

(1996) 11 KL CK 0013
In the High Court Of Kerala
Case No : T.R.C. No"s. 3 and 35 of 1994

Bisonfield A Estate

APPELLANT

Vs

Inspecting Assistant Commissioner (Special) and Others

RESPONDENT

Date of Decision : 14-11-1996

Acts Referred:

Citation : (1998) 233 ITR 656

Hon'ble Judges : K.K. Usha, J;G. Sivarajan, J

Bench : Division Bench

Advocate : Ramesh Chander and P. Reghunath, for the Appellant; V.C. James, Government Pleader, for the Respondent

Judgement

K.K. Usha, J.—The revision cases are at the instance of the assessee under the Kerala Agricultural Income Tax Act. They relate to the assessment years 1978-79 and 1979-80, respectively. The following questions of law are raised in the revision petitions :

"a. Whether, on the facts and circumstances of the case, the Appellate Tribunal was justified in interfering with the order of the Deputy Commissioner (Appeals) in AITA No. 13 of 1985 dated March 11, 1986 ?

b. Whether the assessing authority has the right to adopt a different method for the valuation of coffee pooled other than the method that was being adopted by the assessee and accepted without challenge by the Department during the past years ?

c. Whether the Appellate Tribunal was justified in holding, inter alia, that the valuation of coffee made by the revision petitioner was incorrect even in the absence of the allegation made by the assessing authority that the revision petitioner has deliberately undervalued the coffee pooled with the Coffee Board ?

d. Whether the assessing authority can resort to an estimate which ultimately results in feducory income being estimated which, subsequent events disclosed,

is not actually reasonable ?

e. Whether the Appellate Tribunal was justified in holding that subsequent payments received in subsequent years over and above what has been estimated reasonably by the revision petitioner is not bonus ?

f. Whether the decision of the Appellate Tribunal is correct in view of the decision of the Karnataka High Court in D.G. Graig Jones Vs. State of Karnataka, , which decision has been followed by the Appellate Tribunal in AITA No. 401 of 1984 dated April 30, 1985, Chembra Peak Estates ?"

2. According to the revision petitioner, the main income obtained is from the sale of coffee pooled. It is alleged that the assessee maintained books of account, following the mercantile system of accounting. The coffee obtained by the assessee is pooled with coffee curers, namely, Chamundi Curing Works, who effect payment for the coffee pooled in instalments, depending upon the payment declared by the Coffee Board. The assessee files returns on the basis of a reasonable estimate of the value depending upon the instructions given by the pooling agent. Therefore, even though a much lesser amount is received as part consideration for the coffee pooled during the particular year, the assessee valued the same at a much higher rate than what has been initially paid. If any further amounts are received in the subsequent years over and above the amount valued by the assessee, such excess amount received would be treated as income during the year in which it was received and declared before the agricultural Income Tax authorities, This system was being followed by the assessee for the last several years. But, for the assessment years 1978-79 and 1979-80, the assessing authority took the view that the entire consideration received by the assessee for the crop pooled in each year had to be taken as income of the particular year in which the sale took place. The matter was taken in appeal by the assessee and the appellate authority (appeals) found that as per the consistent method of accounting followed by the assessee, the difference, if any, need be accounted only in the year in which it was received. The order passed by the appellate authority was taken in appeal by the Revenue before the Appellate Tribunal. Reliance was placed by the Department on the decision of the Supreme Court in State of Kerala and Others Vs. Bhavani Tea Produce Co. Ltd., as well as Sheveroy Estates Ltd. Vs. Government of Madras, , in support of its contention. The Tribunal took the view that there is transfer of property in the accounting year. So, whatever amount is received subsequently also should be taken as income of the assessee for the assessment year in which sale was effected.

3. The assessee-revision petitioner has produced before this court the assessment order and order passed by the appellate authority for the year 1974-75, the assessment order and the appellate order for the year 1976-77, the revised assessment order for 1976-77 giving effect to the order passed by the appellate authority, the assessment order and the appellate order for the assessment year 1977-78 and also the order passed by the Income Tax Appellate

Tribunal for the assessment years 1974-75 and 1977-78 which would show that the assessee had been uniformly following the pattern of accounting which was to account for the additional amount received during the subsequent years as and when it was received and that such procedure was accepted by the authorities mentioned above.

4. A common order was passed by the Tribunal in an appeal filed by the Revenue for the assessment year 1974-75 and an appeal filed by the assessee for the assessment year 1977-78. The Tribunal held that the first appellate authority has found that the assessee was following the mercantile method of accounting and it was being consistently followed. Reference was made to an earlier decision of the Tribunal. The Tribunal accepted the contention taken by the assessee.

5. Learned counsel appearing on behalf of the revision petitioner submitted that in view of the fact that the revision petitioner had been following the mercantile system and it was accounting for the additional amount received only during the years in which it was actually received and since the Department had been accepting such returns and passing assessment orders on that basis, there was no justification at this distance of time to take a different view. Reliance was placed by him on a decision of the Karnataka High Court in D.G. Graig Jones Vs. State of Karnataka, in support of his contention that the value as estimated by the assessee in the return as per the mercantile system of accounting should be taken as the basis for computing the income.

6. The very same question involved in these cases had been the subject-matter of decision of a Bench of this court in Commissioner of Agricultural Income Tax Vs. Raja Rajeswari Narikelly Estate, . After discussing the contentions in detail and referring to the decision of the Supreme Court in State of Kerala and Others Vs. Bhavani Tea Produce Co. Ltd., , this court rejected the contention of the assessee. It was held that since handing over of the coffee by the planter amounts to a sale to the Coffee Board and the mercantile system of accounting adopted by the assessee renders the income as one accrued in the year in which the relevant entry is made about the sale of the coffee to the Coffee Board, the difference in the amount as per the award made by the Coffee Board at a subsequent point of time, should also be treated as part of the income of the assessee during the year in which the sale was effected. While coming to the above conclusion, this court considered the plea of the assessee that the procedure followed by the assessee was to account for the actual amount received by it in later years as and when it was received and, therefore, the assessee should not be compelled to deviate from the procedure followed by it. The above plea did not find favour with this court. While coming to the above conclusion, this court had followed the principle laid down by the Supreme Court in State of Kerala and Others Vs. Bhavani Tea Produce Co. Ltd., .

7. We respectfully follow the decision of this court referred to above and disagree with the view taken by the Karnataka High Court in D.G. Graig Jones Vs. State of Karnataka, . In the light of the above, we answer the questions raised in these

cases in the affirmative, against the assessee and in favour of the Revenue. References are answered as above.