
(1991) 09 MAD CK 0017

In the Madras High Court

Case No : Tax Case (R) No. 1072 of 1982

Kairbetta Estates Syndicate

APPELLANT

Vs

State of Tamilnadu

RESPONDENT

Date of Decision : 23-09-1991

Acts Referred:

Citation : (1993) 202 ITR 975

Hon'ble Judges : Kanakaraj, J;A.S. Anand, J

Bench : Division Bench

Advocate : P.P.S. Janardhanaraja, for the Appellant; Srinivasan, for the Respondent

Judgement

Kanakaraj, J.—The petitioner/assessee is engaged in the manufacture of tea. The Income Tax Officer, having finalised the assessment of the

firm for the assessment year 1979-80, 60 per cent. of the income was taken as the income relating to agriculture within the meaning of the Tamil

Nadu Agricultural Income Tax Act. The Agricultural Income Tax Officer added to this the sale value of timber realised out of silver oak shade

treess to the tune of Rs. 52,381. It is this turnover which is the subject-matter of the present revision. In the assessment order, there is a categorical

averment that the turnover relates to the sale of trees "not grown spontaneously but by human labour." On appeal, the Assistant Commissioner also

held that the shade trees were not grown solely for the purpose of giving shade to the tea plants and that threes were being felled at regular

intervals and sold as firewood. The petitioners were again planting further trees in the area. Therefore, it was held that the sale of such trees and the

income therefrom would amount to agricultural income. On further appeal, the

Tamil Nadu Agricultural Income Tax Appellate Tribunal confirmed

the assessment made by the statutory authorities. The assessee is in revision before us.

2. Learned counsel for the petitioners contended that the shade trees are grown from the purpose of giving protection to the tea plants and,

therefore, such shade trees when cut and sold, the sale proceeds whereof would not amount to agricultural income. In *State of Kerala Vs.*

Karimtharuvi Tea Estate Ltd., , the assessee had grown gravellia trees for the purpose of providing shade to the tea plants. When such trees were

cut and sold after the trees had become old and useless, the sale proceeds were held as not eligible to agricultural Income Tax. In *United Nilgiris*

Tea Estates Company Ltd. Vs. The Government of Tamil Nadu, , a Division Bench of this court had taken the view that the sale of shade trees

may constitute a sale of a produce from the land and such produce may be agricultural if the trees had been planted on land on which labour had

been expended. It was made clear that the trees would not be agricultural produce if the trees and come up by spontaneous growth. More

recently, a Division bench of this court in *Untied Nilgiri Tea Estates Co. Ltd. Vs. State of Tamil Nadu*, (Tax Cases Nos. 720 to 722 of 1981 by a

judgments were not in any way contradictory or conflicting. The Division bench laid down the ratio as follows (at page 402) :

If such trees were grown by them for the purpose of deriving income therefrom, undoubtedly, they use such trees for agricultural purposes and so

they used the land upon which such trees were grown by them for agricultural purposes. But, once it is found that they had grown the tress not for

the purpose of deriving any income therefrom, but solely for the purpose of providing shade for the tea plants, the trees cut and sold by them thus

gave no agricultural income to them.

3. The Division Bench, however, found that on the facts of the case dealt with by them there was no finding whether the assessee had grown the

trees for the purpose of providing shade to the tea plants and only such shade trees had been cut and sold. Therefore, the Division Bench had to

remand that case for rendering a finding on that aspect.

4. Turning now to the facts of the present case, we have already noticed that the assessing authority had rendered to the effect that the trees had

not grown spontaneously but purposely grown by the assessee for the purpose of earning income by felling and selling the same. The Tribunal has

referred to the fact that, in the estate in question, shade trees had not been grown for the protection of the tea plants. Further, the agreement

entered into between the assessee the purchaser of the trees contained the clause as follows :

The entire standing gravellia trees in the tea fields consisting of silver oak trees to be sold and demarked.

5. Therefore, the Tribunal came to the right conclusion that, if the trees had been grown for the purpose of shade, no prudent agriculturist would

cut the entire trees. We, therefore, agree with the finding of fact that the trees had not been grown for the purpose of providing shade to the tea

plants. The Tribunal also refers to the recent Development in tea plantation which suggests that shade trees are not helpful for realising the best

yield from the tea plants.

6. On the question whether the trees sold were of spontaneous growth or planted and cultivated, the Tribunal rendered a finding on the basis of the

assessee's own grounds of appeal that the trees in the question were not of spontaneous growth. The Tribunal finally rendered a finding that the

trees had been planted purposely for the purpose of deriving income by cutting and selling the same at a later stage. Thus, the sale proceeds were

found to be taxable under the Tamil Nadu Agricultural Income Tax Act. On such clear findings, the law as adumbrated in the Division bench

judgment in T. C. Nos. 720 to 722 of 1981 (see *Untied Nilgiri Tea Estates Co. Ltd. Vs. State of Tamil Nadu*, , makes the petitioner/assessee

clearly liable to pay agricultural Income Tax on the turnover of Rs. 52,381. We, therefore, uphold the orders of the statutory authorities and

dismiss the revision petition. There will, however, be no order as to costs.