

(2002) 257 ITR 0091 :(2003) 128 TAXMAN 0779

CIT v. Nabhinandan Digamber Jain

In the Madhya Pradesh High Court C. K. Prasad & Arun Mishra, JJ.

Income Tax Reference No. 71 of 1999 2 May 2001

Counsel : Arya, for the Revenue

JUDGMENT

The following question of law was proposed by the petitioner for the year 1988-89 :

"(i) Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is justified in holding that the agricultural income will not form part of total income for the purpose of computing the accumulation of income in excess of 25 per cent of the total income as laid down under section 11 of the Income Tax Act, 1961 ?"

2. The revenue has filed this application under section 256 of the Income Tax Act, 1961, asking this court to direct the Tribunal to state the case and refer the following question for our determination :

" Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is justified in holding that the agricultural income will not form part of total income for the purpose of computing the accumulation of income in excess of 25 per cent of the total income as laid down under section 11 of the Income Tax Act 1961 ?"

3. Mr. Arya submits that the agricultural income has to be taken into account for the purpose of computing the accumulation under section 11(1)(a) of the Income Tax Act (hereinafter referred to as "the Act") and the view taken by the Income Tax Appellate Tribunal that income from agriculture is exempted from the tax under section 10(1) of the Act and not chargeable to tax under section 4 of the Act, which is the charging section, is erroneous. In support of his submission, he has placed reliance on a Bench decision of the Allahabad High Court in the case of *CIT v. Panchayati Akhara Nirmal (1991)* [190 ITR 121](#) (All). According to Sri Arya, the view taken by the Tribunal runs contrary to the decision of the Allahabad High Court in the case of *Panchayati Akhara Nirmal (1991)* [190 ITR 121](#) (All).

In the said case, the Allahabad High Court held as follows :

"A reading of the opening words of section 10 as well as section 11 shows that both the provisions exclude certain types of incomes from being included in the total income of a person. Section 10(1) excludes agricultural income while section 11(1) excludes income derived from property held under trust to the extent specified. Now we are concerned with an assessee who has got both the types of income, namely, income from agriculture

and income derived from property held under trust wholly for charitable or religious purposes. However, the exemption under section 11 is not an absolute one. The exemption is available only to the extent such income is applied for such purposes in India or is accumulated to the extent permitted. What the Income Tax Officer had to determine was how much income derived by the assessee from non-agricultural property held under trust for charitable or religious purposes has been applied for such purpose in India. The assessee had not maintained a separate account of the income derived from non-agricultural property. He had mixed up both the agricultural income (which was derived from the property which was also held under trust wholly for charitable/religious purposes) and income from other trust properties (which too were held under trust wholly for charitable/religious purposes). Out of the income so received, he had spent a certain amount towards the specified charitable/religious purposes. The question is whether the agricultural income should be excluded altogether from consideration when determining the extent of income applied for the said purposes within the meaning of section 11(1)(a). We are of the opinion that, in such a situation, it is not so much a question of law but one of applying a fair and equitable rule. It is to be remembered that both the agricultural properties and non-agricultural properties are held under trust for specified purposes. Had the income from both these sources been kept apart, it would have been possible to know how much income derived from non-agricultural properties has been applied towards the specified purposes, but in the absence of separate accounts, the Income Tax Officer had no option but to allocate the amount spent between agricultural and non-agricultural income in an appropriate ratio."

4. From a close reading of the judgment of the Allahabad High Court, it is evident that it had held that section 10(1) of the Act excludes agricultural income while section 11(1) of the Act excludes income derived from property held under trust to the extent specified. In the said case, the assessee had not maintained a separate account of the income derived from non-agricultural property, and in such a situation, the court observed that it is not so much a question of law but one of applying a fair and equitable rule and in the absence of separate accounts the Income Tax Officer had no option but to allocate the amount spent between agricultural and non-agricultural income in an appropriate ratio. This is not a situation here. Section 10(1) of the Act excludes agricultural income and in that view of the matter, we are of the opinion that the reference as sought for is uncalled for.

5. The application stands dismissed.

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