(2007) 07 KL CK 0078

In the High Court Of Kerala

Case No : TRC No''s. 367, 383, 384, 389, 395, 396, 397, 398 and 400 of 2002

Harrisons Malayalam Limited APPELLANT

Vs

State of Kerala RESPONDENT

Date of Decision : 24-07-2007

Acts Referred:

Income Tax Act, 1961 — Section 147, 263
Income Tax Rules, 1962 — Rule 7A, 7B, 8(1)
Kerala Agricultural Income Tax Act, 1950 — Section 78
Kerala Agricultural Income Tax Act, 1991 — Section 2(1), 35(2), 39(3), 41, 41(1)

Citation : (2007) 07 KL CK 0078

Hon'ble Judges : H.L. Dattu, C.J;K.T. Sankaran, J

Bench : Division Bench

Advocate : Antony Dominic, for the Appellant; No Appearance, for the Respondent

Judgement

H.L. Dattu, C.J.—These revision petitions are filed under the provisions of the Kerala Agricultural Income Tax Act, 1991 (hereinafter for the sake of convenience and brevity, referred to as "the Act").

2. The assessment years in question are 1988-89, 1990-91, 1989-90, 1992-93, 1994-95, 1991-92, 1993-94, 1995-96 and 1992-93.

3. Petitioner is a company incorporated under the provisions of the Companies Act. The petitioner company is a dealer in rubber and manufacture of tea. The assessing authority under the Act had completed the assessments for the assessment years in question u/s 39(3) of the Act.

4.The assessing officer, being of the opinion that the agricultural income chargeable to tax under the Act has escaped assessment for the assessment years in question, had initiated proceedings u/s 41(1) of the Act. The reason for re-opening the assessment was that the replanting allowance on rubber and cardamom was wrongly allowed at the time of completion of the assessment proceedings u/s 39(3) of the Act. After receipt of the show cause notice, the assessee had filed its reply resisting the proposal made in the show cause notice.

5. The assessing authority, after considering the reply so filed by the assessee, had confirmed the proposal made in the show cause notice and thereby had brought to tax, under the Act, the amounts spent for replanting of rubber and cardamom.

6. Aggrieved by the orders passed by the assessing authority u/s 41(1) of the Act, the assessee had preferred appeals before the First Appellate Authority. Before the said authority, the assessee had raised two issues. They are:

That the re-opening of the assessment by the assessing authority is bad in law for the reason that on change of opinion the reassessment is impermissible. The other issue that was canvassed before the First Appellate Authority was that the assessing authority erred in assessing the income derived from sale value added grades of rubber like cenex PLC etc. (income arising on process not ordinarily employed by a cultivator) and the assessing authority should have found that the said income do not constitute agricultural income as defined under the provisions of the Agricultural Income Tax Act and, therefore, the assessing authority should have excluded the related income from the assessment by following the decision of this Court in the case of Commissioner of Income Tax Vs. Kanam Latex Industries P. Ltd., .

7. The Appellate Authority has answered both the issues against the assessee and in favour of the Revenue.

8. Aggrieved by the said order passed by the Appellate Authority, the assessee had carried the matter by filing second appeals before the Tribunal in T.A.Nos.76 of 1999, 28 of 1999, 77 of 1999, 39 of 1999, 98 of 1999, 30 of 1999, 41 of 1999, 27 of 1999 and 40 of 1999 respectively. The Tribunal by its common order dated 30th March, 2002 has rejected the appeals filed by the assessee and while doing so the Tribunal has confirmed the view of the First Appellate Authority in so far as the reopening of the assessments is concerned. In so far as the second legal issue canvassed, the Tribunal has stated as under:

As per Section 2(1) of the AIT Act, agricultural income means any income derived from land by agriculture or by any process ordinarily employed by a cultivator to render the produce raised or received by him fit to be taken to market. No doubt rubber plantation is an agricultural activity and unless it is provided otherwise, income from rubber plantation is to be treated as agricultural income. Of course in the case if income from manufactured tea Rule 8(1) of the Income Tax Rules 1961 provides for allocation of the income as agricultural income and business income in the ratio 60:40. But in the case of rubber income, Rules do not provide for any such allocation. Here of course the learned representative of the assessee has brought to our notice that as per Finance Act 2001, Rule 7A has been introduced w.e.f.1.4.2002, as per which provision 65% of the income from Cenex will be treated as business income. But significantly enough during the relevant period no Rule provides for any such allocation. That is to say, unlike in the case of tea income, rubber income is not to be apportioned as agricultural income and business income till 31.3.2002. We are therefore of the view that during the relevant period no portion of rubber income, whether by sale of value added grades of rubber or by sale of conventional types or rubber sheets, can be treated as business income. In that view of the matter the question as to whether the process employed by the assessee to produce value added grades of rubber involves manufacturing activity, does not assume much importance. We are therefore unable to accept the contention of the assessee that a portion of income from rubber is to be treated as business income. That the proposal made by the Central Income Tax Authorities to treat a portion of rubber income as business income is also not decisive, if it is agricultural income assessable under the State Agricultural Income Tax Act. We therefore reject the contention of the assessee in this regard and confirm the order of the 1st appellate authority.

9. The assessee aggrieved by the aforesaid order passed by the Tribunal, has filed these Tax Revision Cases u/s 78 of the Agricultural Income Tax Act, 1963.

10. The assessee has raised the following three issues for consideration and decision of this Court. They are as under:

i) In the facts and circumstances of the case ought not the tribunal have set aside the assessment completed u/s 41(1) of the AIT Act on the ground that reopening was done by forming the different opinion on the same materials and that there was no fresh material for doing so?

ii) In the facts and circumstances of the case ought not the tribunal have set aside the assessment u/s 41(1) more so relying on the judgment of this Court in the matter reported in 1997 KLJ 177

iii) In the facts and circumstances of the case ought not the tribunal have held that the income from value added forms of rubber cannot be treated as agricultural income tax more so in view of the fact that in the matter reported in Commissioner of Income Tax Vs. Kanam Latex Industries P. Ltd., wherein it has been held that centrifuging means to manufacture and therefore the income from value added grades of rubber is to be treated as non agricultural income or business income?

11. The issue Nos.(i) and (ii) can be combined and disposed of. For the aforesaid purpose, the provisions of Section 41(1) of the Act requires to be noticed by us. Section 41(1) of the Act reads as under:

41. Income escaping assessment:- (1) If for any reason agricultural income chargeable to tax under this Act has escaped assessment in any financial year or has been assessed at too low a rate, the Agricultural Income Tax Officer may at any time within ten years of the end of that year and subject to the provision of Sub-section (2), serve on the person liable to pay the tax, a notice containing all or any of the requirements which may be included in a notice under Sub-section

(2) of Section 35 and may proceed to assess or reassess such income and the provisions of this Act, shall, so far as may be apply accordingly as if the notice were a notice issued under that sub-section:

Provided that the tax shall be charged at the rate at which it would have been charged if such income had not escaped assessment or full assessment, as the case may be:

Provided further that the Agricultural Income Tax Officer shall not issue a notice under this sub-section unless he had recorded his reasons for doing so.

12. The opening of the words in Section 41(1) of the Act, "if for any reason" the agricultural income chargeable to tax has escaped assessment or has been assessed at too low rate. The expression "if for any reason" used in the section is of wide import. That only means the escapement of assessment may be due to various reasons. The escapement envisaged by Section 41 of the Act need not necessarily spring from a source extraneous to the original record. Initiation of proceedings under this section can be taken on the basis of materials already on record at the time of original assessment, if the escapement of assessment to tax was a result of lack of care or inadvertence on the part of the assessing officer.

13. Sri. Anil D. Nair, learned Counsel appearing for the assessee would contend that all the materials were available before the assessing authority when he completed the assessments for the assessment years in question and, therefore, by issuing a notice u/s 41(1) of the Act, could not have reopened the assessments on the sole ground that replanting allowance on rubber and cardamom was wrongly allowed. This, according to the learned Counsel, is nothing but a change of opinion and the same is impermissible under the Act.

14. In our opinion, the contention canvassed by the learned Counsel for the assessee should not detain us for a long. In the instant case, in the returns filed, the assessee had claimed allowance of expenditure while computing the Agricultural Income for the purpose of the Act. This had been allowed by the assessing authority and thereafter, realising that the allowance so granted is contrary to the provisions of the Act, has initiated proceedings u/s 41(1) of the Act. This, in our opinion, is permissible under the Act, in view of the language employed in Section 41 of the Act. A turnover escapes assessment when it is not noticed by the officer either because it is not before him by reason of inadvertent omission or deliberate concealment on the part of the assessee or because want of care on the part of the officer, the turnover though shown in returns was not taken notice of. The present case falls, in our view, in the last category. Therefore, the contention of the learned Counsel that there was change of opinion and therefore re-assessment is impermissible in law cannot be accepted. A similar provision had come up for consideration before the Karnataka High Court in the case of Kesoram Rayon v. Commissioner of Commercial Taxes, Bangalore (1989) 75 STC 13. In the said decision, while considering the scope of

Section 12A of the Karnataka Sales Tax Act, 1957, which provides for reassessment of completed assessment, the Court has observed as under:

In our opinion, language of Section 12A of the Act is clear and unambiguous. It confers power on the assessing authority to make a reassessment even in cases where the entire turnover was before the assessing authority, but it had committed a mistake in the matter of rate of tax in that a lower rate of tax than the one at which the tax ought to have been levied had been levied. Therefore, the question set out first has to be answered in the affirmative and against the petitioners.

15. In view of the above, the first two questions of law raised by the assessee requires to be answered against the assessee and in favour of the Revenue.

16. To appreciate the contentions canvassed by the learned Counsel for the assessee on issue No. 3 raised in these revisions, a reference to the similar instruction issued by the Central Board of Direct Taxes in Circular No. 5 of 2003, dated 22nd May, 2003 requires to be noticed and therefore, it is extracted. The said Circular is as under:

To

All Chief Commissioners of Income Tax. All Directors-General of Income Tax.

Subject: Tax on income from the manufacture of rubber and coffee - Clarification regarding reassessment of income for the assessment years prior to assessment year 2002-03.

Rules 7A and 7B of the Income Tax Rules, 1962, inserted by the Income Tax (Second Amendment) Rules, 2001, with effect from the April 1, 2002, provide that income from manufacture of rubber and coffee, as mentioned therein, shall be computed as if it were income derived from business and a specified percentage of such income shall be deemed to be income liable to tax.

2. Representations have been received in the Board seeking clarification as to whether proceedings u/s 147 or u/s 263 of the Income Tax Act, 1961, can be initiated for the assessment year(s) prior to the assessment year 2002-03 to determine the income liable to Income Tax, even if the assessees had already paid agricultural Income Tax on such income.

3. The Board have considered the matter and it is clarified that no proceedings u/s 147 or u/s 263 of the Income Tax Act, 1961, should be initiated for the assessment year(s) prior to the assessment year 2002-03 in the cases of assessees earning income from manufacture of rubber and/or coffee, for determining the income liable to Income Tax, if the assessees had already paid agricultural Income Tax on the whole of such income.

17. In view of the said Circular, for the assessment proceedings prior to the assessment year 2002-03, the income derived from the manufacture of rubber and coffee requires to be assessed as agricultural income. Therefore, the third

issue requires to be answered against the assessee and in favour of the Revenue. Ordered accordingly.

