

(1973) 06 KL CK 0013

In the High Court Of Kerala

Case No : Income-tax Reference No. 16 of 1972 (Agrl.)

K.C. Jacob

APPELLANT

Vs

Agricultural Income Tax Officer

RESPONDENT

Date of Decision : 29-06-1973

Acts Referred:

Kerala Agricultural Income Tax Act, 1950 — Section 2

Citation : (1977) 110 ITR 402

Hon'ble Judges : P. Govindan Nair, Acting C.J.; George Vadakkal, J

Bench : Division Bench

Advocate : A.K. Avirah, for the Appellant; Government Pleader, for the Respondent

Judgement

George Vadakkal, J.—This is a reference under the Kerala Agricultural Income Tax Act, 1950. The assessment year is 1967-68. The assessee returned a net income of Rs. 43.79. The Agricultural Income Tax Officer rejected the return and issued a pre-assessment notice. The assessee objected mainly on the ground that the rubber trees, income from which was proposed to be taken into account had been leased out for " slaughter tapping ". The lease arrangement was found against by the Agricultural Income Tax Officer as well as by the Appellate Assistant Commissioner and also by the Tribunal. The Tribunal considered the question whether income derived from slaughter tapping is agricultural income, and held that when the assessee himself performs slaughter tapping, the income derived by him is agricultural income liable to tax. On the application of the assessee, the Tribunal has referred to this court the question :

" Whether, on the facts and in the circumstances of the case, the income derived from the old rubber trees on slaughter tapping is agricultural income as denned in Clause (a) of Section 2 of the Kerala Agricultural Income Tax Act, 1950 ? "

2. The question whether income received from " slaughter-tapping " (we will conveniently use this term to mean the practice of rubber trees being ruthlessly tapped for getting as much latex as possible and ultimately felling down the trees

for replanting the area) is agricultural income has come up for consideration of this court on prior occasions. This court considered the nature of the income received by the owner of the trees as well as the nature of the income received by the person "slaughter-tapping". In these cases there were agreements whereby the owner allowed another to "slaughter-tap" for a consideration. The earliest of the cases referred to us is the decision of M. S. Menon C.J. and Govindan Nair J. in *E. J. John v. State of Kerala* (I.T.R. Nos. 76 and 77 of 1965). The following principles emerge from that decision :

"(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 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."

3. The next case that is brought to our notice is the decision of Isaac J. in *C.P.A. Yoosuf Vs. Income Tax Officer and Another*, . There the question arose as to the nature of the income derived from rubber obtained by slaughter-tapping by the purchaser permitted to slaughter-tap. The question was whether it is agricultural income or income liable to be taxed under the Indian Income Tax Act, 1922. Isaac J. held that it is non-agricultural income. The decision was confirmed in appeal. The decision in appeal is *Agricultural Income Tax Officer Vs. C.P.A. Yoosuf and Another*, . Raghavan C.J. referred to *E. J. John's* case and distinguished it on the ground that it concerned the receipts in the hands of the owner of the land. In this case the agreement was construed as one not creating in the purchasers any interest in the land on which the trees stood.

4. *Commissioner of Agricultural Income Tax Vs. George Varghese and Co.*, is another case where another Division Bench of this court considered the nature of receipts from sale of rubber obtained on slaughter-tapping. In this decision, Govindan Nair J. (as he then was), observed that if the intention was that the things sold, the rubber trees, shall be withdrawn from the land and if the land is to be considered as a mere warehouse of the thing sold, the contract will be for sale of goods. *E. J. John's* case was referred to and distinguished. The following passage can usefully be extracted :

" We must refer to one other aspect. When the owner of the land who by undertaking agricultural operations had cultivated trees and when he derived income by slaughter-tapping and finally sold the trees, the question might arise

as to whether the entire amount received by slaughter-tapping and sale of the trees later is agricultural income. The question, has been answered by this court in the decision in I.T.Rs. Nos. 76 and 77 of 1965 (E. J. John v. State of Kerala). We wish to make it clear that the question arising in this decision is different. What is the nature of the receipts by the assessee depends on the terms of his contract with the owner of the land. Construing it we have to hold that there has been no transfer of an interest in land. And so the amounts received will not fall within the definition of the term " agricultural income " in the Act. "

5. Another decision cited at the bar is Commissioner of Agricultural Income Tax v. Woodlands Estates Ltd. ILR [1972] Ker 614. Here the question arose as to the liability of the owner of land (a company) to agricultural Income Tax in respect of the amount received by it as consideration for sale of rubber trees for slaughter-tapping. The Tribunal had held that the amount is not taxable on the ground that there was no lease by the assessee, and consequently the sum did not represent rent received. The two questions referred to this court related only as to the correctness of the findings by the Tribunal that the agreement was not a lease and that the amount received by the owner was not rent. This court answered the two questions in the affirmative and in favour of the assessee holding that the agreement was not an agreement for an interest in land, and that there was no intention that the trees sold should derive sustenance from the land and continue to afford income to the transferee. The attempt of the counsel for the revenue to persuade the court to reframe or resettle the issues was not successful. The request of the counsel to refer the question and call for additional statement raising new questions was also not acceptable to the court. In the course of discussing these matters it was observed :

"It is clear from the Tribunal's order that on the question whether the amount received by the assessee or part of it at least could be agricultural income other than rent, it has been held that it is not agricultural income. If an application was made before the Tribunal to refer that question to this court u/s 60(1) of the Act we conceive that the Tribunal would have been bound to refer that question. We may add that this is the real question in the case and only on answering this question and the further question as to what part of Rs. 1,76,000 represented income, can the real controversy between the revenue and the assessee be settled. "

6. As stated already, in all these cases the question raised was the nature of the receipt, either of the amount received by the owner from the purchaser allowed to slaughter-tap, or of the amount received by the latter from sale of rubber he obtained from slaughter-tapping. We are afraid that none of these decisions have any application to the instant case. Here the slaughter-tapping was by the owner himself. The rubber obtained by him, in whatever manner he tapped his trees, is his, and the receipts by him from sale of rubber obtained by such tapping is " income derived from land which is used for agricultural purposes ", within the meaning of Section 2(a) of the Act. Such receipts in the hands of one who has no

interest in the lands on which the trees are standing may not be agricultural income, but not so in the hands of the owner. The principles enunciated in E.J. John's case also have no application to the facts of this case, in so far as the assessee has not sold the trees to another and received any amount representing partly capital receipt and partly agricultural income. This court held in that case that that portion of the total "consideration which is attributable to latex is agricultural income liable to tax. The receipts sought to be taxed in this case is attributable wholly to latex ; there was no sale of the trees, and consequently there are no receipts which is attributable to the value of the trees.

7. We answer the question in the affirmative, that is, in favour of the revenue and against the assessee. The assessee will pay costs of the revenue including advocates' fee of Rs. 250.

8. A copy of this judgment shall be sent under the seal of this court and the signature of the Registrar to the Appellate Tribunal.