

(1979) 01 KL CK 0025

In the High Court Of Kerala

Case No : Income-tax Reference No. 53 of 1976

Commissioner of Agrl. Income Tax

APPELLANT

Vs

Pullangode Rubber and Produce Company

RESPONDENT

Date of Decision : 19-01-1979

Acts Referred:

Citation : (1979) 120 ITR 84

Hon'ble Judges : V.P. Gopalan Nambiyar, C.J.; Balagangadharan Nair, J

Bench : Division Bench

Advocate : Government Pleader, for the Appellant; Pathrose Mathai, Joseph Vellappally and Markose Vellappally, for the Respondent

Judgement

Gopalan Nambiyar, C.J.—The Agricultural Income Tax Appellate Tribunal, Trivandrum, has sent up its statement of the case and forwarded the following question of law for our opinion, viz.:

"Whether, on the facts and in the circumstances of the case, this Tribunal was justified in coming to the conclusion that, so far as the appellants were concerned, as per the agreements executed between them and M/s. E.J. Abraham and Co. the appellants had received a sum of Rs. 3,44,108"70 as the sale price of old rubber trees sold, and even if the purchasers had been extracting latex and making some profits, an imaginary contract of lease for extracting latex could not be bifurcated from the agreements produced before this Tribunal, and hence, the appellants were not receiving any taxable agricultural income in these transactions ?"

2. The assessee, M/s. Pullangode Rubber and Produce Company Ltd., Calvetty, returned before the Agrl. ITO for the assessment year 1970-71, an agricultural income of Rs. 2,18,013. On verification of the books of accounts and records the IAC found that the income should not be accepted as it did not include the income received by them from M/s. E.J. Abraham and Company who had executed three agreements dated March 25, 1965, November 8, 1968, and

August 4, 1969, undertaking to pay an amount of Rs. 3,44,108-70 for cutting and removing trees belonging to the assessee. On going through these agreements, executed by the assessee, the IAC found that M/s. E.J. Abraham and Company had agreed to pay the aforementioned amount during the year under assessment towards sale proceeds of old rubber trees. An amount of Rs. 2,97,716 was to be treated as agricultural income received by the assessee towards the value of the latex extracted by M/s. E.J. Abraham and Company. We are concerned only with this aspect of the finding. On appeal the Deputy Commissioner of Agrl. I.T. & S.T., Kottayam, concurred with the IAC and dismissed the appeal. On further appeal, the Agricultural Income Tax Appellate Tribunal took the view that the assessee had sold only old and discarded rubber trees for a sum of Rs. 3,44,108.70 to M/s. E.J. Abraham and Company. According to the agreement the ownership of the trees was vested in the purchasers even though a longer period was given to them to cut and remove the trees from the estate. The assessee had received consideration as the sale price of the trees sold; and even if the purchasers were extracting latex and making profits it was the view of the Tribunal that the consideration received for a contract which in its view was plainly and simply one for the sale of trees, could not be bifurcated as made up in part, of consideration for the trees, and in part, of consideration for price of the latex extracted by the purchaser. Hence, the Tribunal found that the assessee was not receiving any taxable agricultural income in these transactions. With the rest of the Tribunal's order and the matters concerned therewith, we are not concerned in this reference.

3. When this reference came on before a Division Bench of this court on an earlier occasion, it was found that the statement of the case was neither full nor complete, and that the Tribunal had not chosen to incorporate or send up the three agreements which had a vital bearing in answering the question of law referred for our opinion, viz, the agreements dated March 25, 1965, November 8, 1968, and August 4, 1969. The Tribunal was directed to forward a supplemental statement of the case incorporating the arguments. This has been done and the matter has come on before us.

4. We have gone through the agreements referred to above. The preambulatory part of the agreement dated March 25, 1965, reads:

"THIS AGREEMENT made the twenty-fifth day of March, One Thousand Nine Hundred and Sixty-five between THE PULLANGODE RUBBER & PRODUCE COMPANY LIMITED, a company incorporated in India and having its Registered Office at Fort Cochin (hereinafter called "the Vendor" which expression where the context admits shall also mean and include its successors and assigns) of the one part and E. J. Abraham and Company, West Hill, Calicut 5, represented by the Managing Partner E. J. ABRAHAM aged 41 years, son of Joseph (hereinafter called "the purchaser" which expression where the context admits shall also mean and include their successors and assigns) of the other part :

WHEREAS the rubber trees standing in the 383 acres and 25 cents of land

comprised in the three sub-divisions of Pullangode Division of the Pullangode Rubber Estate belonging to the vendor and more particularly described in the Schedule hereunder have become old and uneconomic :"

5. The preambulatory part in the other two agreements is practically on the same lines. We, therefore, think it unnecessary to quote the same. The preamble purports to be only sale of rubber trees which have become old and uneconomic for the purpose of being replanted with rubber. The first agreement covers an extent of 383 acres, the second, an extent of 105 acres, and the third, an extent of 205 acres. This, and the difficulties in the matter of communication, transport, labour and other factors in the region in which the trees were situate, should sufficiently explain the comparatively long time allowed for the purpose of felling and clearing the old trees and replanting the same with new ones. Clause (3) of the said agreement contained the provision that the purchaser should remove from the vendor's property, as soon as possible, all rubber trees agreed to be sold, so that the land may lie fallow for as long a period as possible, prior to the commencement of replanting. Any such trees remaining on the property after the dates shown in the agreement were to be the property of the vendor and the purchaser shall have no claim over them. The dates shown in the first agreement were 30th April, 1967, for the 1st sub-division, 30th April, 1968, for the 2nd sub-division, and 30th April, 1969, for the third sub-division. Similar provisions are incorporated in the other two agreements also. In respect of the second agreement dated November 8, 1968, for the revenue considerable reliance was placed on Clauses 7, 8 and 9. These clauses read:

"7. The purchaser may put up purely temporary sheds on the Schedule Property where the trees hereby sold stand, and shall remove on or before the 30th April, 1970, all such sheds which he might have erected. Upon failure to remove any such sheds the same shall vest absolutely in the vendor on the 1st May, 1970, and the purchaser shall have no claim to the same or for any compensation in respect thereof.

8. The purchaser agrees to hand over to the Vendor the smoke house constructed by the purchaser in Field No. 28 of Chenapadi Division of the Vendor at the end of the contract period without claiming any compensation. The purchaser shall however be entitled to use the said smoke house free of rent for curing the latex harvested by him by virtue of future contracts with the Vendor.

9. The purchaser also agrees to reimburse to the Vendor a sum of Rs. 13,809.60 (Rupees Thirteen thousand eight hundred and nine and paise sixty only) being expense incurred in aerial spraying on the said 105 acres before 7th December, 1968."

6. The argument based on these clauses was that these clauses would indicate that the transaction was really not a plain and simple transaction, of the sale of the trees but a composite transaction of sale of the trees plus a right to enjoy the trees and take agricultural income from them and that the consideration received

by the vendors had to be apportioned for these periods under these two heads. According to the Tribunal, there was no justification for thus bifurcating the consideration stipulated in the document. This, it expressed, in para. 14 of its order, at page 18 of the first statement of the case. The idea was more succinctly and clearly stated in para. 6 of the statement of the case at page 14 of the supplementary statement sent up by the Tribunal. We are not satisfied that the conclusion come to by the Tribunal discloses any error of law.

7. The learned Government Pleader strongly contended that the Tribunal has not taken into account Clause. 7 to 9 of the second agreement dated November 8, 1968, and had merely extracted those clauses without separately and independently discussing them and considering their effect and the nature of the transaction effected by the agreements. We find it difficult to accept this argument of the learned Government Pleader. The Tribunal had, in para. 8, extracted the three clauses. In para. 9 it noticed that from these clauses the assessing authority had taken the view against the assessee and that the said view was being disputed before the Tribunal by the assessee. It was, thereafter, in the subsequent paragraphs, that the Tribunal discussed the position in regard to the law as laid down in the judicial decisions and eventually recorded its conclusion in para. 14. In the circumstances, we cannot say that there was a non-advertence of the mind of the Tribunal to the effect and the operation of Clause. 7 to 9 of the agreement dated November 8, 1968, on the nature of the transaction. Attention was called to certain decisions bearing on the construction of the transaction and the agreements involved in the case. In *PULLANGODE RUBBER AND PRODUCE CO LTD Vs. COMMISSIONER OF AGRICULTURAL Income Tax KERALA STATE.*, , the very same assessee before us had claimed that an amount of Rs. 55,708 received as an instalment of consideration payable under a deed dated 19th February, 1962, was of the nature of capital and not income and was, therefore, not liable to agricultural Income Tax. The Tribunal held that the document was one for sale of trees unfit for tapping, and that the price of the trees was not an agricultural income. It was held by the Supreme Court that the assumptions made that in fact there were attendant circumstances like unreasonableness of the time allowed for cutting and removing trees, the unreasonableness of the amount shown as consideration for the sale of the rubber trees, and that the trees were capable of being tapped for two or three years more, were not founded on any decision of the Tribunal. It was, therefore, held that these assumptions made by the High Court were not shown to have been determined by the Tribunal. The question of law, therefore, did not arise out of the order of the Tribunal, and it was ruled that the same should not have been answered by the High Court. In *Commissioner of Agricultural Income Tax Vs. George Varghese and Co.*, , the question arose in regard to a purchaser under a contract to cut and sell old rubber trees. It was ruled that wherever at the time of the contract it is contemplated that the purchaser should derive a benefit from the further growth of the things sold, from further vegetation and from the nutriment to be afforded by the land, the contract is to be considered as

for an interest in the 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 things sold and the contract is for goods. We desire to extract the following two passages from the judgment (pp. 499, 500) :

"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 out and out sale of the trees and considering the extent of the land on which the trees stood, 303 acres, 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.

We must refer to one other aspect. 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 ITR 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 the amounts received will not fall within the definition of the term "agricultural income" in the Act."

8. In Agricultural Income Tax Officer Vs. C.P.A. Yoosuf and Another, , it was ruled that as the documents of purchase and the circumstances of the case disclosed that the assessee derived no interest in the land it had to be held that the income derived by the purchaser of the trees from slaughter-tapping was not agricultural income. The decision is important in that the point on which attention has to be focussed, is whether, under the agreements in question, the person concerned could be said to have derived any interest in the land. That question may not, by itself, assume prominence, or cause much difficulty in this case, as we are concerned here with the owner of the land who had entered into a contract with the assessee for the purpose of cutting and removing old rubber trees. The owner always had interest in land, and retained the same, despite the sale of the trees.

9. In the Thirumbadi Rubber Co. Ltd. Vs. Commissioner of Agricultural Income Tax, , the assessee was the owner of the land on which the rubber trees sold stood. One of the questions of law referred was whether the sale proceeds of the rubber trees sold for being cut and removed and for replantation can be separated into the value of the trees and the value of the latex that can possibly be extracted from slaughter-tapping the trees, and whether the latter is assessable to agricultural Income Tax in the hands of the owner of the trees sold.

That approximates to the question arising for consideration in this reference. It was observed that the point arising for decision was covered by an earlier pronouncement of this court in ITR Nos. 76 and 77 of 1965 (E. J. John v. State of Kerala). The following quotation was made from that judgment :

""For the relevant/accounting period for the year 1962-63, the assessee received Rs. 32,250 pursuant to the agreement, annexures "D" and "D-1" and for the assessment year 1963-64, a sum of Rs. 45,750 pursuant to the agreement, annexure "D". The Tribunal has assessed for the two years these amounts treating the entirety of these amounts as agricultural income of the assessee. The question is whether the whole of the above amounts can be treated as agricultural income. On a reading of the two agreements there can be no doubt that the amounts that have to be paid by those who entered into agreements with the assessee represent payments for permitting them to take the latex as well as for permitting them to cut and remove the trees. A consolidated amount is provided for the two, though payments are to be made in instalments. There can be no doubt that in every payment pursuant to these agreements, there is an element of payment towards the capital, namely, the value of the trees which were ultimately to be cut down. No doubt there is also a payment towards the latex which on the terms and conditions, according to the two documents, we think, represents agricultural income.

The Tribunal, however, has treated the entirety of the payment as agricultural income. This is not correct. That part of the amounts, Rs. 32,250, and Rs. 45,750 which represents the value of the trees, can only be a capital receipt and is not agricultural income. That part of these amounts will have, therefore, to be deducted from these amounts for determining the agricultural income received by the assessee pursuant to the two agreements, annexures "D" and "D-1". In the light of the above, we answer the question referred to us in the following manner. The documents are composite ones. The entire amounts received as per the agreements, annexures "D" and "D-1", are not liable to agricultural Income Tax. These amounts must be bifurcated, that pertaining to latex and that which is attributable to the value of the trees. The former will be income liable to tax and the latter cannot be taken into account for the purpose of imposing agricultural Income Tax.""

10. The decision in ITR Nos. 76 and 77 of 1965 (E.J. John v. State of Kerala) was also based on the construction of the agreements. We do not think that, on the terms of the document and the circumstances of the transaction as disclosed by the records, there is any justification to split 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. We rather think that the transaction was one and entire--plainly and simply a sale of the trees, and there is no justification in splitting up the consolidated amount of consideration.

11. We think the view taken by the Tribunal was correct. We answer the question

of law referred to us in the affirmative, i.e., in favour of the assessee and against the, department. There will be no order as to costs.

12. A copy of this judgment under the signature of the Registrar and the seal of the court will be communicated to the Agricultural Income Tax Appellate Tribunal, Trivandrum, as required by law.