J. Thomas and Co. Vs. Commissioner of Agricultural Income-tax, West Bengal.

LegalCrystal Citation : legalcrystal.com/877496

Court : Kolkata

Decided On : Mar-25-1957

Reported in : [1958]34ITR454(Cal)

Appeal No. : Income-tax Reference No. 54 of 1951

Appellant : J. Thomas and Co.

Respondent : Commissioner of Agricultural Income-tax, West Bengal.

Judgement :

CHAKRAVARTTI C.J. - This is a reference under section 63(I) of the Bengal Agricultural Income-tax Act, 1944, by which the Agricultural Income-tax Appellate Tribunal, West Bengal, has submitted to this court the following question of law :

'Whether the dividend received by the assessee as shareholders from tea companies or any part thereof is agricultural income within the meaning of the Bengal Agricultural Income-tax Act, 1944, and assessable as such ?'

The assessee is a firm going by the name of J. Thomas & Co. During the accounting year 1943-44 relative to the assessment year 1944-45, it received from several tea companies dividends which were calculated to contain Rs. 1,65,141 as agricultural income. About the correctness of that calculation there is no dispute, but whether the amount was agricultural income is disputed. The contention of the assessee was that no part of any dividend received by a shareholder, even if such dividend might have been paid out of the agricultural income of the paying company, could be agricultural income in the hands of the shareholder who received it. The Departments contention was that inasmuch as by an arrangement between the Central and State taxing authorities as embodied in rule 24 framed under section 59 of the Indian Income-tax Act, sixty per cent. of the profits made by the tea companies out of growing and manufacturing tea was to be treated as agricultural income, the same percentage of the amount of dividends received by the shareholders of such companies should be treated and taxed as their agricultural income. That contention was in accordance with section 8(2) of the Bengal Agricultural Income-tax Act. The contention of the assessee was successively repelled by the agricultural Income-tax Officer, the Appellate Assistant Commissioner and the Income-tax Appellate Tribunal, all of whom upheld the contention of the Department. Thereupon, the assessee asked for a reference to this court and the Tribunal referred a question framed in terms which I have already read.

Up to the time that the Agricultural Income-tax Appellate Tribunal was dealing with the assessees case the decision of the Supreme Court in the case of Bacha F. Guzdar v. Commissioner of Income-tax, Bombay, had not been given. We have now the benefit

of that decision which, in fact, concludes the assessee. The Supreme Court had before it the converse case of an assessee under the Indian Income-tax Act who was contending that at least sixty per cent. of the amount of dividends which he had received from the agricultural income of two tea companies would be agricultural income in his hands and, therefore, not liable to be taxed under the Indian Income-tax Act. That contention was negatived by the Supreme Court. It was held that agricultural income as defined in section 2(I) of the Indian Income-tax Act was income proximately derived from direct association with land by a person who actually filled the land or got it cultivated by others. It did not mean or include income which could be made out in some manner to have been ultimately derived from agricultural operations. In accordance with that construction of the definition of agricultural income as given in the Indian Act, the Supreme Court held that even though a tea company growing and manufacturing tea got an exemption from the Indian income-tax of sixty per cent. of its profits as agricultural income in accordance with rule 24 framed under section 59 of the Indian Act, the dividend paid by such company to its shareholders was not derived by the shareholders out of any direct connection with the land in which tea was grown, but it was received by virtue of their right to participate in the profits of the company under the contractual relationship between the company and themselves. The whole of the amount of the dividends so received was, therefore, non-agricultural income and even as regards sixty per cent. of them it could not be contended that such percentage was the agricultural income of the shareholders.

The definitions of agricultural income as given in the Bengal Agricultural Income-tax Act is identical given of the same income in the Indian Income-tax Act. Indeed, by reason of the division of the legislative power as between the Central and the State Legislature by the Constitution of India, the definitions could not validly be different. Agricultural income is within the legislative sphere of the State Legislatures whereas it outside the legislative sphere of the Central Legislature. The Indian Income-tax Act therefore defines agricultural income for the purpose of exempting it from tax, whereas the Bengal Agricultural Income-tax Act defines such income for the purposes of bringing it to tax. It is thus plain from the scheme of our Constitution that what is as excepted as agricultural income by the Indian Act and what is included as agricultural income by a State Act must be necessity be the same, provided, however, the respective definitions are correctly frame and do not transgress the relevant limits. In the present case, as I have pointed out, there is no question of either of the definitions being incorrectly framed, has been held not to comprise dividend paid out of a companys agricultural income.

If therefore the two definitions are fin precisely the same terms, what is not agricultural income under the Indian Act cannot be agricultural income under the Bengal Act. As I have already stated, dividends received by the shareholders of tea companies out of their agricultural income have held by the Supreme Court to be non-agricultural income of the shareholders as respects the whole of the amounts of dividend so received. That decision proceeds on a construction of the definition of agricultural income as given in the Indian Act. The decision being a decision of the Supreme Court is binding on everyone and, therefore, the same construction must be put on the definition contained in the Bengal Act which is expressed in the Same words. It follows that if under the definition of agricultural income as contained in the Indian Income-tax Act, dividends paid by tea companies to their shareholders of out of their agricultural income cannot be agricultural income in the hands of the shareholder, equally they cannot be agricultural income in the hands of the same

shareholders under the identical definition contained in the Bengal Act. The answer to the question referred must, therefore, be against the assessee. (sic.)

Mr. Sen, who appear for the Commissioner of Agricultural Income-tax, West Bengal, however, contented that although the Departments contention so far as it was based on the definition the section had been laid to rest by the decision of the Supreme Court, there were two other sections which had to be reckoned with before the question referred could be answered adversely to his client. He referred to section 10(a) of the Bengal Act and another section to which section 10 is expressly made subject, that is section 17. The former section says :

'Agricultural income-tax shall not, subject to the provision of section 17, be payable on that part of the total agricultural income of a person which is -

(a) any dividend which such person receives as a shareholder out of the agricultural income of a company which has paid or will pay the tax in respect of the said agricultural income.....'

The rest of the sub-clause is not material. Mr. Sen, contended that the section obviously presupposed that dividends received by a person as a shareholder out of the agricultural income of a company was his agricultural income, because it spoke of his total agricultural income 'which is' as to a part, any such dividend. It was said that similarly section 17 also presupposed that dividends received by the shareholder of a company which had been paid out of the companys agricultural income were agricultural income in the shareholders hands. Section 17, to quote only the material portion, provides that 'a company which had paid agricultural income-tax under this Act in respect of its agricultural income as such company....shall be deemed for the purposes of section 48 to have paid agricultural income-tax behalf of the shareholders of such company'. It was contended that if the shareholders were not themselves liable to pay tax on the dividends received by them on the basis that such dividends constituted agricultural income, there could be no meaning in saying that the company which had paid agricultural income-tax in respect of its agricultural income was to be deemed to have paid such tax on behalf of the shareholders. Mr. Sen contended that the two sections to which he had referred were either valid or invalid. If dividend paid out of the agricultural income of a company was not agricultural but was non-agricultural income in the hands of the shareholder receiving such dividend, sections 10 and 17, so far as they presupposed the contrary must be ultra vires the constitution. If, on the other hand, they intra vires, some means had to be sought for reconciling them with the provisions of the definition section as interpreted by the Supreme Court.

I may explain here that although under section 10 of the Act, the dividend income of an assessee who had been paid such dividend out of the agricultural income of a company is not liable to tax in his hands, if the company had paid or will pay tax on its agricultural income, the Department is proceedings against the assessee because, it is said the accounting year being the first such year under the Act, the companies were left untaxed by mistake. Mr. Sen contended that the companies had not paid tax and would not have to pay it, since assessment was now barred and therefore he was entitled to look to the assessee, if sections 10 and 17 were not ultra vires.

I do not think that it is necessary for the purpose of this reference to decide whether those portions of sections 10 and 17 of the Bengal Act to which Mr. Sen referred are

not ultra vires. It will be sufficient to say that in so far as those sections assume the dividends paid out of the agricultural income a company to be agricultural income in the hands of the shareholders receiving them, they proceed on a misconception or, to put if another way, on a conception of agricultural income which is opposed to the conception embodied in the definition. In any event, the same income cannot be both agricultural and non-agricultural. If the constitutional difficulty of the powers of the State Legislature being limited to agricultural income and the powers of the Central Legislature covering all non-agricultural income had not been there, it might be possible to say that because a certain amount bore a certain character under a certain Act, it did not necessarily follow that the same amount could not bear another character under the provisions of another Act. Such mutual independence is, however, not possible in the case of the agricultural income, because if receipts of a certain kind are non-agricultural income and, therefore, are within the legislative sphere of Parliament they cannot at the same time be agricultural under a State Act. Whatever internal inconsistencies there may be in the Bengal Act, the definition of agricultural income contained in it must be taken as a definition embodying the correct concept of agricultural income and that concept must be the same concept as embodied in the definition in the Indian Act now clarified by the Supreme Court.

For the foregoing reasons it must be held that no part of the dividend received by the assessee as a shareholder from the various tea companies was agricultural income within the meaning of the Bengal Agricultural Income-tax Act, 1944. The answer to the questions referred must, therefore be in the negative.

Since at the time the decisions of the Tribunal was given, the Supreme Court had not yet pronounced on the matter and since the decisions of the Tribunal was in the Departments favour there will be no order as to costs.

GUHA, J - I agree.

Questions answered in the negative.