
(1993) 10 MAD CK 0033
In the Madras High Court

P. Mohamed

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 08-10-1993

Acts Referred:

Income Tax Act, 1955 — Section 2(2)
Income Tax Act, 1961 — Section 2(1)

Citation : (1994) 209 ITR 707

Hon'ble Judges : V. Ratnam, J;T. Somasundaram, J

Bench : Division Bench

Advocate : K.J. Chandran, for the Appellant; Mrs. Chitra Venkataraman, for the Respondent

Judgement

Ratnam J.

1. This revision case, at the instance of the assessee, u/s 54(1) of the Tamil Nadu Agricultural Income Tax Act, 1955 (hereinafter referred to as

the Act), has been preferred against the order of the Tamil nadu Agricultural Income Tax Appellate Tribunal Madras, in A.T. No. 84 of 1990

relating to the assessment year 1987-88. The assessee had entered into an agreement on July 5, 1984, with one Sastha in respect of 1,100 rubber

trees that stood on an extent of ten acres, which belonged to Sastha. In order to appreciate the controversy arising for decision in this revision, it

would be necessary to refer to the terms of the agreement. The agreement recited that as 1,100 rubber tress had become old and the yield of latex

had reduced and the incurring of further expenditure would not yield results, but would result in wasteful expenditure, the owner of the land and the

rubber trees decided that it would be advantageous to slaughter the trees and the assessee agreed to do so on payment of a consideration of one

and a half lakhs of rupees. The further provision in the agreement was that the assessee should slaughter and cut the rubber trees within a period of three years and that the assessee should not plant new rubber trees or other trees. The owner of the land, on which the rubber trees stood, further agreed that he would not in any manner obstruct the cutting of the trees by the assessee till the expiry of the period of three years. Some other provisions with reference to the removal of the cut trees after obtaining clearance from the various authorities and the furnishing of the Income Tax clearance certificate and other documents were also incorporated in the agreement and they are not very material for the purpose of deciding the question that has arisen. In addition, the assessee had also taken another extent of 18 acres for slaughter tapping and he also owned 3.19 acres of land with immature rubber trees. Since the assessee did not file returns, notices were issued u/s 35 of the Act calling upon him to file the returns for the assessment year in question and others, in response to which ""nil"" returns were filed. The assessee maintained that the income derived from the slaughter tapping and cutting and removal of the trees is only in the nature of a commercial venture and cannot be regarded as income which can be subjected to assessment under the provisions of the Act, Negating the stand so taken, the Agricultural Income Tax Officer completed the assessment estimating the yield of latex rubber from the trees intended for slaughtering at 450 kilograms per acre, after allowing certain expenditure on an ad hoc basis and apportioning the amount paid in the ratio of 54 : 37 as relating to tree value and latex value, respectively, and finally brought to assessment under the Act that part apportioned towards latex. In doing so, the Agricultural Income Tax Officer relied upon a decision in Chittarwally United Traders v. Commissioner of Agrl. I.T. (W.P. Nos. 1038 to 1040 of 1979, order dated 8-12-1981). Aggrieved by this, the assessee preferred an appeal before the Assistant Commissioner of Agricultural Income Tax, Nagercoil, and the appeal was dismissed upholding the assessment, against which the assessee preferred an appeal before the Tribunal. The Tribunal took the view that though the ownership of the land or interest in land is not a pre-requisite for earning agricultural income, yet for purposes of slaughter-tapping, the assessee had to perform certain agricultural operations and the assessee had, therefore, carried out agricultural operations and in view of the decision in Chittarwally United

Traders (W.P. Nos. 1038 to 1040 of 1979), the assessee was liable to the assessed to tax on the receipts of slaughter tapping of rubber trees.

However, the Tribunal estimated the yield from the trees to be 350 kilograms per acre and directed the Agricultural Income Tax Officer to re-

calculate the income of the assessee for being subjected to tax under the provisions of the Act.

2. The main question that arises for consideration is whether the authorities below were right in subjecting the latex obtained by slaughter-tapping,

in the process of annihilating the trees, to tax under the provisions of the Act ? That, in turn, would involve the applicability of section 2(a) (2) (ii)

and (iii) of the Act. It is not in dispute that the character of the income has to be decided with reference to the terms of the agreement entered into

between the assessee and Sastha and also the provisions of the Act referred to earlier. From the terms of the agreement, it is seen that the assessee

had not been granted any interest in the land. There is no provision that the trees permitted to be slaughter-tapped under the agreement should be

protected, preserved or should derive sustenance from the land so as to continue to yield latex and income therefrom to the assessee. The object

of the agreement appears to be the annihilation of 1,100 rubber trees on payment of a lump sum of Rs. 1.50 lakhs by the assessee, without any

apportionment thereof, between latex and trees and a period of three years had been granted to the assessee to cut the large number of trees, as it

was contemplated that the removal of the trees would taken considerable time. That, however, would not mean that the intention was that the trees

should be cared for and protected and should receive nourishment from the assessee so as to give rise to agricultural income to him. On the terms

of the agreement, it is clear that the permitted slaughter tapping by the assessee was in the nature of just a step towards the ultimate annihilation of

the trees. Just as in the case of some animals, which are bled before being slaughtered, the rubber trees are slaughter-tapped before the actual

cutting. In addition, the source of the income by slaughter tapping pursuant to the terms of the agreement is the agreement itself and such income is

not derived from carrying out any agricultural operations s such. The agreement, and not the land, was the source of the income in so far as the

assessee was concerned. There is also absence of nexus between income, and agricultural operations. u/s 2(a) (2) (ii) of the Act income derived

from such land by the performance by a cultivator or receiver of rent-in-kind of any process ordinarily employed by a cultivator or receiver of rent-in-kind to render the produce raised or received by him fit to be taken to market, would be "agricultural income". In this case, as pointed out earlier, the source of the income is not the land, but only the agreement. further, the assessee is neither a cultivator nor receiver of rent-in-kind and under the terms of the agreement, the assessee need not do anything to render the produce received by him marketable. Even u/s 2(a) (2) (iii) of the Act, in order to be assessable as agricultural income, the income should be derived from such land by the sale by a cultivator or receiver of rent-in-kind of the produce raised or received by him in respect of which no process has been performed other than a process of the nature described in sub-clause (ii). Earlier, it had been pointed out that the dominant intention as can be gathered from the terms of the agreement is the annihilation of the trees and that slaughter tapping, as a step taken in that direction, cannot be regarded as the sale of the produce raised by a cultivator nor as produce received by him in respect of which no process has been performed, other than that of rendering it fit to be taken to market. The assessee cannot also be regarded as receiver of rent-in-kind of the produce raised by him. Viewed thus in the light of the terms of the agreement, section 2(a) (2) (ii) and (iii) of the Act cannot have any application at all in this case as to clothe the income from the latex derived by the assessee with the character of agricultural income for purposes of assessment under the provisions of the Act.

3. It now remains to refer to same decisions to which our attentions was drawn. In C.P.A. Yoosuf Vs. Income Tax Officer and Another, , while considering the applicability of section 2(1) of the Income Tax Act, 1961, with reference to income derived by the assessee by sale of rubber obtained by slaughter-tapping of rubber trees, which had been purchased for being cut and removed, it was held that as the income was derived under contracts sale entered into, such income was clearly non-agricultural. This decision was affirmed in Agricultural Income Tax Officer Vs. C.P.A. Yoosuf and Another, , holding that as the assessee derived no interest in the land, but only a right to the trees, the income derived by the purchasers of the trees from slaughter tapping, was not agricultural income. In Commissioner of Agricultural Income Tax Vs. George Varghese and

Co., , construing section 2(2) (a) of the Kerala Agricultural Income Tax Act, 1950, which is in pari materia with section 2(2) of the Act, it was

held that the question has to be answered in the light of the provisions in the agreement between the parties and the intention was that the trees,

which were sold should be withdrawn from the land and the land was considered as a mere warehouse of the thing sold and, therefore, the income,

though derived from the land, had been derived by the assessee, who had not undertaken the basic operations relating to agriculture and would

not, therefore, fall within the definition of agricultural income. In so holding, the court referred to the following passage from *Marshall v. Green*

[1875] LR 1 CP 35 (at page 500 of 90 ITR) :

The principle of these decisions appears to be its, that wherever at the time of the contract it is contemplated that the purchaser should derive a

benefit from the further growth of the thing sold, from further vegetation and from the nutriment to be afforded by the land, the contract is to be

considered as for an interest in land; but where the process of vegetation is over, or the parties agree that the thing sold shall be immediately

withdrawn for the land, the land is to be considered as a mere warehouse of the thing sold, and the contract is for goods.

4. It is also important to note that the court also took care to observe that the nature of the receipt would depend on the terms of the contract with

the owner of the land and that in all cases, it is not necessary that the person receiving the agricultural income should himself have undertaken the

basic operations of agriculture. On the terms of the contract in this case, referred to earlier, there is no doubt that the contract was no one for any

interest in the land and the intention was that the 1,100 rubber trees should be removed from the land and, in that context, the land was considered

only as a mere warehouse of the thing sold and the contract was for sale of goods.

5. In *Commissioner of Income Tax, Madras Vs. K.S. Imam Saheb*, , a Division Bench of this court laid down that in order to constitute

agricultural income, there should be a clear nexus between such income, land and agricultural operations and if the connection of the income is with

the trees themselves without reference to land or agricultural operations, the, such income would not be agricultural income. In this case also, as

earlier noticed, the connection of income is only with the trees and not with reference to either the land or carrying on agricultural operations

therein. This decision would undoubtedly support the stand of the assessee.

6. In *Cherian Dominic and Another Vs. Commissioner of Agricultural Income Tax*, it was found as a fact that since the assessee carried on

agricultural operations and held the land for that purpose, the income derived by him was held to be agricultural income. From the provisions of the

agreement referred to earlier, it is clearly established that the assessee was not obliged to carry on any agricultural operations nor did he carry on

any such operations holding the land for that purpose and this decision, therefore does not in any manner assist the Revenue.

7. In *Commissioner of Income Tax, Uttar Pradesh Vs. Kunwar Trivikram Narian Singh*, the character of the amount received under the terms of

a compromise arrived at in 1837 came to be considered. Under the compromise, the jagirdhar and his heirs were granted a pension in perpetuity

by the Government, the quantum being regularly calculated on the basis of one-fourth of the net revenue collections of the jagir. The Supreme

Court laid down that under the arrangement of 1837, no interest in the land or land revenue payable had been secured and the source of the

income was the arrangement of 1837 and as the income was not derived from the land, it was not agricultural income within the meaning of section

2(1) (a) of the Indian Income Tax Act, 1922. On the terms of the agreement, it had earlier been noticed that the source of the income was only the

agreement and that did not create any interest in land or oblige the assessee to carry on any agricultural operations and under those circumstances,

the income referable to latex resulting from slaughter-tapping would not be agricultural income. In *Abraham Taliat Vs. State of Tamil Nadu* and

others, *Govindaswamy j.* had occasion to consider the terms of an agreement under which the purchaser was to cut and remove the rubber trees

in proportion to the amounts paid during a period of three years, before the expiry of which all trees should be cut and removed. The agricultural

Income Tax Officer bifurcated the consideration into two parts, one relating to the value of the latex and the other, the value of the trees and

subjected to assessment, the amount pertaining to latex. In dealing with the writ petition to quash the assessment, the learned judge, after referring

to the terms of the agreement, held that the amounts were paid for sale of rubber trees and no part of it was towards slaughter tapping. In so holding, the learned judge referred to the several terms and conditions in the agreement, which did not provide for slaughter tapping, but proceeded clearly to sell 3,000 rubber trees outright for being cut and removed. Much assistance cannot, therefore, be derived from this decision, as it rested purely on the terms of the agreement between the parties in that case.

8. That leaves for consideration the decision in Chittarwally United Traders (W.P. Nos. 1038 to 1040 of 1979), relying upon which all the

authorities below have held that the assessee had received agricultural income. These writ petitions were filed to quash the assessment orders in

respect of assessment to agricultural income which, according to the assessee, did not fall u/s 2(a) of the Act. Under the agreement dated February

3, 1973, out of the consideration payable at the rate of Rs. 40 per tree for 10,000 trees, a sum of Rs. 15 was towards cost of manure, manuring,

up-keep of fences, roads, culverts, etc. Further, under clause (10) of the agreement, it was provided that the responsibility for the maintenance and

proper upkeep including weeding, etc. to the satisfaction of the licensor, was on the assessee. The court found that the object of the agreement

was to protect the trees from the weeds to secure maximum yield and to manure, to dust, to spray, etc., and to maintain the fences, and this would

mean agricultural operations had to be carried on to secure the best yield from the trees. It was also further found that under the terms of the

agreement, the assessee was to make efforts to maintain the trees in a condition fit for maintaining the best yield and the arrangement could not,

therefore, be regarded as no contemplating any agricultural operations. It is thus seen that the decision was rendered on the basis of the terms of

the agreement and since there were clear and unambiguous provisions for the carrying on of certain agricultural operations by the assessee, the

income realised by him was also held to be agricultural income subject to tax under the provisions of the Act. In this case, there is no provision in

the agreement with reference to the carrying on of any agricultural operations by the assessee. The consideration is also not partly towards

manuring, spraying, dusting, keeping the fences, intact, etc., etc., which would be essential components of agricultural operations. It had earlier

been found that the agreement in this case was only for the purpose of annihilating the trees by slaughter tapping, that being the first step taken in that direction, and under those circumstances, the decision in Chittarwally United Traders (W.P. Nos. 1038 to 1040 of 1979) cannot have any application at all on the terms and conditions of the agreement in this case and the authorities below clearly were in error in placing reliance on this decision to hold that the income derived from latex was liable to be assessed under the provisions of the Act. Thus, on a due consideration of the terms of the agreement and the relevant provisions of the Act as well as the decisions referred to earlier, we are of the view that the order of the Tribunal cannot be sustained and the tax revision case will, therefore, stand allowed. There will be no order as to costs.