(1968) 02 KL CK 0019

High Court Of Kerala

Case No: O. P. No. 2377 of 1966

The Malankara Rubber and Produce Co. Ltd.		APPELLANT
	Vs	
Inspecting Assistant Commissioner of Agricultural Income Tax, Kottayam and Others		RESPONDENT

Date of Decision: Feb. 7, 1968

Acts Referred:

- Kerala Agricultural Income Tax Act, 1950 - Section 36

Citation: (1968) KLJ 495

Hon'ble Judges: V. Balakrishna Eradi, J

Bench: Single Bench

Advocate: K. V. Suryanarayana Iyer and Joy Joseph, for the Appellant; Government Pleader, for the Respondent

Final Decision: Allowed

Judgement

V. Balakrishna Eradi, J.

The petitioner-company was assessed under the Kerala Agricultural income tax Act, 1950, for the assessment year 1957-58 by the Agricultural income tax Officer, Special Circle, Kottaysm by order Ex. P-l dated 30-10-1967. Under the said order, in addition to the levy of income tax, a surcharge calculated at 5% on the amounts of income tax and super tax aggregating to Rs. 10640-40 was imposed on the petitioner under the Kerala Surcharge on Taxes Act, 1957. Though the petitioner-company took up the matter in appeal to the Appellate Assistant Commissioner of Agricultural income tax, Kottayam, and later to the Agricultural income tax Appellate Tribunal-the 3rd respondent, its objections to levy of surcharge were negatived and the assessment made by the income tax Officer in that regard was confirmed. Both the Appellate Assistant Commissioner as well as the 3rd respondent-Tribunal relied upon the

decision of this court reported in State of Kerala v Karimtharuvi Tea Estate Ltd. 1963 K. L. T. 743, for holding that the levy of surcharge was valid and legal. The aforesaid decision rendered by this court was subsequently reversed by the Supreme Court in Karimtharuvi Tea Estate Ltd. Vs. State of Kerala, , wherein the Supreme Court held that the Kerala Surcharge on Taxes Act, 1957, did not authorize levy of surcharge on agricultural income tax in respect of the assessment year 1957-58. On the strength of this decision of the Supreme Court, the petitioner filed an application before the 3rd respondent u/s 36 of the Agricultural income tax Act praying that its orders upholding the levy of surcharge may be rectified by correcting the mistake of law apparent on the face of record in the light of the pronouncement by the highest court of the land. The 3rd respondent by its order evidenced by Ex. P-7 has dismissed the application on the ground that it was not maintainable u/s 36 of the Act.

2. The petitioner has approached this court with this original petition praying that Ex. P-7 order should be quashed and that a writ of mandamus or other appropriate direction should be issued to the 4th respondent to refund to the petitioner-company the amount illegally collected from it by way of surcharge on agricultural income tax for the assessment year 1957-58.

3. In view of the decision of the Supreme Court referred to above, it does not admit of doubt that the levy and collection of the surcharge for the assessment year 1957-58 was illegal and without jurisdiction. The dismissal of the petition for rectification cannot be sustained in view of the decision of a Division Bench of this court in O. P. 2527 of 1966 where, in circumstances exactly similar to those obtaining in the present case, it was held that rectification could be made u/s 36 and that the contrary view expressed by the Tribunal was incorrect and unsustainable. In the case before the Division Bench there was apparently no alternative prayer made by the petitioner for a writ of mandamus directing the refund of the tax illegally collected, and, probably for this reason, the relief granted was only to direct the tribunal to restore the petition filed before it u/s 36 and to rectify the mistake in the light of the decision of the Supreme Court. It is contended before me by the learned counsel appearing for the petitioner that in as much as his client has prayed for a writ of mandamus it is not necessary to relegate him to pursue the proceedings before the Tribunal, particularly because the Tribunal is not even functioning since some time on account of the Chariman''s vacancy not having been filled up. He also brought to my notice an unreported decision of my, learned brother Mr. Justice Isaac in O P, 2507 of 1966 where, under similar circumstances, an order for refund was passed by this court. There is no dispute in this case as to the amount of surcharge actually collected from the petitioner for the assessment year 1957-58. The decision of the Supreme-Court having been rendered only on 15-12-1965, this petition has been presented before this court well within the time limit of 3 years indicated in State of Madhya Pradesh Vs. Bhailal Bhai and Others, . In these circumstances I have no hesitation to follow the same course as was adopted by

Isaac, J. in the unreported decision referred to above. While quashing Ex. P-7, I direct the 1st respondent to refund to the petitioner-company the sum of Rs. 10640-40 which had been collected from it by way of surcharge on agricultural income tax for the year 1957-58. The Original Petition is allowed as above. There will be no order as to costs.