(1990) 09 KL CK 0006

In the High Court Of Kerala

Case No : IT Reference No. 127 of 1988 & Income-tax Reference No. 127 of 1988

Commissioner of Income Tax — APPELLANT

Vs

Pullengode Rubber and Produce Co. Ltd. — RESPONDENT

Date of Decision : 19-09-1990

Acts Referred:

Citation : (1992) 62 TAXMAN 298

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

Bench : Division Bench

Advocate : P.K.R. Menon and N.R.K. Nair, for the Appellant; C.M. Devan, for the Respondent

Judgement

K.S. Paripoornan, J.—At the instance of the revenue, the Tribunal has referred the following two questions of law for the decision of this Court:

1. Whether, on the facts and in the circumstances of the case, was the Tribunal right in law and in fact in holding that rubber replantation subsidy was given for agricultural operations and the same is to be treated as agricultural income and is not the decision against law and the decision of the Kerala High Court in ITR Nos. 352 and 353 of 1982 - Commissioner of Income Tax Vs. Malayalam Plantations Ltd., ?

2. Whether, on the facts and in the circumstances of the case, was the Tribunal right in law and in fact in holding that the Commissioner (Appeals) was justified in estimating the capital gains at 30 per cent of the total sale value of timber?

The respondent is a public limited company. We are concerned with the assessment year 1979-80 for which the accounting period ended on 31-3-1979. During the relevant accounting period, the assessee received subsidy from the Rubber Board for rubber replanting. The ITO treated the same as a revenue receipt and taxed the same under the head ''Income from other sources''. In appeal, the Commissioner (Appeals) held that the subsidy received by the assessee is not income liable to tax under the income tax Act, 1961 (''the Act''). The revenue filed an appeal before the Tribunal and contended that the subsidy received by the assessee for rubber replantation is a revenue receipt and fortified the said plea by reference to the decision of this Court in Commissioner of Income Tax Vs. Malayalam Plantations Ltd., . The Tribunal held that since the subsidy was given for agricultural operations, it was agricultural income. The assessee had sold some timber in the pepper areas. The ITO estimated the capital gains on this at the rate of 50 per cent of the sale value. The Commissioner (Appeals) reduced it to 30 per cent and it was concurred with by the Tribunal. It is against the said decision of the Tribunal dated 30-4-1987, that the two questions of law, formulated hereinabove, have been referred for the decision of this Court.

2. We heard the counsel. When the matter was heard by the Tribunal, as per the prevailing decision of this Court in Malayalam Plantations Ltd.''s case (supra), rubber replantation subsidy was considered as a revenue receipt and liable to be brought to tax under the Act. The Tribunal approached the question from a different angle, which was put forward for the first time and held that since the subsidy was given for agricultural operations, it was treated as agricultural income. We do not propose to deal with that aspect of the question at this stage, since a Full Bench of this Court had, subsequent to the decision of the Tribunal, held in Commissioner of Income Tax Vs. Ruby Rubber Works Ltd., Travancore Rubbers Ltd. and Smt. M. Fathima, that rubber replantation subsidy is not a revenue receipt taxable under the Act. The ultimate conclusion of the Full Bench that the rubber replantation subsidy is not a revenue receipt and cannot be brought to tax under the Act is sustainable on this basis. But, it is a matter to be examined by the Tribunal, since it was held that the subsidy given to the assessee is agricultural income. So, while we decline to answer question No. 1 referred to this Court, we direct the Tribunal to restore the appeal to file and decide the said question afresh, bearing in mind the subsequent Full Bench decision of this Court in Ruby Rubber Works Ltd.''s case (supra).

3. The only other question is regarding the estimate of the capital gains. The ITO estimated the capital gains at 50 per cent of the sale value. The Commissioner (Appeals) reduced it to 30 per cent of the sale value. He has given cogent reasons therefore. The Tribunal has concurred with the said view. The net result is that the Commissioner (Appeals) as also the Tribunal have concurrently held that the capital gains is to be estimated at 30 per cent of the total sale value of timber. An estimate is always a matter of variable import. In such a case where two statutory authorities have concurrently held that 30 per cent of the total sale value of timber represents the estimated capital gains, we are of the view that it is largely a question of fact and no question of law arises on that score. Therefore, we hold that the determination of the percentage of the capital gains is largely a question of fact and that the said question has been concurrently found in this case by the Commissioner (Appeals) and the Tribunal, at 30 per cent of the total sale of timber.

4. We are of the view that no question of law arises on question No. 2 that had been formulated and forwarded to this Court. We answer question No. 2 referred to us in the affirmative, against the revenue and in favour of the assessee. The income tax referred case is disposed of as above.

