
(1993) 09 KL CK 0022

In the High Court Of Kerala

Case No : Income-tax Reference No's. 15 to 18 of 1989

Balanoor Tea and Rubber Co. Ltd.

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 10-09-1993

Acts Referred:

Kerala Agricultural Income Tax Act, 1950 — Section 5
Kerala Agricultural Income Tax Rules, 1951 — Rule 9

Citation : (1994) 207 ITR 501

Hon'ble Judges : K.S. Paripoornan, J; K.P. Balanarayana Marar, J

Bench : Division Bench

Advocate : S.A. Nagendran and K.B. Subagamani, for the Appellant; V.C. James, for the Respondent

Judgement

K.S. Paripoornan, J.—These are four connected references made to this court by the Agricultural Income Tax Appellate Tribunal, Additional Bench, Palakkad, by order dated September 17, 1988, at the instance of an assessee to agricultural Income Tax. The same assessee is the applicant in all the four cases. It is a public limited company. It has got huge agricultural income. The respondent is the Revenue. We are concerned with the assessment years 1979-80, 1980-81, 1981-82 and 1982-83. The following seven common questions of law have been referred for all the four years by the Agricultural Income Tax Appellate Tribunal at the instance of the assessee for the decision of this court :

"(1) In view of Section 5(j) of the Agricultural Income Tax Act, 1950, whether the Tribunal is legally justified in disallowing a portion of the travelling expenses, allowable as per Section 5(j) of the Agricultural Income Tax Act ?

(2) In view of Section 5(j) of the Agricultural Income Tax Act, 1950, whether the Tribunal is legally correct in disallowing legal charges, allowable u/s 5(j) of the Agricultural Income Tax Act ?

(3) Whether the findings of the Tribunal that jeep is eligible for depreciation at

the rate of 7 per cent. only instead of 20 per cent. under entry III-B(i) of Rule 9 of the Kerala Agricultural Income Tax Rules, is legally correct ?

(4) In view of Section 5(d) of the Agricultural Income Tax Act, 1950, whether the Tribunal is legally correct in holding that, expenditure incurred for repairs of the buildings are capital expenditure ?

(5) In view of Section 5(j) of the Agricultural Income Tax Act, 1950, whether the Tribunal is legally correct in disallowing the miscellaneous expenses ?

(6) In view of Section 5(d) of the Agricultural Income Tax Act, 1950, whether the Tribunal is legally correct in holding that stores consumed is capital expenditure ? and

(7) In view of Section 5(d) of the Agricultural Income Tax Act, 1950, whether the Tribunal is legally correct in holding that Rs. 2,504.63 incurred for repairs of estate building are capital expenditure ?"

2. We heard counsel.

3. For all the four years, the assessee was assessed by the Agricultural Income Tax Officer, Perintalmanna, by four separate orders dated March 20, 1985. He accepted the books of account of the assessee, but disallowed certain items of expenses claimed by the assessee-company. The assessment orders are annexures D, E, F and G. The appeals filed by the assessee before the Appellate Assistant Commissioner were disposed of by a common order dated April 30, 1986. He allowed some of the expenses disallowed by the assessing authority. The assessments were modified to that extent. The common order passed by the first appellate authority is annexure C. Not satisfied with the relief granted by the Appellate Assistant Commissioner, the assessee filed four appeals before the Appellate Tribunal as A. I. T. A. Nos. 6, 7, 8 and 9 of 1986. The main plea was against the disallowance of certain expenses made by the lower authorities. In the common order dated May 25, 1987, the Appellate Tribunal upheld the disallowances made by the lower authorities. It is thereafter at the instance of the assessee that the Agricultural Income Tax Appellate Tribunal, Additional Bench, Palakkad, has referred the above seven questions of law for the decision of this court.

4. The common order passed by the Appellate Tribunal dated May 25, 1987, has given the gist of the various allowances claimed for the different years. It is as follows :

1979-80 1980-81 1981-82 1982-83

Rs. P. Rs. P. Rs. P. Rs. P.

Donations 1,150.00 _ _ _

Travelling expenses 8,980.02 9,813.37 5,739.13 5,620.98

Legal charges _ 1,000.00 _ _

Depreciation _ 6.934.26 _ _

Building repairs _ _ 22.571.29 4,944.00

Miscellaneous _ _ 2.500.00 _

Stores consumed _ _ 5,675.89 _

Cost of pipes _ _ _ 2,504.63

5. The Appellate Tribunal has dealt with the above aspects in paragraphs 6, 7, 8, 9, 10 and 11 of the appellate order. We shall consider the matter seriatim under the following heads :

I. Travelling allowance ;

For the year 1979-80, 20 per cent. of the amount claimed under this head was disallowed by the assessing authority on the ground that the purpose of the journey was not made known. The Appellate Assistant Commissioner affirmed the said disallowance. The Appellate Tribunal also held that the disallowance was justified, since details explaining the necessity of payment in each case for the travelling expenses was not substantiated. We are of the view that, in the absence of details pinpointing as to for what purpose the journey was undertaken and whether it has any reasonable nexus with the purpose of deriving agricultural income, the decision is right. For the years 1980-81, 1981-82 and 1982-83, the Appellate Tribunal affirmed the findings of the authorities below to the effect that the expenses were met for personal purposes and in some cases, the purpose of the journey was not ascertainable. After noticing that the company is maintaining a jeep and car and that the details of the expenses under "travelling expenses" are not separately made out and that the disallowance of 20 per cent. on that count is proper, the Appellate Tribunal upheld the disallowance affirmed by the Appellate Assistant Commissioner. The decision of the Appellate Assistant Commissioner is contained in pages 17 and 24 of the paper book. The Appellate Assistant Commissioner has also stated that no satisfactory explanation was offered to admit the claim in full and the purpose of the journey was not available from the accounts. We are of the view that, in the absence of details, the statutory authorities were justified in disallowing 20 per cent. of the claim under "travelling allowance". Question No. (1) referred to this court is answered in the affirmative, against the assessee and in favour of the Revenue.

II. Legal charges Rs. 1,000 :

The Appellate Tribunal has stated in a laconic fashion that the amount was spent in connection with a litigation relating to an area taken possession of by the forest department from which no agricultural income is derived. It was submitted that the expenses were of a revenue nature to preserve and protect the property and so, admissible. We are of the view that, in the light of the Bench decisions of this court in COMMISSIONER OF AGRICULTURAL Income Tax Vs. MALAYALAM

PLANTATIONS LTD., and Commissioner of Agricultural Income Tax Vs. Kartikulam and Alathur Estates, , the legal expenses were incurred for legitimately defending the property belonging to the company and so, allowable. We answer question No. (2) referred to this court in the negative, against the Revenue and in favour of the assessee. The legal charges claimed (Rs. 1,000) are allowable as revenue expenditure.

III. Depreciation Rs. 6,934.26 for 1980-81 :

This relates to the depreciation claimed for the jeep. The assessing authority allowed 7 per cent. as depreciation as against 20 per cent. claimed. This was upheld by the Tribunal. The sole question that arises for consideration is whether the jeep will be taken in by the expression "motor car" in entry III-B(i) read with Rule 9 of the Kerala Agricultural Income Tax Rules, 1951. Following an earlier Bench decision of this court in Commissioner of Agricultural Income Tax Vs. Good Hope Plantation, , a Bench of this court in Commissioner of Agricultural Income Tax Vs. Good Hope Enterprises, , has held that the expression "motor car" in entry IIIB(i) of the statement of Rule 9 of the Kerala Agricultural Income Tax Rules, 1951, includes a "jeep" for the purpose of deduction u/s 5 of the Kerala Agricultural Income Tax Act. Depreciation is allowable at 20 per cent. The Tribunal was in error in taking a contrary view. We answer question No. (3) referred to this court in the negative, against the Revenue and in favour of the assessee. Depreciation should be allowed at 20 per cent.

IV. Building repairs Rs. 22,571.29 and Rs. 4,944 (1981-82 and 1982-83) :

The statutory authorities, including the Tribunal, agreed that the claim includes the cost of building materials purchased for the construction of latrines, bathrooms, etc. The plea of the assessee was that the existing units were repaired and no new asset was brought into existence. The Appellate Tribunal concurred that no additional asset came into existence nor was the cost of existing units increased by the repairs. Even so, it was held that the repairs were undertaken for increase in the capital value of the asset. We are unable to agree with the reasoning and conclusion of the Appellate Tribunal. The materials were purchased substantially for repairs. They were necessary for latrines and bathrooms, which form part of the buildings that already existed. The buildings were occupied by the company. The expenditure related to the carrying on or the conduct of the business of the company and so, it must be regarded as an integral part of the profit-earning process. It cannot be said to be an acquisition of an asset or of a right of a permanent character. The perspective with which the matter should be viewed is stated in a recent Bench decision of this court in Federal Bank Ltd. Vs. Commissioner of Income Tax, at pages 245 and 246. The expenses were incurred for the preservation and maintenance of a capital asset. So it should be considered as a revenue expenditure. The disallowance made under "building repairs" should have been allowed in so far as they related only to the cost of materials for construction or replacement, etc., of the existing set up in the buildings. The materials were admittedly purchased for the construction

of latrines and bathrooms. They are to be allowed in full. Question No. (4) referred to this court is answered in the negative, against the Revenue and in favour of the assessee.

V. Miscellaneous Rs. 2,500 :

The Appellate Tribunal has stated that this relates to expenses incurred for police personnel. The Appellate Assistant Commissioner has allowed the claims for the years 1979-80, 1980-81 and 1982-83. He has disallowed the claim for the year 1981-82. The assessing authority as well as the Appellate Assistant Commissioner have rejected the expenses incurred for the year 1981-82 by a single line order, stating that it relates to donation paid to police, and that it is not a legal liability. No details are available as to whether the expenses have been incurred for police personnel in connection with obstructing an encroachment or preventing theft or pilferage, etc. In the absence of details on that score, the disallowance of Rs. 2,500 as donation paid to police sustained by the Appellate Tribunal is justified and proper. We see no reason to differ from the said view. Question No. (5) referred to this court is answered in the negative, against the assessee and in favour of the Revenue.

VI. Stores consumed Rs. 5,675.89 (1981-82) and cost of pipes Rs. 2,504.63 (1982-83) :

These are mainly cost of pipes and fittings and cost of sanitary wares which were not included under the "building repairs" account. The Appellate Tribunal has adverted to the plea that the stores items were purchased for replacement of old items. The assessing authority as well as the appellate authorities disallowed the claim on the ground that fittings purchased were items which will last for a long period and so, the cost of assets will be increased by the fitting of pipes, etc. They were items of capital expenditure. We are of the view that the items claimed under "Stores consumed and cost of pipes" is similar to an earlier item considered by us under "building repairs". Since the stores consumed and the cost of pipes were only for the purchase of materials for replacement and no new assets or additional assets came into existence, the claim is allowable in full. Questions Nos. (6) and (7) referred to this court are answered in the negative. Both the items are revenue expenditures. They have been dealt with in paragraph 11 of the common order of the Tribunal. We hold that the assessee is entitled to the deduction of those amounts in full. Questions Nos. (6) and (7) are answered in the negative, against the Revenue and in favour of the assessee. The references are disposed of as above.

6. A copy of this judgment, under the seal of this court and the signature of the Registrar, shall be forwarded to the Agricultural Income Tax and Sales Tax Appellate Tribunal, Additional Bench, Palakkad.