
(1997) 11 MAD CK 0121

In the Madras High Court

Case No : Tax Case No's. 1295 to 1299 of 1990 and 696 of 1993

Kanthimathy Plantations (P) Ltd.

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 14-11-1997

Acts Referred:

Tamil Nadu Agricultural Income Tax Act, 1955 — Section 3, 35, 5

Citation : (2000) 241 ITR 224

Hon'ble Judges : K.P. Sivasubramaniam, J; Janarthanam, J

Bench : Division Bench

Advocate : Ashok Pathy, for K. Mani, Mrs. Mallika Srinivasan and Ramakrishnan, for the Appellant; K. Blango, for the Respondent

Judgement

Janarathanam, J.—Desirable it is, to pen down a common order inasmuch as the assessee is one and the same relatable to various assessment years viz., 1984-85 to 1987-88 and 1989-90 in all these actions.

2. The assessee - The Kanthimathy Plantations (P) Ltd., Pattom Palace Post, Trivandrum-4, it is said, owns 508.45 acres equivalent to 1471-75 standard acres at Kaliyal village, Vilavancode Taluk, Kanyakumari District. The main agricultural income of the estate appears to be from rubber plantations. Other agricultural income derived by the estate, it is said, is from coconuts, arecanuts, cloves, etc. A car is stated to be maintained by the estate for the purpose of supervision of a medical centre going by the name "Bharat Medical Centre" for the purpose of giving treatment to the staff members of the estate and the said medical centre is located at Trivandrum, 70 K.mtrs. away from the situs of the estate.

3. In respect of the two asst. yrs. 1984-85 and 1985-86, the AO it is said, reopened the assessments after the disposal of the appeal before the AAC, Grade I, Nagercoil. The ground for reopening of the assessment as relatable to the asst. yr. 1984-85 is that the yield of latex per acre as reported by the assessee, i.e., to say 398-11 kg. per acre was too low in yield and, therefore, the yield of latex per acre had been estimated at 500 kg. per acre taking into consideration the

necessary and requisite factors such as the yield of latex from the adjacent rubber plantation and other relevant factors conducive for the good yield. The ground for the reopening of the assessment for the year 1985-86 is that the yield of latex in respect of rubber trees sold was not taken into consideration.

4. The assessment orders passed after reopening the assessments were questioned before the AAC for those two years and the AAC was stated to have confirmed the estimation of yield of latex at 500 kg. per acre relatable to the asst. yr. 1984-85. He, however, remanded the matter, relatable to the determination of the yield of latex from the trees cut and sold, to the AO relatable to the asst. yr. 1985-86.

5. The assessee filed appeals in A.T. Nos. 36/88 and 64/88 before the Tamil Nadu Agricultural Income Tax Appellate Tribunal, Madras 104 (for short "the Tribunal"), relating to the two asst. yrs. 1984-85 and 1985-86 and the Tribunal also confirmed the orders passed by the AAC of Agri. IT, Garde I, Bagercoil, giving rise to the present actions-T.C. (R) Nos. 1297/90 and 1298/90.

6. In respect of the other assessment years, viz., 1985-86, 1986-87, 1987-88 and 1989-90, the assessee claimed certain deductions in the computations of the agricultural income relating to (1) expenses incurred in maintenance of the car, (2) rates and taxes, and (3) expenses incurred relating to the maintenance of Bharath Medical Centre and depreciation to the equipments in the said centre, etc. The deductions so claimed as per accounts by the assessee were not allowed either in full measure or totally disallowed. That apart, the AO estimated the yield from coconuts and arecanuts without accepting the claim made in that regard by the assessee. Further, the expenditure incurred by the assessee in the upkeep of coconut trees and clove plants was not fully allowed, in the sense of some portion of the claim being disallowed. The assessee, it appears, also derived agricultural income from leasehold lands. The income so derived had been added in the process of computing the income of the assessee from agriculture, although the assessee contended that such income is not includible in his agricultural income. The assessee, it appears, also received subsidy from rubber Board in a quantified sum in respect of certain assessment years and the subsidy so received by the assessee-company was treated as revenue receipts and thereby included in the income exigible to tax, notwithstanding the fact that the assessee contended that such subsidy cannot at all be treated as revenue receipt.

7. Barring the treatment of the rubber subsidy as revenue receipt and the total disallowances of the expenditure incurred for the maintenance of Bharat Medical Centre and depreciation to the equipments in the said centre, the order passed by the Tribunal in respect of other items, as we have referred to above confirming in its entirety of the disallowance made by the authorities below or restricting the disallowance to a specified extent, cannot at all interfered with, inasmuch as the said allowance and disallowance are the resultant products of the appreciation of the relevant materials placed on record, when especially such

appreciation of the materials is not suffering from the infirmity of perverse appreciation, on the facts and in the circumstances of the case.

8. So far as the claim relating to the deduction pertaining to rubber subsidy received from the Rubber Board under the Replanting Subsidy Scheme is concerned, a Division Bench of this Court in *Velimalai Rubber Co. Ltd Vs. Agricultural Income Tax Officer*, has held that the subsidy received from the Rubber Board under the Replanting Subsidy Scheme could not be considered as revenue receipt and consequently, could not be subjected to tax. This sort of a view has also been followed by this Court in many a decision subsequently rendered. Consequently, the finding relatable to the treatment of the rubber subsidy as revenue receipt and therefore, exigible to tax, deserves to be set aside and the assessee has to be necessarily given the benefit of exemption from taxation, treating such receipt as capital receipt.

9. Regarding the expenses incurred in maintaining the Bharat Medical Centre and the depreciation relatable to the equipments installed in the said centre, we are of the view that the disallowance for the entirety of the claim made in that regard does not appear to be justifiable, on the facts and in the circumstances of the case. The medical centre, it appears, has been established primarily to cater to the needs of the workers. While that be the position, the claim deserves to be at least partly allowed. On a careful consideration and a reasonable and liberal understanding of the claim, we consider, that in the absence of any details regarding the proportion or of the number of outsiders, who have also availed themselves of the benefits of the medical centre, in addition to or along with the agricultural workers of the estate, 50 per cent of the amount claimed for deduction may be allowed as deduction for the purpose of computation of agricultural income under this head in respect of expenses incurred for medical centre as well as for depreciation of the claim in respect of the said unit, as had been done in the case of the same assessee, viz., *The Kanthimathy Plantations vs. State of Tamil Nadu* 1993 (4) Mad T C R 409. Therefore, the order of the Tribunal, treating rubber subsidy as revenue receipt and the disallowance of the entirety of the expenditure incurred for the maintenance of the said medical centre and the depreciation claimed in respect of the equipments installed therein are set aside and relief is ordered to be granted to the assessee in respect of the entirety of the claim relatable to rubber subsidy treating the same as capital expenditure and, therefore, not exigible to tax, besides giving 50 per cent of relief to the assessee as relatable to expenses incurred in the maintenance of Bharat Medical Centre and depreciation claimed in regard to the equipments installed therein.

10. What is left out for consideration is as to whether the AO has the necessary and requisite power to reopen the assessments relatable to the asst. yrs. 1984-85 and 1985-86 under s. 35 of the Agrl. IT Act, 1955 (for short "the Act"), when especially the appeal preferred by the assessee before the AAC of Agrl. IT Nagercoil, questioning the original assessment relatable to the said years had

been finally disposed of.

(a) Sec. 35 of the Act dealing with income escaping assessment runs as under :

"35. Income escaping assessment. - 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 (or has been underassessed) the Agri. ITO may, at any time, within five years of the end of that year serve on the person liable to pay the tax or, in the case of a company, on the principal officer thereof, a notice containing all or any of the requirements which may be included in a notice under sub-s. (2) of s. 16 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."

11. From a cursory perusal of the section, as extracted above, it is rather crystal clear that the reopening of the assessment by the AO under the various situations is permissible and certain conditions are prescribed therein. They are :

(i) The agricultural income chargeable to tax must have escaped assessment in any financial year. The escapement of assessment relates to omission of income escaping the net of taxation in the said financial year.

(2) The agricultural income must have been assessed at too low a rate or has been underassessed. This sort of a parameter is so eloquent and speaks for itself and, therefore, no elucidation is necessary.

(3) The reopening must have to be done within five years of the end of that financial year.

12. In the case on hand, no doubt true it is, the original assessment made by the AO had been challenged in appeal before the AAC of Agri. IT, Nagercoil, and the appeal so filed had been finally disposed of. The moot issue arising for consideration, in such a situation, is as to whether it is permissible for the AO to reopen the assessment.

13. If what has been determined by the AO had been the subject-matter of appeal and the appeal so filed, had been finally disposed of, then it is impermissible for the AO to reopen such an assessment. That is not a situation here. What had happened in the instant case is that the assessee had been assessed at too low a rate or had been underassessed in respect of the asst. yr. 1984-85 and in respect of the asst. yr. 1985-86, the income by way of latex yield from rubber trees cut and sold was stated to have escaped the taxation. These questions were not at all in contemplation of the AO at the time he made the original assessment orders relatable to those two years, and therefore, he had not passed any order in that regard. Such being the case, it cannot at all be said

that the matters in respect of which the assessments had been reopened by the AO were the subject-matter of appeal before the AAC and the same had been finally disposed of. Therefore, to say that the reopening of the assessments by the AO relatable to the asst. yrs. 1984-85 and 1985-86 is impermissible in law cannot at all be countenanced.

14. Barring the reliefs granted to the assessee-company as above, these revisions in other respects shall stand dismissed. No costs.