

PETITIONER:
COMMISSIONER OF AGRICULTURAL INCOME TAX, TRIVANDRUM

Vs.

RESPONDENT:
SMT. LUCY KOCHUVAREED

DATE OF JUDGMENT 07/05/1976

BENCH:
GUPTA, A.C.
BENCH:
GUPTA, A.C.
SINGH, JASWANT

CITATION:
1976 AIR 1681 1976 SCR 657
1976 SCC (3) 438

ACT:
Kerala Agricultural Income Tax Act, 1950, ss. 34 and 35-Revisional power of Commissioner and assessing 'escaped assessment', scope of.

HEADNOTE:

The assessee made a full disclosure of his income and claimed expenses incurred for the maintenance of his immature rubber plantations as deductions. The Agricultural Income Tax Officer, after considering the matter, allowed such deductions as he thought proper. The appellant-Commissioner, in exercise of his revisional powers under s. 34, Kerala Agricultural Income Tax Act, 1950, issued notice to the respondent (widow of the assessee) proposing to revise the assessment on the ground that the deductions allowed were excessive. The appellant, after considering the respondent's objections, held that the deductions allowed were excessive and remanded the matter to the Agricultural Income Tax Officer for fresh disposal according to law. At the instance of the respondent, the question whether the appellant had jurisdiction to pass the order under s. 34 was referred to the High Court, and the High Court, on the view that it was a case of re-opening escaped assessment held, relying on Maharajadhiraj Sir Kameshwar Singh v. State of Bihar, (1959) 37 I.T.R. 388 (SC), that the power of revision vested in the Commissioner under s. 34 could not be invoked for the purpose of assessing income that had escaped assessment, and that such income could be assessed only by resorting to the procedure prescribed by s. 35. within the time limit prescribed therein.

Allowing the appeal to this Court,

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HELD: (1) Every case of under-assessment is not a case of escaped assessment. The Agricultural Income Tax Officer may have committed an error in allowing the deductions to the extent he did, but he did so after applying his mind to the claims. This is not a case where the officer omitted to assess any item of income disclosed in the assessee's return as in the case relied on by the High Court and as in kamal Singh v. C.I.T. (1959) 35 I.T.R. 1 (SC). Therefore, it is not a case of reopening escaped assessment. [662F-H]

Deputy Commissioner of Agricultural Income-tax and

Sales Tax, Quilon and another v. Dhanalakshmi Vils Cashew Co., (1969) 24 S.T.C. 491, followed.

(2) Since it is not a case of escaped assessment, the appellant had jurisdiction to make the order under s. 34. [663B]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 793 to 794 of 1971.

Appeal by Special Leave from the Judgment and order dated the 7th August, 1970 of the Kerala High Court at Ernakulam in Income Tax Reference No. 9 of 1968.

T. S. Krishnamoorthy Iyer, N. Sudhakaran and K. M. K. Nair; for the Appellant (In CA 793/71)

K. M. K. Nair; for the appellant (In C.A. 794/71).

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D. V. Patel and A. S. Nambiar; for the Respondent.

The Judgment of the Court was delivered by

GUPTA, J.-One T. V. Kochvared who owned rubber plantations in Trichur was assessed by the Agricultural Income-Tax other, Trichur on a net agricultural income of Rs. 31,662/- and Rs 30,856/- respectively for the assessment years 1959-60 and 1960-61. The assessee had in his possession immature rubber plantation covering 193 acres during the assessment year 1960-61. In computing their income for the said two years, the Agricultural Income-tax Officer had disallowed out of the expenses claimed for the upkeep and maintenance of the immature area Rs. 2500/- for the year 1959-60 and Rs. 3500/- for the year 1960-61. T. V. Kochuvareed died in 1961 leaving behind him as his heir and legal representative his wife who is the respondent before us. On March 13, 1963 the Commissioner of Agricultural Income-tax issued a notice under section 34 of the Kerala Agricultural Income-tax Act, 1960 to the respondent, which was served on her on March 15, 1963, proposing to revise suo motu the assessment for the said two years on the ground that the deductions allowed were excessive and without any proper basis as a result of which Rs. 16,800/- for the year 1959-60, and Rs. 25,800/- for 1960-61 had "escaped assessment". The respondent was asked to file objections, if any within fifteen days of the receipt of the notice. The respondent in her objection contended that the proposed revision of her husband's income which was said to have "escaped assessment" was outside the scope of section 34. On this objection another notice was served on her on September 26, 1966 stating that the expression "escaped assessment" used in the earlier notice was inadvertent and asking the respondent to file further objections, if she liked, after this eradication. The respondent filed further objections on October 12, 1966 which the Commissioner rejected by his order dated August 23, 1967 and remanded the cases to the Agricultural Income-tax officer for fresh disposal. The relevant part of this order is as follows:

"In these circumstances I find that the disallowance of Rs. 2500/- for 1959-60 and Rs. 3500/- for 1960-61 towards upkeep and maintenance of immature area is irregular as it is not based on any rational method. The orders of assessment for these years are therefore set aside and the cases are remanded to the Agricultural Income-tax Officer, Trichur, for fresh disposal according to law after examining each item of expenditure individually and the general charges by applying the principles laid down by the Kerala High

Court in its judgment reported in (1964) 58 ITR 629." At the instance of the respondent the Commissioner of Agricultural Income-tax referred the following question of law to the High Court of Kerala under section 60(2) of the Kerala Agricultural Income-Tax Act, 1950:

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Whether on the facts and in the circumstances of the case the Commissioner has jurisdiction to pass an order in this case under section 34 of the Agricultural Income-Tax Act, 1950.

The High Court by a majority held that the power of revision vested in the Commissioner under section 34 of the Act could not be invoked for the purpose of assessing income that had "escaped assessment:" and that such income could be assessed only by resorting to the procedure under section 35 of the Act. In these appeals by special leave the appellant questions the correctness of this decision.

It is necessary to refer to the relevant provisions of the Act before proceeding to consider the contentions of the parties. Section 3 provides that agricultural income-tax shall be charged for each financial year on the total agricultural income of the previous year at the rate or rates specified in the Schedule to the Act. Total agricultural income is defined in section 2(s) as the aggregate of all agricultural income mentioned in section 4 computed in accordance with the provisions of section 5 including all income of the description specified in section 9 and all receipts of the description specified in section 10(a), (c) and (d). Section 5 enumerates the deductions from the total income which have to be made in computing the agricultural income. Section 17(1) of the Act requires every person whose total agricultural income during the previous year exceeded the limit which is not chargeable to agricultural income-tax, to furnish to the Agricultural Income-tax officer a return stating his total agricultural income in that year and the expenditure incurred by him out of that income. Section 18 deals with the powers of the Agricultural Income-tax officer to assess the total agricultural income of the assessee and determine the sum payable by him. Section 19 authorises the Agricultural Income-tax officer to cancel the assessment in certain cases at the instance of the assessee and to make a fresh assessment in accordance with the provisions of section 18. Section 31 provides an appeal to the Assistant Commissioner against any order of assessment with which the assessee is dissatisfied. Sub-section (7) of the section requires the Assistant Commissioner to communicate the orders passed by him disposing of the assessee objecting to an order passed by an Assistant Commissioner may appeal to the appellate Tribunal. Sub-section (2) of the section permits the Commissioner if he objects to any order passed by the Assistant Commissioner under section 31, to direct the Agricultural Income-tax Officer to appeal to the appellate Tribunal against such order. Subsection (5) of section 32 provides that the appellate Tribunal after giving both parties an opportunity of being heard may pass such order thereon as he thinks fit. The tribunal is required to communicate the order to the assessee and to the Commissioner. Section 34 and section 35 are the two most important section for the purpose of these appeals. Section 34 which confers on the Commissioner revisional powers is in these terms:

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"34. Revision.-(1). The Commissioner may, of his own motion or on application by an assessee, call for

the record of any proceeding under this Act which has been taken by any authority subordinate to him and may make such enquiry or cause such enquiry to be made and, subject to the provisions of this Act, may pass such orders thereon as he thinks fit:

Provided that he shall not pass any order prejudicial to an assessee without hearing him or giving him a reasonable opportunity of being heard

Provided further that an order passed declining to interfere shall not be deemed to be an order prejudicial to the assessee.

- (2) Any order passed under subsection (1) shall be final subject to any reference that may be made to the High Court under section 60."

Section 35 which deals with income escaping assessment reads:

"35. Income escaping assessment.(1) If for any reason agricultural income chargeable to tax under this Act has escaped assessment in any financial year or has been assessed at too low a rate, the Agricultural Income-tax Officer may, at any time within three years, of that end of that year serve on the person liable to pay the tax or in the case of a company on the principal officer thereof a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of section 17 and may proceed to assess or re-assess such income and the provisions of this Act shall so far as may be, apply accordingly as if the notice were a notice issued under that sub-section;

Provided that the tax shall be charged at the rate at which it would have been charged if such income had not escaped assessment or full assessment, as the case may be;

Provided further that the Agricultural Income-tax Officer shall not issue a notice under this sub-section unless he has recorded his reasons for doing so.

(2) No order of assessment under section 18 or of assessment or reassessment under sub-section (1) of this section shall be made after the expiry of three years from the end of the year in which the agricultural income was first assessable;

Provided that where a notice under sub-section (1) has been issued within the time therein limited, the assessment or reassessment to be made in pursuance of such notice may be made before the expiry of one year from the date of the service of the notice even if at the time of the assessment or reassessment the three years aforesaid have already elapsed;

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Provided further that nothing contained in this section limiting the time within which any action may be taken or any order, assessment or reassessment may be made shall apply to a reassessment made under section 19 or to an assessment or reassessment made in consequence of, or to give effect to any finding or direction contained in, an order under section 31, section 32, section 34 or section 60.

(3) In computing the period of limitation for the purposes of this section, any period during which the assessment proceeding is stayed by an order or injunction of any court or other competent authority shall be excluded."

Section 35 as it originally stood contained only the

provision now contained in sub-section (1) including the first proviso. The second proviso to sub-section (1), and sub-sections (2) and (3) were introduced and the original provision was renumbered as sub-section (1) by an amending Act in 1964, but the newly added provisions were given effect from April 1, 1958. Section 35 as extracted above was therefore, applicable in a proper case during the two assessment years we are concerned with. It would appear that sub-section (2) prescribes a time limit of three years for reassessment under sub-section (1) of this section from the end of the year in which the agricultural income was first assessed though the first proviso to sub-section (2) extends the time for reassessment in a case where notice under sub-section (1) had been issued within the time prescribed by the sub-section, till the expiry of one year from the date of service of the notice even if at the time of reassessment the prescribed period of three years had elapsed. The second proviso to sub-section (2) states that the limitation of time prescribed by section 35 will not apply to an assessment or reassessment made in consequence of any direction contained in an order under section 31, section 32, section 34 or section 60. Section 36 empowers the authority which passed an order on appeal or revision, within three years from the date of such order, and the Agricultural Income-tax Officer within three years from the date of any assessment made by him, to rectify any mistake apparent from the record of the appeal, revision, assessment or refund as the case may be. Sub-section (1) of section 60 provides that the assessee or the Commissioner may require the appellate tribunal to refer to the High Court any question of law arising out of an order under section 32(5). Sub-section (2) of section 60 permits an assessee who is served with a notice of an order under section 34 which is prejudicial to him to require the Commissioner to refer to the High Court any question of law arising out of such order.

The majority decision of the High Court took the view that this was a case of escaped assessment and that the power of revision conferred on the Commissioner by section 34 of the Act could not be utilised for the purpose of reassessment of income that escaped assessment disregarding the provisions of section 35. Sub-section (1) of section 34 makes it clear that the power of revision is exercisable "subject to the provisions of this Act." It was pointed out in the majority judgment that section 35 contains a specific provision for reassessment of income that had escaped assessment and it was held that revisional powers under section 34 could be availed of to reopen cases of escaped assessment

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only within the time limit and in accordance with the procedure prescribed by section 35. Before us, Mr. Patel, learned counsel for the respondent, reiterated the same contention. Mr. Krishnamurthy Iyer appearing for the appellant challenged the decision of the High Court on two grounds: (1) the income sought to be reassessed was not income that had "escaped" assessment and, as such, the provisions of section 35 are not relevant for the present purpose, and (2) assuming this was a case of income escaping assessment, even then the second proviso to sub-section (2) of section 35 removes the bar of time for any assessment or reassessment made to give effect to a direction under section 34. On the first question the High Court found, relying on the decision of this Court in *Maharajadhiraj Sir Kameshwar Singh v. State of Bihar*, that this was a case of

escaped income. In Kameshwar Singh's case one of the provisions that came up for interpretation was section 26 of the Bihar Agricultural Income-Tax Act, 1938 which is similar in many respects to section 35(1) of the Act we are concerned with in this appeal. It was held in Kameshwar Singh's case that under section 26 of the Bihar Act, the Agricultural Income-tax Officer was competent to "assess any item of income which he had omitted to tax earlier, even though in the return that income was included and the Agricultural Income-tax Officer then thought that it was exempt". The same view was taken in an earlier decision of this Court, Kamal Singh v. Commissioner of Income-tax, that : "even if the assessee has submitted a return of his income, case may well occur where the whole of the income has not been assessed regarded as having escaped assessment". But the question that arises in the case before us is not covered by either of these decisions. This is not a case where the Agricultural Income-tax Officer omitted to assess any item of income disclosed in the assessee's return. Here the assessee made a full disclosure of his income and claimed certain deductions. It is not disputed that he was entitled to claim some deductions for the maintenance of the immature rubber plantation. The Agricultural Income-tax Officer may have committed an error in allowing deductions to the extent he did, but he did so after applying his mind to the claim. Every case of under assessment is not a case of escaped assessment. The view we take finds support from the decision of this Court in Deputy Commissioner of Agricultural Income-tax and Sales Tax, Quilon and another v. Dhanalakshmi Vilas Cashew Co.

On the other question, the High Court held that the order of the Commissioner directing the Agricultural Income-tax Officer to reassess the income for the two years was bad, having been made after the expiry of the period prescribed by section 35 for the reassessment of income that had escaped assessment. For the appellant it was contended

663 that the second proviso to section 35 removed the limitation of time in the case of a reassessment made in consequence of a direction or order under section 34. As we have held that this was not a case of escaped assessment, this other question does not arise for consideration.

In our opinion the Commissioner in this case had jurisdiction to make the order he did under section 34, and the question referred to the High Court under section 60(2) should therefore be answered in the affirmative. The appeals are allowed, but in the circumstances of the case we make no order as to costs.

V.P.S.

Appeals allowed.

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