(1992) 06 KL CK 0047

In the High Court Of Kerala

Case No : Income-tax Reference No''s. 206 to 208 of 1989

Commissioner of Income Tax APPELLANT

Vs

Kailas Rubber Co. Ltd. RESPONDENT

Date of Decision : 05-06-1992

Acts Referred:
Income Tax Act, 1961 — Section 45

Citation : (1993) 201 ITR 836

Hon'ble Judges : P.A. Mohammed, J;K.S. Paripoornan, J

Bench : Division Bench

Advocate : P.K.R. Menon and N.R.K. Nair, for the Appellant; Joseph Vellappally and S. Sirijagan, for the Respondent

Judgement

K.S. Paripoornan, J.—These are references at the instance of the Revenue. The respondent, a public limited company, is carrying on the business of plantation. In this case, we are concerned with the assessment years 1979-80 and 1980-81. During the previous years relevant to the assessment years under consideration, the assessee had sold certain worn out old rubber trees. The plea of the assessee was that it had incurred a loss in the transaction. The Income Tax Officer rejected the said plea. He estimated the capital gains arising out of the sale of old trees at Rs. 5,765 and Rs. 2,86,540 for the assessment years 1979-80 and 1980-81, respectively, by estimating the value of a tree as on January 1, 1964, at Rs. 20. In appeals, the Commissioner of Income Tax (Appeals) held that no capital gains on sale of trees could be brought to tax for 1979-80. For the year 1980-81, he directed that the value of a rubber tree as on January 1, 1964, should be adopted at Rs. 40. He ordered a remit. The Revenue took up the matter before the Income Tax Appellate Tribunal (in short, " the Tribunal"). The Tribunal, following its earlier decision, held that the value of an old rubber tree when sold cannot be more than its market value as on January 1,1964, and that no capital gains arose out of the sale of the old rubber trees by ,the assessee. At the instance of the Revenue, the Tribunal has referred two questions for the years 1979-80 and 1980-81. They are as follows :

For the year 1979-80 ;

" Whether, on the facts and in the circumstances of the case, the Tribunal is justified in holding that the sale price of a rubber tree cannot be more than the fair market value as on January 1, 1964, and, therefore, no capital gain arises ?"

For the year 1980-81 :

" Whether, on the facts and in the circumstances of the case, the Tribunal is justified in holding that the sale price of a rubber tree cannot be more than the fair market value as on January 1, 1964, and, therefore, no capital gain arises ?"

2. The questions are similar though they relate to two different years 1979-80 and 1980-81.

3. In reply to the application filed by the Revenue, the assessee has required the Tribunal to refer two questions of law. But the Tribunal referred only one question (question No. 1 enumerated in paragraph 8 of the reference order) for the decision of this court. It is as follows :

" Whether the rubber trees in question were ''capital assets'', transfer of which attracted the charge to capital gains tax u/s 45 of the Income Tax Act ?"

4. Altogether there are three questions which have been referred for the decision of this court by the Tribunal for the above two years 1979-80 and 1980-81--two at the instance of the Revenue and the third at the instance of the assessee.

5. We heard counsel. In the light of the former Bench decisions of this court in Kanthimathy Plantations Pvt. Ltd. Vs. Commissioner of Income Tax, , Commissioner of Income Tax Vs. Midland Rubber and Produce Co. Ltd., and COMMISSIONER OF Income Tax Vs. RAJAGIRI RUBBER AND PRODUCE CO. LTD. (NO. 1)., , we have to hold that the sale price of an old rubber tree cannot be more than its fair market value as on January 1, 1964, and that no capital gains arose when old and unyielding rubber trees were sold. We, therefore, answer the questions referred to us at the instance of the Revenue in the affirmative, against the Revenue and in favour of the assessee.

6. When it is held that no capital gains arose when old and unyielding rubber trees were sold, it is unnecessary to consider whether, when rubber trees were sold, it could be considered to be transfer of a capital asset so as to attract Section 45 of the Income Tax Act. We are of the view that the said question is academic and we need not answer the said question since, on the larger canvas, we have held that when old worn out rubber trees were sold, no question of capital gain arises. We decline to answer the only question referred to this court at the instance of the assessee.

7. The references are disposed of as above.

8. A copy of this judgment under the seal of this court and the signature of the Registrar will be forwarded to the Income Tax Appellate Tribunal, Cochin Bench.

