tea which alone come within the definition of agricultural income under the Assam Act IX of 1939.

The taxing statutes should be strictly interpreted and it will be unjust to carry the analogy of the Income Tax Act which has wider scope for assessment of income coming under different heads. I venture to say that income from land or landed property in a given case may amount to income under the Income Tax Act as income from property--but not an agricultural income unless it comes within the definition of agricultural income given in the Act. If Mr. Lahiri''s contentions are sound the compensation may be treated as a damage for loss sustained in a business,--but cannot be said to be loss in agriculture or an agricultural venture. It is

not for us either to investigate or to say whether the compensation would come under income assessable under the Income Tax Act.

16. All the cases relied on by both parties relate to the Income Tax Act and not to the Agricultural Income Tax Act--and we have only to see if there be any principle laid down in any of the cases which is likely to help us in the matter of coming to our decision on the point under reference.

17. In--''Commissioner of Income Tax, Bengal v. Shaw, Wallace & Co.'' 59 Ind App 206 (PC), the matter for consideration was whether the respondents who carried on business as merchants and agents in Calcutta and elsewhere in India were chargeable to Income Tax under the above Act, in respect of compensation paid to them for the determination of agencies for two oil producing companies. It was held that the sums so received by the respondents were not taxable income u/s 6 (iv) (business) because they were not the produce, not the result, of carrying on the agencies of the oil companies in the year in which they were received; nor u/s 6 (vi) pother sources) for the same reason.

18. In the opinion of the Privy Council, the term "income" in the Income Tax Act, 1922 connotes a periodical monetary return "coming in" with some sort of regularity, or expected regularity, from definite sources; the source is not necessarily one which is expected to be continuously productive, but it must be one whose object is the production of a definite return, excluding anytning in the nature of a windfall, but wnen once it is admitted that they were sums received and not for carrying on the business; it becomes of the nature of solacium and not taxable as income.

19. Mr. Ghose relying on the principle of this case urged that the sum received as compensation was of the nature of solatium. Mr. Lahiri wanted to distinguish this case by saying that in this case, there was no obligation on the oil producing companies to pay Shaw, Wallace and Company any compensation for cancellation or termination of the agencies. But as a matter of fact it is not necessary for us to go into these contentions for the purpose of this case.

20. The case reported in--''19 Income Tax Reports 406'', has no application to the facts of this case and I find no necessity to discuss that case here.

21. As regards the case reported in-- (1951) 19 ITR 361 in which the assessee surrendered his rights under two agreements with the Railway Company for consideration of a sum of Rs. 2,50,000/- and the point under reference was whether this sum was assessable to Income Tax. It was held by a Division Bench of the Nagpur High Court that under the circumstances of the case, the sum of Rs. 2,50,000/- was received by the assessee as a solatium for the surrender of his rights under the agreement and was a capital receipt and was, therefore, not liable to assessment. Here in this case, as is evident, there was no surrender of contractual rights but only cessation of certain activities and we cannot say that this case applies

to the facts of this case. As a matter of fact unless the amount received represents any portion of the agricultural income, we must hold that it is not liable to assessment under the Assam Agricultural Income Tax Act.

22. With regard to the case reported in-- RAI BAHADUR H. P. BANNERJI Vs. COMMISSIONER OF Income Tax, BIHAR AND ORISSA., the case is fairly distinguishable from the facts in this case. There the assessee purchased about thirteen bighas of land for the purpose of setting up a market but the plot was requisitioned by the military authorities under the Defence of India Rules and a certain sum was paid to the assessee by the military authorities as compensation for the use of the land. The assessee contended that the sum was not taxable because it was merely compensation from the military authorities for preventing the assessee from making use of his capital assets. But the Court held that the compensation received was really a profit derived from the land and was, therefore, taxable under the Income Tax Act.

23. The case reported in-- AIR 1943 153 (Privy Council) cited by Mr. Lahiri does not as a matter of fact help us in deciding the points before us. There the points for decision before the Judicial Committee of the Privy Council were quite different from the one that is before us and the case dealt with the income in the shape of royalty of coal-mine, mining lease etc.

24. I have already observed that the cases cited by the learned Advocates for both the parties do not help much in our decision. But on a reference to Privy Council, case reported in--''Mustafa Ali Khan v. Commissioner of Income Tax, U. P., Ajmer and Ajmer-Merwara'' 1948 16 I T R. 330 , we find that their Lordships observed that though it must always be difficult to draw the line, yet, unless there is some measure of cultivation of the land, some expenditure of skill and labour upon it, the land cannot be said to be used for agricultural purposes within the meaning of Income Tax Act. Drawing the same analogy for the purpose of the Assam Agricultural Income Tax Act as the wordings defining the agricultural income are almost identical on material particulars in both the Acts,--we may say that unless there was cultivation of the land and some expenditure of skill or labour upon it, there was no agriculture and consequently no agricultural produce from the tea garden land in the year under assessment and, therefore, there was no agricultural income which can be assessed even though the parties received some amount from the military authorities for making up the loss sustained by them for not being able to run their concern.

25. It is needless to enter into a discussion to express our view as to whether the sum received as compensation was a solatium or a windfall as contended on behalf of the assessee but we uphold the second contention raised by Mr. Ghose and hold that there was no cultivation of tea during the year under assessment and as such, there was no income from agriculture or cultivation of tea which alone is assessable to tax under the Assam Agricultural Income Tax Act.

26. We accordingly hold that the compensation received from the military authorities did not represent agricultural income and was not assessable as agricultural Income Tax under the Assam Agricultural Income Tax Act and we answer the point under reference in the negative.

27. The reference is decided as indicated above but we make no order as to costs.

Ram Labhaya, J.

28. I agree.