

**(1996) 08 GAU CK 0025**

**Gauhati High Court**

**Case No:** IT Reference No. 4 of 1994

Commissioner of Income Tax

APPELLANT

Vs

K.C. Bezbaruah

RESPONDENT

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**Date of Decision:** Aug. 20, 1996

**Acts Referred:**

- Income Tax Act, 1961 - Section 256(1)

**Citation:** (1997) 90 TAXMAN 234

**Hon'ble Judges:** S.B. Roy, J; D.N. Baruah, J

**Bench:** Division Bench

**Advocate:** A.K. Saraf, for the Appellant; B.P. Katakey and K.H. Choudhury, for the Respondent

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### **Judgement**

Baruah, J.

In this reference u/s 256(1) of the income tax Act, 1961 ("the Act"), the following question has been referred for opinion of this Court:

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified on the basis of the deeds produced before it that late G.C. Bezbaruah cannot be assessed in respect of entire income of Narayanpur Tea Estate and Bhawanipur Tea Estate?"

The facts for the purpose of answering this question may be narrated as follows:

The reference pertains to the assessment years 1963-64 to 1967-68. The issue involved in all these assessment years is whether the income from Narayanpur Tea Estate and Bhawanipur Tea Estate can be included in the assessments of the assessee late G.C. Bezbaruah. The department relied on the fact that the income from the aforesaid two estates was declared by the assessee as his individual income up to the assessment year 1962-63 in the returns of income filed under the Act. The assessee died in the year 1966. Thereafter, returns for the present

assessment years had been filed by the legal representatives of the assessee. They, however, claimed that the incomes from the two tea estates were not the individual income of the deceased assessee. They, on the other hand, had contended that those incomes belonged to two separate firms. They claimed that Bhawanipur Tea Estate belonged to a partnership firm consisting of late G.C. Bezbaruah and Shri K.C. Bezbaruah, one of his sons as partner and the business of Narayanpur Tea Estate had been carried on by another firm consisting of late G.C. Bezbaruah and his two sons P.C. Bezbaruah and K.C. Bezbaruah. This claim was not accepted by the department on the ground that there was no evidence to show that the two firms actually existed and had been carrying on business of the aforesaid two estates. Against the order passed by the departmental authorities, the legal representatives of late G.C. Bezbaruah filed appeal before the Tribunal. The Tribunal came to the conclusion that as late G.C. Bezbaruah had declared the income from the aforesaid two estates as his own income in the returns of income filed up to the assessment year 1962-63, it was to be held that the income in fact belonged to him (late G.C. Bezbaruah). Against that order, the heirs of the assessee late G.C. Bezbaruah requested the Tribunal to refer the question to this Court u/s 256(1) for opinion. This Court in income tax Reference No. 7 of 1980 while disposing of the same observed thus:

"In this connection, we shall only observe that it would be incorrect to say that there were no materials inasmuch as the sale deed of Panbari Tea Estate as well as mortgage deed relating to it were on record which tells a different story. Let the learned Tribunal consider all the materials on record and come to a fresh finding on the questions referred to this Court."

Thus, the reference was sent back directing the Tribunal to take up the matter afresh for disposal after considering the relevant documents. The Tribunal thereafter took up the matter afresh and passed the order dated 22-4-1993 considering all the relevant deeds relating to the controversy and came to the conclusion that the assessee's claim as a co-owner was to be accepted. Therefore, the Tribunal found that the deceased assessee G.C. Bezbaruah was not the sole owner of the aforesaid two tea estates and the income derived from the business of the aforesaid two tea estates was not the income of the deceased assessee late G.C. Bezbaruah only.

2. In view of the findings of fact of the Tribunal, we answer the question in the affirmative in favour of the assessee and against the revenue.