(2002) 06 MAD CK 0006

In the Madras High Court

Case No : T.C. No''s. 144 and 145 of 1998 26 June 2002.

N. SASTHA APPELLANT

Vs

STATE OF TAMIL NADU RESPONDENT

Date of Decision : 26-06-2002

Acts Referred:

Citation : (2002) 258 ITR 553

Hon'ble Judges : V.S. Sirpurkar, J;N.V. Balasubramanian, J

Bench : Full Bench

Advocate : Meenakshisundaram, for the Assessee S.V. Radhakrishnan, for the Revenue, for the Appellant;

Judgement

V.S. Sirpurkar, J.

This judgment will dispose of T.C. Nos. 144 and 145 of 1998. They are revisions filed u/s 54(1) of the Tamil Nadu Agricultural Income Tax Act

(hereinafter referred to as ""the Act""), challenging the common order passed by the Tamil Nadu Agricultural Income Tax Tribunal (hereinafter

referred to as ""the Tribunal"").

The assessee owns acres of land having matured rubber trees in Aramannallur village in Thovala Taluk as also some promboke lands. He filed

returns for three assessment years, viz., 1985-86, 1986-87 and 1987-88 under the provisions of the Act. We are not concerned presently with the

assessment year 1985-86 because we have already disposed of T.C. No. 143 of 1998 relating to that assessment year.

The assessment of both the years was made and two separate appeals came to be filed. During the assessment, the assessing officer added certain

income and disallowed certain expenditure. He had disallowed the expenditure for maintenance of immature rubber trees. The assessee had

claimed this as it was his case that firstly he had spent some amounts for replanting the rubber trees and later on he incurred certain expenditure for

those immature trees in the subsequent year. Though the figures differ, the plea was common in both the appeals pertaining to the assessment years

1986-87 and 1987-88. The appellate authority by giving a specific finding, disallowed the expenses for maintenance purpose. It found that the

authorities below were right in disallowing the expenditure for maintenance of immature rubber trees made in the subsequent year of the replanting.

The assessee had specifically raised a ground that the expenditure incurred on the replanted rubber plants for the subsequent years other than the

first year had to be allowed as a revenue expenditure as such expenditure was coverable u/s 5(e) of the Act. However, the Tribunal took the view

that since the expenditure for replanting is provided for u/s 5(g) of the Act that expenditure alone would be allowable and only under that provision

and no other. In that view, the expenditure ""for maintaining the immature rubber trees"" made in the subsequent year was disallowed by the

Tribunal. The Tribunal also held that the expenditure incurred by the appellant for such planting would be a capital expenditure as the trees would

be assets. Stretching the analogy further, the Tribunal held the expenditure for subsequent nurturing of the plants till they reach a reasonable stage

of maturity should also be treated as capital expenditure and as such it would not be allowable.

Learned counsel drew our attention to the question of law raised in the revision. Learned counsel frankly pointed out that the question relating to

other points raised were already covered by the decision rendered by this court in T.C. No. 1128 of 1987

Learned counsel pointed out that section 5(e) of the Act came to be amended by Act No. 56 of 1994. He contended and in our opinion rightly

that it would be the unamended provision which would be relevant. That provision, before its amendment, was as under :

The agricultural income of a person shall be computed after making the following deductions, namely :

(e) any expenditure incurred in the previous year (not being in the nature of capital expenditure or personal expenses of the assessee) laid out or expended wholly and exclusively for the purpose of the land.

Learned counsel points out that after the words ""for the purpose of the land"" by the amendment in 1994, the words ""from which the agricultural

income is derived"" came to be added. According to learned counsel, therefore, after the amendment, the expenditure spent on such portion of the

land from which no agricultural income was derived could not be allowed and that would mean that the expenditure on the immature trees would

not be allowable after the amendment. However, considering that we have to deal with only the unamended provision, learned counsel argues that

the expenditure made even on the portion of the land which had only immature trees from which no agricultural income was being derived would

also be allowable u/s 5(e). For this purpose, learned counsel invites our attention to the definition of the term ""land"" given in the Act, which reads as

follows :

''land'' means agricultural land which is used for the purpose of growing any plantation crop with or without any other crop intermingled with such

plantation crop or for purposes subservient thereto and is either assessed to land revenue in the State or is to a local rate assessed and collected by

officers of the government as such and includes any plantation in any forest land.

Learned counsel, therefore, argues that in the pre-amendment period, the expenditure made even on the immature rubber trees from which no

agricultural income was derived would be allowable. He points out that factually the assessee had replanted the trees and in the subsequent years

had made expenditure for maintenance of those immature trees and, therefore, he would be entitled to the expenditure that made under the said

provision.

What we see from the orders passed by the Tribunal is that the Tribunal has refused to allow the same on the ground that there was a specific

provision meant for expenditure of replanting the trees vide section 5(g) of the Act. According to the Tribunal, if there was a specific provision

made then, the assessee would be entitled to the expenditure for replanting only under that provision and no other. The Tribunal has relied on

section 5(g) which reads as under :

5(g) expenses other than capital expenditure incurred in the previous year of cultivating the crop from which the agricultural income is derived and of transporting such crop to market including the maintenance of agricultural implements and cattle required for such cultivation and transport or

both :

Provided that in any particular year the total replanting expenditure shall not exceed the amount necessary for replanting 2-1/2 per cent of the

acreage if the crop is rubber or coffee, 1-1/2 per cent (if the crop is arecanut or tea) and 8-1/3 per cent if the crop is cardamom and 10 per cent if

the crop is cinchona :

Provided further that if the replanting expenditure allowance under this section is not incurred in one year, the allowance for the year or years may

be carried forward for a period of three years in the case of arecanut, tea, rubber and coffee and one year in the case of cinchona and cardamom

beyond the assessment year.

The Tribunal seems to have held that what was permissible expenditure for replanting is provided in clause (g) alone and, therefore, the expenditure

would be only to the extent provided in the first proviso, i.e., the amount necessary for replanting 2-1/2 per cent of the acreage of the crop if the

crop is rubber. It, therefore, seems that the Tribunal was under the impression that what is permissible expenditure is only for replanting that too to

the extent as suggested in clause (g) of section 5 of the Act. However, in so far as the expenditure made in the next year for maintenance of those

immature trees, such expenditure would not be allowable firstly because it is capital expenditure and secondly because it is not covered by the

language of section 5(g).

Learned counsel for the department supported the order on the basis of the reasoning of the Tribunal.

It will be, therefore, our task to see whether the expenditure of planting the trees and the expenditure in maintaining those immature trees of rubber

in the subsequent year is capital expenditure. The Tribunal has held that the expenditure of planting the trees is a capital expenditure but since the

Legislature has made an exception by way of the proviso and provided the restriction of the expenditure meant only for 2-1/2 per cent of the land,

it could be only that expenditure which would be allowable. Carrying the analogy further, the Tribunal holds that if the immature trees are in the

nature of a capital asset and the expenditure made for planting them is a capital expenditure, the expenditure made for their maintenance would also

be capital expenditure. In our opinion, this analogy and the line of reasoning are not correct. We must at once point out that the expenditure made

for plantation of the trees would certainly be the expenditure made for the purpose of the land. Considering the language of the definition of ""land"",

such expenditure would be for the purpose of plantation because ""land"" includes plantation. Again, both in sections 5(e) and 5(g) the expenditure

which is a capital expenditure made in the previous year is specifically excluded. The proviso to section 5(g) only provides the subsequent

restriction because in the absence of the proviso all the expenditure for replanting the land would have been allowable but the proviso restricts the

same to expenditure required for 2-1/2 per cent of the land area. Therefore, it is erroneous to hold that planting of the trees amounts to capital

expenditure. Merely because it is from the trees that the income is generated on the basis of their yields, it would be erroneous to call the tree a

capital asset. The capital asset in such case is the land and not the tree. This was perhaps expressed by the Tribunal because while considering

what is ""capital asset"" and ""revenue asset"" there are reported decisions wherein a simile is used showing tree to be a capital asset and its fruits to be

the revenue asset. In our opinion, such is never the position particularly when we are not considering the case of a commercial firm or a partnership

firm. It may be that a capital of the partnership firm from which the profits are derived may be compared to a tree and the profits therefrom to the

fruits but such cannot be the position in case of the present Act and the rubber tree by itself cannot be viewed as a tree meant in those decisions

only by way of a figure of speech. The Tribunal has clearly gone wrong here. As we have pointed out the meaning of section 5(g) of the Act is only

that all the expenditure made for the purposes mentioned in that section in the previous year of cultivating the crop from which the agricultural

income is derived is allowable as expenditure. However, the provisos only restrict that particular expenditure by limiting the same in the manner

done in the provisos. Though the unamended clause did not mention the replanting expenses as one of the allowable expenses, the words

expenditure incurred of cultivating the crop"" were broad enough to include that expenditure which was clear from the language of the proviso to section 5(g) which specifically mentioned the expenditure for replanting though, however, it restricted the limit of the allowable expenditure. That

would be the simple way of looking at it. Since the Tribunal has gone wrong on the very basic premise, it has fallen into the further area of treating

the expenditure made in the previous year for the immature trees and their maintenance as capital expenditure. In fact, what we are concerned with

here in this case is only the expenditure made in the subsequent year of the plantation to maintain the immature trees which were non-yielding. Such

expenditure has always been held not as capital expenditure but as allowable expenditure.

The Supreme Court in The Travancore Rubber and Tea Co. Ltd. Vs. The Commissioner of Agricultural Income Tax, Kerala, has taken the same

view in respect of the expenses incurred for maintenance and upkeep of immature rubber plants. The Supreme Court, in that case, was considering

the provision of section 5(j) of the Travancore-Cochin Agricultural Income Tax Act (Act 22 of 1950). Clause (j) was worded as under:

(j) any expenditure (not being in the nature of capital expenditure or personal expenses of the assessee) laid out or expended wholly and

exclusively for the purpose of deriving the agricultural income.

There also the plea was raised on behalf of the revenue that such expenditure would be a capital expenditure. The learned judges relied on an

English judgment in Vallambrosa Rubber Co. Ltd. v. Farmer (1910) 5 Tax Cas 529 (C. Sess) and ultimately came to the conclusion :

In our opinion the amount expended on the superintendence, weeding, etc., of the whole estate should have been allowed against the profits

earned and it is no answer to the claim for a deduction that part of those expenses produced no return in that year because all the trees were not

yielding rubber in that year.

The plea regarding such expenditure being in the nature of capital expenditure was rejected by the Supreme Court in that case. In another case,

viz., Commissioner of Agricultural Income Tax, Trivandrum Vs. Calvary Mount Estates (Private) Ltd., wherein section 5(e) of the Madras

Plantations Agricultural Income Tax Act fell for consideration, the Supreme Court reiterated the same view.

Regarding these two decisions and more particularly about the latter decision, a criticism could be made that section 5(e) of the Madras Plantations

Agricultural Income Tax Act, which fell for consideration, was a pari materia section to section 5(e) of the present Act and, therefore, was a

section of general application while section 5(g) was a specific provision and, therefore, section 5(g) should prevail over section 5(e) and since

section 5(g) does not provide for the disallowing of the expenditure made for maintaining the immature rubber trees, such disallowance ordered by

the Tribunal should be upheld. The Tribunal has actually turned on those lines only. In our view, such reading of the provision would not be right.

We have already explained about the true import of the unamended provision of section 5(g) which in the first part covers the expenses other than

capital expenditure incurred in the previous year. It will be seen that in the clauses which were considered by the Supreme Court particularly in the

second referred decision, the expenses for the purpose of land were allowable provided they were not capital expenditure. By holding that the

expenditure for maintenance of the immature rubber trees would be an allowable expenditure, by necessary implication, the Supreme Court has

held that it is not a capital expenditure because if it was so, it would have been automatically excluded by the express language of section 5(e) of

the Madras Plantations Agricultural Income Tax Act, which is exactly like section 5(e) of the present Act. Section 5(e) of the Madras Plantations

Agricultural Income Tax Act was as under :

5. Computation of agricultural incomeThe agricultural income of a person shall be computed after making the following deductions, namely :

(e) any expenditure incurred in the previous year (not being in the nature of capital expenditure or personal expenses of the assessee) laid out or

expended wholly and exclusively for the purpose of the plantation.

The Supreme Court in Calvary Mount Estates (P) Ltd.''s case (supra) has specifically included the expenditure for maintenance of immature rubber

trees on the basis of the language of section 5(e) which we have extracted above. The only difference would be in the last word of the section

because in the aforementioned section the word was ""plantation"" while in the present section 5(e) the word is ""land"". We have already shown that

the term ""land"" includes ""plantation"" also. Therefore, it must be held that the Supreme Court has held the expenditure on the maintenance of immature rubber trees to be covered in section 5(e), the language of which had specifically excluded ""capital expenditure"" like section 5(j) of the

Travancore-Cochin Agricultural Income Tax Act. If that be so, if such expenditure was not a capital expenditure for the purposes of section 5(e),

which is exactly like the present section 5(e) then, it cannot become a capital expenditure for the purpose of section 5(g) also. In view of both

these decisions, we are of the opinion that the Tribunal has erred in disallowing the expenditure.

It is not clear as to how much is the expenditure in the relevant year for maintaining the immature rubber trees and how much the expenditure for

replantation. We would, therefore, choose to remand the matter back. The Tribunal will decide the expenditure which is claimed on the

maintenance of immature rubber trees and would hold it as a deductible expenditure. If necessary, the Tribunal may remand the case back for

deciding the extent of the allowable expenditure.

The revisions are, therefore, partly allowed in the light of the discussion held above and to that extent.

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