

(1991) 09 MAD CK 0040

In the Madras High Court

Case No : Writ petition No. 7007 of 1983

Abraham Taliat

APPELLANT

Vs

State of Tamil Nadu and others

RESPONDENT

Date of Decision : 06-09-1991

Acts Referred:

Citation : (1992) 196 ITR 891

Hon'ble Judges : Govindaswamy, J

Bench : Single Bench

Advocate : M.S. Sundararajan, for the Appellant; V.M.C. Varadarajan, for the Respondent

Judgement

Govindasamy, J.—The petitioner was holding about 3,000 rubber trees in Carmelyn Rubber Estate comprised in Survey No. 34/1 of Kalial

Village in Vilavancode Taluk. The petitioner, by an agreement dated August 19, 1981, entered into with one Mrs. Lilly Abraham, daughter of P. T.

Abraham, residing at Kalial Village, Vilavancode Taluk, agreed to sell the three thousand rubber trees to be cut and removed with a view to

replant the above area with rubber. The said Mrs. Lilly Abraham agreed to purchase the said 3,000 rubber trees earmarked by the petitioner and

identified by the said Mrs. Lily Abraham at the rate of Rs. 142 per tree, in all aggregating to Rs. 4,26,000, of which the said Mrs. Lilly Abraham

paid an advance of Rs. 1,00,000 on March 23, 1981, and also agreed to pay the balance of Rs. 3,26,000 as entered into in the agreement and

that the purchaser shall cut and remove the rubber trees in proportion to the amounts paid under the purchase price. The said agreement was said

to be oral in the first instance which was later reduced in a stamp paper on August 19, 1981. The petitioner has stated that apart from the advance,

he had received a sum of Rs. 1,02,942 during the accounting period April 1, 1981, to March 31, 1982, the corresponding assessment year being 1982-83. The petitioner was of the view that the sale consideration of the rubber trees was not agricultural income and, consequently, the petitioner did not include the said amount in the statement of income and expenditure of the estate furnished to the assessing authority for the year in question. In response to the notice issued by the assessing authority u/s 17(2) of the Tamilnadu Agricultural Income Tax Act, 1955 (hereinafter referred to as "the Act"), the account of the petitioner appeared before the Agricultural Income Tax Officer-I, and produced the accounts. The Agricultural Income Tax Officer-I stated that the accountant of the petitioner deposed about the factum of the sale under the agreement with a condition that the trees should be cut and removed within a period of three years from March 20, 1981, to April 19, 1984, with permission to slaughter tap" the trees and that the petitioner-assessee received a sum of Rs. 3,05,884 from the purchaser of the trees. The assessing authority proceeded on the basis that since three years had been given to the purchaser to cut the trees, it was obvious that the sale included the privilege of slaughter tapping the trees also before cutting and removing them and stated that on inspection by him on December 13, 1982, slaughter tapping of the trees was going on by the purchaser of the trees, which was corroborated by the statement of the authorised representative of the petitioner. In view of the aforesaid statement, the assessing authority proceeded on the basis that the consideration received by the assessee was not only in relation to the value of the trees, but was also in relation to the grant of permission to extract latex from the trees and since the latex had been extracted from the trees, the amount of consideration received by the assessee had to be bifurcated into two portions, one pertaining to the value of latex and the other attributable to the value of the trees and that the portion of the amount pertaining to latex had to be construed as agricultural income and consequently valued the tree at Rs. 75 per tree and also valued the income from the extract of latex at Rs. 67 per tree. Accordingly, the assessing authority determined the income at Rs. 1,42,329.20 and also determined his liability at Rs. 73,763.85. Aggrieved by the said order of the assessing authority, the petitioner filed Revision Petition No. 34 of 1983 before the Commissioner of Agricultural Income Tax, Madras, the

second respondent herein. The Commissioner of Agricultural Income Tax, on the basis of the statement of the revision petitioner, considered that

the Agricultural Income Tax Officer, u/s 17(3) of the Act, made an assessment of liability and that cannot be disputed by the revision petitioner and

that the revision petitioner failed to prove the contentions of (i) capital receipts on cutting the trees, (ii) no agricultural operations thereon, and (iii)

no agricultural income derived thereon and, consequently, by an order dated April 22, 1983, rejected the revision petition filed by the petitioner

herein. It is at this stage that the petitioner has filed the above writ petition for issue of a writ of certiorari to quash the assessment order No. G. I.

R. 52A of 1982-83 (Vil), dated December 17, 1982, of the third respondent herein and the order in R. P. No. 34 of 1983, dated April 22, 1983,

of the second respondent herein.

2. Mr. Sundararajan, learned counsel for the petitioner, represented that what was sold under the deed of agreement of sale is only trees and that

the consideration received as a result of the sale of the rubber trees will constitute only a capital receipt and that cannot be construed as agricultural

income. The assessing authority proceeded to determine the income by bifurcating the consideration received by the sale of the rubber trees

contrary to the terms contained in the agreement and that, in the absence of any income as a result of the slaughter tapping, the determination of the

tax liability by the assessing authority is not sustainable. Learned counsel for the petitioner strenuously contended that what was received by the

petitioner under the deeded of agreement represented a capital receipt and that cannot be construed as a revenue receipt and that the petitioner

had not derived any interest from the land and, consequently, the assessment made contrary to the terms of the agreement is unsustainable in law.

3. In order to support the contention that the amount received as a result of the sale of the trees would constitute only a capital receipt, learned

counsel refers to a decision of the Supreme Court in Commissioner of Agricultural Income Tax, Kerala Vs. Kailas Rubber and Co. Ltd., . It was a

case in which the respondent therein sold rubber trees after they ceased to yield latex any further. In computing its agricultural income for the

accounting year, the Commissioner of Agricultural Income Tax included the sum of Rs. 8,532.50 representing the sale proceeds of rubber trees

which were cut down and sold after they became useless. The respondent preferred an appeal before the Deputy Commissioner. However, the respondent was not successful and, on further appeal to the Agricultural Income Tax Appellate Tribunal, the Tribunal accepted the case of the respondent and held that the sum of Rs. 8,532.50 representing the sale proceeds of rubber trees cut down and sold after they had become useless was not taxable as income, but was merely a capital receipt. On the application made by the Revenue, the Tribunal referred the case to the Kerala High Court and the Division Bench of the Kerala High Court affirmed the views of the Tribunal. Thereafter, the Revenue brought the matter to the Supreme Court on obtaining special leave to appeal to the Supreme Court. The Supreme Court observed as follows (at page 437) :

The definition of "agricultural income" in section 2 does not include proceeds from the sale of rubber trees in an estate which were utilised for the purpose of deriving income in the shape of latex. There was enough evidence in the record justifying the High Court's conclusion that the rubber trees formed part of the capital assets of the respondent. Admittedly, the respondent did not grow the rubber trees for the purpose of selling them. It was getting income from these rubber trees in the shape of latex. In course of time the rubber trees became old and unyielding. When the trees were no longer productive of latex, the respondent felled them and sold them. The Appellate Tribunal and the High Court were, therefore, right in holding that the sale proceeds of these trees should be treated as a capital receipt and not taxable as agriculture income.

4. Learned counsel for the petitioner also cited the decision of the Supreme Court in A.K.T.K.M. Vishnudatta Andharjanam represented by D.V.

Nambudripad Desamangalam Vs. The Commissioner of Agricultural Income Tax, Trivandrum, wherein the Supreme Court had occasion to consider whether the sale proceeds of teak trees constituted a capital or revenue receipt. The Supreme Court has considered as follows (at page 60) :

The principal point that has to be determined is whether the sale proceeds of the teak trees constituted capital or revenue. It appears to have been common ground before the High Court that the assessee planted the teak trees some time in the year 1946-47. The form of the question itself

showed that the trees were cut and completely removed from the land together with their roots for the purpose of planting rubber. There was no

question of any further regeneration or growth of the trees which had been cut and removed. In other words, there was no possibility of recurring

income from these trees. In *V. Venugopala Verma Rajah Vs. Commissioner of Income Tax, Kerala*, the question before this court was whether

trees which had not been removed with the roots and the stumps of which had been allowed to remain in the land was in the nature of income.

This is what was observed in that case :

"Where the trees are cut so that the stumps remain intact and capable of regeneration, receipts from sale of the trees would be in nature of

income. It is true that the tree is a part of the land. But by selling a part of the tree, the assessee does not necessarily realise a part of his capital.

We need not consider whether in case there is a sale of the trees with the roots so that there is no possibility of regeneration, it may be said that the

realisation is in the nature of capital. That question does not arise in the present case."

The present question was apparently left open and was not decided as the point which arose there did not relate to sale of trees of which the roots

had also been taken out for the purpose of planting some other kind of trees, e.g., rubber, as in the present case.

It seems to us that the well-known test laid down by the Privy Council in AIR 1932 138 (Privy Council), to find out whether a particular receipt is

income is not satisfied in the facts and circumstances of the present case. According to that test, income connotes a periodical monetary return

coming in with some sort of regularity of expected regularity from definite sources. The source is not necessarily one which is expected to be

continuously productive, but it must be one whose object is the production of a definite return excluding anything in the nature of a mere windfall.

Once the teak trees were removed together with their roots and there was no prospect of regeneration or of any production of a return therefrom,

it could well be said that the source ceased to be one which could produce any income. The Bombay High Court in *Commissioner of Income Tax,*

Bombay South Vs. N.T. Patwardhan, said that from the point of view of a person engaging himself in the business of sale of trees stood but also

the roots of the trees from which the wood yielded income. If the trees were sold off with the roots the capital structure would be affected.

The High Court in the judgment under appeal was particularly impressed with the profit motive of the assessee in planting teak trees although that

was done several years ago. But it was overlooked that the profit motive is not decisive of the question whether a particular receipt is capital or

income. An accretion to capital does not become taxable income merely because an asset is acquired in the hope that it may be sold at a profit. It

must also be remembered that trees so long as they are uncut form a part of the land. If they are cut with roots once and for all a part of the assets

is disposed of. The sale proceeds on account of their disposal cannot constitute revenue because by removing the roots the source from which

fresh growth of trees can take place is also removed. The sale of such trees, thus affects capital structure and cannot give rise to a revenue

receipt.

5. In Commissioner of Agricultural Income Tax Vs. George Varghese and Co., , the assessee entered into a contract with a rubber estate which

stated that the rubber trees on a specified 303 acres of land had become old and uneconomical, that with a view to replant rubber in the said 303

acres, the vendor had agreed to sell and the purchaser had agreed to purchase all the said rubber trees with their roots standing on the assessee's

said properties with rights to do with the trees whatever the purchaser considered gift, including slaughter-tapping till they are felled and removed,

for a certain consideration. On a reference by the Tribunal, the Kerala High Court has observed as follows (at page 499) :

We think that in substance what the Tribunal has held is that under the agreement there has been no intention on the part of the contracting parties

that the trees which were permitted to be slaughter-tapped, cut and removed, should derive sustenance from the land and continue to afford

income to the transferee, the assessee before us. The provisions in the agreement that we have read would clearly show that the definite intention

was to have the trees annihilated. There was an outright sale of the trees and considering the extent of the land on which the trees stood, 303

acre, it is quite conceivable that the removing of the trees would take considerable time and the provisions in the agreement that the assessee had

three years" time to remove them does not at all imply any intention that the trees should continue to receive nourishment from the land and afford

agricultural income to the assessee. The most apt passage that we have been able to find which can be applied to the facts of the case is that

contained in *Marshall v. Green* [1875] L. R. I. C. P. 35. The passage is in these terms :

"The principal of these decisions appears to be this, that wherever at the time of the contract it is contemplated that the purchaser should derive a

benefit from the further growth of the thing sold, from further vegetation and from the nourishment to be afforded by the land, the contract is to be

considered as for an interest in land, but where the process of vegetation is over, or the parties agree that the thing sold shall be immediately

withdrawn from the land, the land is to be considered as a mere warehouse of the thing sold, and the contract is for goods When the owner

of the land who by undertaking agricultural operations had cultivated trees and when he derived income by slaughter tapping and finally sold the

trees, the question might arise as to whether the entire amount received by slaughter tapping and sale of the trees later is agricultural income. The

question has been answered by this court in the decision in I. T. R. Nos. 76 and 77 of 1965 (*E. J. John v. State of Kerala*). We wish to make it

clear that the question arising in this decision is different. What is the nature of the receipts by the assessee depends on the terms of his contract

with the owner of the land. Construing it we have to hold that there has been no transfer of an interest in land. And so that amounts received will

not fall within the definition of the term ""agricultural income"" in the Act."

6. Learned counsel for the petitioner further cited the decision in *Commissioner of Agrl. Income Tax Vs. Pullangode Rubber and Produce*

Company, wherein one Messrs. E. J. A. and Co. entered into three agreements with the assessee, Messrs. Pullangode Rubber and Produce Co.

Ltd., undertaking to pay Rs. 3,44,108.70 to the assessee for cutting and removing rubber trees belonging to the assessee-company. The amount

was payable in the assessment year 1970-71. While considering as to whether the amount paid by the purchaser would constitute taxable

agricultural income, the Kerala High Court held that, on the terms of the documents and the circumstances of the transaction as disclosed by the

records, there was no justification for splitting up the amount of consideration received as representing the value of the trees sold and the price of

the latex to be extracted by way of earning agricultural income from the sold trees and that the transaction was one and entire - plainly and simply a

sale of the trees.

7. Learned counsel for the petitioner contended that the law on this aspect, deducible from the decisions cited hereinabove, is that the value

received for the sale of the trees has to be considered only as a capital receipt and not as revenue and that, in the instant, case, if the ratio of those

decisions is applied, the amount received under the agreement has to be construed only as a capital receipt and not as revenue and the impugned

orders are unsustainable.

8. In reply, the learned Additional Government Pleader contended that the amount specified in the agreement of sale of properties as sale

consideration represents not only the value of the trees, but also represents latex alleged to have been extracted from the trees. It is also contended

that it is evident that, on inspection by the assessing authority, it was found that the operation of slaughter tapping was going on and that apart, the

statement of the representative of the assessee-petitioner is to the effect that the slaughter tapping was permitted and that during the accounting

year the assessee received a sum of Rs. 3,05,884. The learned Additional Government Pleader further contended that having due regard to the

facts of the case, the assessing authority is right in bifurcating the sale consideration representing the value of the trees as well as the value of the

latex. The learned Additional Government Pleader also contended that, in view of the aforesaid circumstances, the assessment made by the original

authority and confirmed by the revisional authority cannot be said to be vitiated for any reason whatsoever, as contended by learned counsel for

the petitioner. In support of the above contentions, learned Additional Government Pleader relied on an unreported judgment of a single judge of

this court in Chittarwally United Traders v. Commr. of Agrl. I. T. (Order dated December 8, 1981, in W. P. Nos. 1038 to 1040 of 1979). That

was a case where the petitioner therein entered into a deed of licence dated February 3, 1973, with one Messrs. Kanthimathi Plantations Ltd. for

realising rubber latex from 10,000 rubber trees standing on an extent of 100

acres known as Pooparambu within the Kanthimathi Estates and that the right was only limited to slaughter, tapping and collecting rubber latex from the trees. In the case, the assessee included the income realised therefrom in the return submitted by him before the assessing authority, who determined and computed the total taxable turnover by including the income, included in the return. Later on, the assessee contended that the income received by realisation of the rubber latex should not be treated as agricultural income for the purpose of determination of the total income liable for agricultural Income Tax. In that case, that High Court held that the income realised from rubber latex, while granting licence to the said Messrs. Kanthimathi Plantation, would constitute agricultural income and would be liable for assessment under the Agricultural Income Tax Act, 1955.

9. In the face of the rival contentions put forth by both the parties, it may be relevant to consider the agreement which is extracted *ubi infra*.

This agreement executed on this Nineteenth day of August, one thousand nine hundred and eighty-one between Abraham Taliat, son of late Dr.

Jacob Taliat, aged 57, residing at Carmelyn, Gandhi Nagar, Cotton Mill, Trivandrum-14, hereinafter referred to as the Vendor and Mrs. Lilly

Abraham, daughter of P. T. Abraham, aged 34, residing at Kandathil House, Kaliel Village Vilavancode Taluk, Kanyakumari District. (hereinafter referred to as "the purchaser").

Whereas the 3,000 (three thousand) rubber trees standing in Carmelyn Rubber Estate, comprised in Re. Survey No. 34 of Kaliel Village, Vilavancode Taluk, Kanyakumari District, have become old and uneconomic.

And whereas the vendor is desirous of selling the aforesaid 3,000 (three thousand) rubber trees to be cut and removed with a view to replant the above area with rubber;

And whereas the purchaser had agreed to purchase the aforesaid 3,000 (three thousand) rubber trees clearly earmarked by the vendor and identified by the purchaser for a sum of Rs. 142 (rupees one hundred and forty-two only) per tree, thus totalling Rs. 4,26,000 (rupees four lakhs and twenty-six thousand only) being the purchase price to be paid as hereunder provided and the offer being accepted by the vendor.

Now this witnesses and the parties hereby mutually agree as follows :

1. The purchaser had paid a advance of Rs. 1,00,000 (rupees one lakh only) on March 23, 1981, the receipt of which is acknowledged by the vendor.

2. The balance amount of Rs. 3,26,000 (rupee three lakhs and twenty-six thousand only) shall be paid by the purchaser as detailed below :

a(1) to a(18) on March 20, 1981/March 20, 1983 Rs. 17,157

a(19) on April 20, 1983 Rs. 17,174

3. The purchaser shall cut and remove the rubber trees only in proportion to the amounts paid under the purchase price and without causing any damage to the building and power lines.

4. If the purchaser violates any of the terms and conditions, this agreement shall automatically stand cancelled and the purchaser shall forfeit all the rights and privileges herein contained.

5. The period of this agreement expires on April 19, 1984. The purchaser shall cut and remove all the rubber trees before the expiry of this agreement.

10. It is manifest from the aforesaid terms and conditions that the purchaser had agreed to purchase 3,000 rubber trees at the rate of Rs. 142 per

tree, in all aggregating to a sum of Rs. 4,26,000 being the purchase price to be paid as stated therein. It is also manifest from the agreement that the

purchaser shall cut and remove the rubber trees only in proportion to the amount paid under the purchase price and without causing any damage to

the building and power lines. The purchaser paid an advance of Rs. 1,00,000 on March 23, 1981, and the balance amount of Rs. 3,26,000 was

agreed to be paid by the purchaser in 18 instalments at the rate of Rs. 17,157 from March 20, 1981, to March 20, 1983, and the balance of Rs.

17,174 was agreed to be paid as the 19th instalment on April 20, 1983. It is also provided that if the purchaser violated any of the terms and

conditions, the agreement shall automatically stand cancelled. Having due regard to the terms contained in the aforesaid agreement, it is explicit that

what is sold under the agreement is only 3,000 rubber trees and that the consideration specified thereon is attributable to the value of the trees and

there is no indication whatsoever that any portion of the consideration can be attributed with reference to slaughter tapping. While so, the

observations of the assessing authority that the trees were sold with permission for slaughter tapping is not correct. There is no permission

whatsoever granted in favour of the agreement holder for slaughter tapping the trees sold under the agreement. On a reading of the agreement, it is

clear that the purchaser shall cut and remove the trees on payment of the consideration specified thereon. In so far as the receipt of a sum of Rs.

3,05,844 is concerned, it should have been accounted for in the books of account maintained by the petitioner. In the absence of any material,

averments to the contrary cannot be relied upon. It is not the case of the assessing authority that the books of account revealed that the assessee

had received the said sum of Rs. 3,05,844 during the accounting year from the agreement-holder. The terms of the agreement also do not show

that the assessee had to receive the said sum during the accounting period. Even otherwise, if the assessee has received the said sum towards the

value of the trees, as per the terms of the agreement, it has to be construed as to whether it is capital or revenue, capable of being for payment of

tax.

11. From the catena of decisions cited by learned counsel for the petitioner, it is clear that the consideration for the sale of the trees would

constitute only a capital receipt and not a revenue receipt. In the decision cited by the learned Additional Government Pleader, it was held that if

the income is realised by permitting slaughter tapping, such income would be construed as agricultural income liable for assessment to tax. In the

instant case, what is sold is only trees and the consideration received therein is only for the trees and the agreement does not disclose that the

agreement-holder shall be entitled to carry out slaughter tapping. It is a agreement pure and simple for sale of trees and, consequently, having due

regard to the ratio of the decisions cited by learned counsel for the petitioner, the consideration received under the agreement of sale from the

purchaser should necessarily be construed as a capital receipt and it cannot be construed as revenue. Even assuming as per the statement of the

representative of the assessee/petitioner that during the accounting period the petitioner received the sum of Rs. 3,05,884 from the agreement-

holder, it may be in relation to the sale consideration due and payable under the agreement and as such the said amount had to be construed as a

capital receipt and cannot be construed as an agreement of sale. If at all either the assessee-petitioner or the purchaser realised any income by extracting latex, it is for the assessing authority, based on proper materials, to proceed against the person concerned to determine the amount realised as a result of extraction of latex and make an assessment. In so far as the amount received towards the sale consideration under the agreement is concerned, it cannot be construed as agricultural income but has to be construed as a capital receipt and if it is so construed, the impugned orders treating a portion of the amount received by the assessee-petitioner towards the sale consideration of the sale of property as income realised as a result of slaughter tapping is not correct. Having construed as such, the decision referred to by the learned Additional Government Pleader which relates to the consideration received for realisation of rubber latex which was construed as agricultural income is not applicable in the instant case. The petitioner-assessee has not received any amount towards the realisation of rubber latex. Since the amounts covered as sale consideration of the trees sold under the agreement are construed as a capital receipt, the inclusion of the portion towards agricultural income during the accounting period of the assessee cannot stand. In view of the aforesaid reasons, the impugned orders of the assessing authorities are liable to be quashed and accordingly they are quashed. It is for the assessing authorities, if they possess enough material to substantiate that either the assessee or the agreement-holder during the accounting year, de hors the consideration specified in the agreement, derived income as a result of slaughter tapping, to decide what course of action to be taken, if they are so advised. The writ petition is allowed with costs of Rs. 2,000 (rupees two thousand only).