

(2000) 05 GAU CK 0024

In the Gauhati High Court

Case No : Agricultural Income Tax Reference No. 1 of 1996

Goodricke Group Ltd.

APPELLANT

Vs

Assistant Commissioner of Taxes (Appeals)

RESPONDENT

Date of Decision : 30-05-2000

Acts Referred:

Assam Agricultural Income Tax Act, 1939 — Section 8(2)
Assam Agricultural Income Tax Rules, 1939 — Rule 5

Citation : (2000) 244 ITR 687

Hon'ble Judges : W.A. Shishak, J;D. Biswas, J

Bench : Division Bench

Advocate : A.K. Saraf, K.K. Gupta and S.K. Agarwalla, for the Appellant; A.K. Goswami, for the Respondent

Judgement

D. Biswas, J.—Heard Dr. A.K. Saraf, learned counsel for the petitioner assisted by Mr. S. K. Agarwalla, and also Mr. A.K. Goswami, learned counsel for the respondent.

2. This agricultural Income Tax reference u/s 28(2) of the Assam Agricultural Income Tax Act, 1939, has been referred to this court by the Assam Board of Revenue on the following questions of law :

"(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 Agricultural Income Tax Act, 1939, as it stood prior to its amendment by the Assam Agricultural Income Tax (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 Agricultural Income Tax Rules, 1939 ?

(ii) Whether the Board was right in holding that the assessing authorities under the Assam Agricultural Income Tax Act have to accept the same computation without any discretion to apply on their own as to the amount of expenses disallowed in computing 100 per cent, of composite income from cultivation,

manufacture and sale of tea for the purpose of the Income Tax Act, 1961, without considering the implication of the second proviso to Section 8(2) of the said Act read with rule 5 of the Assam Agricultural Income Tax Rules, 1939 ?

(iii) Whether, on the facts and in the circumstances of the case, the Board was right in holding that the expenses disallowed in computing composite income from cultivation, manufacture and sale of tea under the Income Tax Act, 1961, due to restrictive provisions contained in the said Act would not be deductible to the extent of 60 per cent, of such expenditure from 60 per cent, of the composite income from tea business as determined under the Income Tax Act, 1961, on agricultural income since disallowance, of expenditure was made on consideration of reasonableness of it by the Income Tax authorities ?"

3. Dr. A.K. Saraf, learned counsel for the applicant-petitioner, and Mr. A.K. Goswami, learned counsel for the respondent, at the very outset submitted that the questions required to be answered in this reference have already been considered and answered by a Division Bench of this court in *George Williamson (Assam) Ltd. Vs. Assistant Commissioner of Taxes (Appeals)*, and, therefore, it is submitted that in the light of the said judgment the present reference may be disposed of.

4. Before we take up the matter for consideration it would be of convenience to refer to the background which has eventually culminated in this reference. Goodricke Group Ltd. engaged in cultivation, manufacture and sale of tea having its business in the State of Assam is an assessee under the Assam Agricultural Income Tax Act of 1939. The dispute relates to the assessment years 1981-82 and 1982-83. The appellant submitted returns of the agricultural income claiming, inter alia, deduction under the head (i) entertainment expenses, (ii) share issue expenses, (iii) commission and bonuses, (iv) salary and perquisites, etc. After completion of the assessment, the Agricultural Income Tax Officer disallowed the claim of deduction, against which appeals were filed before the Assistant Commissioner of Taxes (Appeals), Guwahati, claiming deduction of expenses u/s 8(2)(f)(vii) of the Act. The Assistant Commissioner of Taxes (Appeals) vide order dated March 20, 1990, dismissed the appeals. The orders passed by the Assistant Commissioner of Taxes were also challenged before the Assam Board of Revenue by preferring appeals as per provisions of Section 26 of the Act. The appeals were heard together and the Full Bench of the Board, by a common order passed on November 18, 1991, dismissed the appeals. Thereafter, at the instance of the assessee, reference has been made to this court for opinion on the questions quoted hereinbefore.

5. In the judgment in *George Williamson (Assam) Ltd. Vs. Assistant Commissioner of Taxes (Appeals)*, the questions that came up before this court were identical in nature. The Division Bench after hearing the parties answered the questions in favour of the assessee. The observation of the Division Bench in the said judgment relevant for the purpose at hand is quoted below (page 474) :

"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 Income Tax Officer 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 and business. It is the legislative wisdom not to prescribe any percentage for the purpose of ascertaining the expenses.

On going through all the provisions of the Act and the relevant Rules, in our opinion, whatever amount spent is disallowed by the Income Tax Officer can be allowed by the Agricultural Income Tax Officer. However, we make it clear that it must relate to plantation, manufacture and sale of tea.

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

6. Holding as above, this court held that the expenses incurred by the assessee under the heading, (i) entertainment, expenses, (ii) share issue expenses, (iii) commission and bonuses, (iv) salary and perquisites, etc., which was disallowed by the Income Tax Officer can be allowed by the Agricultural Income Tax Officer.

7. We do not find any reason to disagree with the views expressed by the Division Bench of this court in the aforesaid judgment, specially when there is no difference in the questions involved. We are of the opinion that the opinion tendered by this court in the aforesaid judgment squarely covers the question. The amount left unassessed by the Income Tax Officer being agricultural shall be assessed under the Act of 1939 after allowing such deductions as per the provisions of this Act and the rules framed thereunder so far as they have not been allowed under the Income Tax Act in computing the net income for the relevant assessment years.

8. We, therefore, answer the questions referred to this court in the negative, i.e., in favour of the assessee and against the Revenue.

9. The reference accordingly stands disposed of.