

(1984) 02 MAD CK 0013

In the Madras High Court

Case No : T.C. No"s. 443 to 445 and 469 to 471 of 1982

Balamore Estate (Private) Ltd.

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 15-02-1984

Acts Referred:

Citation : (1984) 40 CTR 231 : (1987) 163 ITR 195

Hon'ble Judges : V. Ratnam, J;G. Ramanujam, J

Bench : Division Bench

Advocate : V. Ramachandran, for the Appellant; K.S. Bakthavatsalam, for the Respondent

Judgement

Ramanujam, J.—All these six tax cases relate to the same assessee for various assessment years, and as the point involved is substantially

the same, they are dealt with together.

2. The common point that arises in all these cases relates to the taxability of the turnover relating to the sale of albezia trees in the various years as

detailed below :

Asst. Yr. Value of trees sold

Rs.

1973-74 18,878.00

1974-75 5,520.00

1975-76 43,782.00

1976-77 1,00,370.00

1977-78 60,900.00

1978-79 48,465.00

3. The assessee claimed before the Agrl. ITO that the sale proceeds of albezia trees was a capital receipt and, therefore, it is not exigible to tax,

relying upon the decision in *State of Kerala Vs. Karimtharuvi Tea Estate Ltd.*, . But the Agrl. ITO brought the amount to tax treating it as a revenue

receipt. The assessee took the matter on appeal to the AAC who confirmed the order of the Agrl. ITO. Then, the matter was taken to the Agrl. IT

Appellate Tribunal and it has also held that the sale proceeds of albezia trees raised in the estate was a revenue receipt liable for its conclusion is

set out below :

We may make it clear that we have not based our decision on the necessity for such shade trees in the light of the literature extracted above. We

will only say that the number of shade trees planted cannot be too many in an area as they should be enabled to grow sufficiently large to give

shade. Hence, the receipt from such trees cannot be considerable. If really they were shade trees, only few such trees can be planted. Our

conclusion is mainly based on the important facts and circumstances of this case viz., (1) that there was regularity and pattern in growing and felling

of trees, (2) that these trees were not of spontaneous growth, (3) that they were not grown solely for the purpose of giving shade to these plants,

(4) that the trees were felled and did not die by natural processes such as drought, age, etc., and (5) that after felling the trees, the appellant had

grown similar varieties of trees in the estate.

4. The said view taken by the Tribunal has been challenged before us by the assessee on the ground that the sale proceeds of albezia trees which

had been planted only for the purpose of giving shade to the tea plants in the estate can never be treated as a revenue receipt. The Id. counsel has

chosen to rely on the decision of the Supreme Court in *State of Kerala Vs. Karimtharuvi Tea Estate Ltd.*, and *Commissioner of Income Tax Vs.*

Ambat Echukutty Menon, . The revenue, on the other hand, relies on the decision of this court in *Nellayappan Sastha and Bros. Vs. Commissioner*

of Agricultural Income Tax, in support of its plea that the albezia trees had been planted with a view to derive income by regularly cutting and

selling them for making catamarans and not solely for the purpose of providing shade for the tea plants and so the income by sale of those trees

should be treated only as a revenue receipt and not as capital receipt and as

such it can be brought to tax under the Agrl. It Act.

5. In the decision of the Supreme Court in *State of Kerala Vs. Karimtharuvi Tea Estate Ltd.*, the assessee company carried on the business of

manufacturing and selling tea. Only for the purpose of affording shade to the tea bushes, it had grown grevelia trees in its different tea estates, On

those facts the Supreme Court had held that the owners of the tea estate planted grevelia trees only for the purpose of providing shade for the tea

bushes that such shade is essential for the proper cultivation of tea, that these trees were cut down and sold after they had become useless by efflux

of time, that as such the grevelia trees in the estate constituted capital assets and that, therefore, the proceeds derived by their sale as firewood

would not constitute agricultural income under the Act.

6. In *Commissioner of Income Tax Vs. Ambat Echukutty Menon*, which is also relied on by the assessee; the Supreme Court has held that the sale

consideration of trees meant for giving shade to the tea plants should be taken to be capital receipts and as such, they were not taxable as

agricultural income. In that decision, the Supreme Court has observed thus :

Intention is a material factor in such cases, and each case has to be decided on its particular facts. Without evidence of the intention or object

behind such a stipulation, the mere fact that the trees were sold without stumps and roots cannot lead to the necessary inference that a profit

making activity was involved"".

Thus, the intention with which the trees were planted should be the material factor for deciding whether the sale proceeds is a capital receipt or not.

7. In *Nellayappan Sastha and Bros. Vs. Commissioner of Agricultural Income Tax*, this court has taken the view that where the trees are planted

not only for the purpose of giving shade to the tea plants but also to derive a regular income by raising the trees and thereafter cutting and selling

them for making catamarans, the proceeds of sales of such trees should be treated only as a revenue receipt and not as a capital receipt.

8. On the facts of this case, the Tribunal after a personal inspection of the local area and after finding out the nature and condition of the trees, has

held that the intention of the assessee is not exclusively to provide shade for the tea bushes, but the intention is also to raise the trees and thereafter

to cut and sell the same for making catamarans which would indicate that the

receipts are revenue in nature. The Id. counsel for the assessee seeks to question the finding of the Tribunal that the trees were not planted solely for the purpose of providing shade for the tea plants. But, on the materials, we are not in a position to interfere with the finding of fact arrived at by the Tribunal after a personal local inspection of the area in which the trees were raised and after seeing the nature and condition of the trees. A perusal of the notes of inspection recorded by the Tribunal at the time of the local inspection on 12-8-1980 shows that the trees were tall and fairly big with few branches and that the trees have been mostly with the result that there was little shade by the trees. In view of the running of the trees which are already tall and fairly big resulting in very little shade, it cannot be said that the trees have been planted exclusively for the purpose of providing shade for the tea plants. It is not the case here that the trees have become old and useless by efflux of time so that it could be said that the sale proceeds if the trees will be capital receipts as was the case before the Supreme Court in State of Kerala Vs. Karimtharuvi Tea Estate Ltd., . In this case, as found by the Tribunal, the trees have been allowed to grow tall and big with suitable pruning which will not be the case if the trees are intended to give shade to the tea plants. It is not also the case of the assessee that the trees have become useless by efflux of time and their continued existence will affect the tea plantation. In this view of the matter, we are of the view that this case is governed by the principal laid down by this Court in Nelayappan Sastha and Bros. Vs. Commissioner of Agricultural Income Tax, and the decision of the Tribunal does not call for any interference. The tax cases are, therefore, dismissed. There will, however, be no order as to costs.