(1996) 06 KL CK 0072

In the High Court Of Kerala

Case No : Income-tax Reference No. 101 of 1987

Commissioner of Income Tax APPELLANT

Vs

M. Shajahan RESPONDENT

Date of Decision : 07-06-1996

Acts Referred:
Income Tax Act, 1961 — Section 10, 10(30), 10(31), 2(24)

Citation : (1996) 221 ITR 594

Hon'ble Judges : V.V. Kamat, J;P.A. Mohammed, J

Bench : Division Bench

Advocate : P.K.R. Menon and N.R.K. Nair, for the Appellant; C. Kochunni Nair, M.A. Firoz and Dale P. Kurien, for the Respondent

Judgement

V.V. Kamat, J.—The Revenue expects an answer from us to the following question :

" Whether, on the facts and in the circumstances of the case, was the Tribunal justified in law in deleting the amount representing rubber replanting subsidy and in holding that the amount representing rubber replanting subsidy is not, taxable ?"

2. The assessment year is 1979-80 which ended on March 31, 1979. The original assessment was completed u/s 143(1) on September 24, 1979. Thereafter, the Income Tax Officer noticing that the assessee had received a sum of Rs. 9,502 as subsidy from the Rubber Board reopened the assessment and the amount of Rs. 9,502 came to be subjected to tax on the ground that it was a revenue receipt. This was by an order dated September 14, 1981 (annexure "A"). The first appellate authority--the Appellate Assistant Commissioner allowed the appeal by the order dated March 10, 1983, and deleted the addition of Rs. 9,502. The first appellate authority had placed reliance on the decision of the Tribunal in I. T. A. No. 193/(Coch) of 1980.

3. The matter was taken up before the Income Tax Appellate Tribunal. The

Tribunal also by its judgment dated November 26, 1985, relied on its own judgment dated August 27, 1981, in I. T. A. Nos. 593 and 594/(Coch) of 1977-78 in the case of Ruby Rubber Works. This was done, by a short judgment and the order of the first appellate authority deleting this amount of Rs. 9,502 was confirmed.

4. It appears that the Division Bench of this court in Commissioner of Income Tax Vs. Malayalam Plantations Ltd., considered the question on the basis of reference to various decided cases. The Division Bench also considered the provisions of Section 10 of the Income Tax Act 1961, relating to incomes not included in the total income. The court specifically considered the provisions of Section 10(30) of the Act relating to the amount of any subsidy received by the assessee carrying on the business of growing and manufacturing of tea in this country by way of a subsidy received from or through the Tea Board under any such scheme for replantation or replacement of tea bushes or for rejuvenation or consolidation of areas used for the cultivation of tea as the Central Government may, by notification in the Official Gazette specify. In this connection, it is observed that in the process of computation of total income the exclusion of subsidy for tea plantation shows that otherwise what was includible in such computation was specifically excluded by the Legislature. The Division Bench took the view that the object of the Legislature in so excluding the subsidy for tea plantation was to confer a special benefit in view of the peculiar predicament of that industry. From this the Division Bench observed as a consequence inevitable that but for the exemption, subsidy of the nature would have to be considered as part of the includible items in the process of computation of total income. Aid was sought by the Division Bench by referring to Explanation 2 to Section 5 of the Agricultural Income Tax Act, 1950, of this State, to read that nothing could be deemed to entitle a person deriving agricultural income to deduction of any expenditure laid out or expended for the cultivation, upkeep or maintenance of immature plants from which no agricultural income has been derived during the previous years. In the process of reasoning it is observed that this Explanation was placed on the statute in view of certain decisions on the principle that money expended for cultivation, upkeep or maintenance of immature plants would have to be also considered as revenue expenditure. The view was taken finding that there is nothing to show that the subsidy was paid for beneficial purposes. The question also came up before the Full Bench of this court in Commissioner of Income Tax Vs. Ruby Rubber Works Ltd., Travancore Rubbers Ltd. and Smt. M. Fathima, with regard to the same assessee--Ruby Rubber Works Limited, receiving subsidy and the decision of the Tribunal upon which the Tribunal in the present proceedings relied on merely to follow the same. In the said decision, the Full Bench of this court has observed as beyond the pale of dispute that the subsidy is received by Ruby Rubber Works Limited under a subsidy scheme of the Rubber Board. This was with an express purpose, benevolent and beneficial in the public interest having nothing to do with the activity of acquiring profits or gains in the trade. In regard to the instances of the Rubber Board granting subsidies, referring to the

Hand Book of Natural Rubber Production in India it is observed that the Board implements many schemes designed to achieve development of the rubber plantation industry on efficient and economic lines. Certain requirements are behind the formulation of the schemes. It is also observed in the context the decisions of the Supreme Court in regard to the nature of subsidy are also taken into consideration. In this connection, the judgment enters to further details making references to the observations of the Supreme Court in regard to the purposes of floating the grant of subsidies and the spirit behind the said grant, that they are to be issued not as a part of the profits or gains or as sums which make up the profits or gains in the trade but a receipt is given for the express purpose having no connection whatsoever with the normal trading activity of the concerned industry. What is received by way of a grant of subsidy, the discussion proceeds further, the above assessee from the Rubber Board would only have to be considered by way of reimbursement of expenditure in replanting rubber trees. In the context, the Full Bench has also taken into consideration the point of distinction as regards earning of an income, income-earning asset and the process of earning of the income to show that the subsidy schemes make it clear that the amount of subsidy has to be spent for the acquisition of an asset by replanting rubber plants of high-yielding varieties.

5. The reasoning of the Division Bench in Commissioner of Income Tax Vs. Malayalam Plantations Ltd., is also taken up for consideration when the Division Bench referred to Section 10(30) of the Act allowing exclusion of subsidy for tea plantation for the computation of total income. In this connection, the Full Bench has observed that it has to be noted that a percentage of income from the profits earned from the business of growing and manufacturing tea in India is an income under the Income Tax Act, but the profits earned by the business of growing rubber is not an income under the Income Tax Act because now it has to be noted that Section 10(31) has been inserted by the Finance Act, 1988, with effect from April 1, 1989, to exclude the amount of subsidy received from the Rubber Board from the computation of the total income of the assessee.

6. In this situation, learned senior standing counsel for taxes with forensic skill at his command submitted that from the later decision of the Supreme Court in Commissioner of Income Tax, Madras Vs. G.R. Karthikeyan, , it will have to be seen that what is income and what would not be income would have to be understood from the statutory provisions governing the situation with regard to the assessment year in question. Learned counsel factually emphasised that although Section 10(31) on and from April 1, 1989, would show that the amount of subsidy received from the Board under any scheme for replantation or replacement of rubber plants could not be considered as income in view of the commencing clause of Section 10. The situation would be statutorily otherwise prior thereto. In this context, learned counsel heavily relied on the decision of the Supreme Court (see Commissioner of Income Tax, Madras Vs. G.R. Karthikeyan,) for a proposition that what is income and what would not be income having been precisely defined could not be assumed oh interpretation.

Learned counsel submitted that the definition of the term "income" in Section 2(24) of the Income Tax Act, 1961, is inclusive and this is so held by the Supreme Court in no uncertain terms in Commissioner of Income Tax, Madras Vs. G.R. Karthikeyan, and what is not income or what is not to be included in regard thereto is also statutorily available by the clauses of Section 10 of the Act. Learned counsel took us through the decision, to concentrate on the observations of the apex court that even if the receipt of a particular amount may not fall within all the clauses and sub-clauses of Section 2(24), it may yet constitute income. The observations in this context are more than emphasised by learned senior standing counsel for taxes that to say otherwise would mean reading the several clauses in Section 2(24) as exhaustive of the meaning of "income" when the statute expressly clarifies that the definition is required to be understood as "inclusive". The observations of the apex court (see Commissioner of Income Tax, Madras Vs. G.R. Karthikeyan,) that it would be a wrong approach to try to place a given receipt under one or the other sub-clauses in Section 2(24) and consequently if it does not constitute income would be a wrong approach. These observations leading to the conclusion that the idea behind providing an inclusive definition in Section 2(24) is not to limit its meaning but to widen the net, learned counsel submits is a background for an approach to appreciate the statutory provision of Section 10 seeking to exempt certain incomes from being included in the total income. Learned counsel submitted that, if it is found that Section 10(31) would not be available, the approach of the Supreme Court would be the basis to consider the question of grant of subsidy as to whether it amounts to income or not would be the ruling situation and not the Full Bench decision of this court.

7. We have anxiously gone through the decision of the Supreme Court. The assessee had income from salary and business and he participated in a car rally during the accounting year in question, restricted to private motor cars. The method of ascertaining the first prize winner was based on a system of penalty points for various violations and the competitor with the least penalty points was adjudged the first prize winner and received Rs. 22,000. The question was whether this sum was taxable in the hands of the respondent and in regard thereto the question was whether it could be understood as answering the requirements of Section 10(3) of the Act for not being included in the process of computation of total income of the assessee. The question was whether it could be a receipt of the amount of a casual and non-recurring nature.

8. At this stage learned senior standing counsel for taxes brought to our notice a copy of the judgment dated April 9, 1996 Commissioner of Income Tax Vs. Travancore Rubbers and Tea Co. Ltd.,) of the Division Bench of this court dictated by one of us (myself) where the court had an occasion to consider and apply Commissioner of Income Tax, Madras Vs. G.R. Karthikeyan, , especially Section 10(3) with regard to the question as to whether the receipt of the amount therein which was Rs. 75,000 in respect of agreements for sale of old and uneconomic rubber trees could be considered as casual and non-recurring

receipts. It must be stated that the question was directly covered by a specific provision of the statute--section 10(3) of the Act making the decision in Commissioner of Income Tax, Madras Vs. G.R. Karthikeyan, directly governing the situation.

9. The submission of learned counsel that not the Full Bench decision of Commissioner of Income Tax Vs. Ruby Rubber Works Ltd., Travancore Rubbers Ltd. and Smt. M. Fathima, of this court but the Division Bench judgment of Commissioner of Income Tax Vs. Malayalam Plantations Ltd., of this court would rule, would be the correct position of law in view of Commissioner of Income Tax, Madras Vs. G.R. Karthikeyan, is a difficult situation. The Full Bench has considered the nature and purpose of the subsidy. The Full Bench has also taken into consideration that the receipt of the amount could not be understood in the sense of the term "income". In view of the clear-cut position that the emergence of the scheme by the Board has no relation whatsoever with anything that would go to create a situation that it could be understood as income in any sense of the term. The scheme is floated by the Rubber Board and was designed to achieve development of the rubber plantation industry on efficient and economic lines. Even if the various facets of Section 2(24) are taken into consideration along with the situation that the definition is inclusive, it is not possible to understand the amount which is as a result of the floating of the scheme by the Rubber Board which could be contemplated to fall in any of the items or considered even otherwise as exhibiting analogous situation to lead to the conclusion that it could be understood as income. Illustratively, the statutory provisions of Section 2(24) of the Act would show that even the inclusive character of the term "income" would have to be understood in the context of understanding inclusiveness, was of partaking and sharing the same characters as is available from its various clauses. Such clauses are profits and gains, dividends, voluntary contributions received by a trust, the value of any perquisite or profit in lieu of salary, special allowances and benefits, allowances to meet personal expenses, the value of any benefit or perquisite convertible into money or not ; any sum chargeable under the provisions of the Act stated therein ; capital gains chargeable u/s 45 and others stated in the definition, give a positive indication to something from the concerned assessee as a step in the process of getting the said income. In Commissioner of Income Tax, Madras Vs. G.R. Karthikeyan,) although the inclusive character of the definition has been emphasised, this inclusive character of the term "income" will have to be understood and appreciated with regard to the facets of its inclusive-ness which are definitely required to be understood in the context of having some semblance of relationship with various clauses of Section 2(24) of the Act.

10. Along with this, the provisions of Section 10 also will have to be taken into consideration with reference to its various clauses to appreciate that even income with reference to the clauses thereof is stated to be not to be understood for its inclusion as a total income. It is not necessary to elaborate this aspect because just as several clauses of Section 2(24) revealed a situation, several clauses of

Section 10 also would reveal various instances for taking out of the clutches of the statutory meaning of the term "income" in regard thereto. In fact, Section 10(30) has to be understood meaningfully with regard to any scheme for replantation or replacement in the case of tea bushes along with the fact that in a similar situation in regard to rubber, coffee, cardamom or such other commodity, Section 10(31) has been subsequently added.

11. In our judgment, in Commissioner of Income Tax, Madras Vs. G.R. Karthikeyan, although the emphasis is on the inclusive definition and relevance with regard to the meaning of the expression "income", the decision of the Full Bench would not get any dent, in view of the position that the Full Bench "has also taken into consideration the position that Section 10(31) of the Act has come on the statute book by reason of an amendment on and from April 1, 1989, by the Finance Act of 1988. Additionally as we have stated hereinbefore the nature and content of indusiveness will have to be understood as partaking of the same character and qualities shared by the situation illustrated in the statutory provisions. For all the above reasons, it is not possible to accept the submissions of learned senior standing counsel for taxes. The Full Bench decision of this court rules.

12. The question is answered in the affirmative, against the Revenue and in favour of the assessee.

13. A copy of this judgment under the seal of this court and the signature of the Registrar shall be sent to the Income Tax Appellate Tribunal, Cochin Bench, for passing consequential orders.

