

(1994) 10 MAD CK 0058

In the Madras High Court

Case No : Tax Case No. 301 of 1987 (Revision No. 149 of 1987)

Kanthimathy Plantations P. Ltd.

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 27-10-1994

Acts Referred:

Citation : (1995) 215 ITR 203

Hon'ble Judges : P. Shanmugam, J; K.A. Thanikkachalam, J

Bench : Division Bench

Advocate : K. Mani, for the Appellant; A.K. Gopinath, for the Respondent

Judgement

Thanikkachalam, J.—The assessee is the petitioner. The assessment year involved in this revision is 1984-85. For this assessment year, the

assessee claimed motor car expenses amounting to Rs. 53,808. No trip sheet or log book was produced to show that the car was used for

agricultural purposes only. Hence, 25 per cent. of the claim was disallowed, treating the same as expenses incurred other than agricultural

purposes. Accordingly, a sum of Rs. 13,452 was disallowed by the Income Tax Officer. On appeal, the Appellate Assistant Commissioner

confirmed the addition made by the Income Tax Officer under this head. On further appeal before the Tribunal, the assessee contended that the

motor car was used for the purpose of earning agricultural income and there is no element of personal expenditure in the case of a limited

company. Further, it was submitted that the car is to be used by the the manager and employees and, therefore, the entire expenditure ought to

have been allowed. however, the Tribunal confirmed the order passed by the Appellate Assistant Commissioner, in view of the fact that the

assessee has not maintained a log book and trip sheet. It is against this order that the assessee is in revision before this court.

2. We have heard learned counsel appearing for the assessee as well as the Government advocate. The Assessing Officer disallowed 25 per cent.

of the claim made by the assessee. Since, according to the Assessing Officer, the log book and trip sheet were not produced to show that the car

was used solely and exclusively for the purpose of agriculture, the entire expenditure claimed cannot be allowed. It is the case of the Department

that the assessee has not produced any log book or trip sheet in order to show the use of the car. In the absence of evidence, the Department was

justified in disallowing 25 per cent. of the claim on estimated basis on the ground that the car was not solely and exclusively used for agricultural

purposes. The view taken by the authorities below appears to be reasonable and in order. Hence, we are not inclined to interfere with the said

order.

3. The assessee also claimed deduction of profession tax of Rs. 250 and tax of Rs. 126. The assessee has not produced any voucher to show that

profession tax was paid and no particulars were shown with regard to the payment of tax. Therefore, the authorities below disallowed a sum of Rs.

376 claimed under the said head.

4. The assessee is the revision petitioner before this court. We have also heard learned counsel for the assessee as well as the learned Government

advocate. The assessee claimed deduction of profession tax paid. But no particulars or vouchers were produced to substantiate the claim made by

the assessee. In the absence of evidence to show that the assessee has paid the profession tax, it is not possible to allow a sum of Rs. 376 claimed

under this head. Hence, we are not inclined to interfere with the order passed by the Tribunal on this item of expenditure also.

5. The assessee also claimed deduction of Rs. 25,000 under the head ""rubber nursery"". The Income Tax Officer disallowed the expenditure on the

ground that it is a capital nature. According to the Assessing Officer, the assessee has no shown the sale of plants from the nursery. Therefore,

according to the Assessing Officer, the expenditure incurred would be in the nature of capital. The Appellate Assistant Commissioner sustained the

disallowance made by the Income- tax Officer. On appeal before the Tribunal, the

assessee pleaded that the expenditure is in the nature of budding expenditure. It is for the purpose of obtaining better crops. The Tribunal has pointed out that the assessee was not consistent in its stand in respect of the claim made under the head ""Rubber nursery"". Therefore, the Tribunal upheld the order passed by the Appellate Assistant Commissioner. Aggrieved, the assessee is in revision before this court.

6. We have heard learned counsel appearing for the assessee and the learned Government advocate. It remains to be seen that the assessee was selling plants. The sale proceeds were not shown for tax purpose. Therefore, the authorities below treated the expenditure incurred on the plants as capital in nature. It remains to be seen that it is for the assessee to show that this expenditure was incurred for the purpose of maintaining the plants. But this expenditure was claimed under the heading ""estate expenditure"". The assessee-company has shown this amount in the balance-sheet under the head ""development addition"". The company has not claimed this amount in the profit and loss account as expenses. But this amount was deducted while furnishing separate figures for expenses under ""estate account"". It is only before the Tribunal that it was contended that the expenditure was incurred on budding the plants. When the assessee itself is not consistent in claiming deduction of this amount, it is not possible for the Department to allow the same as deduction on any of the grounds as suggested by the assessee, at the stage of second appeal. In view of the foregoing factual position, we have no other alternative but to uphold the order of the Tribunal on this aspect. Accordingly, we are not inclined to interfere with the same.

7. The assessee also claimed expenditure incurred towards the medical centre amounting to Rs. 47,533 and depreciation of Rs. 14,037 in respect of Bharat Medical Centre, which is a hospital at Trivandrum in Kerala State. Following the earlier order of the Tribunal in the case of the same assessee, the assessing authority refused to allow the said amount as deduction. On second appeal, the Tribunal upheld the order passed by the first appellate authority on this point.

8. The assessee is the revision petitioner before this court. Learned counsel appearing for the assessee submitted that the hospital was being used not only by the employees of the company but also by outsiders. Taking this

aspect into consideration in the earlier year, this court allowed 50 per cent. of the expenditure claimed under this head. In *Kanthimathy Plantations Ltd. v. State* [1993] 4 MTCR 409, this court took the view that 50 per cent. of the expenditure claimed for the medical centre is allowable as expenditure since the hospital was used both by the employees of the company and outsiders. Considering the fact that the medical centre was utilised both by the employees of the company as well as by outsiders, following the earlier view taken by this court in the case of the same assessee, we hold that the assessee is entitled to 50 per cent. of Rs. 47,533 and Rs. 14,037 claimed under the head ""Expenditure towards medical centre"" and ""Depreciation"", respectively. Accordingly, the order passed by the Tribunal on this aspect is set aside and the assessee is entitled to deduction of 50 per cent. of the claim made towards ""hospital expenses"" and depreciation"".

9. Accordingly, the revision filed by the assessee is allowed in part. However, there will be no order as to costs.