
(1997) 04 MAD CK 0143

In the Madras High Court

Case No : T.C. No. 424 and T.C. (R.) No. 804 of 1985

Greenham Estate (P.) Ltd.

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 17-04-1997

Acts Referred:

Income Tax Act, 1961 — Section 28

Citation : (1997) 226 ITR 929

Hon'ble Judges : N.V. Balasubramanian, J;Abdul Hadi, J

Bench : Division Bench

Advocate : Deokinandan, K.M.L. Majele, Venkatachalam, for M/s.King and Partridge, for the Appellant; Sudarsanam, for the Respondent

Judgement

N.V. Balasubramanian, J.—These tax case revision petitions arise under the Tamil Nadu Agricultural Income Tax Act, 1955 (hereinafter referred to as "the Act"), and relate to two assessment years, viz., 1976-77 and 1977-78.

2. The only point that arises for consideration in the above tax cases is whether the subsidy received by the assessee from the Rubber Board is to be treated as income from the land and, as such, exigible to tax under the Act, as held by the Tribunal, or is to be treated as capital receipt and, as such, not liable to be taxed.

3. The Agricultural Income Tax Officer in the assessment order passed for the assessment years 1976-77 and 1977-78 held that the subsidy received by the assessee from the Rubber Board was a revenue receipt on the ground that the subsidy was made not only for planting of rubber, but also to cover the expenditure such as weeding, manuring, spraying and dusting to prevent pests. The Agricultural Income Tax Officer also held that the immature area expenses of rubber were allowed as deduction, and, therefore, the subsidy received for rubber is assessable as revenue receipt. The Assistant Commissioner of Agricultural Income Tax (Grade-I), Nagercoil, confirmed the views of the Agricultural Income Tax Officer and dismissed the appeal. The Appellate Tribunal, on appeal by the assessee, in the common order passed, followed the decision of

the Supreme Court in V.S.S.V. Meenakshi Achi and Another Vs. Commissioner of Income Tax, Madras, , and held that the subsidy was paid by the Rubber Board as an inducement to develop rubber plantation and to recoup the assessee for the expenditure incurred for maintaining the plantation. The Tribunal, therefore, held that it was a revenue receipt. Aggrieved by the order passed by the Tribunal, the assessee has preferred these tax case petitions.

4. We have to see the precise nature of the subsidy granted by the Rubber Board to determine the question whether the subsidy received is a capital or revenue receipt. The nature of the subsidy granted was considered by the Tribunal, and the Tribunal found that the subsidy was granted under the Replanting Subsidy Scheme, 1970, and, according to the said scheme, the subsidy was intended to reimburse part of the expenses incurred for replanting rubber in order to encourage rubber production in the country. The scheme provided for grant of subsidy of Rs. 2,471 per hectare, and the amount is payable in seven yearly instalments, subject to replanting in an area of not less than 0.40 hectare in a year. For the first year, it was payable at Rs. 988.40 per hectare, and in the subsequent years at Rs. 247.10 per hectare. The Rubber Board also provided to the permit holders manure for replanting free of cost or at concessional rate and subsidy for digging of sit pites, construction of kayhalas, etc. The contention of learned counsel for the assessee is that a similar question whether the subsidy received can be treated as revenue receipt or capital receipt was considered by this court in Velimalai Rubber Co. Ltd Vs. Agricultural Income Tax Officer, , wherein this court has held that subsidy received from the Rubber Board under the Development Replanting Subsidy Scheme was not a revenue receipt and could not be subjected to tax. He also placed reliance on a decision of the Supreme Court in the case of M/s. Kalpetta Estates Ltd. etc. etc. Vs. Commissioner of Income Tax, Cochin, . He, therefore, submitted that the subsidy amount received by the assessee is only a capital receipt and not an agricultural income. On the other hand, the learned Government Advocate appearing for the Revenue submitted that the amount was given for maintaining the plantation and hence, it is a revenue receipt. He further submitted that the expenses incurred by the assessee in the plantation of rubber had been allowed as revenue expenditure, and since the subsidy was given to reimburse revenue expenditure incurred by the assessee, the same should be regarded as a revenue receipt.

5. We have carefully considered the rival submissions of the parties. We are of the opinion that the Appellate Tribunal was not correct in holding that the subsidy was given for maintaining the plantation. The amount of subsidy, as held by the Tribunal, was paid to the assessee under the Replanting Subsidy Scheme, 1970. The object of the scheme is to encourage replantation of rubber trees in order to increase rubber production in the country. The amount is quantified at Rs. 2,471 per hectare, and it is payable in seven yearly instalments. Hence, the scheme clearly shows that the amount was paid for replantation of rubber trees and it cannot be regarded that the subsidy was paid for maintaining the plantation. That apart, the amount of subsidy is quantified even in the first year, but was

paid at the graduated rate during the course of seven years, so that the amount is not frittered away by the assessee, but the amount is used properly for replantation purposes. Secondly, the mere fact that a certain portion of subsidy was utilised by the assessee to meet the expenditure for maintenance of the plantation would not lead to the conclusion that the entire amount of subsidy was received for maintaining the rubber plantation. The object of the scheme is the replantation of rubber trees, and it is only with that object in view that the Rubber Board paid the subsidy. It is reasonable to expect that the Rubber Board would continue to make the yearly payments after effecting the initial payment in the first year or at the inception when the planting is done as soon as the plants are planted, and would also monitor the situation to see that the moneys paid are properly utilised for the plantation of rubber trees and it was actually utilised for the growth of the rubber trees. If the payments are not made continuously, it will leave the assessee high and dry, making it impossible to replant the rubber trees and to take proper and effective care of the plants planted, and it would in effect defeat the object of the scheme, and it would also frustrate the motive with which the payments were made. Hence, it is wrong to assume that the Rubber Board granted the subsidy to meet the cost of expenditure for the maintenance of the rubber trees. It is only with the object that the plants are replanted and they are also properly taken care of during their initial years of growth, the amounts were paid by the Board in seven yearly instalments. The continuous payment is of vital importance for the proper and efficient growth of any plant, particularly in the early years of growth of the plant, and, therefore, it is wrong to hold that the subsidy was paid to recoup the expenditure incurred for the maintenance of rubber plantation.

6. A similar scheme, i.e., Development Replanting Subsidy Scheme, formulated by the Rubber Board was considered by this court in *Velimalai Rubber Co. Ltd Vs. Agricultural Income Tax Officer*, , and after considering the scheme, this court has held that the subsidy paid under Replanting Subsidy Scheme is not a revenue receipt and cannot be included in the computation of the profit or income. In *Commissioner of Income Tax Vs. Ruby Rubber Works Ltd., Travancore Rubbers Ltd. and Smt. M. Fathima*, , a Full Bench of the Kerala High Court had an occasion to consider the nature of the subsidy received by the assessee from the Rubber Board and the Kerala High Court [FB], after considering the earlier decisions, held that the subsidy was given to encourage rubber growers to undertake replantation of rubber plantation and the economic assistance offered by the Board was subject to certain stringent conditions in implementing the scheme designed to achieve development of the rubber plantation. Hence, the Kerala High Court held that the replanting subsidy scheme cannot be regarded as revenue receipt. The Supreme Court in *M/s. Kalpetta Estates Ltd. etc. etc. Vs. Commissioner of Income Tax, Cochin*, , after noticing the decision of the Full Bench of the Kerala High Court in the case of *Commissioner of Income Tax Vs. Ruby Rubber Works Ltd., Travancore Rubbers Ltd. and Smt. M. Fathima*, , and another decision of the Kerala High Court in *Kanthimathy Plantations Pvt. Ltd. Vs.*

Commissioner of Income Tax, , held that the replanting subsidy received by the assessee from the Rubber Board cannot be treated as revenue receipt for taxing purposes.

7. It is now necessary to consider a decision of the Supreme Court in the case of V.S.S.V. Meenakshi Achi and Another Vs. Commissioner of Income Tax, Madras, , relied upon by learned counsel for the Revenue. In the said case, subsidy was given to reimburse the expenditure incurred by the planters for maintaining rubber plantation and for producing the rubber and the amount was paid with reference to the production of the rubber, and in that situation the Supreme Court held that the subsidy received was revenue in nature. The Supreme Court in V.S.S.V. Meenakshi Achi and Another Vs. Commissioner of Income Tax, Madras, , was not dealing with the case of replanting subsidy and hence, the decision of the Supreme Court in V.S.S.V. Meenakshi Achi and Another Vs. Commissioner of Income Tax, Madras, , has no application to the facts of the case.

8. The decision of the Supreme Court in M/s. Kalpetta Estates Ltd. etc. etc. Vs. Commissioner of Income Tax, Cochin, , and the decision of this court in Velimalai Rubber Co. Ltd Vs. Agricultural Income Tax Officer, , and the decision of the Full Bench of the Kerala High Court in Commissioner of Income Tax Vs. Ruby Rubber Works Ltd., Travancore Rubbers Ltd. and Smt. M. Fathima, , clearly show that the subsidy received by the assessee from the Rubber Board under the Replanting Subsidy Scheme 1970, cannot be regarded as a revenue receipt. There is no justification for the Agricultural Income Tax Officer to hold that the subsidy was received by the assessee to reimburse the expenditure incurred by the assessee. The main object of the scheme is the replantation of rubber. A portion of the amount used for maintenance of the rubber would not make the amount received a revenue receipt. The maintenance of the rubber plantation is incidental, necessary and auxiliary to the main object of replantation of rubber trees. Hence, we are of the view, the Tribunal was not correct holding that the subsidy was given for maintaining the rubber plantation. The order of the Tribunal in both the tax cases holding that the subsidy received is a revenue receipt, is not in conformity with the judgment of this court in Velimalai Rubber Co. Ltd Vs. Agricultural Income Tax Officer, , and the decision of the Supreme Court in M/s. Kalpetta Estates Ltd. etc. etc. Vs. Commissioner of Income Tax, Cochin, .

9. Accordingly, we hold that the Tribunal was not justified in treating the subsidy amount received as a revenue receipt, and we hold that the amount of subsidy should be treated as a capital receipt and not liable to be included in the computation of income of the assessee. In this view of the matter, the tax cases are allowed, and there will be no order as to costs.