
(1970) 10 KL CK 0013

In the High Court Of Kerala

Case No : Income-tax Reference No's. 22 and 23 of 1968

Pullangode Rubber and Produce Co. Ltd.

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 16-10-1970

Acts Referred:

Citation : (1971) 79 ITR 738

Hon'ble Judges : T.C. Raghavan, J;E.K. Moidu, J

Bench : Division Bench

Advocate : K.V.R. Shenoy, V. Desikan, K.A. Nayar and K. Sukumaran, for the Appellant; P.K. Krishnankutty Menon, for the Respondent

Judgement

Raghavan, J.—The question referred in these cases is:

Whether, on the facts and in the circumstances of the case, the amounts of Rs. 17,250 and Rs. 18,752, representing the sale proceeds of timber cut and removed with roots constitute revenue receipts in the hands of the assessee and are taxable as such under the Income Tax Act, 1961 ?" and the facts of the case are the following. The assessee is a limited liability company doing rubber plantation business; and the assessee took on lease an extent of about 2,000 acres of forest land from the Senior Rani (the Valiya Thamburatti) of the Patinhare Kovilakam under two leases, the first of 3rd August, 1913, and the second of 9th July, 1937. The assessee agreed to pay an annual rent of Rs. 250, and an additional sum of Rs. 2 for every acre of land brought under rubber cultivation. And the lease was for a term of 99 years. The second lease deed of 1937 provided, in clarification of the provisions in the earlier lease deed, that the assessee had the right to cut, remove and sell trees, bamboos and the forest produce from the land held on lease subject to the condition that, in respect of the contract which was then under negotiation by the assessee with third parties for the sale of trees, the assessee had to pay to the Senior Rani 50 per cent. of the net proceeds of the sale, and for subsequent similar contracts, 25 per cent. of the net sale proceeds. During the relevant assessment years, 1962-63 and

1963-64, the assessee received from such contracts of sale of timber effected with third parties on 21st June, 1961, and 22nd February, 1962, net amounts of Rs. 17,250 and Rs. 18,752, respectively. The Income Tax authorities sought to assess these amounts as revenue receipts, when the assessee objected to the assessment claiming that these amounts were capital returns. This objection was repelled by the Income Tax Officer who made the assessment, which was confirmed by the Appellate Assistant Commissioner as well as the Appellate Tribunal. Thereafter, on the application of the assessee, the common question extracted hereinbefore has been referred to this court.

2. The counsel for the assessee has drawn our attention to a few decisions on the question as to whether the amounts are capital returns or revenue receipts. The first decision cited before us was cited before the department and the Tribunal too; and that is Commissioner of Income Tax, Bombay South Vs. N.T. Patwardhan, of the Bombay High Court. On the grass lands of an area of 10 square miles belonging to the assessee stood for many years a large number of trees of spontaneous growth. The assessee sold the trees by four auctions with a condition that the purchasers should remove the trees with their roots. The purchase price was payable in a lump, but was realised only in instalments ; and in the relevant accounting years, different amounts were received ; and the question was whether these amounts were capital returns or receipts of revenue nature. The Bombay High Court held that, since the sale was of the trees with roots once and for all, the amounts realised from such sales were in the nature of capital returns, because the trees themselves constituted part of the capital assets of the assessee and by cutting and selling them the capital structure was affected causing diminution in the capital assets. Another decision brought to our notice is Consolidated Coffee Estates (1943) Ltd Vs. Commissioner of Agricultural Income Tax, Mysore, a decision of the Mysore High Court, wherein it was held that shade trees in a coffee estate were part of the fixed assets of the planter and the proceeds of sale of timber of the shade trees were capital receipts. Yet another decision cited before us is the decision of the Supreme Court in Commissioner of Income Tax, Hyderabad-deccan Vs. Vazir Sultan and Sons, . Therein Bhagwati and Sinha JJ. observed that, in considering whether compensation paid to an agent on the cancellation of his agency was a capital receipt or a revenue receipt, the first question to be considered was whether the agency agreement in question was a capital asset of the assessee's business and constituted its profit making apparatus and was in the nature of its fixed capital or it was a trading asset or circulating capital or stock-in-trade of its business; and that, if it was the former, the compensation received would be a capital receipt. A few other decisions have also been brought to our notice ; but the principle that can be drawn from all these decisions is whether the trees sold constituted part of the capital assets or the profit-making apparatus of the assessee. If they did, by their sale the capital structure of the assessee will be affected and the moneys brought in by such sales will then constitute capital returns.

3. In this connection, another line of thinking has also been suggested by referring to the decision of the Supreme Court in *V. Venugopala Verma Rajah Vs. Commissioner of Income Tax, Kerala*, . In that decision the Supreme Court held that where the trunks of trees of spontaneous growth were cut so that the stumps were allowed to remain in the land with the bark adhering to the stumps to permit regeneration of the trees, receipts from the sale of the trunks would be in the nature of income--would be revenue receipts. In the case before us, the trees were cut and removed, root and all without any possibility of sprouting or regeneration.

4. Now, the position in the case before us is quite clear; and none of those decisions can help the assessee. In the case before us, the assessee was not the owner of the trees cut and sold ; he had only a right to cut and sell the trees. And the ownership of the trees continued in the Senior Rani, the lessor. In other words, the trees might have constituted capital assets in the hands of the lessor, but not in the hands of the lessee ; they could not have also formed part of the profit-making apparatus of the assessee in their plantation business, because they never belonged to the assessee. And the question whether the trees were removed root and all or only their trunks were removed leaving the stumps on the land with the possibility of regeneration is also irrelevant in these cases since the assessee was not the owner of the trees.

5. The counsel for the assessee has then attempted to argue that what was sold in these cases to third parties was not the timber, but only the right to cut and remove the trees. This contention cannot also hold water, because under the agreements the timber was sold on specified portions of the forest area and the purchasers were asked to cut and remove the trees with their roots paying specified amounts as price of the trees. There is no meaning in saying that what was sold to the third parties was only the right to cut the trees and not the trees themselves--the timber. The facts and the circumstances clearly show that what was sold was the trees, the timber, and not merely the right to cut and remove the trees. If the assessee sold his leasehold right and the right to cut and remove the trees, the position would have been different, since the leasehold right itself was a capital asset of the assessee.

6. From this discussion what emerges is that the trees did not constitute part of the capital assets of the assessee or part of the assessee's profit-making apparatus and, therefore, the amounts received by sale of the trees will not be capital receipts.

7. The next question that arises is as to what is then the nature of these receipts. The contention of the revenue, which was accepted by the Tribunal, is that these returns were from a subsidiary business of the assessee, or, at least, from a venture in the nature of business. In *Commissioner of Income Tax, Madras Vs. P.K.N. Co. Ltd.*, the Supreme Court observed that the question whether a taxpayer entered upon a business activity or not had to be determined in the light of the facts and the circumstances. The purpose or the object for

which the company was incorporated (where the taxpayer was a company) might have some bearing on the question, but it was not decisive. Similarly, the profit motive was also not decisive. In that case, the assessee-company acquired rubber estates and other immovables for their plantation business, but, later on, sold uneconomical or inconvenient portions of the land ; and the Supreme Court held that the profits arising from such sales were not taxable. In considering this question, therefore, we have to see the facts and the circumstances of the case and the intention of the parties. Light is thrown on the intention of the parties by a provision in the lease deed of 1937. The lease deed provides that "the lessees shall, as long as they are in possession of the demised premises as lessees, even otherwise than for purposes of cultivation or industry, be entitled also to exploit all timber and other forest produce, inclusive of bamboos and other growths from the demised premises, to fell, shroud, cut, carry, sell and appropriate the same together with all barks, lops, tops, shrouds and whatsoever thereof". This provision makes it clear that the lessee had the right to exploit all timber and other forest produce even otherwise than for purposes of cultivation. The intention then, evidently, was for the lessee to have a subsidiary business of exploiting the timber and other forest produce in addition to the main business of planting rubber. If so much is established (we feel that this is established beyond doubt), the cutting and removing of the trees with the roots thereof by entering into contracts with third parties, to whom the trees were sold for specific amounts, was in pursuance of, or in the course of the subsidiary business of exploiting the timber and the forest produce. The facts and circumstances do indicate that. It follows then that the amounts received by the sales are revenue receipts.

8. The counsel for the assessee has argued that the cutting and removing of the trees in these cases was not part of any subsidiary business, because the assessee had no such subsidiary business. The counsel has proceeded to contend that the cutting and removing was only for the purpose of planting rubber and the recital in the lease deed of 1937 is not decisive of the question. It may be that ultimately the assessee plants rubber in the area cleared. Still, in the circumstances, the cutting and removing of the trees so as to make the area available for planting rubber was only part of the subsidiary business of the assessee. Even if, for the sake of argument, we agree that the cutting and removing of the trees was only with a view to plant rubber, still, there is no doubt that the cutting and removing was at least a venture in the nature of business. What really happened when the lessee entered into contracts of sale of the trees with third parties in exercise of the lessee's right to cut and remove the trees was to purchase the trees from the lessor and sell them to the "third parties at a profit--a venture in the nature of trade, the trees momentarily becoming the stock-in-trade. Thus, in any view of the matter, the returns from such sales are revenue receipts, and in the circumstances, they cannot be said to be capital returns.

9. In the result, we answer the question referred in the affirmative, against the

assessee. The assessee will pay the costs of the revenue with one counsel's fee of Rs. 100 for both cases together.

10. A copy of this judgment will be sent to the Tribunal in accordance with law.