

(1969) 04 SC CK 0060

In the Supreme Court Of India

Case No : Civil Appeal No. 11 (Nt) Of 1969

Pullangode Rubber and Produce Co. Ltd., Quilon

APPELLANT

Vs

Commissioner of Agri. Income Tax Trivandrum

RESPONDENT

Date of Decision : 24-04-1969

Acts Referred:

Citation : (1970) 7 ITR 76 : (1970) 3 SCC 268

Hon'ble Judges : J. C. Shah, J;G. K. Mitter, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Shah J-An appeal was filed before the Agricultural Income tax Appellate Tribunal by the appellant company claiming that an amount of ` 55,708 received as an instalment of consideration payable under a deed dated February 19, 1962, was of the nature of capital and not income and was on that account not liable to be taxed. The Appellate Tribunal, on a review of the relevant covenants in the deed, held that the transaction between the parties was one of sale of old trees which were unfit for tapping and that the price received for sale of Rubber trees was not liable to be included in "agricultural income" as defined in section 2 of the Agricultural Income Tax Act. The Tribunal further recorded that by the covenants of the agreement a right to cut and remove the trees and not to subject them to the process of tapping was granted, and the grant being of trees and not of a right to tap trees, the company received no income out of the transaction. At the instance of the Commissioner of Agricultural Income-tax, Kerala State, three questions were referred to the High Court of Kerala. They were :

"(i) On the facts and in the circumstances of the case, is the Tribunal right in holding that there is nothing in the agreement dated February 19, 1962, to show that it was a composite agreement of lease and sale ?

(ii) On the facts and in the circumstances of the case, is the Tribunal right in holding that the agreement dated February 19, 1962, is an agreement for an

outright sale of rubber trees ?

(iii) Is the Tribunal right in giving a literal interpretation to the agreement without duly considering the attendant circumstances like the unreasonableness of the time allowed for cutting and removing the trees, the unreasonableness of the amount shown as consideration for the sale of the rubber trees, that the trees are capable of being tapped for two or three years more, etc., and how the parties acted under it ?"

The High Court declined to answer question Nos. 1 and 2, and on the third question the High Court recorded an answer in the negative. With special leave granted by this court, the assessee has appealed to this court.

The frame of the third question answered by the High Court is open to grave objection. There was no finding by the Tribunal that there were any attendant circumstances which indicated that the agreement did not record the covenant relating to the cutting of the trees and was intended to camouflage a grant of rights to tap latex from standing rubber trees. It was urged before the Tribunal that wording of the agreement dated February 19, 1962, alone could not "be a criterion in deciding whether the actual intention was to cut and remove the trees or to subject the trees to slaughter tapping and remove the trees after so tapping them". Counsel for the State had invited the attention of the Tribunal that the consideration fixed was also consistent with the agreement being one of a grant of a right to tap and not sale of trees. The Tribunal, however, held that "no extraneous motives could be imported into the terms of the agreement". They observed that the agreement was one for sale of rubber trees and the sale proceeds of the rubber trees was a capital receipt. The question referred to the High Court could only arise out of the order of the Tribunal. The assumption made in the third question that in fact there were attendant circumstances like "unreasonableness of the time allowed for cutting and removing the trees", the unreasonableness of the amount shown as consideration for the sale of the rubber trees, and "that the trees are capable of being tapped for two or three years more", were not founded on any decision of the Tribunal. The jurisdiction which the High Court was exercising was purely advisory. The High Court could answer a question of law which arose out of the order of the Tribunal. The High Court apparently assumed certain facts which are not shown to have been determined by the Tribunal and, on the assumption that those facts existed, the High Court has held that the agreement was not one which represented the true bargain between the parties. The High Court observed that it is open to a Tribunal to find on proper evidence that the agreement purporting to embody a transaction does not represent the real bargain, or any bargain, between the parties. That observation is unexceptionable. But the High Court was in error in observing that the Appellate Tribunal has held that the revenue was not entitled to go behind the document and determine the true legal character of the transaction on a consideration of extraneous evidence. The Tribunal did not say that it was not competent to determine the true intention of the parties

camouflaged by false recitals. The Tribunal merely held that the covenants in the agreement represented a genuine bargain between the parties and on the effect of those covenants it had to determine the true relationship, and the true relationship was one of vendor and purchaser and not of lessor lessee.

In that view of the case, we are unable to uphold the judgment of the High Court recording an answer in the negative on the third question. We are of the view that the third question did not arise out of the order of the Tribunal and the High Court should have declined to answer that question.

The appeal is allowed and the order passed by the High Court is set aside. It is ordered that question No. 3 does not arise out of the order of the Tribunal and is not answered. The appellant will be entitled to the costs of this appeal in this court and the High Court.