

(1968) 08 KL CK 0027
In the High Court Of Kerala

Commr. of Agrl. I.T.

APPELLANT

Vs

Pullangode Rubber and Produce Co. Ltd.

RESPONDENT

Date of Decision : 30-08-1968

Acts Referred:

Income Tax Act, 1922 — Section 42

Kerala Agricultural Income Tax Act, 1950 — Section 60(1), 66(6)

Citation : (1970) 76 ITR 10

Hon'ble Judges : P. Narayana Pillai, J; M.U. Isaac, J

Bench : Division Bench

Judgement

Isaac, J.—This is a reference made by the Kerala Agricultural income tax Appellate Tribunal u/s 60(1) of the Agricultural Income Tax Act 1950, on the application of the Commissioner of Agricultural Income Tax, Kerala. The questions referred are:

"(i) On the facts and in the circumstances of the case, is the Tribunal right in holding that there is nothing in the agreement dated 19th February, 1962, to show that it was a composite agreement of lease and sale?

(ii) On the facts and in the circumstances of the case, is the Tribunal right in holding that the agreement dated 19th February, 1962, is an agreement for an outright sale of rubber trees?

(iii) Is the Tribunal right in giving a literal interpretation to the agreement without duly considering the attendant circumstances like the unreasonableness of the time allowed for cutting and removing the trees, the unreasonableness of the amount shown as consideration for the sale of the rubber trees, that the trees are capable of being tapped for two or three years more, etc., and how the parties acted under it ?"

2. This reference relates to the assessment year 1964-65, and the previous year is the one which ended on March 31, 1964. The assessee is an incorporated company, owning a rubber plantation. By an agreement dated 19th February,

1962, executed between the assessee and the Malabar Rubber Company, the assessee sold all the rubber trees standing on an area of 128.60 acres of land for a sum of Rs. 1,71,765. This was for the purpose of replanting the above area with rubber, after cutting and removing the old trees, which had apparently become non-yielding or unremunerative. The purchaser had paid an earnest money of Rs. 10,000 before the execution of the agreement; and the provision regarding the payment of the balance amount was that it should be paid in 37 equal monthly instalments commencing from the last day of March, 1962, and ending with the last day of March, 1965. The agreement also provided, among other things, that the purchaser shall cut and remove the trees as soon as possible, and in any case on or before 31st March, 1965. Under the agreement the assessee received from the Malabar Rubber Company a sum of Rs. 55,708 during the accounting year ended March 31, 1964.

3. The assessee had also executed another agreement dated April 7, 1961, with one Yusuff in respect of 150 acres of rubber plantation. Under this agreement, the assessee sold the rubber trees standing in the said area together with the right of slaughter tapping for a sum of Rs. 2,19,000. The price of the trees was fixed at Rs. 24,000 and the consideration for the slaughter tapping was fixed at Rs. 1,95,000. This sum of Rs. 24,000 was received by the assessee during the accounting year ended March 31, 1964.

4. For the assessment year 1964-65, the assessee claimed that the aforesaid two sums of Rs. 55,708 and Rs. 24,000 received by it on account of sale of old rubber trees were capital receipts and not income. The Inspecting Assistant Commissioner, who was the assessing authority, rejected the assessee's claim. Regarding the amount of Rs. 55,708 received from the Malabar Rubber Company, he stated that, in view of the fact that the value of the rubber trees sold from 128.60 acres of land to the above company was fixed at Rs. 1,71,765 as against Rs. 24,000 fixed as the value of the trees sold from 150 acres to Yusuff, his predecessor in office, he visited the estate on February 16, 1964; and that it was then he found that slaughter tapping was actually in progress in the whole area; that, in the light of the above facts, the assessee agreed in respect of the assessment for the year 1963-64 that the amount received from the Malabar Rubber Company represented actually the price of trees and consideration, for granting the right of slaughter tapping; and that, accordingly, the sum of Rs. 55,708 was income and not capital. Regarding the sum of Rs. 24,000 received from Yusuff, the Inspecting Assistant Commissioner stated that what was sold was not old and unyielding trees, and that the said amount also constitutes income.

5. The assessee filed an appeal before the Deputy Commissioner of Agricultural Income Tax, who was the appellate authority, and he accepted the claim of the assessee regarding the sum of Rs. 24,000 without any hesitation. Regarding the sum of Rs. 55,507 received from the Malabar Rubber Company, he agreed with the finding of the Inspecting Assistant Commissioner and the reasons stated by

him in support of the said finding, and held that the said amount was income.

6. The assessee appealed before the Appellate Tribunal. It held that the agreement dated February 19, 1962, between the assessee and the Malabar Rubber Company evidenced an outright sale of the rubber trees, that it was "incorrect to import any extraneous motives in the terms of the agreement and construe it as a composite one of lease and sale", and that the amounts received by the assessee under the said agreement were capital receipts. In the opinion of the Tribunal, the document is the sole determining factor, and the revenue is not entitled to go behind the document, and determine the real character of the transaction on a consideration of facts not stated in, or disclosed, by the document.

7. The learned counsel for the revenue contended before us that the above opinion of the Tribunal is wrong. He submitted that the revenue is entitled to ignore the apparent form of the transaction as engrossed in the document, and to determine its real character in the light of the true facts and circumstances of the case. He also submitted that the stand taken by the revenue throughout was that, on the facts of this case, which had been found by the assessing authority and affirmed by the appellate authority, the transaction between the assessee and the Malabar Rubber Company was a sale of the trees together with the right for slaughter tapping, and not a sale of the trees alone as put in the document. The learned counsel further submitted that the Appellate Tribunal failed to consider this question on the erroneous view that the document was conclusive in the matter. The learned counsel also submitted that the revenue had no case at any stage that the agreement dated February 19, 1962, does not evidence an outright sale of the rubber trees, or it is a composite agreement of lease and sale. Questions Nos. 1 and 2 in this reference do not, therefore, arise for our decision. The only question that arises for decision out of the order of the Tribunal is whether it was right in holding that the form of the agreement executed between the parties was conclusive regarding the real character of the transaction, and that the revenue is not entitled to go behind the document and determine the true character of the transaction by taking into account the real facts. Question No. 3 raises this point, though it has not been framed in a satisfactory form, and we shall proceed to answer this question.

8. There is a very lucid and instructive discussion of the question whether the liability to tax, when the transaction is embodied in a document, depends upon the meaning and effect of that document or the substance of the transaction in Article 63 (pages 49 to 51), Simon's Income Tax, second edition, volume 1. In *Inland Revenue Commissioners v. Wesleyan and General Assurance Society* [1948] 16 ITR (Suppl.) 101 Viscount Simon stated the principles in these words:

"It may be well to repeat two propositions which are well established in the application of the law relating to Income Tax. First, the name given to a transaction by the parties concerned does not necessarily decide the nature of the transaction. To call a payment a loan if it is really an annuity does not assist

the taxpayer, any more than to call an item a capital payment would prevent it from being regarded as an income payment if that is its true nature. The question always is what is the real character of the payment, not what the parties call it. Secondly, a transaction, which on its true construction is of a kind that would escape tax, is not taxable on the ground that the same result could be brought about by a transaction in another form which would attract tax."

9. After referring to the above decision and a few earlier decisions of the House of Lords, the learned author states:

"The true principle, then, is that the taxing Acts are to be applied in accordance with the legal rights of the parties to a transaction. It is those rights which determine what is the " substance " of the transaction in the correct usage of that term, Reading "substance" in that way, it is still true to say that the substance of a transaction prevails over mere nomenclature."

10. In our opinion, this statement lays down the correct legal position.

11. The learned counsel for the assessee referred us to the following passage appearing in the judgment of the Privy Council in *Bank of Chettinad Ltd. v. Commissioner of Income Tax* [1940] 8 ITR 522 (P.C.):

"Their Lordships think it necessary once more to protest against the suggestion that in revenue cases "the substance of the matter" may be regarded as distinguished from the strict legal position."

12. The question which arose for decision in that case was whether the "Kanadukathan Bank" which was carrying on business in British India, can be assessed u/s 42 of the Indian Income Tax Act, 1922, as agent of the "Pudukottai Bank", which was carrying on business in an Indian State in respect of the income from six loans given by the Pudukottai Bank to certain branches of the Kanadukathan Bank in Burma. Their Lordships-examined the true character of the loans, and held that they were loans really given by the Pudukottai Bank to the British Indian branches of the Kanadukathan Bank, though the parties treated them in their books of account as loans by the Pudukottai bank to the Burma branches of the Kanadukathan Bank. This decision does not, therefore, support the contention of the learned counsel for the assessee. On the other hand, it shows that what is relevant is the true legal character of the transaction, and not its apparent form. It is open to a tribunal of facts to find on proper evidence that the agreement purporting to embody the transaction does not represent the real bargain, or any bargain, between the parties. The Appellate Tribunal was, therefore, wrong in holding that the revenue was not entitled to go behind the document and determine the true legal character of the transaction on a consideration of extraneous evidence.

13. The learned counsel for the assessee raised a contention that, even assuming that the amount received by the assessee under the agreement dated February 19, 1962, partly represented the consideration for slaughter tapping of the trees,

it did not constitute income. He submitted that the amounts received by slaughter tapping of rubber trees were not "agricultural income" but it was only capital. In support of this contention the learned counsel relied on the decisions of the Supreme Court in COMMISSIONER OF Income Tax, KERALA Vs. WEST COAST CHEMICALS AND INDUSTRIES LTD. (IN LIQUIDATION)., and Commissioner of Income Tax, West Bengal, Calcutta Vs. Raja Benoy Kumar Sahas Roy, . This contention deserves consideration; but it was not raised before the Appellate Tribunal; and it does not, therefore, arise for decision in this case. The decision of this court in E.J. John v. State of Kerala ITR C. Nos 76 and 77 of 1965 (Unreported) is authority for the position that amounts received by slaughter tapping of rubber trees constitute income. On a perusal of this decision, it appears to us that all that was decided in that case is that, where rubber trees are sold together with the right of slaughter tapping that part of the amount which represents the value of the trees is a capital receipt and not agricultural income. The question whether the amount received by slaughter tapping is capital or agricultural income was neither raised nor decided in the above decision.

14. In the result, we decline to answer questions Nos. 1 and 2; and we answer question No. 3 in the negative and in favour of the Commissioner of Agricultural Income Tax, subject to the observations made in paragraph 6 of this judgment. The partner will bear their own costs. A copy of this judgment will be forwarded to the Appellate Tribunal as required by Section 66(6) of the Act.