
(1989) 09 KL CK 0034

In the High Court Of Kerala

Case No : Income-tax Reference No's. 183 and 184 of 1985

Commissioner of Income Tax

APPELLANT

Vs

Velimalai Rubber Co. Ltd.

RESPONDENT

Date of Decision : 18-09-1989

Acts Referred:

Citation : (1990) 181 ITR 299

Hon'ble Judges : Varghese Kalliath, J;K.S. Paripoornan, J

Bench : Division Bench

Advocate : P.K.R. Menon, for the Appellant;

Judgement

K.S. Paripoornan, J.—At the instance of the Revenue, the Income Tax Appellate Tribunal has referred the following questions of law for the decision of this court :

"1. Whether, on the facts and in the circumstances of the case, the Hon''ble Tribunal is right in holding,--

(i) the value realised on the sale of the rubber trees would be less than the value as on January 1, 1954 ?

(ii) there would be no capital gains arising on the sale of the rubber trees ?

2. Whether, on the facts and in the circumstances of the case, the manner and method of valuing rubber trees for the purpose of determining capital gains are right and justified ?"

2. The respondent-company is an assessee to Income Tax. We are concerned with the assessment years 1976-77 and 1977-78. The previous years ended on February 29, 1976, and February 28, 1977, respectively. The assessee is engaged in rubber plantation industry. It sold substantial unyielding rubber trees in both the years. The sale proceeds for the year 1976-77 were Rs. 78,575. Similarly, for the year 1977-78, the trees were sold for Rs. 31,480, According to the assessee, no capital gains arose on the sale of the rubber trees since as on January 1, 1954, the value of the trees was more than the sale price. However,

the Income Tax Officer declined to accept the said plea and valued each tree as on January 1, 1954, at Rs. 14 and computed the capital gains for both the years. The capital gains, for the year 1976-77, was arrived at Rs. 19,425 and Rs. 9,444 for the year 1977-78. In the appeals, the Commissioner of Income Tax (Appeals) followed the order of the Income Tax Appellate Tribunal in the case of the very same assessee. rendered in I. T. A. Nos. 13 to 18 (Coch) of 1971-72 dated November 30, 1972, and held that the value realised on the sale of the rubber trees will be less than the value as on January 1, 1954, and, therefore, there would be no capital gains arising on the sale of the rubber trees. In the second appeals filed by the Revenue, the Income Tax Appellate Tribunal upheld the order of the Commissioner of Income Tax (Appeals). The Tribunal held that no reason was made out to take a different view from the one taken in its order in I. T. A. Nos. 13 to 18 (Coch) of 1971-72 in the assessee's own case which was followed by the Commissioner of Income Tax (Appeals). It is thereafter, at the instance of the Revenue, that the questions of law, formulated hereinabove, have been referred for the decision of this court.

3. We heard counsel. Counsel for the Revenue argued that in this case the manner and method of valuing rubber trees adopted for the purpose of determining the capital gains were erroneous and the Income Tax Appellate Tribunal erred in concurring with the Commissioner of Income Tax (Appeals) on that score. We are unable to accept the said plea. In disposing of the appeals filed by the Revenue, the Income Tax Appellate Tribunal, in the appellate order dated January 10, 1984, stated thus :

". . . . On appeal, the Commissioner of Income Tax (Appeals) followed the order of the Cochin Bench of the Tribunal in I. T. A. Nos. 13 to 18 (Coch) of 1971-72 in the assessee's own case and held that the value realised on the sale of the rubber trees would be less than the value as on January 1, 1954, and, therefore, there would be no capital gains arising on the sale of the rubber trees ... We do not see any reasons to take a different view from the one taken in our order in ITA Nos. 13 to 18 (Coch) of 1971-72 in the assessee's own case. In that order, the Tribunal has taken note of the fact that in 1955, rubber trees in the plantation of the assessee which were cut by the Kerala Electricity Board were valued by the District Judge, Ernakulam, at Rs. 81 per tree. We, therefore, uphold the orders of the Commissioner of Income Tax (Appeals) for these two assessment years."

4. The appellate order of the Tribunal dated January 10, 1984, has only followed its earlier order rendered in ITA Nos. 13 to 18/Coch. of 1971-72 in the assessee's own case. The earlier order of the Tribunal does not form part of the paper book. The fact that the Tribunal has, in the assessee's own case, taken the view that the value realised on the sale of the old rubber trees would be less than the value as on January 1, 1954, is not disputed and it is a relevant and cogent factor that can be taken note of when the assessment for a later year comes up for consideration before the Commissioner of Income Tax (Appeals) or

the Tribunal. Adverting to the earlier order passed by it, the Tribunal has stated that there is no reason to take a different view from the one taken earlier in ITA Nos. 13 to 18 (Coch) of 1971-72. No material was placed, either before the Tribunal or before us, nor any aspect stressed which will warrant us to take a different view from the one taken by the Tribunal earlier in ITA Nos. 13 to 18 (Coch) of 1971-72. Though the principle of res judicata will not apply to Income Tax proceedings, when a question of law or fact is decided in the assessee's own case for an earlier assessment year, and the identical question comes up for consideration for a later year, the Appellate Tribunal will be justified in placing reliance on the earlier decision to base its conclusion, in the absence of any new material or change in circumstances or a fresh look necessitated on existing facts on a closer and more intelligent analysis. None of these contingencies arises in this case : vide M.M. Ipoh and Others Vs. Commissioner of Income Tax, Madras, and Annamalai Reddiar Vs. Commissioner of Income Tax, Kerala, . In this perspective, we are of the view that the Appellate Tribunal had proper and sufficient materials before it, evidenced by its own order in ITA Nos. 13 to 18 (Coch) of 1971-72, which has become final, and so was justified in concurring with the Commissioner of Income Tax (Appeals) and in affirming that no capital gains arose on the sale of the rubber trees by the assessee for the two assessment years.

5. In this view, we answer questions Nos. 1(i) and (ii) in the affirmative, against the Revenue and in favour of the assessee.

6. No principles regarding the valuation of the rubber trees was either mooted or adjudicated by the Appellate Tribunal. So, we are of the view that question No. 2, referred to us by the Income Tax Appellate Tribunal, does not really arise out of the appellate order. We decline to answer question No. 2.

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