(1993) 02 GAU CK 0004

In the Gauhati High Court

Case No : Income-tax Reference No. 16 of 1988

Commissioner of Income Tax APPELLANT

Vs

Tarajan Tea Co. (P.) Ltd. RESPONDENT

Date of Decision : 03-02-1993

Acts Referred:
Income Tax Act, 1961 — Section 147, 148

Citation : (1993) 201 ITR 94

Hon'ble Judges : U.L. Bhat, C.J;R.K. Manisana, J

Bench : Division Bench

Advocate : D.K. Talukdar and B.J. Talukdar, for the Appellant; A.K. Saraf and K.K. Gupta, for the Respondent

Judgement

U.L. Bhat, C.J.—The following question has been referred to us by the Income Tax Appellate Tribunal u/s 256 of the Income Tax Act, 19(51 (for short "the Act"), at the instance of the Revenue.

" Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the Income Tax Officer had no jurisdiction to reopen the assessment for the assessment year 1975-76 u/s 147(a) of the Income Tax Act, 1961?"

2. The reference arises in regard to assessment for the year 1975-76. The assessee is a tea producing company having tea plantation, forest areas and other land. The assessee entered into an agreement with a sister concern on March 13, 1971. allowing the latter to cut trees from a part of the asses-see''s forest land for a consideration agreed to between the parties till December 31, 1973. The agreement was renewed on December 15, 1973, for the period expiring on December 31, 1976, for consideration out of which Rs. 5,00,000 was to be paid before December 31, 1974, that is in the previous year relevant to the assessment year 1975-76. In pursuance of this agreement, the other party to the agreement paid Rs. 5,00,000 to the assessee for cutting and removing timber trees. In submitting the return for the year, the assessee showed Rs.

5,00,000 in Part III, i.e., as a non-taxable receipt. The directors'' report to the shareholders referred to this amount as fetched by sale of standing trees pursuant to the renewal of the agreement. The payment was also referred to in the profit and loss account for the year. The Income Tax Officer, by a letter dated October 14, 1976, required the assessee to furnish information on various points. Point (e) relates to Rs. 5,00,000 realised by sale of standing trees. The particulars wanted were the total number of trees and quantity of timber sold. The assessee was required to produce the agreement regarding sale and to state why the receipt should not be treated as a revenue receipt. The assessee sent a reply dated September 20, 1977, furnishing the particulars called for and also a copy of the agreement and claiming the amount as a capital receipt. Copies of the balance-sheet and directors'' report were also furnished. The Income Tax Officer passed an assessment order without adding the amount of Rs. 5,00,000 to the assessable income. That was by order dated September 29, 1977.

3. It has to be noticed that, at that time, the reassessment proceedings relating to the earlier assessment years 1972-73, 1973-74 and 1974-75 were pending. In the previous years relevant to these assessment years also, the assessee had received various amounts as consideration for sale of timber trees under the same agreement. Ultimately, the Appellate Tribunal set aside the reassessment proceedings and that was affirmed by this court in the decision reported in Tarajan Tea Co. (P.) Ltd. Vs. Commissioner of Income Tax,

4. During the pendency of the reassessment proceedings for the earlier years, the Income Tax Officer decided to invoke Section 147 of the Act and to issue notice u/s 148 of the Act to the assessee for the assessment year 1975-76. Notice dated March 30, 1978, was duly issued. The assessee, by a written objection, contended that there was no failure on his part to disclose fully and truly all material facts necessary for the assessment and, therefore, the Income Tax Officer had no jurisdiction to invoke Section 147 of the Act or to issue notice u/s 148 of the Act. The Income Tax Officer rejected this contention and held that the receipt of the amount of Rs. 5,00,000 was a revenue receipt and not a capital receipt and passed a fresh assessment order accordingly on that basis. The Commissioner of Income Tax in appeal and the Appellate Tribunal in further appeal held that there was no failure of disclosure as contemplated in Section 147(a) of the Act and the reopening proceedings were without jurisdiction. Accordingly, the reassessment proceedings and the order were set aside. Hence, this reference at the instance of the Revenue.

5. It is relevant to notice that, when the Income Tax Officer passed the original assessment order dated September 29, 1977, the reassessment proceedings for earlier years were pending before him. The order of the Appellate Tribunal extracts the order passed by the Income Tax Officer on March 30, 1978, u/s 147. It shows that the non-disclosure related to particulars as to whether the trees were in fact removed or not, the quantity of trees felled and removed, the area of land cleared, whether new plantations were made on such land or not, the

gains arising out of such sale of trees, the date of acquisition of the assets, cost of improvement, if any, and the fair market value as on January 1, 1971, etc. Therefore, the formation of opinion regarding failure of disclosure relates to the above matters.

6. The principles on the basis of which the consideration for sale of trees is to be regarded as a capital receipt or as income receipt have been discussed by the Supreme Court in Commissioner of Income Tax Vs. Ambat Echukutty Menon, . The Supreme Court, after considering the earlier decisions of the court and of the Privy Council, observed (at page 76) :

" The return may be one and only one. But if the object of felling the trees leaving the root and stumps intact is for regeneration of income, then whether income is regenerated or not is immaterial. But in a case where the trees are sold by uprooting the roots nobody can say that there could be any object of regeneration of income from the trees growing again as there was no question of a second growth at all. Similarly, ordinarily and generally, when the trees are sold and allowed to be felled by leaving the roots and stumps intact, then in case of trees of spontaneous growth there is a likelihood of fresh sprouting and further growth of trees on the left out roots and stumps. The presumption in such cases generally would be that the owner did it with the object of regenerating the income. But there may be cases, although few and far between, like the one with which we are concerned here where the roots and stumps were not allowed to be uprooted and cut by the licensee or the lessee, yet the object was not the regeneration of the trees but a protection of the land eventually to be used for the purpose of cultivation."

7. The matter has to be decided, generally speaking, on the basis of the intention in cutting the trees. Was the transaction intended to be one in the business line and for deriving profits ? Did it amount to profits derived from capital which are consumed or exhausted in the process of realisation ? Are the trees to be treated as usufruct from the land or as part of the capital itself ? These are the relevant questions which are to be considered in deciding the controversy.

8. The reassessment order passed by the Income Tax Officer sets out ten alleged facts which would persuade one to take the view that the receipt was income and not a capital receipt They are that the intention was to make available raw materials for the sister concern, that the trees were outside the tea plantations, that the duration of the exploitation was nine years, that Rs. 28,00,000 were derived during the nine years and the amount was very high compared to the value of the whole tea estate, that no standing trees were sold to any person other than the sister concern, that no new plantation was made for seven years from 1971, that the agreement is silent as to whether the stumps and roots are to be removed or not, that out of Rs. 28,00,000 only a small fraction was spent for garden development by way of replantation and new plantation and there was no substantial extension of area under tea and a major part of the proceeds of sale was utilised in advancing loans to sister concerns under the same

management. Many of these circumstances were not at all relevant in deciding whether the receipt was by way of capital receipt or income receipt. Regarding the intention of the parties and the circumstances under which the agreement was entered into, the recitals in the agreement are to be looked into and the agreement was furnished to the Income Tax Officer in response to his notice. The agreement also indicates the duration of the exploitation. The returns for the earlier years in regard to which reassessment proceedings were pending before the Income Tax Officer would indicate the extent of sale price derived during those years. That a small fraction of the amount of the sale price was spent would also be evident from those returns. The recital in the original agreement that the sister concern approached the assessee for purchasing timber and the assessee "agreed to part with the standing trees thus making the land suitable for tea plantation" was also before the Income Tax Officer. Thus, there was no failure on the part of the assessee to make a full and true disclosure of primary facts necessary for the assessment for that year. The jurisdiction of the Income Tax Officer is dependent on such non-disclosure. In these circumstances, the Appellate Tribunal was correct in holding that the Income Tax Officer had no jurisdiction to reopen the assessment for the year concerned.

9. We answer the question in the affirmative, that is, in favour of the assessee and against the Revenue.

10. A copy of this judgment under the signature of the Registrar and seal of the High Court he transmitted to the Appellate Tribunal. There will be no direction as to costs.

