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A.F.R.

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION**

Present :

The Hon'ble Justice Surya Prakash Kesarwani

And

The Hon'ble Justice Rajarshi Bharadwaj

WPTT 14 of 2013

Gouranga Parbati Tea Co. Pvt. Ltd.

Vs.

Agricultural Income Tax Officer & Ors.

For the petitioner	:	Mr. Boudhayan Bhattacharyya Ms. Stuti Bansal Ms. Rinki Saha Mr. S.S. Prasad	
For the respondents	:	Md. T.M. Siddiqui, AGP Mr. Tanoy Chakraborty Mr. Saptak Sanyal	
Heard on	:	18.12.2023, 20.12.2023, 29.02.2024 & 04.03.2024	09.02.2024
Judgement on	:	05.03.2024	

Surya Prakash Kesarwani, J.:

1. Heard Mr. Baudhayan Bhattacharyya, learned counsel for the petitioner and Mr. Md. T.M. Siddiqui, learned Additional Government Pleader for the State respondents.
2. This writ petition has been filed praying to quash the impugned order dated 08.08.2012 in Case No. RN-63 of 2011 (Gouranga

Parbati Tea Co. Pvt. Ltd. Vs. Agri. I.T.O., Siliguri & 2 Others) passed by the West Bengal Taxation Tribunal, Kolkata. The petitioner has also sought relief for a direction to the respondents to calculate depreciation in accordance with Section 7A of the Bengal Agricultural Income Tax Act, 1944 (hereinafter referred to as the Act of 1944) and not under Section 7 thereof.

Facts :

3. Briefly stated facts of the present case are that the petitioner is engaged in business of producing green tea leaves and pays agricultural income tax on the income derived from the sale of such tea. Orders dated 26.12.2006 and 09.11.2010 were passed by the Agricultural Income Tax Officer, Siliguri and Assistant Commissioner, Agricultural Income Tax, Jalpaiguri Circle, respectively in respect of the assessment for the year 2002-03. Assessing Officer sought to levy tax on sale of **saplings** and computed depreciation in accordance with Section 7 of the Act of 1944 read with Rule 3 of the Bengal Agricultural Income Tax Rules, 1944 (hereinafter referred to as the Rules). According to the petitioner assessee “tea saplings” is not “tea” and as such in view of charging Section 3 of the Act of 1944, no tax could be levied on the income derived from sale of saplings. With regard to the depreciation, objection of the petitioner assessee is that

specific provision Section 7A has been enacted for companies. Therefore Section 7A shall apply and Section 7 and Rule 3 of the Rules shall not apply. Aggrieved with the order of the Assessing Officer, as aforesaid, the petitioner filed the aforesaid Case No. RN-63 of 2011 which was dismissed by order dated 08.08.2012 passed by the West Bengal Taxation Tribunal, Kolkata. Aggrieved with the aforesaid order of the Tribunal the petitioner has filed the present writ petition.

Submissions :

4. Learned counsel for the petitioner submits as under :
 - (i) as per charging Section 3 of the Bengal Agricultural Income Tax Act, 1944, only income from “tea” is taxable and, therefore, the tribunal has committed a manifest error of law to uphold the imposition of tax on tea saplings. The word “tea” has not been defined under the Act, although it is defined under the Tea Act, 1953 (Central Act) which also does not include tea saplings. Therefore, the imposition of tax on income derived from tea saplings is wholly without authority of law and beyond the charging Section itself;
 - (ii) the depreciation Section 7A read with Section 2(6) of the Act specifically provides for computation of agricultural income of a

company in accordance with the method of accounting regularly employed it. Therefore, the tribunal has committed a manifest error of law to invoke Rule 3 of the Rules instead of computing depreciation as per accounting method regularly employed by the assessee company. Depreciation is computable as per Schedule XIV read with Sections 349 and 350 of the Companies Act, 1956.

5. Learned counsel for the State submits that since income derived from sale of saplings is an agricultural income under Section 2(1A) of the Income Tax Act, 1961 (hereinafter referred to as the Act of 1961), therefore, income derived from saplings is also liable to tax under the Act of 1944. On the point of depreciation, he submits that Section 7A does not speak about the depreciation, therefore, Section 7 read with Rule 3 shall apply.

Discussion and findings :

6. We have carefully considered the submissions of the learned counsel for the parties and perused the record of the petition.
7. Entry 46 of List II-State List under Schedule VII to the Constitution of India provides field of Legislation on "Taxes on Agricultural Income". Thus, in view of the provisions of Article 246(3) read with aforesaid Entry 46 of List-II under Schedule VII to the Constitution of India, the State Legislature has exclusive

power to enact a law with respect to “Tax on Agricultural Income” in exercise of power so conferred, the Bengal State Legislature has enacted the Bengal Agricultural Income Tax Act, 1944 (Bengal Act IV of 1944). Section 3 of the Act of 1944 is the charging Section and Sections 7 and 7A provides for computation of tax and allowances under the head “Agricultural Income from Agriculture”. Section 3 and Sections 7 and 7A are reproduced below :

“3. (1) Agricultural income-tax shall be charged for each financial year in accordance with and subject to the provisions of this Act, at the rate or rates specified in the Schedule **in respect of the total agricultural income of the previous year of every individual, Hindu undivided Family, company, firm or other** (association of persons) **and every Ruler of [a Part B State]:**

Provided that if the total world income of the previous year of any individual or Hindu undivided family consists of agricultural income as well, as other income, agricultural income-tax shall be chargeable under sub-section (1) on such part of the agricultural income as exceeds ten thousand rupees at the highest rate which would have been chargeable if the total world income were the agricultural income:

Provided further that in such cases increase in the quantum of tax in view of the application of the highest rate shall not exceed fifty per centum of the amount by which the total world income exceeds the agricultural income.

(2) Notwithstanding anything contained in sub-section (1), agricultural income tax shall not be charged in respect of -

(a) the total agricultural income of the previous year of any individual or Hindu undivided family where such total agricultural income **does not exceed ten thousand rupees:**

(b) the total agricultural income of the previous year of Central Government or any State Government or any local authority:

(c) the agricultural income of the previous year of any individual, Hindu undivided family, company, firm or other association of persons **where such agricultural income is derived from-**

(i) land which is used for agricultural purposes **other than those for producing tea,**

(ii) land by agriculture other than that for producing tea,

(iii) land by 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, other than tea, raised or received by him fit to be taken to market, or

(iv) land by the sale by a cultivator or receiver of rent-in-kind of the produce, **other than tea**, 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 (iii)."

Section 7. "Agricultural income-tax shall be payable by an assessee under the head "Agricultural income from agriculture" in respect of all agricultural income derived from land referred to in sub-clause (b) of clause (1) of section 2 included in his total agricultural income and received by him in the previous year subject to the following allowances, namely:-

(1) the cost incurred by the assessee in the previous year:-

(i) in cultivating such land or raising livestock thereon:

(ii) in performing any process contemplated in item (ii) of sub-clause (b) of clause (1) of section 2 for rendering the produce of such land fit to be taken to market;

(iii) in transporting such produce or livestock to market; and

(iv) in maintaining agricultural implements and machinery in good repair and in providing for the upkeep of cattle for the purpose of such cultivation, process, or transport:

Provided that in the case of an agricultural income derived from land possessed by an individual or a Hindu undivided family and cultivated by such individual or by the members of such family with or without the aid of servants or hired labourers or of both, the allowance admissible under this clause shall, instead of such cost be a sum equal to fifty per centum of the market value of the produce raised from such land:

(2) any sum paid by him in the previous year on account of-

(i) land revenue or rent,

(ii) any local rate or cess including Education Cess, in respect of such land;

(3) where his interest in such land is subject to a mortgage or other capital charge, the amount of any interest paid by him in the previous year in respect of such mortgage or charge and where such land has been acquired, reclaimed or improved by him by the use of borrowed capital, the amount of any interest paid by him in the previous year in respect of such capital:

Provided that the interest allowable under this clause shall not exceed the interest which the assessee is liable to pay in respect of such mortgage, charge or capital as a borrower under section 30 of the Bengal Money-lenders Act, 1940;

(4) any sum paid by him in the previous year as interest on any loans taken by him under the Agriculturists' Loans Act, 1884, or the Land Improvement Loans Act, 1883, in respect of such land;

(5) in respect of the maintenance of any irrigation or protective work or other capital assets the amount paid in the previous year on account thereof.

Explanation.- : "Maintenance" includes current repairs and includes also in the case of protective dykes and embankments all such work as may be necessary from year to year for repairing any damage or destruction caused by flood or other natural causes;

(6) depreciation at the prescribed rate in respect of any irrigation or protective work or other capital asset constructed or acquired after the commencement of this Act for the benefit of the land from which **such agricultural income is derived** or **for the purpose of deriving such agricultural income from such land**;

(7) any sum paid by him in the previous year as premium in order to effect any insurance against loss of or damage to such land or any crops to be raised or cattle to be reared thereon;

(8) in respect of any machinery or plant used exclusively for agricultural purposes which has been sold or discarded, the amount by which the written down value of the machinery or plant exceeds the amount for which the machinery or plant is actually sold or its scrap value;

Provided that such amount is actually written off in the books of the assessee:

(9) any other expenditure of the assessee not being in the nature of capital expenditure or personal expenditure laid out wholly and exclusively for the purpose of deriving such agricultural income from such land;

(9a) any sum of allowance computed under sub-section (2);

(10) any other sum which may be prescribed.”

* * * * *

Section 7A. “Notwithstanding anything to the contrary contained in this Act in the case of an assessee being a company or a firm or other association of persons, the agricultural income of such assessee shall be computed in accordance with the method of accounting regularly employed by such assessee for such computation:

Provided that if, in any case, the method of accounting as aforesaid is such that, in the opinion of the Agricultural Income-tax Officer, the agricultural income cannot be computed, the computation shall be made on such basis and in such manner as the Agricultural Income-tax Officer may determine.”

8. From bare reading of Section 3 of the Act of 1944 i.e. the charging Section, it is clear that agricultural income tax shall be charged for each financial year in accordance with and subject to the provisions of the Act, at the rate or rates specified in the schedule in respect of the total agricultural income of the previous year of every individual, Hindu undivided Family, company, firm or other association of persons and every Ruler of Part B State. Sub-section 2 of Section 3 starts with a non-obstante Clause. It

excludes chargeability to tax to certain class of persons. By Clause (c) of Sub-Section 2 of Section 3 of the Act of 1944, the agricultural income of the previous year of any individual, Hindu undivided family, company, firm or other association of persons shall be excluded where such agricultural income is derived from land used for agricultural purposes **other than those for producing tea**, land by agriculture **other than producing tea**, land by the performance by cultivator or receiver of rent-in-kind of any process ordinarily employed by cultivator or receiver of rent-in-kind to render the produce, **“other than tea”** raised or received by him fit to be taken to market, or land by the sale by a cultivator or receiver of rent-in-kind of the produce, **other than tea**, 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 (iii). Thus, mainly “tea” has been made liable to tax under the charging Section 3 of the Act of 1944.

9. The word “tea” has not been defined under the Act of 1944. Therefore, to find out the meaning of the word “tea” as used in Section 3 of the Act of 1944, common parlance test may be applied. It is a matter of common knowledge that saplings are neither treated as tea nor saplings are bought and sold as tea nor

the saplings can be used as tea. If a buyer asks for “tea” he shall not be given “saplings” and vice-versa. Even as per dictionary meaning “tea” does not include saplings. The provisions of Tea Act, 1953 was enacted by Parliament for the control by the Union of the Tea Industry, including control, in pursuance to the International Agreement in force, cultivation of tea in and of the export of tea from India and for that purpose to establish a **Tea Board** and levy a duty of exercise on tea produced in India. There is no provision under the Act of 1944 which either adopts or incorporates the provisions of the Tea Act, 1953. Therefore, definition of “tea” as given in Section 3(n) of the Tea Act of 1953 is not liable to be adopted for the purpose of Act of 1944. That apart, even the definition of “tea” given under Section 3(n) of the Tea Act, 1953 does not include saplings. Thus by any stretch of imagination or logic “tea” shall not include saplings.

10. Saplings are altogether a different agriculture produce. Sapling is a young plant which is neither known nor is used as “tea”. Tea saplings is planted in untilled soil which develops into tea bushes. After it is grown up it produces tea leaves. Therefore, we hold that saplings are not “tea” and thus are outside the scope of the charging Section 3 of the Act of 1944. Consequently, “saplings” are not liable to tax under the Act of 1944.

Regarding depreciation :

11. Section 7 of the Act as aforequoted provides for computation to tax and allowances under the head “Agricultural Income from Agriculture” derived from land referred to in Section 2(n)(b) of the Act of 1944. It is a general provision. Section 7A inserted by the State Legislature in the year 1980, has been made specifically applicable to a company or firm or other association of persons for computation of their agricultural income in accordance with the method of accounting regularly employed by such assessee for such computation. Therefore, the provision of Section 7A shall apply for computation of agricultural income of a company or firm or other association of persons. The petitioner is a company. Therefore, for computation of its agricultural income, the provisions of Section 7A shall apply and its agricultural income shall be computed in accordance with the method of accounting regularly employed by it.

12. Rule 3 of the Bengal Agricultural Income Tax Rules, 1944 provides that the allowances under Clause (5) of Section 6 or under Clause (6) of Section 7 in respect of depreciation of any

irrigation or protective work or other capital asset shall be made in accordance with the statement of rates given in Part-I of Rule 3. Thus, from bare reading of the Rule 3 of the Rules, 1944 it is evident that it has not been made applicable for the purposes of Section 7A of the Act of 1944. Therefore, the agricultural income of a company incorporated under the Companies Act shall be computed under the Act of 1944 in accordance with the method of accounting regularly employed by such assessee for such computation.

13. The findings of the tribunal in the impugned order holding that saplings are included in tea for the purposes of tax under the Act of 1944, is wholly erroneous and baseless. In paragraph 19 of the impugned order the tribunal has held that non-obstante Section 7A, being silent about the allowances to be made from such income for computation of tax; the deduction on account of depreciation is required to be made as per stipulation of Section 7 of the Act of 1944. We find that this interpretation given by the tribunal is in disregard to the provisions of Section 7A which starts with a non-obstante Clause and thus has an overriding effect over Section 7 of the Act of 1944. The tribunal has incorrectly held that Section 7A does not provide for allowances or

depreciation for computation of agricultural income of an assessee which is a company or a firm or other association of persons. Bare reading of Section 7A of the Act of 1944 makes it clear that agricultural income of such assessee (a company or a firm or other association of persons) shall be computed in accordance with method of accounting regularly employed by such assessee for such computation. Therefore, agricultural income of the petitioner company is liable to be computed in accordance with the method of accounting regularly employed by it provided that, if, in any case, the method of accounting as aforestated is such that in the opinion of the Agricultural Income Tax Officer, the agricultural income cannot be computed, the computation shall be made on such basis and in such a manner as the Agricultural Income Tax Officer may determine. Therefore, the finding of the tribunal in the impugned order regarding the applicability of Section 7A or regarding computation of agricultural income is totally erroneous and in breach of the scheme of the Act itself and as such it deserves to be set aside.

14. For all the reasons aforestated the impugned order dated 08.08.2012 passed by the West Bengal Taxation Tribunal, Kolkata in Case No. RN-63 of 2011 is hereby quashed. Matter is

remitted back to the Agricultural Income Tax Officer/competent authority to pass afresh an assessment order for the year 2002-03 in accordance with law, in the light of the findings/directions recorded above, within four months from the date of submission of a certified copy of this judgment, after affording reasonable opportunity of hearing to the petitioner assessee.

15. **Writ petition is allowed** to the extent indicated above.
16. Urgent Photostat Certified copy of this order, if applied for, be supplied to the parties after complying with all necessary legal formalities.

(Surya Prakash Kesarwani, J)

I agree.

(Rajarshi Bharadwaj, J.)

A.F.R.