(1984) 08 KL CK 0013

In the High Court Of Kerala

Case No : Income Tax R. No''s. 53 to 55 of 1982

E.K. Joseph APPELLANT

Vs

The Commissioner of Wealth-Tax RESPONDENT

Date of Decision : 29-08-1984

Acts Referred:
Wealth Tax Act, 1957 — Section 5(1)(viiia), 5(1)(vim)

Citation : (1984) KLJ 741

Hon'ble Judges : T. Kochu Thommen, J;K.P. Radhakrishna Menon, J

Bench : Division Bench

Advocate : G. Sivarajan, for the Appellant; P.K. Raveendranatha Menon, for the Respondent

Judgement

T. Kochu Thommen, J.—Pursuant to the orders of this Court in O.P. Nos. 4404, 4406 and 4444 of 1977, the following question has been referred to us by the income tax Appellate Tribunal, Cochin Bench:

Whether on the facts and in the circumstances of the case the tea bushes cannot be characterised as ''growing crops''?

The assessee is a partner of a firm owning tea estates. He is assessed as an individual in respect of his one half share. For the assessment years 1970-71, 1971-72 and 1972-73, the assessee filed returns under the Wealth-tax Act, 1957 showing his net wealth after claiming certain exemptions. One of the items, claimed as exemption was in respect of growing crops as provided u/s 5(1)(viiia) as it stood at the relevant time. The exemption was claimed for the total value of the buds and leaves plucked from the tea bushes. The income tax Officer however accepted the claim only to the extent of 20 per cent. In refusing the claim in respect of the other 80 per cent, the Officer followed an earlier decision of the Tribunal in W.T.A. Nos. 73, 74 and 75/Coch/1974-75 (Annexure E). Aggrieved by this order, the assessee appealed to the Appellate Assistant Commissioner, but without success. On further appeal, the Tribunal, following its own earlier decision, affirmed the finding of the income tax Officer. Counsel for the assessee points out that the exemption claimed in terms of Section 5(1)(viiia) represented the total value of the leaves and buds plucked during the year from the tea bushes. He says that from each bush only two leaves and one bud are plucked during each season of the year. In respect of the remaining leaves, which he says, have no value, the assessee claimed no exemption. The exemption claimed by the assessee is for the total value of these leaves and buds plucked during the year and constituting the raw material for the manufacture of tea. None has a case that what does not form raw material has any value which can be exempted under the head "growing crops".

2. It would appear from the order of the income tax Officer (Annexure A) for the assessment year 1970-71 that 8,23,051 Kgs. was the total quantity of leaves and buds plucked by the assessee as raw material for the manufacture of tea during the relevant year. For the total value of that quantity, the assessee claimed exemption. The Officer, as we have stated earlier, granted exemption only to the extent of 20 per cent, presumably, we think, on the assumption that that portion alone represented the actual value of the raw materials. From the contentions of the parties, the orders of the income tax Officer and the higher authorities, and the arguments at the bar, we seriously doubt the correctness of this assumption, should that be the assumption on the basis of which the Officer restricted the exemption to 20 per cent. If 8,23,051 Kgs. for the assessment year 1970-71 represented the total quantity of raw materials plucked at the rate of two leaves and one bud from each bush every season, the Officer was in error in limiting the exemption to 20 per cent, for such limitation has no validity in law. From the orders it would appear that 8,23,051 Kgs. represented none other than the leaves and buds plucked as raw material. What the Officer says is:

....The total quantity of green leaves obtained by the assessee on the valuation date is 8,23,051 Kgs...

It is unlikely that the assessee would have plucked any other leaves or buds. Without expressing any final view, we think it is even more unlikely that the leaves which were not raw material and which were not therefore plucked had any value at all.

3. If therefore the amounts claimed by the assessee as the exempted value of growing crops did not include the value of any leaves other than those leaves and buds which were the raw material and which were plucked in each season during the relevant year at the rate of two leaves and one bud from each bush there was no justification in law for not allowing the total value so claimed. If that was the position, the denial of exemption to the extent of 80 per cent of the value claimed by the assessee was unjustified.

4. It is necessary for the Tribunal to reconsider the question in the light of what is stated above to determine what exactly was the nature of the exemption claimed by the assessee. If the exemption claimed was only for the raw material gathered during the year at each season as aforesaid, the assessee was entitled

to total exemption. That is a matter to be determined by the Tribunal with reference to the relevant evidence and the contentions of the parties.

5. In the light of what is stated above, the question referred to us has to be recast so as to highlight the point of law which requires to be answered. Accordingly we read the question as follows:

Whether on the facts and in the circumstances of the case, the value of the leaves and buds plucked from each bush during each season of the year as raw material for the manufacture of black tea is exempted u/s 5(1) (vim) of the Wealth-tax Act, 1957 as it stood at the relevant time?

The question thus recast is answered in the affirmative, that is, in favour of the assessee and against the revenue. In the light of this answer, the Tribunal shall determine the relevant facts and compute the actual value of such leaves and buds. We direct the parties to bear their respective costs in these Tax Referred Cases.

