**(1996) 09 GAU CK 0026**

**In the Gauhati High Court**

**Case No :** Agrl. IT Ref. No. 2 of 1995

George Williamson (Assam) Ltd. APPELLANT

Vs

Assistant Commissioner of Taxes (Appeals). RESPONDENT

**Date of Decision :** 07-09-1996

**Acts Referred:**
Assam Agricultural Income Tax Act, 1939 — Section 10, 2, 2(a), 28(4), 50

**Citation :** (1997) 141 CTR 340

**Hon'ble Judges :** D.N. Baruah, J

**Bench :** Single Bench

## Judgement

D.N. Baruah, J.—In this agricultural Income Tax reference u/s 28(4) of the Assam Agrl. IT Act, 1939 (for short, "the Act"), the following questions have been referred to this Court by the Assam Board of Revenue for opinion of this Court :

(i) Whether the Board, in deciding the appeal, was right in relying solely on the provisions of Section 8(2)(f)(vii) of the Assam Agrl. IT Act (as it stood prior to its amendment by the Assam Taxation Laws (Third Amendment) Act, 1989) without considering the implication of the second proviso to Section 8(2) of the said Act and the provisions of Rule 5 of the Assam Agrl. IT Rules, 1939 ?

(ii) Whether the Board was right in distinguishing sixty per cent of income derived from cultivation, manufacture and sale of tea from agricultural income ?

(iii) On the facts and in the circumstances of the case, where the Board was right in holding that sixty per cent of the expenses disallowed in computing hundred per cent of the composite income from cultivation, manufacture and sale of tea for the purpose of the IT Act, 1961, would not be deductible from sixty per cent of the composite income from tea business as determined under the IT Act, 1961, as such sixty per cent of such composite income could not be said to be agricultural income ?

2. George Williamsons (Assam) Ltd., is a company incorporated under the Companies Act. The company owns tea estates in various parts of the State of

Assam and was engaged in cultivation, manufacture and sale of tea. It is an assessee under the Act. The relevant assessment years relating to the questions referred to above are 1982-83, 1983-84 and 1984-85. The assessee submitted returns of its agricultural income claiming deduction u/s 8(2)(f)(vii) of the Act. The Agrl. ITO completed the assessment disallowing the claims of deduction. The assessee preferred an appeal before the Asstt. Commr. of Taxes (A). This appeal was disposed of confirming the order of assessment passed by the Agrl. ITO. Being aggrieved by the appellate order passed by the Asstt. Commr. of Taxes (A), the assessee preferred yet another appeal before the Assam Board of Revenue. The matter was taken up by a Full Bench of the Board and by order dt. 5th December, 1990, the Board upheld the order passed by the Asstt. Commr. of Taxes (A). While disposing of the appeal the Board held that in order to get deduction of the amount it must first be ascertained whether those expenses relate to agricultural operations. According to the Board, the deduction in respect of the expenses can be allowed if the assessee incurred the expenses in agricultural activities. Being aggrieved, the appellant requested the Board to refer the above questions to this Court. The Board, however, refused to make the reference of the above questions on the ground that no question of law was involved in those questions. Situated thus, the assessee approached this Court by filing a petition u/s 28(4) of the Act and this Court in Civil Rule Nos. 2(M), 3(M) and 4(M) of 1993 by a common judgment directed the Board to refer the above questions. Hence, the present reference.

3. We have heard Mr. R. Gogoi, learned counsel assisted by Mr. H. Roy, learned counsel appearing on behalf of the assessee, and Dr. B. P. Todi, learned Addl. senior Government advocate, Assam, for the Revenue.

4. Mr. Gogoi submits that the Board committed a manifest error by holding that deduction is allowable so far the expenses which relate to the agricultural activities are concerned. The Board also erred in law in holding that unless it is ascertained, the deductions are not permissible. Mr. Gogoi submits that the Agrl. ITO should allow the expenses which are not allowed by the ITO while making the assessment if the assessee is successful in proving that those expenses relate to the plantation, manufacture and sale of tea. Mr. Gogoi further submits that as 60 per cent of the composite income is agricultural income within the meaning of the Act, after apportionment of the composite income the agricultural income gets identified. The expenses disallowed under the Central Act are to be allowed against the said income upon proof that all the expenses relate to earning the agricultural income, full deduction is to be allowed, in any case a minimum of 60 per cent of the disallowed expenses is to be allowed under the Act.

Dr. Todi, on the other hand, submits that there cannot be apportionment in respect of expenses unlike the income where the statute specifically provides that after the making of allowable deductions by the ITO the total income is to be apportioned as 40 per cent and 60 per cent. In any case, the expenses actually made for the purpose of cultivation and manufacture of tea may be allowed under the Act. Dr. Todi further submits that every expenditure disallowed by the IT authorities cannot be allowed u/s 8(2)(f)(vii) of the Act. As per the submission of Dr. Todi, the Agrl. ITO should find out the actual expenditure relating to agriculture before allowing deductions.

5. We have gone through the judgement passed by the Assam Board of Revenue. The assessee claimed deduction in respect of the following items :

(1) Expenses incurred on entertainment;

(2) Legal expenses;

(3) Guest house maintenance expenses;

(4) Travelling expenses;

(5) Perquisites.

The Board considered the respective expenses and observed thus :

In the result, we uphold the impugned order with respect to legal expenses in toto and direct the primary assessing authority to make fresh enquiry into the claim of the appellant-company with respect to entertainment expenses in so far as such expenses are a condition for work in the tea estate, guest house maintenance in so far as such expenses would fall in the category of maintenance expenses for the purpose of deriving agricultural income from the land u/s 8(2)(f)(ii) of the State law, travelling expenses and perquisites in so far these are exclusively and wholly incurred for agricultural operations in the tea estate for the purpose of deriving agricultural income. With these directions to the primary assessing authority we leave the option to the appellant-company to place evidence/documents/other material showing scientific and proper apportionment of the expenses for the purpose of earning and deriving agricultural income, as construed u/s 8(2) of the Assam Agrl. IT Act.

While coming to the finding the Board held that expenses incurred by the assessee on the items mentioned above could be allowed only when it related to agricultural operations. As there was nothing on the record to show whether those expenses actually related to agricultural operations or not, the Board thought it fit to remand the case to the AO to examine whether those expenses related to the agricultural income of the assessee.

6. Rule 8 of the IT Rules deals with income from the manufacture of tea. Rule 8 is quoted below :

(1) Income derived from the sale of tea grown and manufactured by the seller in India shall be computed as if it were income derived from business, and 40 per cent of such income shall be deemed to be income liable to tax.

(2) In computing such income an allowance shall be made in respect of the cost of planting bushes in replacement of bushes that have died or become

permanently useless in an area already planted, if such area has not previously been abandoned, and for the purpose of determining such cost, no deduction shall be made in respect of the amount of any subsidy which, under the provisions of Clause (30) of Section 10, is not includible in the total income.

7. From a reading of this rule it is clear that the income derived by a tea garden from plantation, manufacture and sale of tea shall be first taken as a composite income derived from business and the allowances deductible under the provisions of the Act shall be deducted. Thereafter the net income shall be found out and after finding out the net income, 40 per cent of the said income shall be deemed to be income liable to tax under the IT Act. The procedure of apportioning the income at the rate of 40 per cent and 60 per cent has been prescribed as it may not always be possible to determine the actual business income and the agricultural income. Therefore, the legislature thought it fit to apportion the income in the said manner prescribed. The IT Act and the Rules do not, however, prescribe any apportionment so far as expenses are concerned unlike the manner prescribed for agricultural and business income. Learned counsel for the parties have also not been able to show before us any provisions in that regard. But at the same time genuine expenditure made by the assessee in this regard and allowable under the law, we feel should be deducted. Therefore, we have to find out what expenses can be allowed under the IT Act and what expenses can be allowed under the present Act. We find from Rule 8 of the Rules that the ITO shall take the entire gross income as a whole and make deductions within the limit prescribed.

8. u/s 2(a) of the Act "agricultural income" means, -

(1) any rent or revenue derived from land which is used for agricultural purposes, and is either assessed to land revenue in Assam or subject to a local rate assessed and collected by officers of the (Government) as such.

(2) any income derived from such land by -

(i) agriculture, or

(ii) the performance by a cultivator or receiver of rent-in-kind of any process ordinarily employed by a cultivator or receiver of rent-in-kind to render the produce raised or received by him fit to be taken to market, or

(iii) the sale by a cultivator or receiver of rent-in-kind of the produce raised or received by him, in respect of which no process has been performed other than a process of the nature described in sub-cl (ii);

Explanation. - Agricultural income derived from such land by the cultivation of tea means that portion of the income derived from the cultivation, manufacture and sale of tea as is defined to be agricultural income for the purposes of the enactments relating to Indian Income Tax.

Sec. 8 of the Act provides for determination of agricultural income mentioned in clause (a)(2) of Section 2 - (1) The agricultural income mentioned in Sub-clause (2) of Clause (a) of Section 2 shall be assessed on the net amount of such income determined in the prescribed manner. (2) Rules prescribing the manner of determining the net amounts of agricultural income for the purpose of this clause provide the deductions as mentioned in Sub-section (2).

Section 50 of the Act empowers the State Government to make rules relating to agricultural income. Sub-section (2) of section 8 of the Act clearly indicates that in order to determine the net income certain deductions are to be made as mentioned in the said section. Clause (f)(vii) of Section 8 indicates that any expenditure (not being in the nature of capital expenditure) laid out or expended wholly and exclusively for the purpose of earning or deriving the agricultural income.

Rule 5 of the Assam Agrl. IT Rules, 1939 (for short, "the Rules"), provides as follows :

5. In respect of agricultural income from tea grown and manufactured by the seller in the Province of Assam, the portion of net income worked out under the Indian IT Act and left unassessed as being agricultural shall be assessed under this Act after allowing such deductions under the Act and the rules made thereunder so far as they have not been allowed under the Indian IT Act in computing the net income from the entire operation.

9. From a reading of these provisions of the Act and the Rules, in our opinion, expenses incurred for the purpose of earning agricultural income after giving allowable deductions by the ITO while making the assessment, whatever amount is left out genuine expenses are to be deducted in accordance with law. In our opinion, the Act and the rules do not prescribe any procedure for ascertaining what amount is actually spent by the assessee for the purpose of cultivation and manufacture of tea inasmuch as it will not be possible to ascertain actually what amount is spent towards agricultural activities. For instance, an employee may be engaged in cultivation of tea as well as for sale of tea. In such cases, it will not be possible to ascertain the actual expenditure in agricultural activities. We do not agree with the submission of Dr. Todi that actual expenditure made for the purpose of cultivation of tea should be found out and be taken as expenditure to derive income from agriculture. We also find it difficult to accept the submission of Mr. Gogoi that a notional percentage of expenses should be taken out for the purpose of giving allowance to the extent of 60 per cent in the manner prescribed for the purpose of determining the income. The legislature thought it fit to prescribe the percentage for determining the income both agricultural an business. It is the legislative wisdom not to prescribe any percentage for the purpose of ascertaining the expenses.

10. On going through all the provisions of the Act and the relevant Rules, in our opinion, whatever amount spent is disallowed by the ITO can be allowed by the Agrl. ITO. However, we make it clear that it must relate to plantation,

 

manufacture and sale of tea.

11. Accordingly, we answer all the questions in the negative in favour of the assessee and against the Revenue.

 