STATE OF KERALA AND OTHERS

v.

BHAVANI TEA PRODUCE CO. LTD.

October 7, 1965

[P. B. GAJENDRAGADKAR, C.J., K. N. WANCHOO, M. HIDAYATULLAH, J. C. SHAH AND S. M. SIKRI, JJ.]

Madras Plantations Agricultural Income-tax Act, 1955 (*as extended to Kerala State*) *s.* 3—*Charge of income-tax on income of previous year—Accounts maintained on mercantile system—Coffee supplied to Coffee Board under s.* 25 *of the Coffee Act,* 1942 *and price entered in accounts though not received—Price received in next accounting year—Income when accrues —Sale when occurs—Whether in year of supply or year in which price received.*

Under s. 3 of the Madras Plantations Agricultural Income-tax Act, 1955 (as extended to Kerala State) income-tax was to be assessed in each financial year on the income of an assessee during the previous year. The first assessment under the Act could be for 1955-56 so that income of any period before April 1, 1954 could not be taxed under the Act. The respondent company was assessed for the years 1955-'56 and 1956-'57 on its income of the relevant previous years. The company objected to the inclusion in its income for these years of certain sums on the ground that they represented income of the period before April 1, 1954 to which the Act did not apply. The controversy was in respect of certain sales of coffee which, according to the company, took place in its accounting years ending March 31, 1953 and March 31, 1954. The sales were to the Coffee Board under s. 25 of the Coffee Act and as the company maintained its accounts on the mercantile system the price was also entered in the accounts at the time of the sale itself although it was received later *i.e.* in the previous years relevant to the assessment years 1955-56 and 1956-57. The Appellate Assistant Commissioner of Agricultural Income-tax and the Appellate Tribunal held that the income arose when the price was received and thus upheld the inclusion of the income from the aforesaid sales in the assessment for 1955-56 and 1956-57. The company filed writ petitions in the High Court challenging the said assessments. A single judge decided in favour of the company and so did the Division Bench. The State of Kerala appealed by special leave to this Court.

HELD : All Coffee which the Coffee Board obtains under the Coffee Act is put in a pool and gets mixed up with other coffee. Coffee in the pool is disposed of on behalf of the Coffee Board which pays only a proportionate price to the planter. Even though the planter does not actually sell coffee to the Coffee Board there is in reality a sale by operation of law as a result of which the planter ceases to be the owner of coffee the moment he has handed over his produce to the Coffee Board. The fact that the price is received later does not make it any the less a sale. [99 H; 100 A-B]

The system of accounting must make a difference as to the time when the income arises. If it were a cash system income would be taxable when actually received but in the mercantile system it would be taxable in the year in which the relevant entry is made about the sale of the coffee to the Coffee Board. [100 C]

A The appellant company maintained its accounts on the mercantile system. When it handed over coffee to the Coffee Board it entered the price of coffee according to the valuation of the Coffee Board in its books of account although it did not receive payment immediately. The payment for coffee handed over before April 1, 1954 was received after that date. No doubt actual payment was received in the previous years relevant to the assessment years 1955-56 and 1956-57 but coffee was handed over to the B Coffee Board in the earlier years for which no tax could be demanded. The High Court therefore rightly held that the income in question was not taxable in the said assessment years. [99 F-G; 101 A]

Puthuthotottam Estates (1943) *Ltd.* v. *Agricultural Income-tax Officer, Coimbatore,* 34 I.T.R. 765, *Puthuthotottam Estates* (1943) *Ltd.* v. *Agricultural Income-tax Officer,* 45 I.T.R. 87 & *amalgamated Coffee Estates Ltd.* v. *State of Kerala,* 45 I.T.R. 353, referred to.

C CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 650 and 651 of 1964.

Appeals by special leave from the judgment and order dated January 9, 1962 of the Kerala High Court in Writ Petitions Nos. 154 and 155 of 1961.

D *P. Govinda Menon* and *V. A. Seyed Muhammad,* for the appellants.

M. C. Setalvad, O. P. Malhotra, J. B. Dadachanji, O. C. Mathur and *Ravinder Narain,* for the respondent.

E The Judgment of the Court was delivered by

Hidayatullah J. These two appeals by special leave arise from two petitions under Art. 226 of the Constitution in the High Court of Kerala questioning the assessment to Agricultural Income-tax of Bhavani Tea Produce Co., Ltd. (respondent) under the Madras F Plantations Agricultural Income-tax Act, 1955 (as extended to Kerala State) for the assessment years 1955-56 and 1956-57 respectively. The High Court decided that certain receipts were not taxable in those assessment years and the State of Kerala is the appellant before us. The assessment year in each case ended on March 31, of the year and tax was leviable on the results of the G previous year. For the first of the two assessment years, corresponding to the previous year ended on March 31, 1955 the net agricultural income was assessed at Rs. 1,32,198/- and a tax of Rs. 45,443/1/- was demanded by the Department and in the succeeding assessment year, corresponding to the previous year ended on March 31, 1956, the amounts of net agricultural income H and the tax were respectively Rs. 1,24,339 and Rs. 42,810/5/-. The assessee Company claimed that Rs. 97,090/- in the first year and Rs. 10,095/- in the second year were not taxable although

received by the company from the Coffee Board during the relevant accounting years. The Company contended that these payments were in respect of coffee delivered by the Company to the Coffee Board under s. 25 of the Coffee Market Expansion Act 1942, in the years 1952-53 and 1953-54, that is to say, prior to April 1, 1954 when the Madras Plantations Agricultural Income Tax Act came into force and were not assessable, as the accounts were maintained on the mercantile system and the amounts were shown in 1952-53 and 1953-54. This plea was not accepted by the Agricultural Income-tax Officer, Coimbatore. His assessment orders are dated May 18, 1956 and July 15, 1957 respectively. The Company appealed, but the Appellate Assistant Commissioner by orders passed on December 19, 1958 dismissed the appeals. The Company appealed further. By a common order dated January 25, 1960 the Agricultural Income Tax Appellate Tribunal dismissed the appeal in respect of the assessment year 1955-56. In the other appeal the conclusion was the same but the case had to be remanded to ascertain some matters not connected with the present controversy. In both the cases the Department had held that the income was derived in the relevant previous year and this opinion was upheld by the Appellate Tribunal. The Appellate Tribunal observed that "amounts actually received in the 'previous year' as the price of coffee from the plantation should be regarded as income derived from the plantation in that year irrespective of the year to which the crop belongs." The Company did not apply for revision under s. 54 of the Agricultural Income Tax Act, but instead filed petitions under Art. 226 of the Constitution against Agricultural Income-tax Officer, Coimbatore, Appellate Assistant Commissioner of Agricultural Income-tax, Kozhikode and Agricultural Income-tax Appellate Tribunal, Trivandrum. The petitions were heard by Mr. Justice Vaidialingam who accepted the contention of the assessee company and cancelling the assessment orders impugned before him directed the Agricultural Income-tax Officer to make a reassessment of the total income excluding the sums of Rs. 97,090/- in the first year and Rs. 10,095/- in the second year. The judgment was pronounced on August 18, 1961. The State of Kerala and the Agricultural Income-tax Officer appealed under the Letters Patent. The appeal was summarily dismissed on January 9, 1962. It is from this judgment that the present appeals have been filed.

A B C D E F G H

The only question is whether the two amounts were rightly excluded from the assessable Agricultural income for the two assessment years. The answer to this question depends on whether

A under the scheme of the Madras Plantations Agricultural Income Tax Act read with the scheme of the Coffee Act it can be said that the income was only received when the payment was received or when the produce was handed over to the Coffee Board and under the mercantile system of accounting it was entered in the books of account of the assessee company. If the answer is that income B was received when the crop was handed over to the Coffee Board and the entry was made in the books of account under the mercantile system, the judgment under appeal must be considered to be right but if it is the other way, then the action of the Department was correct. We shall now consider this question.

C Before we proceed we shall analyse the provisions of the two Acts with which we are concerned. The Madras Plantations Agricultural Income Tax Act consists of 65 sections. It is not necessary to give a full analysis of that Act. For our purpose it is sufficient to refer to some of the provisions only. Section 2 D defines "Agricultural income", *inter alia,* as any income derived from a plantation in the State and Explanation II says that Agricultural income derived from such plantation by the cultivation of coffee means that portion of the income derived from the cultivation, manufacture and sale of coffee as may be defined to be agricultural income for the purpose of the encatments relating to E Indian Income-tax Act. "Plantation" in the Act means any land used for growing certain crops including coffee. Section 3 lays charge of agriculutral income-tax and for our purpose we need read only the first sub-section. It is :

"3. Charge of agricultural income-tax.

F (1) Agricultural income-tax at the rate or rates specified in Part I of the Schedule to this Act shall be charged for such financial year commencing from the 1st April 1955 in accordance with and subject to the provisions of this Act, on the total agricultural income of the previous year of every person.

G (2) . . . . . .".

Section 4 defines "Total agricultural income" as the total agricultural income of any previous year of any person from a plantation situate within the State. We are not concerned with the other sections. Some deal with the computation of agricultural income, H the expenses which may be deducted, the method of accounting, exemption from the tax under the Act and computation and carrying forward of loss. Some others establish Income-tax Authorities,

Appellate Tribunal and provide generally how returns of assessment should be made and sundry matters which have no relevance here. It is thus clear that the income, which is sought to be taxed was the kind of income which is taxable under the Act. This income was derived from coffee grown on a plantation situated within the State and the only question is in which year the income can be said to be received by the assessee company.

To ascertain this we have to turn to the provisions of the Coffee Market Expansion Act of 1942 because the sale of coffee was not made directly by the assessee but by a Board established under the Coffee Market Expansion Act. That Act replaced an Ordinance of the Governor-General (Ordinance No. 30 of 1940) passed to assist the coffee industry by regulating the export and sale of coffee. As a result of the outbreak of the Second World War Indian coffee had lost some of its important foreign markets and there arose a great slump in the price of coffee. A Coffee Control Conference convened to consider the situation, suggested steps that could be taken to save the coffee industry in India. Its recommendations led to the passing of the Ordinance of 1940. A second Coffee Control Conference was held in 1941 and after its recommendations were considered by the Standing Advisory Committee of the Legislature attached to the Commerce Department, the present Act was passed. This Act has been frequently amended and today it is called the Coffee Act after the amendment of its title in 1954. We have referred, and shall refer, to it by this name. The Coffee Act constituted a Board which was known as the Indian Coffee Market Expansion Board, now called the Coffee Board. The Coffee Board is a body corporate (having perpetual succession and a common seal) with power to acquire and hold property, both movable and immovable and to contract (s. 5). The Coffee Act imposes a duty of customs on all coffee produced in India and exported from India (s. 11) and a duty of excise on all coffee which an estate registered under s. 14 is permitted, under a scheme of internal sale quota allotted to it, to sell in the Indian market, whether such coffee is actually sold or not, and on all coffee released for sale in India by the Coffee Board from its surplus pool (s. 12). The proceeds of these duties (though first credited to the Consolidated Fund of India) may be paid to the Coffee Board and when so paid are credited to a General Fund (s. 13). All owners of coffee estates of not less than 10 acres are required to register with a Registering Officer appointed in this behalf by the State Government and the registeration once made continues till it is cancelled (s. 14). The Central Government fixes the price or prices at which coffee may be sold wholesale or

A retail in the Indian Market and no registered owner or licensed curer or dealer can sell coffee wholesale or retail in the Indian market at a price or prices higher than the price or prices fixed by the Central Government (s. 16). Section 17 next provides:

"17. Sale of coffee in excess of internal sale quota.

B No registered owner shall sell or contract to sell in the Indian market coffee from any registered estate if by such sale the internal sale quota allotted to that estate is exceeded nor shall a registered owner sell or contract to sell in the Indian market any coffee produced on his estate in any year for which no internal sale quota is C allotted to the estate."

The internal sale quota is fixed by s. 22. Under that section the Coffee Board allots to each registered estate an internal sale quota for the year. Unless with the previous sanction of the Central Government the Coffee Board decides that no internal sale quota D shall be allotted, the Board allots to each registered estate an internal sale quota for the year. The internal sale quota is a fixed percentage, common to all registered estates, of the probable total production of the estate in the year as estimated by the Board. For the purpose of fixing the quota the registered owner is required to furnish such returns as the Board may demand. The surplus E pool to which we have referred means the stock of coffee accumulated by the Board out of the amounts delivered to the Board under s. 25. That section is a long section of six sub-sections and they need to be carefully considered. It provides that all coffee produced by a registered estate in excess of the amount specified in the internal sale quota allotted to that estate shall be delivered F to the Coffee Board by the owner of the estate for inclusion in the surplus pool. (sub-s. 1). Delivery of coffee must be made to the Coffee Board in such places and at such times and in such manner as the Coffee Board may direct and the Coffee Board may give directions for partial delivery to the surplus pool at any time whether the internal sale quota has been exceeded or not and the G Coffee Board may reject any defective consignment (sub-s. 2). Coffee delivered to the Coffee Board for inclusion in the surplus pool must represent fairly in kind and quality the produce of the estate, and such coffee remains under the control of the Coffee Board and the Coffee Board is responsible for its storage, curing (when necessary) and marketing (sub. s. 3). The Coffee Board H must prepare, from time to time, a differential scale for the valuation of such coffee. In accordance with that scale the Coffee Board must classify each consignment delivered for inclusion in the surplus

pool and make an assessment of its value based on its quantity, kind and quality (sub-s. 4). Sub-section (5) is not material. Sub-section (6) then provides as follows :—

"25. Surplus coffee and surplus pool

. . . . . .

. . . . . .

(6) When coffee has been delivered or is treated as having been delivered for inclusion in the surplus pool, the registered owner whose coffee has been so delivered or is treated as having been so delivered shall retain no rights in respect of such coffee except his right to receive the payments referred to in section 34."

Section 34, which is here referred to, reads :

"34. Payments to registered owners.

The Board shall at such times as it thinks fit make to registered owners who have delivered coffee for inclusion in the surplus pool such payments out of the pool fund as it may think proper.

(2) The sum of all payments made under sub-section (1) to any one registered owner shall bear to the sum of the payments made to all registered owners the same proportion as the value of the coffee delivered by him out of the year's crop to the surplus pool bears to the value of all coffee delivered to the surplus pool out of that year's crop :

Provided that in calculating the sum of all payments made under sub-section (1) and the value of the coffee delivered to the surplus pool out of the year's crop, respectively, any payment accepted by a registered owner as final payment in immediate settlement for coffee delivered by him for inclusion in the surplus pool and the value of any such coffee shall be excluded."

We may refer to one other section and that is section 33 which confers on the Board power to borrow on the security of the coffee so delivered. It reads as follows :—

"33. Power to borrow.

The Board may, subject to any prescribed conditions borrow on the security of the general fund or the pool fund for any purposes for which it is authorised to expend money from such fund, or on the security of the coffee

A delivered or treated as delivered for inclusion in the surplus pool for any purposes for which it is authorised to expend money from the pool fund."

The failure to register, contravention of s. 25, making of a false return, obstruction and contravention of the other provisions of B the Coffee Act, some of which we have not found necessary to mention here, are constituted offences and there is provision for punishment and penalty. The Coffee Board is also given the power to seize coffee withheld from inclusion in the surplus pool. In this way, the marketing of coffee is made the duty of the Coffee Board and the right of a party who has made contributions to the C surplus pool is merely to receive payment for coffee which is handed over. The quantum of payment is determined, at first according to the differential scale of valuation prepared by the Coffee Board. It must be remembered that under s. 34(2) the payment is in the proportion which the value of coffee delivered by the owner bears to the value of all coffee delivered to the surplus pool out of one D year's crop. But an owner need not wait and may accept an immediate settlement for his coffee. It follows that coffee delivered to the Coffee Board becomes the property of the Board no sooner it is delivered. The Coffee Board can borrow money by pledging it and is not required to return any part of that coffee to the producer. It only sells it and gives to the planter price proportionate E to the value of all coffee in the surplus pool for that year, unless the planter settles for an immediate payment.

The appellant Company maintains its accounts on the mercantile system. When it handed over coffee to the Coffee Board it entered the price of the coffee according to the valuation of the F Coffee Board in its books of account although it did not receive payment immediately because as has been shown above the payment is delayed unless immediate settlement is made. The payment for coffee handed over before April 1, 1954 was received after that date. No doubt actual payment was received in the previous years relevant to the two assessment years, but coffee was G handed over to the Coffee Board in the earlier years for which no tax could be demanded. Was there a sale to the Coffee Board? The answer must be in the affirmative. The Coffee Board is neither a trustee nor even an agent of the planter. It is not accountable to the owner, except as to payment for coffee received and valued according to the differential prices. All coffee which the Coffee H Board obtains under the Coffee Act is put in a pool and gets mixed up with other coffee. Coffee in the pool is disposed of on behalf of the Coffee Board. The Coffee Board only pays a proportionate

price to the planter. Even though the planter does not actually sell coffee to the Coffee Board there is in reality a sale by operation of law as a result of which the planter ceases to be the owner of coffee the moment he has handed over his produce to the Coffee Board. He is then entitled to receive payment and is not concerned any more with his coffee. The unsold coffee is not returned to him and he does not enjoy any rights of ownership in it. The Coffee Board can pledge it and sell it as and when it likes. In these circumstances it is plain that the handing over of coffee by the planter amounts to a sale to the Coffee Board and the payment of the price is from the sale of all the coffee in the surplus pool unless the planter settles for immediate payment. The system of account must make a difference. If it were a cash system income would be taxable when actually received but in the mercantile system it would be taxable in the year in which the relevant entry is made about the sale of coffee to the Coffee Board.

We were referred to some rulings of the Madras and the Kerala High Courts. In *Puthuthottam Estates* (1943) *Limited* v. *Agricultural Income-Tax Officer, Coimbatore*,(1) Rajagopalan J. held that there was nothing in the Madras Plantations Agricultural Income-tax Act or the Rules thereunder, which exempted produce gathered earlier than 1st April, 1954 from taxation if payment was received in any previous year relevant to an assessment year under the Madras Plantations Agricultural Income-tax Act. The judgment of Rajgopalan J. was reversed on appeal in *Puthuthottam Estates* (1943) *Ltd.*, v. *Agricultural Income-Tax Officer*(2). Rajamannar C.J., and Jagadisan J. held that, if the sale took place after 1st April 1954, tax was payable no matter if the produce was of an earlier year but if the sale took place earlier than that date, tax would not be payable even if the price was realized later. In the Kerala High Court distinction was made between entries under cash and mercantile systems of book-keeping. In *Amalgamated Coffee Estates Ltd.* v. *State of Kerala*(3) the assessee followed the mercantile system and payments entered in the accounting period April 1, 1953 to March 31, 1954 were held not taxable even though actually received after April 1, 1955. The reasoning in these two cases is the same as in this judgment. It is, therefore, not necessary to refer to them. The judgment under appeal follows the earlier decision of the same Court and the Divisional Bench decision of the Madras High Court, and in our opinion the High Court have taken the right view of the matter.

(1) 34 I. T. R. 764.

(2) 45 I. T. R. 87.

(3) 45 I. T. R. 353.

A The High Court was thus right in holding that there was no sale in the years relevant to the assessment years for which the tax demanded. The sale had taken place in the earlier years over which the Agricultural Income-tax Act did not operate. The appeals will therefore be dismissed with costs. One set of
B hearing fees.

Appeals dismissed.