
(1978) 10 KL CK 0016

In the High Court Of Kerala

Case No : Income-tax Referred Case No's. 1, 2 and 3 of 1976 (Agrl.

R.G.A. Baker

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 19-10-1978

Acts Referred:

Income Tax Act, 1922 — Section 10(2)
Kerala Agricultural Income Tax Act, 1950 — Section 5

Citation : (1979) 116 ITR 570

Hon'ble Judges : V.P. Gopalan Nambiyar, C.J.; Balagangadharan Nair, J

Bench : Division Bench

Advocate : K.P. Radhakrishna Menon, K.K. Ravindranath and V.V. Ravindran, for the Appellant; Government Pleader, for the Respondent

Judgement

Gopalan Nambiyar, C.J.—These references have been made by the Agricultural Income Tax Appellate Tribunal, Trivandrum, u/s 60(1) of the Agrl. I.T. Act, 1950. The assessment years are 1968-69 to 1970-71. The assessee was assessed as a tenant-in-common in respect of an estate owned by three persons, namely, (1) Miss A.D. Baker, (2) Mr. R.G.A. Baker and (3) Mrs. R.V. Bread, the first owning a 4/8ths share, the second 3/8ths, and the 3rd, 1/8th. The assessee is Mr. R. G. A. Baker. In the course of the assessment proceedings the assessee claimed the pension paid to himself, as a deductible item of expenditure u/s 5(j) of the Agrl. I.T. Act. That section reads :

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

(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." The Agrl. ITO negated the claim stating that it is only a payment to a partner and that there was no statutory liability for pension alleged to have been paid. It could, therefore, be treated only as an ex gratia payment or appropriation of profit. The claim was accordingly

rejected. On appeal by the assessee, the AAC rejected the claim stating only that the question has already been dealt with by the assessing authority and there was no reason to interfere in respect of the deduction disallowed. When the matter went up to the Agricultural Income Tax Appellate Tribunal, the Tribunal noticed the relevant facts in the light of which the claim had to be examined and decided. The amount for which deduction was claimed was Rs. 9,498.60 for 1968-69, Rs. 9,498.60 for 1969-70 and Rs. 8,100 for 1970-71. In answer to the pre-assessment notice, the assessee had sent a reply dated December 15, 1969, an extract of which could be found at page 17 of the printed paper book in the case. In that reply the assessee stated that the members of staff of the estate are entitled, on retirement, either to 50% pension or to gratuity at the rate of one month's salary for every completed year of service : and that this was the practice in the estate for the last so many years. It was stated that the practice could be verified from the files in the office of the Income Tax department. It was claimed that by practice this had become part of the conditions of service and this was being exalted into a statutory obligation on the part of the management to pay either of the two retirement benefits. So that, the question had been squarely posed for consideration by the assessee. The reasoning of the Appellate Tribunal is contained in para. 6(4) that all claims of deduction allowable u/s 10(2) (xv) of the Indian I.T. Act, 1922, are not allowable deductions u/s 5 of the Agrl. I.T. Act, 1950, and that there was no agreement to pay pension nor any statutory obligation; and, as far as the practice is concerned, it was not proved that the assessee had been paying pension to all his former employees.

2. We think the matter has not received full or careful attention and consideration at the hands of the Tribunal and the reasoning of the Tribunal cannot stand. This court recently had occasion to examine the scope and application of Section 5(j) of the Agrl. I.T. Act in the decision in COMMISSIONER OF AGRICULTURAL Income Tax Vs. MALAYALAM PLANTATIONS LTD., . A Division Bench of this court referred to Section 10(2)(xv) of the Indian I.T. Act, 1922, and compared the same with Section 5(j) of the Agrl. I.T. Act. Reference was made to the ruling of another Division Bench of this court in COMMISSIONER OF AGRICULTURAL Income Tax, KERALA Vs. NILAMBUR RUBBER CO. LTD., , where it was pointed out that despite the different language of relevant sections, the position u/s 5(j) of the Agrl. I.T. Act is the same as that disclosed by Section 10(2)(xv) of the Indian I.T. Act, 1922. In view of this position, the view taken by the Tribunal that all deductions allowable under the I.T. Act are not allowable u/s 5(j) of the Agrl. I.T. Act requires re-examination.

3. Further, this court in the decision noticed supra, referred to the decision in The Travancore Rubber and Tea Co. Ltd. Vs. The Commissioner of Agricultural Income Tax, Kerala, . The Supreme Court there pointed out that the expression "deriving income" cannot be construed narrowly but must be understood in a wide and comprehensive sense. This principle again has not been kept in mind by the Agricultural Income Tax Appellate Tribunal.

4. As the approach made by the Tribunal in the determination of this question has not been correct and has not taken into account the pronouncements of the Supreme Court or of this court referred to earlier, we are unable to sustain the finding of the Tribunal.

5. In the circumstances, we decline to answer the question of law and direct the Tribunal to rehear the appeal and dispose of the same afresh in accordance with law and in the light of the observations contained in this judgment. We make no order as to costs.

6. A copy of this judgment under the seal of this court and the signature of the Registrar will be communicated to the Agricultural Income Tax Appellate Tribunal as required by law.