(1993) 01 KL CK 0051

In the High Court Of Kerala

Case No : T.R.C. No. 334 of 1992

Kalpaka Rubber Plantations (P.) Ltd. — APPELLANT

Vs

State of Kerala — RESPONDENT

Date of Decision : 15-01-1993

Acts Referred:

Citation : (1993) 111 CTR 100 : (1993) 202 ITR 450

Hon'ble Judges : Varghese Kalliath, J;P.K. Shamsuddin, J

Bench : Division Bench

Advocate : G. Sivarajan, for the Appellant;

Judgement

Varghese Kalliath, J.—This tax revision case arises under the Agricultural Income Tax Act. The assessment year in question is 1986-87 and the accounting period ended on March 31, 1986.

2. The question relates to the exigibility to tax under the Act in respect of sale of uneconomic rubber trees under three agreements of different dates and in respect of different areas. The assessing authority as well as the appellate authority found on an interpretation of the agreement that the agreement would take in the right to slaughter-tap the rubber trees included under the agreement. On that basis, a portion of the sale consideration was taken as agricultural income and that assessment was challenged before the appellate authority. The Appellate Assistant Commissioner confirmed the assessment and dismissed the appeal. The petitioner filed an appeal before the Agricultural Income Tax Appellate Tribunal. The Tribunal also, after considering the various aspects of the matter, confirmed the order of the Appellate Assistant Commissioner as regards the interpretation of the agreement, but modified the order in regard to interest and bank charges and also in regard to expenses incurred for the repairs of the road and compound wall.

3. In this tax revision case, the questions of law raised for decision by this court are :

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"A. Was the Appellate Tribunal justified in holding that the agreements, annexures A, B and C, are for sale of trees as well as for slaughter-tapping also ? Is not the interpretation placed on the agreement illegal, arbitrary and unjustified ?

B. Are the agreements--annexures A, B and C--for sale of uneconomic rubber trees only or for slaughter-tapping as well ?

C. Were the Appellate Tribunal and the authorities below justified in surmising that 2/3rds of the receipt represent the value of latex ? Is there any factual and legal basis for holding so ? Is not the said finding arbitrary, irrational and unjustified ?

D. Are not the reasoning and conclusion of the Appellate Tribunal to hold that the agreements are for slaughter-tapping as well illegal, irrational and unjustified ?"

4. Question C was not seriously pressed before us. Questions A, B and D are inter-linked questions and the answer to those questions depends upon a proper interpretation of the agreements for sale of the uneconomic rubber trees by the petitioner. The finding of the Tribunal regarding the agreements for sale is to this effect : "We do not think that, on the terms in the documents and the circumstances of the transaction as disclosed by the records, there is any justification to hold the transaction as plainly and simply sale of trees. The facts of the dealings as contained in the agreements indicated that part of the consideration was towards latex and hence that part represented agricultural income. The assessing authority was, therefore, right on facts in treating that part of the consideration as agricultural income.

5. Counsel for the petitioner submitted that the authorities concerned did not properly construe the agreements and, on a proper construction of the agreements, it is possible to say that the agreements for sale were exclusively for the timber of the uneconomic trees and no element of taking latex from the trees was involved in the agreements for sale. The question of interpretation of an agreement can also be treated in certain cases as a question of law. Nevertheless, we have to decide the case on the terms of the agreement. Counsel submitted that we have to interpret the agreement in the light of the decision reported in Commissioner of Agrl. Income Tax Vs. Pullangode Rubber and Produce Company, . The Appellate Assistant Commissioner has relied on the decision reported in Thirumbadi Rubber Co. Ltd. Vs. Commissioner of Agricultural Income Tax, This court very clearly and plainly said that the consideration received by the assessee under an agreement for slaughter-tapping and removing trees has to be bifurcated and that part pertaining to latex is liable to tax.

6. In K.C. Jacob Vs. Agricultural Income Tax Officer, , a Division Bench of this court, consisting of P. Govindan Nair, Actg. C. J. and George Vadakkel J. extracted the principles laid down by M.S. Menon C. J. and Govindan Nair J. in E.J. John v. State of Kerala (ITR Nos. 76 and 77 of 1965) :

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"(i) The consideration paid by the purchaser allowed to ''slaughter-tap'' represents payment for permission to take latex as well as for permission to cut and remove the trees, (ii) There is an element of payment towards capital, namely, the value of the trees which are ultimately to be cut down, (iii) There is also payment towards latex which represents agricultural income, (iv) The amount of consideration received by the owner for the permission given by him to ''slaughter-tap'' and to cut and remove the trees is to be bifurcated into that pertaining to latex, and that which is attributable to the value of trees, (v) The part pertaining to latex is agricultural income, liable to tax, and the other part which is attributable to the value of the trees is not liable to tax."

7. This decision was relied on by the Division Bench in Thirumbadi Rubber Co. Ltd. Vs. Commissioner of Agricultural Income Tax, .

8. From the above decisions, it has to be noted that we have to interpret the agreement to see whether there is any permission given to the purchaser of the trees by the owner for slaughter-tapping. In short, what we have to consider while construing the agreement is the intention of the parties. The intention of the parties has to be ascertained from the terms of the agreement. The agreements are produced in this case. Annexure A is the first agreement. In the preamble to the agreement, nothing is stated as regards the question of slaughter-tapping. But, it has to be noted that the owner has agreed that the purchasers will have time up to February 28, 1986, for cutting and removing all the standing rubber trees in the area. The agreement is dated September 28, 1983. In paragraph 5 of the agreement, it is stated that the purchaser shall employ his own workers for slaughter-tapping as well as for cutting and removing the trees. The workers employed by the purchaser for slaughter-tapping shall be settled and sent out of the estate before the cutting of rubber trees is started. So, it is clear that permission is granted by the owner to the purchaser to have slaughter-tapping before the cutting of the rubber trees. This position is made clear in paragraph 7 of the agreement. In paragraph 7 of the agreement, it is stated that "the latex collected by the second party by slaughter-tapping shall be taken over by the first party for cutting purpose during the initial period of two months, the second party shall put up a temporary smoke house in the estate at his cost. The market value of the rubber produced by slaughter-tapping by the second party and taken over by the first party shall be valued at the market price ruling at the time less the cost of curing and manufacturing." Almost similar provisions are seen in the other agreements produced in this case as annexures B and C.

9. From the terms of the agreement, we are of the view that the parties intended to have an agreement for sale of the rubber trees giving and obtaining permission for slaughter-tapping of the trees sold. In this view, the findings recorded by the Tribunal and the other authorities are valid and in consonance with the terms of the agreement.

10. Counsel submitted that we must follow the decision reported in

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Commissioner of Agrl. Income Tax Vs. Pullangode Rubber and Produce Company, . The terms of the agreement considered in that case are totally different from the terms of the agreements involved in this case. In Commissioner of Agrl. Income Tax Vs. Pullangode Rubber and Produce Company, , the Division Bench was construing an agreement for sale of uneconomic rubber trees- The court said that (headnote) : "the preamble of the agreements purports to be only sale of rubber trees which have become old and uneconomic, for the purpose of being replanted with rubber. The first agreement covers an extent of 383 acres, the second, an extent of 105 acres, and the third, an extent of 205 acres. This, and the difficulties in the matter of communication, transport, labour and other factors in the region in which the trees were situate, should sufficiently explain the comparatively long time allowed for the purpose of felling and clearing the old trees and replanting the same with new ones. "No clear indications are seen in the agreement construed by the Division Bench in Commissioner of Agrl. Income Tax Vs. Pullangode Rubber and Produce Company, .

11. In these circumstances, we see no merit in this tax revision case. It is only to be dismissed. We do so.

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