(2006) 11 KL CK 0004

In the High Court Of Kerala

Case No : O.P. No. 11003 of 2003

Malankara Plantations Ltd.	APPELLANT
Vs	
Edavetti Grama Panchayat	RESPONDENT

Date of Decision : 10-11-2006

Acts Referred:
- Kerala Agricultural Income Tax Act, 1950 — Section 5
- Kerala Agricultural Income Tax Act, 1991 — Section 5
- Kerala Panchayat Raj (Profession Tax) Rules, 1996 — Rule 2, 3, 4, 5, 6
- Kerala Panchayat Raj Act, 1994 — Section 204

Citation : (2007) 1 KLT 321

Hon'ble Judges : Kurian Joseph, J

Bench : Single Bench

Advocate : Joseph Markose and Joywin Mathew, for the Appellant; K.K. Chandran Pillai and Jayachandra Babu K., for the Respondent

Final Decision : Disposed Off

Judgement

Kurian Joseph, J.—Whether profession tax is to be paid even if there is no income is the question to be decided in this case. It is the contention of the petitioner that during the year 2001-02 and 2002-03 not only that the petitioner Company did not have any income for the purpose of assessment under the Agricultural Income Tax Act, but had suffered huge loss also. Since the assessment of income is to be based on the income as assessed under the Agricultural Income Tax Act, it is submitted that petitioner is not liable to pay profession tax for those years.

2. Section 204 of the Kerala Panchayat Raj Act, 1994 provides for profession tax. To the extent relevant, the same reads as follows:

204. Profession tax:

1) The profession tax shall, subject to such rules as may be prescribed be levied every half year in every Village Panchayat area on,-

i) every company which transacts business in such Panchayat area for not less than sixty days in the aggregate in that half year and ii) every person who, in that half year-

a) exercise a profession, art or calling, or transacts business or holds any appointment, public or private-

i) within such Panchayat area for not less than sixty days in the aggregate, or

ii) outside such Panchayat area but who resides in it for not less than sixty days in the aggregate, or

b) resides in such Panchayat area for not less than sixty days in the aggregate and is in receipt of any income from investments.

2) The profession tax shall be levied at such rates as may be fixed by the Village Panchayat not exceeding the maximum rates prescribed.

3) A person shall be chargeable under the class appropriate to his aggregate income from all the sources specified in Sub-section (1) as being liable to the tax.

The expression ''transacts business'' is defined under Rule 2(c) of the Kerala Panchayat Raj (Profession Tax) Rules 1996 which reads as follows:

c) Transacts Business'' means (i) the doing of acts or business of whatever nature whether isolated or not, such as soliciting, obtaining or transmitting orders or buying, making, manufacturing, exporting, importing, receiving, transmitting or otherwise dealing with goods.

Rule 4 reads as follows:

4. Transaction of business and exercise of a profession: A company shall be deemed to have transacted business and a person shall be deemed to have exercised a profession, art or calling or held an appointment within a Village Panchayat area if such company or person or persons has an office or place of employment within such Village Panchayat area.

Rule 5 deals with the determination of tax which reads as follows:

5. Determination of tax when the business is confined exclusively to a single Village Panchayat area:Where a company or person transacts business in a half year exclusively in the area of a single Village Panchayat, the income of such company or person from the transaction of such business shall, for the purpose of levying profession tax under the Act during that half year be deemed to be-

a) Where income tax or agricultural income tax or both is/are assessed on such company or person under the Income Tax Act, 1961 (Central Act, 43 of 1961), or the Agricultural Income Tax Act, 1991, for the year, comprising the half year, one half of the amount at which the profits and gains of such business are computed u/s 5 of the Agricultural Income Tax Act, 1991 for the purpose of assessing the income tax or agricultural income tax or the sum of both such amounts and

b) Where the amount of the said profit and gains of such company or person is not ascertainable or where such company or person is not assessed to income tax or agricultural income tax, such percentage or percentages calculated with reference to Rule 6 of the turn over of the business transacted in the area of the Village Panchayat during he half year or where this is also unascertainable the profit and gains during the corresponding half year of the previous year shall be considered as the income.

3. Petitioner contends that since the indication for the basis of income under Rule 5(a) is the assessment for the purpose of Agricultural Income Tax Act, as there is only loss for the Company during the relevant years and thus there being no income, there is no liability to pay profession tax. It is further contended that, it is not as if the income is not ascertainable or where there is no such assessment under the taxing statutes; it is the situation of a finding regarding the loss and thus there being no taxable income under the taxing statutes, there is no liability to pay profession tax.

4. Rule 3 provides for the classification for the purpose of fixation of minimum profession tax. In the case of a Company or a person, in case income is less than Rs. 12,000/- in a half year, there is no liability to pay profession tax. From Rs. 12,000/-onwards, different slabs are fixed. What is the basis of computation of income is the critical question. Once a Company or a person is an assessee under the Income Tax or the Agricultural Income Tax Act, the income is to be calculated on the basis of the profit and loss account under the provisions of the Income Tax Act or Section 5 of the Agricultural Income Tax Act for the purpose of computation of Agricultural Income. On such computation if the half yearly income is below Rs. 12,000/- the Company is not liable to pay profession tax. Therefore, the contention that the petitioner Company suffered loss during the relevant years and hence not liable to pay profession tax cannot accepted as a general principle. Only if the half yearly income is below Rs. 12,000/- then alone there is exemption. That Income is not the next taxable Income; but income is as per the profit and loss accounts. Rule 5(b) operates only if the annual income of a Company or a person is not ascertainable or where the Company or a person is not assessed to income tax or agricultural income tax. In such a situation, the turnover of the business transaction in the area during the half year is the criterion and where the turnover also is unascertainable the profit and gains during the corresponding half year of the previous year should be the basis for the purpose of calculation of income.

5. It is stated in the Original Petition that the petitioner Company incurred loss during the relevant years since the expenditure is more than the income. Petitioner has to produce the profit and loss account prepared under the provisions of the Income Tax Act during 2001-02 and 2002-03 and/or u/s 5 of the Agricultural Income Tax Act 1950 before the 1st respondent and on verification of those accounts only if the income as computed under Rule 5(a) is below Rs. 12,000/- half yearly, then alone it can be said that there is no liability

for the petitioner to pay profession tax.

6. Accordingly, the Writ Petition is disposed of as follows:

Petitioner will produce the accounts as stated above within a period of three months before the 1st respondent and on verification of the accounts for the relevant years the 1st respondent will issue fresh orders to the writ petitioner regarding his liability to pay the tax.

