

(2002) 01 MAD CK 0091

In the Madras High Court

Case No : T.C. No. 247 of 1994 18 January 2002

NEW AMBADI ESTATES PVT. LTD.

APPELLANT

Vs

STATE OF TAMIL NADU

RESPONDENT

Date of Decision : 18-01-2002

Acts Referred:

Citation : (2002) 175 CTR 640 : (2002) 256 ITR 64

Hon'ble Judges : R. Jayasimha Babu, J;A.K. Rajan, J

Bench : Full Bench

Advocate : P.H. Arvinth Pandian, for the Assessee T. Ayyaswamy, for the Revenue, for the Appellant;

Judgement

The petitioner-company had filed a return for the assessment year 1989-90, under the Agricultural Income Tax Act, 1955, showing a net income of Rs. 65,23,215 from its plantation area. The Income Tax Officer II, Nagercoil, disallowed certain expenses claimed by the petitioner and computed the net agricultural income at Rs. 98,53,345. Against that disallowance, an appeal was filed to the Assistant Commissioner who allowed the appeal in part. On further appeal, the Agricultural Income Tax Appellate Tribunal allowed certain expenses and remanded the matter with respect to some other items. The following are the expenses which were disallowed by the Agricultural Income Tax Appellate Tribunal :

Rs. P

(a)

Salary to watchers

2,34,388.74

(b)

Building upkeep wages paid

1,00,811.00

(c)

Cattlemen wages

39,071.88

(d)

Security expenses for dogs

30,561.08

(e)

Midday meal expenses

93,934.89

(f)

Mess expenses

17,929.52

(g)

Interest payments to bank

1,35,330.00

(h)

do.

15,081.07

(i)

Hire purchase interest

15,420.41

(j)

Printing and stationery

13,199.15

(k)

do.

20,960.12

(l)

Mess expenses

81,320.00

(m)

Transit flat allowance

14,473.00

(n)

Motor car expenses

17,161.60

(o)

Subscription to professional bodies

5,301.00

Against the order of the Agricultural Income Tax Appellate Tribunal, this revision has been filed.

Counsel for the petitioner herein submits that the Agricultural Income Tax Appellate Tribunal erred in sustaining the disallowance of payment made to security agencies employed during the year to guard the estate area without having due regard to the evidence produced to establish their actual employment.

The Appellate Tribunal had found that the appellant-company is maintaining separate ledger account for plantation and non-plantation area. The petitioner-company claims expenses relating to both plantation and non-plantation area and the non-plantation area works out to 11 per cent and, accordingly, the lower authorities have disallowed 11 per cent of the expenses claimed under the head "Wages".

(a) Salaries to watchers : With respect to "salaries to watchers", the Agricultural Income Tax Officer had allowed Rs. 1,53,720, towards the salary paid for 15 watchers and disallowed the balance. The Agricultural Income Tax Officer has found that there was no necessity for employing additional watchers from the private agency; only 15 watchers were employed by the company at the rate of Rs. 854 and at this rate the annual expenditure comes to Rs. 1,53,720. The appellate authority found that though the appellant stated that he has got vouchers evidencing payment to the agency employing watchers for Central Security Service, "the appellant has not filed any documents to show that additional watchers are appointed and the amount was paid." That is, the salary paid to the watchers appointed by the appellant had been fully allowed. The appellant has not produced the agreement with regard to the additional watchers. The appellant has not filed any documents to show that additional watchers were appointed. Therefore, the Appellate Tribunal also held that the disallowance made by the lower authorities was proper. In view of the categorical finding that the petitioner has not filed any document to prove that additional

watchers were in fact employed and the amounts were paid through private firms as salaries, the disallowance cannot be said to be incorrect or illegal. In the absence of any proof of actual payment for such additional watchers, this disallowance cannot be set aside and hence the finding of the Tribunal in this aspect, is confirmed.

(b) Building upkeep wages paid : The petitioner claimed that the Appellate Tribunal erred in sustaining disallowance of the entire building upkeep wages of Rs. 1,00,811. The Tribunal has stated that the Agricultural Income Tax Officer found that there are five buildings; these buildings are occupied by the estate manager and four assistant managers and regular employees are doing the job of cleaning of bungalow and cleaning of surrounding areas and they are maintaining the gardens and there is no necessity to incur this expenditure for upkeep of buildings. The Tribunal also found, "the Assistant Commissioner (AIT) has also found that the pay roll does not reflect the actual expenditure of the upkeep of the building. There is no proof with regard to the wages for upkeep of buildings." Hence, the disallowance was confirmed by the appellate authority. The above finding of this Appellate Tribunal cannot be said to be incorrect in the absence of any proof of actual employment of workers for this specific purpose. Counsel contended that the payment to workers was properly vouched. Our attention was not drawn to any such vouchers in proof of payment of this amount and this court cannot go into such questions of fact. Therefore, confirmation of disallowance by the Appellate Tribunal cannot be said to be illegal. Hence, the confirmation of disallowance by the Appellate Tribunal cannot be set aside and hence it is confirmed.

(c) Cattlemen wages : The lower authorities have disallowed the claim of wages paid for cattlemen. The Appellate Tribunal has found, "of course cattle are essential for the welfare of the estate and cattle had to be looked after and expenditure had to be incurred. But the lower authorities have found that there are regular estate employees for the upkeep of cattle and the company has also accepted the wages of upkeep of cattle for regular employees only." That is, since the salaries for all the regular employees have already been deducted, this claim was disallowed. Counsel contended that four cattlemen were separately engaged as whole time employees to look after the cattle belonging to the estate and none of the regular employees of the estate had attended the upkeep of the cattle. This argument is unacceptable, as it was admitted that there was no proof as to whether four cattlemen were separately engaged for this purpose. The Appellate Tribunal held that, the company has also accepted that what was claimed was only the wages for upkeep of cattle for regular employees only. That is, there is no proof of having employed four separate cattlemen other than the regular employees. Therefore, the contention of counsel that four cattlemen were separately engaged to look after the cattle is not borne out by evidence. In the circumstances, the conclusion arrived at by the Appellate Tribunal cannot be said to be incorrect. Hence, disallowance under this head is confirmed.

(d) Security expenses for dogs : The company has claimed Rs. 30,561 as expenditure for the keeping of security dogs. The lower authorities have disallowed this expenditure on the ground that, "feeding the estate dogs for the security of the estate cannot be said to be connected with agriculture." counsel argued that the estate dogs were kept for safeguarding the estate plants from wild animals and intruders; they were not kept for personal security; Hence, the disallowance is illegal. In support of his argument, counsel relied upon the decision of this court in Kil Kotagiri Tea and Coffee Estates Co. Ltd. Vs. Government of Madras, , wherein this court has held that the expression, "for the purpose of land" is wider in scope than "for the purpose of deriving agricultural income from the land". If the expenses are reasonably connected with the holding of the land and the lands are used for the purpose of agriculture, those expenses will be included in the expenses, "for the purpose of the land". In view of this decision, the conclusion of the Tribunal that the expenses "has no nexus with agriculture" and the consequent disallowance is not legal. It is not the case of no evidence or proof for this expenditure. In the circumstances, the disallowance is liable to be set aside. Hence, the claim for security expenses for dogs is allowed.

(e) Mid-day meal expenses : The petitioner-company claimed that it had spent Rs. 93,934.89 for providing mid-day meals to the staff. The authorities disallowed this expenditure on the ground that the Plantation Labour Act does not provide for mid-day meals to the labourers and hence, it is not an admissible expenditure. The Appellate Tribunal observed that "providing mid-day meals to the labourers, is not at all connected with the agricultural activities", and therefore, disallowance was held to be proper. It is not the case of the authorities that there is no proof for the expenditure of providing midday meals for the employees. On the contrary, the Appellate Tribunal also found that "the appellant-company had provided mid-day meals to the estate workers." The mere fact that the Plantation Labour Act does not stipulate providing of mid-day meals to the labourers, it does not mean that mid-day meals cannot be provided to the labourers. Therefore, disallowance of this expenditure is liable to be set aside and accordingly, it is set aside. Hence, this expenditure is allowed.

(f) Mess expenses : The petitioner-company has also claimed Rs. 17,929 towards mess expenses for providing mid-day meals to workers. This was disallowed on the ground that there is no separate mess maintained by the staff. When admittedly, the company has provided for mid-day meals, the expenditure of mess expenses is also allowable. Therefore, disallowance of this expenditure does not appear to be correct. Hence, this amount is allowable and hence allowed.

(g) & (h) Interest payments to bank : The company has claimed Rs. 1,35,330 as interest paid to the banks. The lower authorities have disallowed this expenditure on the ground that the company had not produced any evidence with regard to the purpose for which the interest was paid; the authorities also found that the

company was in sound financial status. The appellant contended that the company discounted certain sale bills with the bank and paid interest to the banks. Similar amount paid to Hong Kong Bank on the overdraft facility was allowed. The Tribunal has held that the petitioner has not produced any proof with regard to this; that it has not been established by the appellant that the amount was borrowed for the development of the estate and that it has nexus with the agriculture and so the interest payment is an allowable one. Hence, this claim was rejected by the Tribunal. It was contended by counsel for the petitioner, that the bills discounting overdraft facility for which interest was paid was utilised and availed of as a matter of business practice; it is common in all estates. The contention of the petitioner-company is that since interest had been paid for availing of overdraft facility which is an allowable expenditure, that expenditure cannot be disallowed. But the Appellate Tribunal has held that, "the appellant has not produced any proof with regard to this." That means, there is no evidence in proof of payment of interest. In the absence of any proof of payment of interest to the banks, this claim cannot be allowed. Therefore, disallowance which was confirmed by the Appellate Tribunal cannot be said to be illegal. Hence, this disallowance is confirmed.

(i) Hire-purchase agreements : The petitioner claimed Rs. 15,420.41 towards interest paid on hire purchase agreement as revenue expenditure. The Income Tax Officer disallowed it holding that, "the things brought under hire purchase for which the interest claimed to have been paid, is capital in nature." The Tribunal held that it has not been established by the petitioner-company that the assets were purchased on hire purchase basis, in connection with the agricultural activities. Counsel for the petitioner contended that when the assets were purchased on hire purchase, interest had to be paid, as per the terms of the agreement; further, counsel submitted that the Appellate Tribunal instead of sustaining the entire disallowance of interest expenses ought to have remanded the issue for ascertaining as to what portion of interest payments should be considered under sections 5(e) and 5(k) of the Tamil Nadu Agricultural Income Tax Act. The appellate authority has found that the "company has not tried to establish the interest amount u/s 5(e) or 5(k)" according to the ingredients stipulated therein, whether the expenditure is "Revenue in nature, as specified u/s 5(e) and (k)". Therefore, the company has to establish that the expenditure falls within the provisions of section 5(e) or (k). The appellant failed to prove its case. Therefore, the Tribunal was not bound to remand the matter again to enable the appellant to establish its case. We find that there is no illegality on the part of the Tribunal in not remitting the matter.

(j) & (k) Printing and stationery : The petitioner claims Rs. 13,119 and another Rs. 20,960 as expenditure incurred for printing and stationery used for administering and managing the estate. The Agricultural Income Tax Officer and the appellate authorities relied upon the decision in COMMISSIONER OF AGRICULTURAL Income Tax, BIHAR Vs. MOTIPUR ZAMINDARY CO. LTD., , and disallowed the entire claim. The Appellate Tribunal held that, "printing and

stationery is not at all connected with the agricultural activities." Hence, disallowance was held to be valid. Counsel for the petitioner argued that the decision in Commr. of Agrl. I.T. v. Motipur Zamindary Co. Ltd.s case (supra) is not applicable to the petitioner's case. The expenditure was allowable u/s 5(e) of the Tamil Nadu Agricultural Income Tax Act. Counsel pointed out that the Patna High Court held that the assessee is not entitled to claim deduction of printing and stationery charges from his gross agricultural income u/s 7 of the Bihar Agricultural Income Tax Act, 1948. But u/s 5(e) of the Tamil Nadu Agricultural Income Tax Act :

"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; (from which the agricultural income is derived) is allowable."

Therefore, counsel argued that this expenditure is allowable as the expenses expended, "for the purpose of the land". We have already held supra that the words, "for the purpose of the land" is wider than "for the purpose of deriving agricultural income from the land." Therefore, the expenses for printing and stationery cannot be said to not fall u/s 5(e) of the Act. Hence, the disallowance by the Tribunal is liable to be set aside and hence, it is set aside.

(l) Mess expenses : The petitioner-company claimed Rs. 81,320 as mess expenses on the ground that the petitioner-company provided lunch to their staff and this expenditure was incurred by the petitioner-company during the course of and for the purpose of business and this expenditure has got nexus to the earning capacity of the company's business. But the authorities have disallowed 50 per cent of the expenditure on the ground that the staff are paid wages. The Appellate Tribunal found no error in the order of the Assistant Commissioner of Agricultural Income Tax. Counsel for the petitioner contended that the factum of expenditure was not doubted and the petitioner incurred such expenditure in the normal course of agricultural activities. The disallowance of 50 per cent. expenditure was erroneous and contrary to law. The authorities have not doubted whether such expenditure was incurred. But, it had only disallowed on the ground that the staff are paid salaries and therefore, this expenditure was held "not allowable" in its entirety. Such an approach does not appear to be correct in the absence of any reason to doubt the expenditure of actual expenditure incurred. In view of the fact that neither the Agricultural Income Tax Officer, nor the appellate authority doubted that such expenditure was incurred, the entire amount expended for providing lunch to the staff is allowable. The payment of salary does not preclude or prevent or prohibit the company from providing lunch to its workers and employees. Hence, the order of the Tribunal is set aside, in so far as it relates to the mess expenses to the staff. In the result, the entire mess expenses are allowable.

(m) Transit flat allowance : The company claimed Rs. 14,743 deductible under the head of transit allowance. The Appellate Tribunal has found that, "the

appellant has not filed any details". Hence, disallowance was held to be valid. Counsel for the petitioner contended that the expenditure in question was incurred for promoting the business interest and the complete details were produced before the assessing officer at the time of scrutiny of the accounts. But the Tribunal also found that no details were produced. There is no reason to doubt the conclusion of the Tribunal. Therefore, there is no alternative except to hold that the appellant had not filed any details with regard to this. Therefore disallowance is to be confirmed and hence, it is confirmed.

(n) Motor car expenses : The petitioner-company claimed Rs. 17,161.60 for motor car expenses. The assessing authority disallowed 25 per cent of the total claim as for personal usage of the vehicles. The authority has come to this conclusion, because there was no trip sheet maintained. For the same reason, the Appellate Tribunal also found that the disallowance of 25 per cent is perfectly in order. Counsel contended that there was no personal element involved in the expenditure of motor vehicles and the authorities have not proved that the vehicles were used other than for the estate. The contention of counsel is not acceptable; onus is not on the authorities to prove that it has been used for personal usage; on the other hand, it lies on the petitioner who claims that it was not used for personal usage. In the absence of any trip sheet, the authorities have deducted 25 per cent of the expenditure. In the circumstances, the reasonings given by the authorities as confirmed by the Appellate Tribunal cannot be said to be illegal and hence, the disallowance of expenditure at 25 per cent appears to be valid and accordingly, the same is confirmed.

(o) Subscription to professional bodies : The appellant-company claimed Rs. 5,301 towards subscription to professional bodies. Subscription was paid to the Federation of Chambers of Commerce and Industry, Southern India Chamber of Commerce and Industry, All India Organisation of Employers and Dinners" Club. The subscription paid to these bodies are not at all connected with the agricultural activities of the company. Therefore, this expenditure was disallowed. The Appellate Tribunal also found that the disallowance made is proper. Counsel contended that the expenditure incurred by the company is in its normal course of agricultural operation. The subscription paid to all these professional bodies was incurred on behalf of the company and the complete details were furnished relating to various bodies and no portion of the expenditure should have been disallowed. In support of his contention, counsel relied upon the decision in Goodricke Group Ltd. Vs. Assistant Commissioner of Taxes (Appeals), , where the Gauhati High Court on the question whether expenditure incurred in respect of entertainment to be considered for deduction in computation of Income Tax has held, "that the expenditure incurred by the assessee under entertainment expenses, etc., which was disallowed by the Income Tax Officer can be allowed by the Agricultural Income Tax Officer" and hence contended that this expenditure is allowable. The subscription paid to the Federation of Chambers of Commerce and Industry, Southern India Chamber of Commerce and Industry, and All India Organisation of Employers is allowable as it cannot be said that

those expenses are not at all "for the purpose of the land". But the subscription to "Dinners" Club" cannot be said to be for the purpose of the land. We are unable to subscribe to the view of the Gauhati High Court that the entertainment expenses are includible within the expression, "for the purpose of land". Hence, only the subscription paid to Dinners" Club is disallowable. The subscription paid to the other professional bodies are allowable.

In the circumstances, items (d), (e), (f), (j), (k), (l) and (o) are allowed and the claims under items (a), (b), (c), (g), (h), (i), (m) and (n) are dismissed.

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