
(2016) 01 KAR CK 0337
In the Karnataka High Court
Case No : CRP No. 188/2012

Killara Estate

APPELLANT

Vs

The State of Karnataka

RESPONDENT

Date of Decision : 28-01-2016

Acts Referred:

Income Tax Act, 1961 — Section 5(k), Section 5(n)

Citation : (2016) 01 KAR CK 0337

Hon'ble Judges : N.K. Patil and S. Sujatha, JJ.

Bench : Division Bench

Advocate : S.P. Bhat, Advocate, for the Appellant; T.K. Vedamurthy, HCGP, for the Respondent

Final Decision : Dismissed

Judgement

S. Sujatha, J.—1. The matter arises under the Provisions of the Karnataka Agricultural Income Tax Act, 1957 (hereinafter referred to as the "Act" for short).

2. Facts in brief are:

- the petitioner is a coffee planter owning 89.10 acres of land at Ankihalli Post, Belur Taluk. For the assessment year 2004-05, the petitioner has declared gross loss of Rs. 16,82,874/-. After verification of the books of accounts, the Assessing Authority concluded the best judgment assessment making an addition of Rs. 3,12,140/- towards the coffee income and disallowing nursery expenses of Rs. 92,908/- and depreciation amount of Rs. 98,202/- with other disallowances claimed by the assessee. Aggrieved by the assessment order, the petitioner had preferred an appeal before the First Appellate Authority. The First Appellate Authority modified the assessment order and redetermined the agricultural income and reduced the tax liability. However, the addition of Rs. 3,12,140/- towards the coffee income and disallowance of nursery expenses of Rs. 92808/- and depreciation of Rs. 98202/- remained undisturbed. Aggrieved by the same, the assessee preferred an appeal before the Karnataka Appellate Tribunal (for

short the "Tribunal"). The Tribunal after appreciating the material evidence on record dismissed the appeal. Being aggrieved by the said judgment of the Tribunal, the petitioner is before this Court raising the following question of law:

"Whether on the facts and circumstances of the case, the Tribunal is justified in confirming the addition of Rs. 3,12,140/- made to the coffee income and confirming the disallowance of Rs. 92,908/- relating to nursery expenses and also disallowing the claim of depreciation of Rs. 98,202/-?"

3. Heard the learned counsel appearing for the petitioner as well as the Government Pleader.

4. Learned counsel appearing for the petitioner vehemently contends that the addition of Rs. 3,12,140/- made to the coffee income is contrary to the EB-2 register maintained by it. EB-2 register maintained on day-to-day basis discloses all the details regarding the coffee yield. The said register has not been found to be defective. The declared yield is rejected for the following reasons:

(1) The declared yield is low when compared to the yield of the previous year.

(2) It is not proportionate to the heavy cultivation expenses incurred by the petitioner.

(3) Considering the cost price of the estate at which the petitioner purchased the estate, the yield declared is low

(4) There was a difference of 417 kgs between the yield declared and the yield as shown in the books.

5. According to the petitioner, none of these reasons are valid to reject the yield declared as per books which are not been found to be defective. It is further contended by the learned counsel that the petitioner has maintained a nursery for raising coffee seedlings. These seedlings are used for the replacement of dead, damaged and unproductive plants. Every year the petitioner loses certain plants on account of some disease and also due to fall of trees during monsoon. The expenditure incurred towards maintenance of this nursery is allowable as revenue expenditure under Section 5(k) of the Act. However, the Assessing Officer placing reliance on explanation (2) under Section 5(n) of the Act, rejected the claim of the assessee and restricted the allowance to 10% of the total claim disallowing 90% amounting to Rs. 92,908/- which is not justifiable. The First Appellate Authority and the Tribunal without noticing the same, proceeded to reject the appeal filed by the assessee on the ground that no proof was produced by the assessee to substantiate his claim.

6. It is further contended that the assessee has claimed disallowance of depreciation of Rs. 98,902/- on the used assets in the estate and their valuation as on 01.06.2003 i.e., before purchase of estate had been placed before the Assessing Officer by way of statement. The Assessing Officer rejecting the statement, disallowed the depreciation claimed by the assessee, which is

accepted by the First Appellate Authority and the Tribunal without application of mind and as such, the same is not sustainable.

7. On the other hand, learned Government Pleader supports the order passed by the Tribunal.

8. Having heard the learned counsel appearing for the parties and perusing the material on record, we have noticed that the assessee is before this Court being dissatisfied by the order of the Tribunal rejecting the appeal filed by the assessee and is questioning the legality and correctness of

(i) addition of Rs. 3,12,140/- made to the coffee income as against the declared income.

(ii) Disallowance of nursery expenses of Rs. 92,908/-.

(iii) disallowance of depreciation of Rs. 98,202/-

9. It is manifest from the accounts maintained by the assessee vis-a-vis the declaration made in the return that there was difference of 417 kgs between the yield declared and the yield as shown in the books. The assessee has purchased the coffee estate under a registered sale deed dated 03.11.2003 and it is shown in the sale deed as 46.24 acres of coffee plantation, 40.33 acres cardamom plantation and 1.33 acres as karab. On the visit made by the Assessing Officer to the estate, it was noticed by him that there was no cardamom plantation in the entire estate. The coffee plantation was found in the entire estate of 89.10 acres. Though the assessee has mentioned cardamom plantation, no declaration is made towards the income of cardamom in the returns filed. It was also found by the Assessing Officer that the income declared by the assessee was lower than the assessment made for the previous year in the hands of the previous owner. Moreover, it was also noticed that the books of accounts and the declaration made in the return were different. In such circumstances, rejecting the books of accounts, best judgment was made by the Assessing Officer on the basis of extent of land, crop season and the assessment of income made for the previous year. This best judgment assessment is accepted by the Appellate Authority and the Tribunal after analytically evaluating the material on record. No grounds are made out by the assessee to interfere with this well considered order.

10. Learned counsel appearing for the assessee inviting our attention to explanation (2) of Section 5(n) of the Act would contend that the said provision applies only to immature plants maintained in the estate and not to the seedlings maintained in a separate nursery for the purpose of replacing the damaged plants.

11. We do not see any difference in the expenditure incurred for the cultivation, upkeep or maintenance of immature plants with that of seedlings as pointed out by the assessee. Explanation 2 to Section 5(n) contemplates to deduct any expenditure expended for the cultivation, upkeep or maintenance of immature plants (other than tea plants) from which no agricultural income has been

derived during the previous year and the allowance is restricted to 10% of the said expenditure which has been rightly considered by the Assessing Officer though the First Appellate Authority and the Tribunal rejected the contention of the assessee that there was no adequate proof furnished by the assessee to claim the deduction towards the said expenditure incurred. Accordingly, the arguments advanced by the learned counsel for the assessee on this issue requires to be negated.

12. The third contention advanced by the learned counsel for the assessee regarding the disallowance of depreciation of Rs. 98,202/- also does not merit any consideration in view of the fact that the assessee is claiming the depreciation on the basis of the statement filed by him before the Assessing Officer. It is an admitted fact that the assessee has purchased the estate on 03.11.2003 and no books of accounts relating to the period prior to the purchase date are produced to prove his claim that there was allowable depreciation on capital goods before the Assessing Authority. In the absence of any documentary evidence produced by the assessee to claim depreciation on the fixed assets, no depreciation can be allowed on the mere statement filed by the assessee. The Authorities as well as the Tribunal having considered this aspect in the right perspective, dismissed the appeal filed by the assessee which can not be found fault with.

13. Given the circumstances, we do not see any infirmity or illegality in the order passed by the Tribunal calling for interference of this Court. Accordingly, the petition stands dismissed as no substantial question of law arises for our determination before this Court.

In the result, petition is dismissed.

Ordered accordingly.