
(1996) 06 PAT CK 0011

In the Patna High Court

Case No : Taxation Case No's. 117 and 118 of 1984

Commissioner of Income Tax

APPELLANT

Vs

Bihar State Forest Development Corporation Ltd.

RESPONDENT

Date of Decision : 25-06-1996

Acts Referred:

Income Tax Act, 1961 — Section 10, 256, 295

Citation : (1997) 224 ITR 766

Hon'ble Judges : Sachchidanand Jha, J; M. Yusuf Egbal, J

Bench : Division Bench

Advocate : S.K. Sharan, for the Appellant; L.N. Rastogi, Alok Kumar Choudhary and Anjana Mishra, for the Respondent

Judgement

1. The assessee-respondent is a Government of Bihar undertaking incorporated as a limited company under the Indian Companies Act. It has been granted a lease of forest land by the Government of Bihar for a period of 30 years. The terms of the lease deed, however, permit the Government to resume possession at any time during the currency of the lease period. The assessee has been deriving income from man-made forest as well as natural forest and which is, therefore, both agricultural and non-agricultural in nature. Section 10(1) of the Income Tax Act, 1961, excludes agricultural income from the purview of the total income and the same is thus not exigible to Income Tax. As, however, no separate accounts were ever maintained by the assessee the entire income was being taxed as income from non-agricultural sources.

2. The dispute in this batch of references relates to the question of deduction of the expenses incurred in regeneration of forest. According to the assessee, the expenses incurred by it over regeneration of forest, being an agricultural activity, should be treated as revenue expenditure and deducted from the total income. This plea found favour with both the Commissioner of Income Tax (Appeals) as well as the Income Tax Appellate Tribunal. Another dispute which is the subject-matter of these references relates to the question of exclusion of the amount of

expenses incurred on payment of royalty. While according to the assessee, the expenditure on payment of royalty is revenue expenditure and, therefore, the same should be excluded from the total income, according to the Department, the expenditure is capital in nature and, therefore, not eligible for deduction. The questions of law with respect to the aforesaid dispute have been framed by the Tribunal in the following manner and referred to this court for its opinion u/s 256(1) of the Income Tax Act :

" (i) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal erred in coming to the conclusion that the expenses incurred on forestry regeneration by the corporation are not capital in nature and they are revenue expenses ?

(ii) Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was correct in confirming the order of the Commissioner of Income Tax (Appeals) who had deleted the addition of Rs. 89,86,981 and Rs. 58,124, respectively, for the assessment years 1977-78 and 1978-79 as a revenue expenditure ?"

3. Counsel for the parties made submissions on the merits of the reference. Counsel for the assessee-corporation, however, pointed out that the dispute as to excludibility of the income derived from man-made regenerated forest/regeneration has since been resolved between the parties and as per the terms of the agreement dated January 29, 1993, 30 per cent. of the gross receipt from sale of fast growing varieties of timber including bamboo, firewood poles, fencing posts, cane bundles, and 15 per cent. of the slow growing species of forest which usually mature after 25 years, is to be excluded from the total income as being income derived from agricultural sources. It was pointed out that the aforesaid agreement has been reached in the light of the circular of the Central Board of Direct Taxes No. 456, dated September 21, 1972, and Rules 7 and 8 of the Income Tax Rules framed u/s 295(2)(b) of the Income Tax Act, which provides for segregation of agricultural income from business income. Counsel for the assessee pointed out that the agreement stipulates, that all pending and subsequent assessments should be completed as per the abovementioned terms. He accordingly submitted that in view of the subsequent developments this court may not answer the references on the merits and, instead, return them for fresh assessment, as the dispute sought to be raised herein has now only academic importance. It was pointed out that the assessments for the assessment years 1984-85 to 1988-89 have since been done in the light of the said agreement. Counsel for the Department stated that in the absence of specific instructions he is not in a position to take any firm stand. He, however, did not controvert the abovementioned facts regarding the parties arriving at the agreement and the assessment for the subsequent years being completed accordingly. He also did not specifically object to the prayer made on behalf of the assessee to return the reference in view of the subsequent developments.

4. Having considered the facts and circumstances of the case as well as the

nature and effect of the subsequent developments, we are inclined to agree with the suggestion of counsel for the assessee. It is obvious that the dispute referred to this court regarding exclusion of the expenses incurred over regeneration of forest is mere manifestation of the real dispute as to whether the assessee is engaged in agricultural activity on account of regeneration of forest and derives income therefrom ; and, if so, the manner and the extent to which such income is to be excluded from the total income. That dispute having been settled between the parties the first question referred to this court for opinion, now, has mere academic importance.

5. As regards the second question regarding exclusion of the amount spent on royalty, it was not disputed by counsel for the Department that the same is covered by the decision of the Supreme Court, in favour of the assessee and against the Department.

6. We would, accordingly, decline to answer the question on the merits and return the same giving liberty to make fresh assessments for the assessment years" in question, namely, 1977-78 and 1978-79. These references stand disposed of accordingly. There will be no order as to costs.

7. Let a copy of this order be sent to the Income Tax Appellate Tribunal, Patna Bench, Patna.