CASE NO.:
Appeal (civil) 5047 of 1996

PETITIONER:
M/S. ASSAM COMPANY LTD. & ANR.

Vs.

RESPONDENT:
STATE OF ASSAM & ORS.

DATE OF JUDGMENT: 21/03/2001

BENCH:
S.P. Bharucha, N. Santosh Hegde & Y.K. Sabharwal

JUDGMENT:

(With W.P.Â©Nos.162/96, 20/97, 61/98 & C.A. Nos.3652/98, 4788/98 &249/99)

J U D G M E N T
L...I...T.......T.......T.......T.......T.......T.......T..J
SANTOSH HEGDE, J.

The income from cultivation, manufacture and sale of tea being a composite income is exigible to both income-tax under the Indian Income Tax Act, 1961 and the Assam Agricultural Income Tax Act, 1939.

In this context, being aggrieved by the decision of the Agricultural Income Tax Officer of the State of Assam (State Officer) who refused to accept the computation of agricultural income made by the Income Tax Officer (Central Officer) under the Income Tax Act, 1961 (Central Act) for the purpose of the levy of Assam agricultural income tax for the relevant assessment years, assessees-appellants approached the High Court of Guwahati by way of writ petitions questioning the authority of the State Officer to recompute the agricultural income already assessed by the Central Officers under the Central Act and for consequential reliefs. Their contentions being rejected both by the learned Single Judge and the Division Bench of High Court of Guwahati, these appeals/petitions have been preferred.

It was argued on behalf of the appellants before the High Court that in view of the constitutional definition of agricultural income under Article 366(1) of the Constitution, the agricultural Income Tax Officers of the State are bound by the computation of agricultural income made by the Income Tax Officer under the Central Act. They also contended before the High Court that the Assam Agricultural Income Tax Act (the State Act) has not specifically authorised the State Officers acting under the said Act to recompute the agricultural income which was already determined by the Central Officers under the Central Act and the Rules. They also contended in the alternative that if it is to be held that the Assam Agricultural Income Tax Act did authorise such a recomputation of income then such provisions of the State Act would be ultra vires of the Constitution. Per contra, it was the contention of the

State that the tax on agricultural income being a State subject under Entry 46 of List II of the 7th Schedule to the Constitution, State has the legislative competence to enact a law which can also empower its officers to recompute the agricultural income even if the same is computed by the Central Officers under the Central Act and such a power under the State Act is found in Section 49 read with Rule 5 of the State Rules.

The High Court in the impugned judgment after analysing the provisions of the Constitution, the Central Act and the State Act and the Rules came to the conclusion that under the provisions of the State Act, there was a specific

authority vested in the State Officers to recompute the agricultural income. The High Court also came to the conclusion that such provision and the Act is not ultra vires of the Constitution nor was beyond the scope of Article 246(3) and 366(1) of the Constitution. However, it held that such power of recomputation can be exercised by the State Officers concerned only if he came to the conclusion that the computation of agricultural income made by the Central Officer is contrary to the provisions of the Central Act and the Rules. It also specifically came to the conclusion that in the decisions of this Court in the case of Karimtharuvi Tea Estates Ltd. & Anr. v. State of Kerala & Ors. (1963 (48) ITR 83), Anglo-American Direct Tea Trading Co. Ltd. etc. v. Commissioner of Agricultural Income-tax, Kerala (1968 (69) ITR 667) and Tata Tea Ltd. & Anr. v. State of West Bengal & Ors. (1988 (173) ITR 18), this question of the States power to enact a law permitting the recomputation of the agricultural income by the State Authorities has been left open, hence, this question was not res integra. In this view of the matter, the High Court upheld the authority of the State Officers to recompute the agricultural income under the provisions of Section 49 of the Act read with Rule 5 of the State Rules in the circumstances mentioned in the impugned judgment.

Before us similar arguments as addressed before the High Court were addressed by the parties concerned.

For the purpose of appreciating the arguments addressed on behalf of the parties before us, it is necessary to note the provisions of the Constitution, the Indian Income Tax Act, 1961, Rules made thereunder and the provisions of the Assam Agricultural Income Tax Act and Rules, to the extent, they are relevant. Entry 46 of List II of the 7th Schedule to the Constitution relates to tax on agricultural income, therefore, in view of Article 246(3) of the Constitution power to legislate in regard to levy of agricultural income tax is with the State Legislature. However, Article 366(1) provides that the expression agricultural income in the Constitution means agricultural income as defined for the purpose of the enactments relating to the Indian Income Tax Act. Therefore, the agricultural income regarding which the State Legislature may enact law under Entry 46, List II would be on such income as defined in the Indian Income Tax Act and the laws relating to the said Act. Section 2(1A) of the Income Tax Act, 1961 defines agricultural income. It is the common case of all parties concerned that so far as the income from cultivation, manufacture and sale of tea is concerned, the same comes within the said definition and

Rule 8 of the Income Tax Rules, 1962 (the Central Rules) which provides for computation of income derived from sale of tea grown and manufactured by the sellers in India. It provides that 40% of such income shall be deemed to be the income liable to income-tax under the Central Act, therefore, the balance 60% of the said income would be agricultural income for the purpose of levying agricultural income-tax under the State laws. A reading of the above provisions shows that the computation of agricultural income even for the purpose of the State enactments will have to be that which is made under the provisions of the Income Tax Act and Rules made thereunder.

Explanation to Section 2(a)(2) of the State Act provides that the agricultural income from cultivation of tea means that portion of the income derived from cultivation, manufacture and sale of tea as is defined to be agricultural income for the purpose of the enactments relating to the Indian Income Tax Act. Second proviso to Section 8 of the State Act provides for the method of determination of agricultural income from cultivation and manufacture of tea which according to this section is deemed to be that portion of income from such cultivation, manufacture and sale which is agricultural income within the meaning of the Indian Income Tax Act. The fact that the legislature under the State Act intended to make the agricultural income to be the same for the purpose of the Central as well as the State Act is also clear from the provisions of Section 20D of the State Act which provides that if there is any variation in the assessment made by Central Officers under the Central Act by virtue of any revision leading to enhancement or reduction, such enhanced or reduced income shall be taken as the agricultural income for the purpose of levy of State tax. From the provisions referred to herein above in the State Act and bearing in mind the definition of agricultural income under Article 366(1) of the Constitution, in our opinion, it is clear that the State Act intended the agricultural income for the purpose of its levy to be that which is computed as such by the officers acting under the Central Act.

However, the argument of the State is based on Section 49 of the State Act read with Rule 5 of the State Rules; therefore, we will first consider whether Section 49 of the Act in any way deviated from the abovesaid object and scheme of the State Act. A perusal of Section 49 shows that in terms it does not empower its officers to recompute the agricultural income already made by the officers under the Central Act. Though we notice that under the proviso to the said section State Officers have been empowered for the purpose of ascertaining agricultural income in regard to tea to call for any papers produced or liable to be produced before the taxing authorities administering the Central Act. Beyond the power of calling for records, this Section does not confer any right on the State Officers to recompute the agricultural income already computed by the Central Officers. We also do not think by a process of interpretation such power can be read into Section 49 of the State Act as has been done by the High Court. It is a well established rule of interpretation that while interpreting a particular provision of a Statute, courts should bear in mind the object and scheme of the entire Act. A particular provision of the Act cannot be considered or interpreted in isolation so as to give room for conflict inter se between

the provisions of the same Act. Courts should also bear in mind that while interpreting a provision of the Act an interpretation leading to the provision becoming ultra vires should be avoided. Thus examined, it is seen from a plain reading of Section 49 of the State Act, it does not authorise the officers under the State Act to sit in judgment over computation of income made by the officers under the Central Act. Such a reading of Section 49 of the State Act is not possible and we accordingly hold that Section 49 of the Act does not per se contemplate a power being vested in the State Officers to recompute the agricultural income already made by the officers under the Central Act. At this stage, we must notice the proviso to Section 49 of the State Act does use the words for the purpose of ascertaining agricultural income in regard to tea but these words in the said section, in our opinion, does not take the States case any further and at this stage it is sufficient to say that if the legislature intended to permit the State Officers to recompute the agricultural income opposed to the computation made by the Central Officers under the Central Act, it could very well have stated so in so many words. In our opinion, the legislature advisedly did not say so because it wanted to keep its legislation within the ambit of the definition of agricultural income in Article 366(1) of the Constitution which definition was obviously inserted in the Constitution to see that there is similarity in the computation of agricultural income throughout the Union of India and also to see that there is no conflict in the computation of such income made by the Central and State Officers, more so with reference to agricultural produces whose income is treated as a composite income both for the purpose of income tax under the Central Act as also the State Acts. We will now consider the effect of Rule 5 of the State Rules. As noticed hereinabove, Rule 5 of the Rules in its proviso has in unequivocal terms empowered the State authorities in given cases to refuse to accept the computation of agricultural income made by the Central Officers after examining the books already examined by such Central Officers. The appellants contend that this provision is beyond the rule-making power under the Act, hence, is in excess of the power delegated under the State Act. They also contend that assuming that such rule-making power has entrusted the delegation under Section 50 of the State Act, same would be ultra vires of the Constitution.

We see force in the above contention. A perusal of Section 50 of the Act shows that the State Government has been empowered to make such Rules as are necessary for the purpose of carrying out the purposes of the Act. We have already noticed that the object and the scheme of the Act do not contemplate the State authorities being empowered to recompute the agricultural income contrary to the computation made by the Central Officers, nor do the subjects specified in sub-sections 2(a) to (m) of Section 50 provide for making such rules empowering the State Officers to make computation of agricultural income contrary to what is computed by the Central Officers under the Central Act. We have noticed that by virtue of the provisions made by the legislature in explanation to Section 2(a)(2), proviso to Section 8 and Section 20D, it is clear that the State Legislature intended to adopt the computation of agricultural income made under the provisions of the Central Act. Having specifically said so in the above Sections of the Act, if the Legislature wanted to deviate from that

scheme of the Act, it could have in clear terms provided for a power being vested with its officers in any given case to recompute the income keeping in mind the revenue of the State but the Legislature has not thought it necessary to do so. Even under Section 50, we do not see any provision which specifically authorises the State Government to make any such rules in the nature of the proviso to Rule 5 of the State Rules. It is an established principle that the power to make rules under an Act is derived from the enabling provision found in such Act. Therefore, it is fundamental that a delegate on whom such power is conferred has to act within the limits of the authority conferred by the Act and it cannot enlarge the scope of the Act. A delegate cannot override the Act either by exceeding the authority or by making provision which is inconsistent with the Act. Any Rule made in exercise of such delegated power has to be in consonance with the provisions of the Act, and if the Rule goes beyond what the Act contemplates, the Rule becomes in excess of the power delegated under the Act, and if it does any of the above, the Rule becomes ultra vires of the Act. We have already noticed that none of the provisions of the Act has contemplated any power to be vested in the State officers to recompute the agricultural income from tea while proviso to Rule 5 of the Rules in specific terms empowers the State officers to recompute the agricultural income from tea different from that which is computed by the Central officers under the Central Act. Thus, it is seen that this Rule is not only made beyond the rule-making power of the State under Section 50 of the Act but also runs counter to the object of the Act itself, and enlarges the scope of the Act. The same also suffers from the other vices pointed out by us hereinabove, hence such a Rule, in our opinion, is ultra vires of the Act. Therefore, proviso to Rule 5 of the State Rules to the extent it empowers the State Officers to recompute the agricultural income already computed by the Central Officers is ultra vires of the State Act.

Before we conclude, we must advert to one other aspect which requires our consideration. Here we must notice the arguments advanced on behalf of the State of Assam that Rule 5 of the Rules was enacted to see that no injustice is done to the State Revenue by erroneous assessments made contrary to the provisions of the Central Act by the Officers acting under the Central Act and if this Rule is to be held ultra vires, States will be left without any remedy in such circumstances. We do not agree with this apprehension expressed on behalf of the State. In our opinion, if while examining the papers produced or liable to be produced before the taxing authorities administering the Indian Income Tax Act, 1961 as contemplated under proviso to Section 49 if the State Authorities are of the opinion that the Central Assessing Authority has not made a proper assessment of the agricultural income of the assessee, as required under the Central Act, then it is always open to the State authorities to invoke the jurisdiction of the appellate or revisional authorities under Chapter XX(E) of the Central Act and if they succeed in any such attempt they can always recompute the agricultural income as contemplated under Section 20D of the State Act. Therefore, the above apprehension is baseless and we notice it is only for this limited purpose proviso to Section 49 of the Act is incorporated by the State Legislature.

Having come to the conclusion that the proviso to Rule 5 of the Rules to the extent stated hereinabove, is ultra

vires of the State Act, we are of the opinion that it is not necessary for us to go into the larger question of constitutional validity of the provisions of the State Act or the question of repugnancy which was argued on the basis of the presumption that the State Act has made provisions which run counter to the constitutional provisions and the provisions of the Central Act.

For the reasons stated above, these appeals and petitions succeed and the same are allowed. The proviso to Rule 5 of the Assam Agricultural Income Tax Rules, 1939 to the extent it permits recomputation of agricultural income by the State Officers is declared as ultra vires, the impugned orders of assessment are set aside with a direction to the Agricultural Income Tax Officers concerned in the State of Assam to re- assess the agricultural income of the appellants/petitioners on the basis of the computation of agricultural income from tea made by the Central Officers, subject to their right to seek relief in the manner aforestated under Chapter XX(E) of the Central Act.

The appeals and petitions are allowed. No costs.

JUDIS