

(1996) 08 GAU CK 0020
In the Gauhati High Court
Case No : Civil Rule No. 2303 of 1992

ASSAM FRONTIER TEA LTD.

APPELLANT

Vs

ASSISTANT COMMISSIONER OF TAXES and Others

RESPONDENT

Date of Decision : 19-08-1996

Acts Referred:

Assam Agricultural Income Tax Act, 1939 — Section 8(2)(f)(vii)
Income Tax Act, 1961 — Section 2(1A)

Citation : (1997) 139 CTR 64

Hon'ble Judges : S.L. Saraf, J; S. L. Saraf, J

Bench : Division Bench

Judgement

S. L. SARAF, J. :

By this writ application, the petitioner challenges the order passed by the Asstt. Commr. of Taxes(A), Gauhati, respondent No. 1, on 9th June, 1992, and the order passed by the Agrl. ITO on 10th May, 1991, and praying for cancellation of the aforesaid two orders and a further direction that the respondent should allow the deductions in respect of contributions made on account of workmen and staff welfare as the same was incurred wholly and exclusively for earning and deriving the agricultural income under s. 8(2)(f)(vii) of Assam Agrl. IT Act, 1939 (hereinafter referred to as "the State Act").

2. The facts in a nutshell are as follows :

The petitioner is a public limited company incorporated under the Companies Act, 1956, having its registered office at Talap in the District of Tinsukia, Assam. The company has several tea gardens in the State of Assam and engaged in the business of cultivation, manufacture and sale of tea.

For the asst. yr. 1984-85, while computing the income of the assessee, the assessing authority under the IT Act, 1961 (hereinafter referred to as "the Central Act"), did not allow any deductions on account of Rs. 4 crores contributed by the assessee to two sister-concerns, namely, Apeejay Educational Association

Ltd. and Apeejay Medical Research and Welfare Association Ltd. and computed the total income as being Rs. 7,25,52,094. The IT authority passed the said assessment order under s. 251 r/w s. 143(3) on 30th March, 1990, and taxed 40 per cent of such income in terms of r. 8 of the IT Rules framed under the IT Act, 1961. The balance 60 per cent. of the income was left out for assessing under the Assam Agrl. IT Act, 1939. Before the Agrl. ITO, the assessee claimed deduction of Rs. 4 crores contributed by the company to the Apeejay Educational Association Ltd. and Apeejay Medical Research and Welfare Association Ltd. The Assam Agrl. ITO, however, disallowed the claim of the assessee on the ground that the assessee's income was partly agricultural and partly business. The expenditure incurred was not wholly and exclusively for deriving agricultural income as claimed by the assessee. As such, he accepted the computation of the composite income as made by the ITO and completed the assessment. As against the said order, the assessee preferred an appeal before the Agrl. Asstt. Commr. of Taxes (A), Gauhati, and contended that under the second proviso to s. 8(2) of the State Act of 1939 and r. 5 of the State Rules, 1939, deductions claimed and incurred wholly and exclusively for purposes of earning or deriving the agricultural income and which have not been allowed in the computation of the assessment under the IT Act are allowable under the State Act. The assessee relied on the provisions of s. 8(2)(f)(vii) and the second proviso to the said section for his submissions. The appellate authority held that the said contribution to two separate institutions is not exclusively for deriving agricultural income inasmuch as besides the labour force which is utilised for agricultural operation, there are other staff whose services are also utilised for manufacture and sale of tea. So it was held that expenditure incurred for workmen and staff welfare are not covered by s. 8(2)(f)(vii) of the State Act. In order to appreciate the facts in this case it will be necessary to refer to the factual aspects of the matter of the earlier years. For the assessment year 1982-83, the company had suffered a loss and filed a loss return of Rs. 45,64,140 and claimed an expenditure on labour welfare account of a sum of Rs. 25,000 only. For the asst. yr. 1983-84, an income of Rs. 2,47,000 was shown. No contribution towards welfare is disclosed. For the asst. yr. 1984-85, the income shown was Rs. 7,25,52,094. From the records disclosed it appears that the said money of Rs. 4 crores, i. e., Rs. 2 crores each were paid by the petitioner-company to the said two sister-concerns as stated hereinabove on 28th March, 1984.

3. On the above facts, the petitioners counsel, Dr. Saraf, raises several contentions. Dr. Saraf, on behalf of the petitioner, submits that the portion of the income derived from cultivation, manufacture and sale of tea as defined by s. 2(1A) of the IT Act, 1961, is assessable income under the Assam Agrl. IT Act, 1939. Rule 8 of the IT Rules, 1962, specifically provides that income derived from the sale of tea grown or manufactured or sold in India shall be computed as if it were income derived from business and 40 per cent. of such income shall be liable to tax under the IT Act, 1961, and balance 60 per cent of such income is to be regarded as agricultural income liable to be taxed under the Assam Agrl. IT

Act, 1939. Rule 5 of the Assam Agrl. IT Rules, 1939, according to Dr. Saraf lays down that in respect of the agricultural income from tea grown and manufactured by the seller in the State of Assam, the portion of net income worked out under the IT Act and left unassessed being agricultural income shall be assessed under the Assam Agrl. IT Act, 1939. It also provides that while assessing such income under the Agrl. IT Act, 1939, deduction should be allowed for the expenditure allowable under the State Act and the Rules made thereunder so far they have not been allowed under the IT Act in computing the net income from the entire operation.

4. Further, Dr. Saraf strongly urges that s. 8(2)(f)(vii) r/w the second proviso and r. 5 of the Agrl. IT Rules provide for deductions of expenses incurred or laid out wholly and exclusively for the purpose of earning or deriving agricultural income if such deductions have not been allowed by the IT authorities while computing the income for the IT Act, 1961. Dr. Saraf further elaborates his argument by referring to s. 40A(9) of the IT Act and submits that though the said expenditure on account of welfare scheme for the workers was allowable under s. 37 of the IT Act, 1961, the same could not be allowed due to the bar or restriction contained in s. 40A(9) of the Act. The provisions of s. 40A(9) prevent the ITO from allowing contributions made to persons stated therein otherwise the ITO while making the assessment under the Central Act would have been obliged to allow the said expenditure. Dr. Saraf tries to get the negative sustenance from the said provisions of s. 40A(9) and urges that the expenditure incurred by the petitioner-company was admittedly an allowable expenditure under s. 37 save for the restriction of s. 40A(9). To appreciate the argument of Dr. Saraf, the following provisions of the IT Act, 1961, and the Rules passed under the said Act and the Assam Agrl. IT Act, 1939, and the Rules framed thereunder are set out hereinbelow :

"2. (1A) agricultural income, means -

(a) any rent or revenue derived from land which is situated in India and is used for agricultural purposes;

(b) any income derived from such land by -

(i) agriculture; or

(ii) 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 raised or received by him fit to be taken to market; or

(iii) the sale by a cultivator or receiver of rent-in-kind of the produce raised or received by him, in respect of which no process has been performed other than a process of the nature described in paragraph (ii) of this sub-clause;

37. (1) Any expenditure (not being expenditure of the nature described in ss. 30 to 36 and not being in the nature of capital expenditure or personal expenses of the assessee), laid out or expended wholly and exclusively for the purposes of

the business or profession shall be allowed in computing the income chargeable under the head Profits and gains of business or profession.

40A(9) No deduction shall be allowed in respect of any sum paid by the assessee as an employer towards the setting up or formation of, or as contribution to, any fund, trust, company, AOPs, BOIs, society registered under the Societies Registration Act, 1860 (21 of 1860), or other institution, for any purpose, except where such sum is so paid, for the purposes and to the extent provided by or under cl. (iv) or cl. (v) of sub-s. (1) of s. 36, or as required by or under any other law for the time being in force.

Rule 8. Income from the manufacture of tea - (1) Income derived from the sale of tea grown and manufactured by the seller in India shall be computed as if it were income derived from business, and forty per cent. of such income shall be deemed to be income liable to tax.

(2) In computing such income an allowance shall be made in respect of the cost of planting bushes in replacement of bushes that have died or become permanently useless in an area already planted, if such area has not previously been abandoned, and for the purpose of determining such cost, no deduction shall be made in respect of the amount of any subsidy which, under the provisions of cl. (30) of s. 10, is not includible in the total income.

Sec. 2(a)(2) :

agricultural income means -

(2) Any income derived from such land by -

(i) agriculture, or

(ii) the performance by a cultivator or receiver of rent-in-kind of any process ordinarily employed by a cultivator or received of rent-in-kind to render the produce raised or received by him fit to be taken to market, or

(iii) the sale by a cultivator or receiver of rent-in-kind of the produce raised or received by him, in respect of which no process has been performed other than a process of the nature described in sub-cl. (ii);

Explanation - Agricultural income derived from such land by the cultivation of tea means that portion of the income derived from the cultivation, manufacture and sale of tea as is defined to be agricultural income for the purposes of the enactments relating to Indian Income Tax.

Sec. 8(2) Rules prescribing the manner of determining the net amounts of agricultural income for the purpose of this clause shall provide that the following deductions shall be made from the gross amounts of such income, namely :

(f)(vii) any expenditure (not being in the nature of capital expenditure) laid out or expended wholly and exclusively for the purpose of earning or deriving the agricultural income;

(g) any sum actually donated for charitable purposes, if such donation is not more than Rs. 1,00,000 or ten per cent of the total agricultural income, whichever is less.

(h) such other deductions as may be prescribed by rules made under s. 50 of this Act :

Provided always that no deduction shall be made under this clause, if it has already been made under s. 7 of this Act or in the assessment under the Indian IT Act :

Provided further that in cases of agricultural income from cultivation and manufacture of tea, the agricultural income for the purposes of this Act shall be deemed to be that portion of the income from cultivation, manufacture and sale which is agricultural income within the meaning of the Indian IT Act, 1922 (XI of 1922) and shall be ascertained by computing the income from the cultivation, manufacture and sale of tea as computed for Indian Income Tax from which shall be deducted any allowance by this Act authorised in so far as the same shall not have been allowed in the computation for the Indian IT Act.

Rule 5. In respect of agricultural income from tea grown and manufactured by the seller in the Province of Assam, the portion of net income worked out under the Indian IT Act and left unassessed as being agricultural shall be assessed under this Act after allowing such deductions under the Act and the rules made thereunder so far as they have not been allowed under the Indian IT Act in computing the net income from the entire operation :

Provided that the computation made by the Indian ITO shall ordinarily be accepted by the Assam Agrl. ITO who may, for his satisfaction under s. 20 of the Assam Agrl. IT Act, obtain further details from the assessee or from the Indian ITO, but shall not without the previous sanction of the Dy. Commr. of Taxes or when there is no Dy. Commr. of Taxes (the Asstt. Commr. of Taxes empowered by the Commn. of Taxes in this behalf), required under the proviso to s. 49, the production of account books already examined by the Indian ITO for determining the agricultural income from tea grown and manufactured in Assam or refuse to accept the computation of the Indian ITO."

5. Dr. B. P. Todi, appearing for the Revenue, submits that no part of the contribution made by the petitioner to the two sister-concerns of the petitioner-company towards the welfare scheme of the workers and staff can be treated as an expenditure wholly and exclusively laid out for the purposes of earning or deriving the agricultural income. Further he urges that in computing the income under the State Act, deductions, if specifically provided for under the State Act, are only allowable. If such deductions are, however, also allowable under the Central Act and they have not been allowed for some reason or the other, the same may be considered for computing income under the State Act. That does not mean that any and every deduction permissible under the Central Act shall also be entitled to deduction under the State Act. Under the State Act only

deductions specifically authorised by the State Act are permissible and not other deductions.

6. In the instant case, there is no provision whereby contribution made on account of the welfare scheme of staff and workers has been authorised to be deducted. As such, the tax authorities have acted legally and in keeping with the provisions of the State Act. Thirdly, Dr. Todi argues that the language of s. 8(2)(f) (vii) of the State Act is different from s. 37 of the Central Act. Under the State Act by no stretch of imagination could the contribution to welfare scheme be treated as expenditure laid out or expended wholly or exclusively for the purposes of earning or deriving the agricultural income. In no way could incurring of expenses on account of welfare scheme or schemes be connected with earning or deriving of the agricultural income. Earning or deriving the agricultural income and productivity of the produce depends on many factors such as proper monsoon, dedicated workers, efficient management, favourable national and international market and other factors. Earning of agricultural income has no direct nexus with the welfare scheme nor is the same attributable wholly and exclusively for the said purpose. Dr. Todi further submits that the contribution made by the petitioner-company to the two sister concerns for the welfare of the workers and staff could at best be treated as donation under s. 8(2)(g) of the Agrl. IT Act, 1939, and the maximum limit provided for deduction is Rs. 1,00,000 or ten per cent. of the total agricultural income, whichever is less.

Dr. Todi further makes a distinction between the expenditure and allowance. He submits that s. 8(2)(f)(vii), second proviso, speaks of deduction of any allowance permissible under the said Act in so far as the same has not been allowed in the computation of the Indian IT Act. In support of his contention, Dr. Todi argues that allowances which have been specifically provided for by ss. 7 and 8 of the Act of 1939 are allowable and nothing else. In this connection Dr. Todi refers to a decision reported in *M.C.V.S. Arunachala Nadar etc. Vs. The State of Madras and Others*, where the Supreme Court has observed : "allowance means something given as compensation, rebate or deduction". Referring to the provisions of ss. 7 and 8, Dr. Todi submits that none of the specific provisions provided under the said Act allows the deduction on account of expenditure for the welfare scheme. According to him, it would be doing violence to the language of s. 8(2)(f)(vii) of the Act of 1939 to say that expenditure on account of welfare scheme is also provided under the said sub-clause. He submits that expenditure and allowance are two different categories though similar in nature still a distinction is being made by the second proviso itself. Expenditure under sub-cl. (vii) is not included in any allowance of the second proviso. The expenditure is not allowance. Dr. Todi further argues that s. 8(2)(f)(vii) speaks of expenditure laid out for earning the agricultural income. The same cannot be equated with business income as provided under s. 37 of the IT Act, 1961.

7. In support of his contention, Dr. Saraf refers to a decision reported in *India United Mills Ltd. Vs. Commissioner of Income Tax, Bombay City-I*, where the

Bombay High Court has observed as follows :

"These deductions were disallowed both by the ITO as well as by the AAC and even the Tribunal disallowed the deduction on the ground that it appeared to the Tribunal that the preponderant consideration for the contribution to the hospital was not the needs of the business of the company but disposition to charity of its directors. This is clear not only from the fact that the payment bore no relation either to the number of employees or the frequency with which they availed of the hospital facilities but also from the fact that it depended on the volume of the business done by the company. The Tribunal took the view that the payments were, therefore, not wholly and exclusively laid out for the purpose of the business and as such deduction had been rightly disallowed. Mr. Kolah, learned counsel for the assessee, had contended before us that the finding of the Tribunal was really based on no evidence at all and it was an inference drawn from the mere fact that the payment that was to be made by the assessee to the Bombay Hospital Trust bore no relation either to the number of employees or the frequency with which they availed of the hospital facilities but depended upon the turnover of the company. He contended that the fact that the payment bore relation to the turnover of the assessee-company and not to the profits earned by the assessee-company in any of the concerned years was eloquent enough to suggest that the payment could not have been by way of gift or donation to the hospital trust, for even if there was loss incurred by the assessee-company in a particular year out of three years for which arrangement had been made, the company was required to make the payment to the hospital trust for the medical facility which the hospital authorities had rendered to its clerical staff in those years. He further contended that normally speaking the assessee-company would have been required to incur expenditure for providing medical facilities to its own staff but instead of the assessee-company incurring that expenditure it made this arrangement with the Bombay Hospital Trust and, therefore, the Tribunal was in error in coming to the conclusion that the payments made to the hospital trust were not wholly and exclusively laid out for the purpose of business of the assessee-company. There is considerable force in this contention of Mr. Kolah and we are also in agreement with him that the finding of the Tribunal is really based on no evidence at all. In the first place, the assessee-company itself could have incurred the expenditure for providing medical facilities to its own staff and had that been done the expenditure incurred on that account would have been allowed as permissible deduction; but instead of doing that the offer which was received from the Bombay Hospital Trust was sanctioned by the assessee-company. Secondly, the AAC has found as a fact on the materials that were placed before him by the assessee-company that the assessee-company had been sending 100 to 125 employees during every month to the hospital for medical check-up and treatment.

The total number of clerical staff during the material period was said to be about 1,200 and out of these employees about 100 to 125 employees used to go to the hospital for medical check-up and treatment every month. Thirdly, the medical

treatment included expert treatment at the hands of competent honorary doctors attached to the Bombay Hospital. It cannot, therefore, be said that the payments made by the assessee-company to the Bombay Hospital Trust under the aforesaid arrangement were excessive. It has been observed by the ITO in his order that no particular number of beds as such had been reserved for the members of the clerical staff of the assessee-company. But this observation cannot be said to be quite correct, for the arrangement actually was that the Bombay Hospital had undertaken to reserve and provide a number of beds for the purpose; in other words, as and when any member of the clerical staff of the assessee-company would be required to remain an indoor-patient in the hospital, the hospital authorities would make sufficient number of beds available for such members. Looking to the years in which this arrangement was made. viz., 1951, 1952 and 1953, it cannot be said that any particular reservation of number of beds was required to be made. Having regard to this material on record, it is not possible for us to accept the finding of the Tribunal and we are clearly of the view that the assessee-company would be entitled to claim deduction in respect of such payment made to the Bombay Hospital Trust as expenditure which had been wholly and exclusively laid out for the purpose of its business."

8. Dr. Saraf further refers to a decision reported in Commissioner of Income Tax Vs. Development Trust Pvt. Ltd., where while constructing a residential colony for sale, the petitioner also constructed a school and claimed deduction on account of the school on the ground that it is wholly and exclusively a business expenditure as it is a part of the construction of the residential colony being an incentive to the purchasers of plots and flats in the said colony. In another decision reported in Purtabpore Company Ltd. Vs. The State of Uttar Pradesh, while interpreting the provisions of s. 6(2)(b)(iv) of the UP Agrl. IT Act, 1948, the Supreme Court was pleased to hold that expenses for raising crops include expenses incurred for management, supervision, organisation, etc. Such expenditure is allowable. The Supreme Court said as follows :

"It is well-known that modern agricultural farming which has become mechanised involves a high degree of organisation, technical skill, etc., in the same way as a well-run industry. If agricultural production has to be obtained with optimum results it is necessary that there should be a proper supervisory and other staff as also the employment of such means as would be conducive to maximum production and proper marketing of the produce. It is axiomatic that the staff would require residential accommodation which will have to be kept in a proper state of repairs. The staff will also need medical attention and other amenities which are normally afforded to employees nowadays. The benefit of provident fund can hardly be denied to them when it has become the accepted and normal feature in all forms of employment in modern times. If any motor vehicle is being maintained for enabling the supervisory or other staff to look after the farm the expenses incurred thereon cannot be regarded as foreign to farming operations. The expenditure incurred on postage, telegrams, printing and stationery for the purpose of and in connection with farming would also be

allowable. If certain periodicals are being subscribed to for obtaining technical knowledge and up-to-date information in the matter of agricultural farming it is difficult to see how that could be disallowed. It is not necessary to refer to all other items the details of which have been given before. What has to be essentially determined under s. 6(2)(b)(iv) is whether the expenses were incurred on or for the purpose of the entire work and operations involved in raising the crops, making the same fit for marketing and the transportation of the produce to the market. The words raising the crop cannot be confined simply to the ploughing of the land, sowing the seed and cutting the harvest. It must be emphasised that s. 6(2)(b)(iv) is not to be construed in a narrow and pedantic sense and must be given its full effect in the background of modern large scale farming and the organisation required for it."

9. Counsel for the petitioner further refers to the observations of the Supreme Court in *Mysore Kirloskar Ltd. Vs. Commissioner of Income Tax*, while interpreting the provisions of s. 37(1) and s. 80G of the IT Act, 1961, as follows :

"The basic requirements for invoking ss. 37(1) and 80G are, therefore, quite different, but none the less, the two sections are not mutually exclusive. If the contribution by an assessee is in the form of donations of the category specified under s. 80G, but if it could also be termed as an expenditure of the category falling under s. 37(1), then the right of the assessee to claim the whole of it as allowance under s. 37(1) cannot be denied. But such money must be laid out or expended wholly and exclusively for the purpose of business. The word wholly refers to the quantum of expenditure and the word exclusively refers to the motive, object or purpose of the expenditure....

Again the words for the purpose of business used in s. 37(1) should not be limited to the meaning of earning profit alone. Business expediency or commercial expediency may require providing facilities like schools, hospitals, etc., for the employees or their children or for the children of the ex-employees. The employees of today may become the ex-employees tomorrow. Any expenditure laid out or expended for their benefit, if it satisfies the other requirements, must be allowed as deduction under s. 37(1) of the Act. It may also be stated, as observed by the Supreme Court in the aforesaid case, that the fact that somebody other than the assessee is also benefited or incidentally takes advantage of the provision made, should not come in the way of the expenditure being allowed as a deduction under s. 37(1) of the Act. But, nevertheless, it must be an expenditure allowable as deduction under the Act.

The question that, however, still remains is whether the donation claimed by the assessee for deduction can be said to be an expenditure as contemplated under s. 37(1) of the Act. Expenditure primarily denotes the idea of spending or paying out or away. It is something which is gone irretrievably, but should not be in respect of an unascertained liability of the future. It must be an actual liability in *praesenti*, as opposed to a contingent liability of the future. Some of these principles have been explained by the Supreme Court in *Indian Molasses Co.*

(Private) Ltd. Vs. Commissioner of Income Tax, West Bengal, wherein it has been observed :

The Income Tax law does not allow as expenses all the deductions a prudent trader would make in computing his profits. The money may be expended on grounds of commercial expediency but not of necessity. The test of necessity is whether the intention was to earn trading receipts or to avoid future recurring payments of a revenue character. Expenditure in this sense is equal to disbursement which, to use a homely phrase, means something which comes out of the traders pocket. Thus, in finding out what profits there be, the normal accountancy practice may be to allow as expense any sums in respect of liabilities which have accrued over the accounting period and to deduct such sums from profits. But the Income Tax law does not take every such allowance as legitimate for purposes of tax. A distinction is made between an actual liability in praesenti and a liability de futuro which, for the time being, is only contingent. The former is deductible but not the latter."

10. Dr. Saraf in continuation of his argument further submits that it is not for the Department to prescribe what expenditure an assessee should incur and under what circumstances he should incur that expenditure.

According to him, every businessman knows his interest best and it was for the assessee to decide how best to protect his own interest and he refers to the decisions in Commissioner of Income Tax, Andhra Pradesh Vs. Dhanrajgiri Raja Narasingirji, and Sassoon J. David and Co. Pvt. Ltd., Bombay Vs. Commissioner of Income Tax , Bombay, Dr. Saraf further refers to the observation of the Supreme Court in Shahzada Nand and Sons Vs. Commissioner of Income Tax, Patiala, which reads as follows :

"But it is well-settled that these factors are to be considered from the point of view of a normal, prudent businessman. The reasonableness of the payment with reference to these factors has to be judged not on any subjective standard of the assessing authority but from the point of view of commercial expediency... What is the requirement of commercial expediency must be judged not in the light of the 19th century laissez faire doctrine which regarded man as an economic being concerned only to protect and advance his self-interest but in the context of current socio-economic thinking which places the general interest of the community above the personal interest of the individual and believes that a business or undertaking is the product of the combined efforts of the employer and the employees and where there is sufficiently large profit, after providing for the salary or remuneration of the employer and the employees and other prior charges such as interest on capital, depreciation, reserves, etc., a part of it should in all fairness go to the employees."

Dr. Saraf in continuation of his argument further, urges that the language of s. 8(2)(f)(vii) of the Assam Agrl. IT Act, is verbatim the same and refers to the decision of the Supreme Court in H.S. Shivakantappa Vs. Commissioner of

Agricultural Income Tax, where it has been held that the words "for the purpose of deriving agricultural income" in s. 5(j) of the Kerala Agrl. IT Act, 1950, do not mean anything very different from the words used in s. 37 of the IT Act, 1961. Expenditure of the kind which falls under s. 37 of the IT Act, 1961, must, therefore, fall within s. 5(j) of the Kerala Agrl. IT Act, 1950. Likewise, he argued that the expenditure allowed or allowable under the IT Act is allowable under the Assam Agrl. IT Act. He further refers to the observation in COMMISSIONER OF AGRICULTURAL Income Tax Vs. MALAYALAM PLANTATIONS LTD.,

"What s. 5(j) provides for is a deduction from the agricultural income in respect of expenditure laid out wholly and exclusively for the purpose of deriving the income. To confine this provision to cover only those expenses which are directly and immediately relatable to the derivation of income will be to import limitations which are not there, either in the language or in the context, and to hold that what is contemplated is only agricultural expenses considered as an antithesis of agricultural income. It appears that r. 5(j) of the Agrl. IT Act and s. 10(2)(xv) of the Indian IT Act, 1922, represent conceptions which are kindred though distinct. No doubt there should be connection between the item of expenditure and the earning or ensuring of income; and the connection should not be remote, indefinite or fanciful. Whether there is such connection in a given case will be a question of fact, once the proper approach is seen to have been made."

In reply, Dr. Saraf submits that there is no distinction between the words allowance and deduction and in this connection refers to Blacks Law Dictionary, sixth Edn. According to the dictionary meaning "allowance means a deduction, an average payment, a portion assigned or allowed; the act of allowing". Further, he refers to r. 5 of the Assam Agrl. IT Rules, 1939, which makes no distinction between the words allowance and deduction and uses the same indiscriminately. In answer to the argument of Dr. Todi that agricultural income is different from business income and they should be interpreted differentially, Dr. Saraf refers to a decision of the Supreme Court in H. S. Shivakantappa vs. Commr. of Agrl. IT (supra) where the Supreme Court observed :

"We see no reason whatsoever why the principle that applies to the interpretation of s. 37 of the IT Act, 1961, should not apply to the said s. 5(j). The fact that s. 5(j) uses the words for the purposes of deriving the agricultural income, pressed by learned counsel for the Revenue, do not, in our view, mean anything very different from the words used in s. 37 of the IT Act, 1961. Expenditure of this kind falls under s. 37 of the IT Act, 1961, and must, therefore, fall within the said s. 5(j)."

11. I have considered the submissions of Dr. Saraf, on behalf of the petitioner, and Dr. Todi, on behalf of the respondents. To appreciate the respective submissions of the parties the most important aspect of the matter is the interpretation of the provisions of s. 8(2)(f)(vii) of the Assam Agrl. IT Act, 1939. The language used by the Agrl. IT Act, 1939, is any expenditure (not being in the nature of capital expenditure) laid out and expended wholly and exclusively for

the purposes of earning and deriving the agricultural income. The very language also appears verbatim in the Kerala Agrl. IT Act, 1950, and the Supreme Court on consideration of the said provisions had said "we see no reason whatsoever why the principles that apply to the interpretation of s. 37 of the IT Act, 1961, should not apply to the said s. 5(j) of the Kerala Act, of 1950, the same as s. 8(2)(f)(vii) of the present Act of 1939. In that view of the matter, the attempt of Dr. Todi to differentiate between the business income and the agricultural income cannot be accepted. Dr. Todis second argument that there is a distinction between allowance and deduction is also not tenable particularly in view of the fact that no distinction between the words deduction and allowance has been made by the rule-making authority and they have treated both the words as bearing the same connotation. Further, the judgment of the Supreme Court in M. C. V. S. Arunachala Nadar vs. State of Madras as quoted above has no application in the instant case as the said observation has been made in a different context. Moreover, the meaning of the word allowance appearing in Blacks Law Dictionary also does not support the contention of Dr. Todi. The other submission of Dr. Todi that deduction of allowance as provided under s. 8(2)(f)(vii), second proviso, only relates to allowances or deductions permissible under the provisions of ss. 7 and 8 of the said Act. Nothing beyond what has been enumerated specifically in ss. 7 and 8 could be allowed under the broad spectrum of s. 8(2)(f)(vii) of the Act. If it specifically and clearly falls within the scope of the said deductions, the same could only be allowed and nothing more, not on the basis of wider interpretations of clauses of the said two sections. However, there is a lacuna in the submissions of Dr. Todi inasmuch as cl. (2)(f)(vii) falls under s. 8 of the Act and if on an interpretation of said cl. (2)(f)(vii) it is found that certain expenses have been made for the purpose of earning or deriving the agricultural income, the same had to be allowed. Clause (2)(f)(vii) itself is specific enough. However, the authorities have to determine as to which are the expenditure which have been expended wholly and exclusively for the purpose of deriving the agricultural income, the direct nexus between the two has to be established.

12. Dr. Saraf, in support of his argument, submits that s. 8(2)(f)(vii) of the Act of 1939 and the Rules framed thereunder particularly r. 5 make it abundantly clear that any expenditure laid out or expended wholly and exclusively for the purpose of earning or deriving the agricultural income is to be excluded in the computation of income under the Agrl. IT Act, 1939. According to Dr. Saraf, s. 8(2)(f)(vii) has a very wide spectrum and is no longer to be judged in the light of the 19th century laissez faire doctrine. It should be looked into from the modern concept of welfare State where workers and their progeny should also share equally the socio-economic advancement and where large profits are made, such profits should look after the interests of the workers of the company. Dr. Saraf submits that but for the limitations of s. 40A(9) of the Act of 1961, the petitioner would have been entitled to claim deduction under s. 37 of the IT Act, 1961. The introduction of the said section which bars the authorities to allow deductions as

provided under the said section while computing income under s. 37 makes it abundantly clear that the said contributions are allowable expenditure under s. 37 of the Act but for the said bar or restriction. However, in the absence of such provision under the State Act, the contribution and/or expenditure made by the petitioner is very much allowable. As a matter of fact, Dr. Saraf submits that in order to prevent claiming of the said expenditure the State legislature passed the Assam Taxation Laws (Third Amendment) Act, 1989, thereby prohibiting the allowance of deduction on and from the asst. yr. 1990-91. However, since the said amendment was not retrospective nor did it apply for the asst. yr. 1984-85, the said provision only support the contention of the petitioner that during the relevant assessment year such deductions were permissible.

13. I have given much thought to the submissions of learned counsel, Dr. A. K. Saraf. However, I am unable to agree with the submissions of Dr. Saraf made on behalf of the petitioner. The most important aspect of the matter was the rational and reasonable nexus of the amount expended for the purposes of the welfare of the workers. The second important aspect was whether the contribution made by the petitioner-company to two of its sister-concerns was wholly and exclusively for earning agricultural income. During the argument, Dr. Saraf admitted that the said two sister-concerns are neither controlled nor managed by the petitioner-company. Thirdly, in order to claim deductions under s. 8(2)(f)(vii), the assessee should have been in a position to prove before the authorities the direct nexus of contribution to the welfare of the workers. In my view of the matter, the provisions of said cl. (2)(f)(vii) do not give carte blanche to the petitioner to contribute any sum of money, on the facile argument of welfare scheme or welfare of the workers. There has to be some amount of accountability and reasonableness in the expenditure made. It is admitted by Dr. Saraf that the contribution of Rs. 4 crores to the said organisation were made on 28th March, 1984. I fail to see how the contribution made on 28th March, 1984, could be for the welfare of the workers during the said asst. yr. 1984-85 nor could the petitioner justify nor did it try to justify that the contribution of Rs. 4 crores was spent for the betterment of the workers within a period of four days. If an expenditure is to be made for the welfare scheme of the workers, the said expenditure has to have some connection with the object sought to be achieved. How could an expenditure of such huge amount be termed as laid out or expended wholly and exclusively for the purpose of earning and deriving the agricultural income during the said assessment year since the said amount was paid on 28th March, 1984. The Supreme Court in *Purtabore Co. Ltd. vs. State of UP* (supra) observed as follows :

"The correct answer to the question referred would be : The amount claimed by the assessee as expenses on management and miscellaneous expenses detailed before can be allowed under s. 6(2)(b)(iv) if and to the extent it is determined that they were incurred for the management, supervision, organisation, technical knowledge and assistance and other allied matters for the purpose of the raising of crops, their marketing and transportation, in the light of the observations

made by us in this judgment."

Further, to allow any expenditure being laid out and wholly and exclusively for earning and deriving the agricultural income, the assessing authority must keep in mind the observation of the Supreme Court in *Indian Molasses Co. (Private) Ltd. Vs. Commissioner of Income Tax, West Bengal*, as follows :

"But the Income Tax laws do not take every such allowance as legitimate for purposes of tax. A distinction is made between an actual liability in *praesenti* and liability *de futuro* which, for the time being, is only contingent. The former is deductible but not the latter."

The other decisions of the Supreme Court and other High Courts cited by Dr. Saraf as in *Mysore Kirloskar Ltd. vs. CIT (supra)*; *CIT vs. Development Trust (P) Ltd. (supra)*; *Purtabpore Co. Ltd. vs. State of UP (supra)*; *India United Mills Ltd. vs. CIT (supra)*; and *Commissioner of Income Tax Vs. National Engineering Industries Ltd.*, though advance his argument that medical and school facilities provided to the workers and their families by the management is allowable expenditure under s. 37 of the IT Act, 1961, and like provisions in other statutes, they go no further. The Supreme Court and other High Courts have specifically restricted such expenditure to the extent the same are incurred for the welfare purpose.

14. The most unusual and huge expenditure or contribution claimed by the assessee as deductible under cl. (2)(f)(vii) has to be justified factually and also shown to have been expended actually for the welfare of the workers. Just to remove the money from the till of the assessee to the till of another sister concern assuming the said concerns are run for the welfare of the workers without disclosing or attempting to disclose the welfare scheme for which the money was actually spent or utilised cannot in my view of the matter be treated as an expenditure laid out wholly and exclusively for the purpose of earning the agricultural income. There has to be a rational nexus and reasonableness in the expenditure expended with the object and purpose of the said clause. If any welfare scheme is devised by the assessee or the sister-concerns regarding health or education such amount should actually be utilised for the said purpose not otherwise. Such expenditure cannot be in a vacuum. It must, in my view of the matter, be closely linked to the welfare of the workers which should in effect result in deriving the better productivity of the agricultural income and for the betterment of the working class. Such book entry transactions between the assessee and sister concerns can only be a camouflage to avoid paying taxes under the State Act and not any attempt for the welfare of the workers. Even assuming that the petitioner-company was most generous and had the workers interest at heart when they made the said contribution, it could not possibly have any connection with the welfare scheme of tea garden workers within the tea estates unless actually shown to be so. Opening of flood gates only destroys, damages and uproots the crop and does not help any proper cultivation of product in the field, the same is possible only with a stream or canal, deep

tubewell which would release sufficient water as and when required to cultivate the land and produce bumper crops. Floods do not produce bumper crops but they destroy the same. Likewise, reasonable expenditure made on consideration of welfare schemes would bring stability and happiness to the workers and staff and benefit the said scheme and not by inundating with funds not required nor utilised for any specific schemes. Accordingly, in an appropriate case where proper expenditure is made towards welfare of the workers, the same could be allowed under the provisions of s. 8(2)(f)(vii) of the State Act, but in the facts of the present case it is not possible to uphold the claim of the petitioner. Further, one has to consider the language of cl. (2)(f)(vii) which speaks of expenditure laid out or expended wholly or exclusively. The same could only mean that the expenditure has to be incurred by the assessee himself through an agency which is under the control and management of the assessee and that would enure to the benefit of the workers giving them incentive to work for more production and more earning. The said clause does not postulate contributions to be made to some third party or other sister-concern which has no direct link or connection with the earning of the agricultural income of the petitioners tea gardens. The ratio of the Bombay Hospital Trust case is that there has to be a nexus between the expenditure and the welfare scheme. The Bombay High Court in *India United Mills Ltd. vs. CIT* (supra), on the materials produced by the assessee before the assessing authority came to the conclusion that payment made to the Bombay Hospital for providing reserve beds for the staff of the assessee was not excessive. In my view of the matter, under cl. (2)(f)(vii) the expenditure can only be allowed to the assessee who is able to disclose the factum of expenditure and only that portion of the expenditure which is directly linked to the welfare of the workers. The said section does not permit deduction of any contribution or expenditure not expended by the assessee himself but a large sum of money was given to a third person to be expended at the sweet will and whims of the third party which has no relationship whatsoever with the earning of the income of the assessee. Moreover, no facts had been disclosed by the assessee to show that the said two sister-concerns were running schools or hospitals only in the tea gardens and not other schools or hospitals outside the tea gardens and the contribution made was only for the betterment of the schools and hospitals in the tea gardens during the said assessment year and not being utilised by the said concerns for schools and hospitals outside the tea gardens. The other argument of counsel for the petitioner on the strength of the Supreme Court decision in *Shahzada Nand & Sons vs. CIT* (supra) regarding that it is not for the ITO to judge the reasonableness of the expenditure made on account of a welfare scheme though appears attractive. The same is, however, without any substance. The question of reasonableness arises only if there is dispute as to the quantum of expenditure. In the facts of this case no such dispute has arisen. The assessee has failed to produce any materials or items of expenditure that connects the same to the welfare of the workers. As such, it is not possible to hold that the aforesaid amount was spent for the object of the cl. (2)(f)(vii) of the Act of 1939. There is no rational nexus existing between the expenditure and the welfare of

the workers in the tea gardens. Such expenditure, in my view of the matter, could under no circumstances be treated as an expenditure laid out or expended wholly or exclusively for the purpose of earning and deriving the agricultural income. In the absence of these factual basis, it is impossible for the assessing authority to allow any deduction of the said Rs. 4 crores or any portion thereof under the said cl. (vii) of s. 8(2)(f) of the Act. No attempt has been made by the assessee to show the nexus or connection of the aforesaid contribution for the purposes under the provisions of the said clause.

15. In view of the above discussions, I hold that -

(a) Expenditure on account of welfare schemes such as hospitals or schools laid out or expended wholly or exclusively for the betterment of the workers within the parameters of the modern concept of welfare state and which is directly and transparently shown to have been expended or utilised for the said avowed purpose, such expenditure on proper verification by the assessing authority could be allowed under the provisions of the aforesaid cl. (2)(f)(vii).

(b) Such expenditure has to have direct nexus with the betterment of the workers and not be indirectly or remotely connected with the welfare which is neither transparent nor the assessee is able to disclose to the assessing authority the utilisation of such expenditure or contribution.

(c) Thirdly, expenditure to be allowable under the said clause has to be incurred by the assessee himself directly and not through an agency who is not under the control and management of the assessee-company.

(d) Only that much amount is allowable which is shown to have been actually and reasonably spent for the betterment and welfare of the workers and not any fanciful or imaginary or presumed amount unconnected with the welfare of the tea garden workers and staff.

In the facts of this case, the petitioner has totally failed to substantiate its claim that the amount of contribution of Rs. 4 crores to the said two concerns was expended or laid out wholly and exclusively for the purpose of earning or deriving the agricultural income. The petition fails and is dismissed. There shall be no order as to costs. But before parting with the present application I make it clear that I express no opinion on whether the said amount could be treated as a donation nor am I expressing any opinion on the other claims made in the petition.

16. There is an alternative remedy provided for under the provisions of the said Act. In the facts of this case, the petitioner should have availed of the alternative remedy which was not availed of by the petitioner and it rushed to the Writ Court in the matter. On the said ground also, the petition stands dismissed. The petitioner, however, will be at liberty to avail of the alternative remedy, if still available, in accordance with law and the authorities on materials produced if satisfied may grant such deductions showing actual expenditure made on

account of welfare schemes such as hospitals or schools for the tea garden workers as per my above judgment.