
(1994) 10 KL CK 0036

In the High Court Of Kerala

Case No : Original Petition No. 5737 of 1993

Commissioner of Income Tax

APPELLANT

Vs

Peermade Tea Co. Ltd.

RESPONDENT

Date of Decision : 21-10-1994

Acts Referred:

Income Tax Act, 1961 — Section 256

Citation : (1994) 10 KL CK 0036

Hon'ble Judges : T.L. Viswanatha Iyer, J;K.K. Usha, J

Bench : Division Bench

Advocate : P.K.R. Menon and N.R.K. Nair, for the Appellant; P. Balachandran and K. George George, for the Respondent

Judgement

T.L. Viswanatha Iyer, J.—The Revenue has filed this application to compel reference of the following question stated to be of law arising out of the order of the Income Tax Appellate Tribunal, Cochin Bench. The assessing authority brought to assessment an amount of Rs. 91,536 which the assessee had received from the Tea Board as subsidy for rejuvenation of the tea plantation. According to the Assessing Officer, though subsidy given for planting, replanting and replacement will be capital in nature, subsidy given for rejuvenation will be revenue in nature. This part of the assessment was confirmed by the Commissioner (Appeals), but was vacated by the Tribunal. In doing so, the Tribunal relied on the decision of this court in Commissioner of Income Tax Vs. Ruby Rubber Works Ltd., Travancore Rubbers Ltd. and Smt. M. Fathima, , where this court dealt with rubber replanting subsidy. This court, inter alia, held that the replantation subsidy was not given to rubber growers to swell, their profits but was intended for the purpose of improving the plantation which was in the national interest. This court accordingly held that the subsidy was not a revenue receipt assessable under the Income Tax Act, 1901.

2. We feel that the ratio of the aforesaid decision must apply to the facts of this case as well. The object of the scheme of rejuvenation is to improve the tea

production from the existing old and uneconomic tea areas within the shortest possible time by arresting deterioration of the existing tea bushes and by increase of the bush population with the use of better planting materials. The subsidy was given subject to conditions laid down by the Tea Board.

3. It is evident that this subsidy was intended for the specific purpose of rejuvenating the tea estate by improving the old and uneconomic tea areas and to improve their productivity. The condition of the estate as a whole is stated to be improved by the rejuvenation process. It is as an aid for the purpose that the subsidy is given. It is not meant to swell the profits of the assessee, to use the terminology of the decision of the Full Bench in Commissioner of Income Tax Vs. Ruby Rubber Works Ltd., Travancore Rubbers Ltd. and Smt. M. Fathima, and, therefore, this receipt cannot be said to be of a revenue nature. The decision in Commissioner of Income Tax Vs. Ruby Rubber Works Ltd., Travancore Rubbers Ltd. and Smt. M. Fathima, has to be squarely applied to this case.

4. Counsel for the Department, however, relied on a decision of the Supreme Court in Commissioner of Income Tax, Madras Vs. G.R. Karthikeyan, , particularly the observations at page 873 of that report to contend that any receipt, even if it be of a capital nature, was income. The Supreme Court relied for this purpose on Section 10(3). Counsel, therefore, stated that the subsidy received must be treated as income and unless it is exempted under any of the provisions of the Income Tax Act, it has to be subjected to tax. Counsel pointed out that Section 10(30) stood amended by introducing rejuvenation subsidy as an item of exemption only with effect from April 1, 1985, We do not agree. Receipts can be either of capital nature or of income nature. The receipt in this case is not of a revenue nature having regard to what we had stated. The fact that rejuvenation subsidy was introduced as one of the items liable to be exempted from April 1, 1985, is immaterial as it is more in the nature of a clarificatory amendment. It is not indicative of the fact that rejuvenation subsidy was liable to be treated as revenue receipt prior to that date. We do not find any reason to uphold the contention of the Department on this aspect. In the light of the above discussion, we do not find any question of law liable to be referred to this court, particularly having regard to the decision in Commissioner of Income Tax Vs. Ruby Rubber Works Ltd., Travancore Rubbers Ltd. and Smt. M. Fathima,

5. Accordingly, we dismiss this petition.