(1991) 10 KL CK 0049

In the High Court Of Kerala

Case No : Original Petition No. 5333 of 1990

Mar Thoma Rubber Co. Ltd. APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 10-10-1991

Acts Referred:
Income Tax Act, 1961 — Section 256(1), 256(2), 45

Citation : (1991) 10 KL CK 0049

Hon'ble Judges : K.S. Paripoornan, J;K.A. Nayar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

K.S. Paripoornan, J.—The petitioner herein is a plantation company. It is a limited company, owning rubber estate. It is an assessee to income tax. The respondent is the revenue. In this petition we are concerned with the assessment year 1978-79, for which, the accounting period ended on 28-2-1978. The sole question, that arose for consideration before the Tribunal, was the exigibility to capital gains in the sale of old worn out rubber trees by the assessee. The ITO held that capital gains accrued by the sale of old worn out rubber trees and fixed the capital gain at Rs. 15,000. In appeal the Commissioner (Appeals) held that the value was little more, but there was no capital gain or capital loss. In second appeal, the Tribunal held that there was a capital gain of at least Rs. 15 per tree. The transfer of 6,500 trees took place during the relevant accounting year and so the entire sum of Rs. 2,27,500 should be considered for levy of capital gains tax during the relevant assessment year. Since the ITO considered capital gains in the sum of Rs. 35,000 only and the Commissioner (Appeals) held that the entire sale proceeds had to be considered for the relevant year, the matter required an enhancement notice by the Commissioner (Appeals), which was not done, on the ground that no capital gains assessable to tax arose, and in view of the altered decision by the Tribunal, the order of the Commissioner in appeal should be set aside and the matter should be remitted back to the Commissioner. It was so done by the order of the Tribunal, dated 20-8-1987. The assessee filed an application u/s 256(1) of the income tax Act, 1961 (''the Act'') and required the Tribunal to refer the following five questions of law formulated in paragraph 8 of the original petition for the decision of this Court:

(a) Whether the income derived from the sale of standing rubber trees in the hands of the assessee is an agricultural income or non-agricultural income liable to be taxed under the income tax Act and whether the standing trees sold by the company to the purchaser, Mr. Jose, is a capital asset taxable under the Act or not?

(b) Whether the rate fixed by the officer as Rs. 20 per tree is justified in view of the age of the trees in 1964 when the tree was only 12 years'' old. At the time of sale the trees were 22 years'' old and, therefore, the improvement of the trees would fetch a higher price than what was arrived at by the Tribunal?

(c) Whether the decision reported in IT Reference Nos. 111 and 49 of 1981, by Kerala High Court is applicable to the facts and circumstances of the case, since this was not an issue in that case and the value has been accepted by both the parties in the above IT Reference Nos. 111 and 49 of 1981.

(d) Whether, in this case, reliance made by the Tribunal in IT Reference Nos. 111 and 49 of 1981 of the Kerala High Court judgment is correct in view of the fact that the High Court has not said anything about the value of future yield to be taken into consideration at the market value since that issue is left open in the judgment?

(e) Whether, on the facts and in the circumstances of this case, is it correct to say that the sale has been completed on the day when the agreement was entered into between the parties, viz., 1977 or whether the sale has taken place after complete payment was made on 15th December, 1979 as evidenced from clause 4 of the agreement entered into by the assessee-company and the purchaser, Mr. Jose, s/o Chacko?

The Tribunal, by order dated 29-9-1989, dismissed the petition. Thereafter the assessee has filed this original petition and has prayed that the following questions of law (a) to (h) formulated in paragraph 11 of the original petition may be directed to be referred to this Court by the Tribunal:

(a) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding the gains, if any, arising out of the sale of the old and unyielding rubber trees from the rubber estate of the assessee, is not agricultural income?

(b) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the old and unyielding trees cut and sold from the rubber estate belonging to the assessee constituted capital assets so as to attract section 45 of the income tax Act, 1961?

(c) Whether, on the facts and in the circumstances of the case and also in the light of the facts repeated in the enclosures to the reference application, the Hon''ble Tribunal is justified in coming to the conclusion that the entire sum of Rs. 2,27,500 is to be considered for capital gains during the assessment year itself?

(d) On the basis of evidence placed by the assessee whether the income derived from the sale of standing rubber trees in the hands of the assessee is an agricultural income or non-agricultural income liable to be taxed under the income tax Act and whether the standing trees sold by the company to the purchaser, Mr. Jose, is a capital asset taxable under the income tax Act, or not?

(e) Whether the rate fixed by the officers of Rs. 20 per tree is justified in view of the age of the trees in 1964 when the tree was only 12 years'' old?

(f) Whether the decision reported in IT Reference Nos. 111 and 49 of 1981 by Kerala High Court is applicable to the facts and circumstances of this case, since this was not an issue in that case and the value has been accepted by both the parties in the above IT Reference Nos. 111 and 49 of 1981?

(g) Whether, in this case, reliance made by the Tribunal in IT Reference Nos. 111 and 49 of 1981 of the Kerala High Court judgment is correct in view of the fact that the High Court has not said anything about the value of future yield to be taken into consideration of the market value since that issue is left open in the judgment?

(h) Whether, on the facts and in the circumstances of this case, it is correct to say that the sale has been completed on the day when the agreement was entered into between the parties, viz., 5th July, 1977 or whether the sale has taken place after the complete payment was made on 15th December, 1979 as evidenced from clause 4 of the agreement entered into by the assessee-company and the purchaser/Mr. Jose s/o Chacko?

2. We heard the counsel. A bare perusal of the questions, which the petitioner desired the Tribunal to refer to this Court and mentioned in paragraph 8 of the original petition as questions (a) to (e) are not the exact questions, which the assessee now desires that this Court may direct the Tribunal to refer. u/s 256(2) of the Act the assessee can pray for a direction to this Court only to refer those questions, which he formulated before the Tribunal in the application filed u/s 256(1) of the Act. Such is not the case herein. On that short ground the prayer in the original petition cannot be allowed.

3. Even on the merits, we find that questions (a) to (e), contained in paragraph 8 of the original petition, which are extracted hereinabove, are not referable questions of law. Question No. (a) is concluded by the decision of this Court in Travancore Tea Estates Co. Ltd. Vs. Commissioner of Income Tax, .

4. Question No. (b) is a pure question of fact. We perused the judgment in IT Reference Nos. 111 and 49 of 1981. The decision in the said cases has nothing to do in this case and so question Nos. (c) and (d) do not arise for consideration. In

question No. (e) the poser is this: When is the sale completed? Ordinarily it depends upon the intention of the parties. Admittedly, there was an agreement, entered into between the parties, which would decide the issue. That is not a part of the paper book before us and we are not in a position to advert to the nature of the agreement, entered into between the parties and as to when the sale has taken place according to the intention of the parties. No material is placed before us to decide whether question No. (e) mentioned in paragraph 8 of the original petition is a referable question of law. So the five questions formulated as question Nos. (a) to (e) in paragraph 8 of the original petition which alone were specified in the application filed before the Tribunal u/s 256(1) are not referable questions of law.

We dismiss the original petition. No costs.