(1997) 08 MAD CK 0066

In the Madras High Court

Case No : Tax Cases No''s. 519, 520, 521, 522, 742, 840, 900, 921, 922 and 1430 of 1985 (Revisions No''s. 175, 176, 177, 178, 340, 396, 417 436, 437 and 501 of 1985)

S. Nagamani and others — APPELLANT

Vs

State of Tamil Nadu — RESPONDENT

Date of Decision : 26-08-1997

Acts Referred:
Income Tax Act, 1961 — Section 28

Citation : (1999) 239 ITR 202

Hon'ble Judges : N.V. Balasubramanian, J;Janarthanam, J

Bench : Division Bench

Advocate : Deokinandan, for the Appellant; K.M.L. Majele, for the Respondent

Judgement

M.S. Janarthanam J.

1. Desirable it is, to pen down a common order in all these actions. The assessees are either holders of rubber or coffee estates in Nagarcoil or

Yercaud. No doubt, the assessees are different and distinct persons. So too, the Assessing Officers. The assessment order also is not the same,

but different.

2. But, none the less, one common thread runs in all those actions and such a common thread is none else than the question relatable to the

disallowance of interest on borrowed capital either under clause (e) or (k) of section 5 of the Tamil Nadu Agricultural Income Tax Act, 1955

(Tamil Nadu Act V of 1955-for short ""the Act""). Disallowance under either of the clauses, as aforesaid was right through from the Assessing

Officer till up to the Tamil Nadu Agricultural Income Tax Appellate Tribunal, Madras 104 (for short ""the Tribunal"").

3. All the aggrieved assessees resorted to the present actions and now they are before us questioning the legality or otherwise of such disallowance

of the claim made by the authorities below.

4. The pivotal question centres round the interpretation of clauses (e) and (k) of section 5 of the Act. Clauses (e) and (k) of section 5 relevant for

the present purpose, as they stood then, read as under :

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

.

(e) 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 ...

(k) any interest paid in the previous year and any amount borrowed and actually spent on the land from which the agricultural income is derived :

Provided that the need for borrowing was genuine having due regard to the assets of the assessee at the time.

Provided further that the interest allowed under this clause shall be limited to nine per cent on an amount equivalent to twenty-five per cent. of the

agricultural income from the land in that year.

6. From what has been extracted above, it is crystal clear that for the application of clause (e) the following are the primordial requisites :

(i) The expenditure must be incurred in the previous year;

(ii) It should not be in the nature of capital expenditure or personal expenses of the assessee;

(iii) Such expenditure need not be limited to an expenditure of a particular clause and it may be even expenditure relatable to interest paid on

borrowed capital; and

(iv) Such expenditure must be laid out or expended wholly and exclusively for the purpose of the land.

7. For the application of clause (k) of the said section, the following are the essential requisites :

(i) The interest must be paid in the previous year;

(ii) The interest so paid is relatable to the borrowed capital;

(iii) Such a borrowed capital must be actually spent on the land from which agricultural income is derived;

(iv) The interest paid on borrowed capital, even if actually spent on the land, from which no agricultural income is derived, is not liable as a

deduction;

(v) But, there is a restriction or limit to the interest so paid and only nine per cent. on an amount equivalent to twenty-five per cent of the

agricultural income derived from the land in that year alone is liable as a deduction; and

(vi) Even for such a deduction, the borrowing so made, must be genuine, having due regard to the assets of the assessee at the time.

8. From a comparison of clauses (e) and (k) of section 5 of the Act, the following factors emerge :

For the applicability of clause (e), any expenditure, inclusive of interest incurred in the previous year, may figure as a deduction in the computation

of the agricultural income of a person, provided such an expenditure, not being in the nature of capital expenditure or personal expenses of the

assessee are laid out or expended wholly and exclusively for the purpose of the land, and even if from such a land, no income is derived.

But, for the applicability of clause (k), the interest payment in the previous year to the extent of nine per cent. on an amount equivalent to twenty-

five per cent. of the agricultural income from the land in that year, from which the income is derived alone is liable as a deduction in the computation

of the agricultural income of a person and that too, when the need for the borrowing is genuine, having regard to the assets of the assessee at the

time.

From clause (e) of section 5 of the Act we are able to notice the phraseologies or expressions, namely, ""laid out or expended wholly and

exclusively for the purpose of the land"" and from clause (k) thereof, we are able to discern the expression, ""any amount borrowed and actually

spent on the land from which the agricultural income is derived"".

9. The question whether the agricultural income referred to in clause (k) means gross agricultural income or taxable agricultural income, which can

be found out only after making all the allowances or deductions provided for in the various clauses of the said section was posing some agonising

situations to the authorities and solution to such a question was also found or arrived at by this court in certain decisions. The interpretation of the

expressions as above actually caused some difficulties in giving relief to assessees, by way of deduction in the computation of the agricultural

income and the difficulties or obstacles posed in giving interpretation to those expressions had been nicely solved with ease and grace, by this

court, on occasions more than one, and profitable it is for us, to refer to those decisions.

10. In Cauvery Peak Estate and Others Vs. Government of Madras, , the question as to Whether the agricultural income referred to in clause (k)

of section 5 of the Act is referable to ""gross agricultural income"" or ""taxable agricultural income"" came up for consideration and what the Division

Bench of this court said on such a question gets reflected as below (page 639) :

Section 5 provides for computation of the agricultural income and it says that the agricultural income of a,person shall be computed after making

the deductions set out in various sub-sections set out thereunder. Sub-section (k) provides for deduction towards.interest paid on the amount

borrowed and actually spent by the assessee on the land. At the stage of finding out the deduction towards interest paid by the assessee, it is not

possible to ascertain as to what exactly is the net taxable income, for the taxable income has to be.computed only after making the deductions

contemplated under the various sub-sections including sub-section (k). Therefore, when the second proviso limits the deduction to 25 per cent. of

the agricultural income from the land, it can only mean the gross agricultural income and not the taxable agricultural income which can be found out

only after making all the allowances or deductions provided for in the various sub-sections.

11. It appears, the decision, as above, had not taken into account the amendment made to the second-proviso to clause (k) of section 5 by the

Madras Act XXIX of 1958. The said amending Act limited the measure of deduction of interest to nine per cent. on an amount equivalent to

twenty-five per cent. to the agricultural income from the land in that year. Whatever it is, the decision lays down the dictum or ratio that the

agricultural income referred to in clause (k) of the said section can only mean the ""gross agricultural income"" and not the ""taxable agricultural

income"" Which can be found out only after making all the allowances and deductions provided for in the various sub-sections.

12. In Kil Kotagiri Tea and Coffee Estates Co. Ltd. Vs. Government of Madras, , the expression ""for the purpose of the land"" and ""for the,

purpose of deriving the agricultural income from the land"", as traceable to clauses (e) and (k) of section 51 of the Act came up for interpretation

and what the Division Bench, of this court said is as below (headnote)

Section 5(e) of the Madras Agricultural Income Tax Act, 1955, is in the nature of a residuary clause and would take in not only those expenditure

incurred for the purpose of earning the agricultural, income but also very many expenses involved in carrying on the agricultural activity as an

occupation. The expression ''for the purpose of the land'' is much wider in scope than the expression ''for the purpose of deriving the agricultural

income from the land''. It covers a wide range of expenses taking in not only the expenses incurred actually for deriving agricultural income but also

expenses which are not directly incurred for deriving agricultural income but have been expended in connection with the lands which do not have

any relationship to the agricultural income derived in the previous year. If the expenses are reasonably connected with the holding of the land and

using it for the purpose of agriculture, those expenses will come under the expression ''for the purpose of the land''.

13. In expressing as above, this court took into consideration certain decisions of the Supreme Court, which happened to consider similar

questions.

14. In The Travancore Rubber and Tea Co. Ltd. Vs. The Commissioner of Agricultural Income Tax, Kerala, , the Supreme Court was

considering section 5(j) of the Travancore-Cochin Agricultural Income Tax Act, 1950 (for short ""the Travancore-Cochin Act""), which reads as

follows (page 753) :

15. ""5. 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 High Court of Kerala hold that the expenses incurred for the upkeep and maintenance of immaature rubber plants could not be considered as laid out or expended for the purposes of deriving agricultural income. The Supreme Court reversed the decision of the High Court and held that the

expenses incurred on the upkeep and maintenance of the whole estate including the immature rubber plants would also come within the purview of

the expression ""laid out and expended wholly and exclusively for the purpose of deriving the agricultural income"".

16. In Commissioner of Agricultural Income Tax, Trivandrum Vs. Calvary Mount Estates (Private) Ltd., , the Supreme Court considered the

scope of section 51(e) of the Madras Act.

17. In that case also the expenses that were the subject-matter of dispute were incurred, in forking and manuring of the non-bearing and immature

rubber plants grown in the estate. The Supreme Court followed their earlier decision in The Travancore Rubber and Tea Co. Ltd. Vs. The

Commissioner of Agricultural Income Tax, Kerala, and held that those expenses are deductible u/s 5(e) of the Act. While so holding, the Supreme

Court noted the difference in phraseology in section 5(e) of the Travancore-Cochin Act and section 5(e) of the Madras Act and held, that the

expression ""for the purpose of land"" occurring in the Madras Act was much more favourable to, the assessee for his contention than the expression

for the purpose of deriving agricultural income"" occurring in the Travancore-Cochin Act. The definition of ""land"" in section 2(nnn) in the Madras

Act includes ""plantation"" and that is why section 5(e) reads as ""for the purpose of the land"" instead of the original expression for the purpose of

plantation. It would be seen, therefore, that the expression ""for the purpose of the land"" is wider in its content than the expression ""for the purpose

of deriving agricultural income"".

18. In Puthutotam Estates (1943) Ltd. v. State of Tamil Nadu [1934] 148 ITR 341, the distinction between clauses (e) and (k) of section 5 of the

Act had been brought about and what their Lordships of this court said on that aspect of the matter is as below (headnote) :

Sections 5(e) and 5(k) of the Tamil Nadu Agricultural Income Tax Act, 1955, operate in different areas. Section 5(e) applies to any expenditure

laid out or expended wholly and exclusively for the purpose of the land, not being in the nature of capital expenditure or personal expenses of the

assessee. Section 5(k) applies only to interest paid on the amounts borrowed and actually spent on the existing crop on the land, from which

income is derived and will not apply to any interest payments on amounts borrowed for maintaining the other areas or plants from which

agricultural income is not derived in the assessment year. The distinction made by the statute between lands in general and lands from which

agricultural income is derived cannot be overlooked. Consequently, the interest payments made on the amounts borrowed and actually spent on

the maintenance of the crop which yielded agricultural income will fall u/s 5(k) while the interest paid on the amounts borrowed for maintaining

immature plants not yielding any income will fall u/s 5(e). There is no question of a restriction in respect of a deduction to be made u/s S(e) as

contemplated u/s 5(k).

19. In State of Madras Vs. G.J. Coelho, , the question as to whether the entire interest paid by an assessee on monies borrowed for the purpose

of purchasing the plantations should be deducted as expenditure laid out or expended wholly and exclusively for the purpose of the plantations u/s

5(e) of the Madras Plantations Agricultural Income Tax Act, 1955, came up for consideration before the Supreme Court and the apex court, in

answering such a question held (headnote) :

(i) that the interest was not capital expenditure as no new asset was acquired or enduring benefit obtained as a result of the payment of interest;

(ii) that the payment of interest was not a personal expense. Every expense to discharge a personal obligation did not become a personal expense

within section 5(e). ''Personal expenses'' included only expenses on the person of the assessee or to satisfy his personal needs such as clothes,

food, etc., or for purposes not related to the business for which the deduction was claimed;

(iii) that it was impossible to dissociate the character of the respondent as the owner of the plantations and as a person working them. He had

bought the plantations for working them as plantations. The payment of interest on the amount borrowed for the purchase of the plantations when

the whole transaction of purchase and the working of the plantations was viewed as an integrated whole was so closely related to the plantations

that the expenditure could be said to be laid out or expended wholly and exclusively for the purpose of the plantations;

(iv) that, therefore, the interest paid by the respondent was allowable as a deduction u/s 5(e) of the Madras Plantations Agricultural Income Tax

Act, 1955.

In principle, there is no distinction between interest paid on capital borrowed for the acquisition of a plantation and interest paid on capital

borrowed for the purpose of an existing plantation. Both are for the purposes of the plantation.

20. In State of Madras Vs. Thiru Arooran Sugars Ltd., , the distinction between clauses (e) and (k) of section 5 of the Act came up for

consideration and what the Division Bench of this court said thus is relevant (headnote) :

Interest paid by the assessee on the unpaid part of the consideration for the purchase of agricultural land due to the vendor is deductible from the

income derived from such land u/s 5(e) of the Madras Agricultural Income Tax Act, 1955;

There is a clear difference between ''moneys borrowed for expenses wholly and exclusively for purposes of the land'' referred to in section 5(e)

and ''moneys borrowed and actually spent on the land'' referred to in section 5(k). For section 5(k) to apply the money borrowed should have

been actually ''spent on the land'' and it is not enough that the money was spent for the purpose of the land in connection with the business activities

of the assessee which resulted in the earning of the agricultural income and it is for the State to establish that particular items represent moneys

actually spent on the land so as to take out any portion of those items from the scope of section 5(e).

Section 5(e) is the general provision and section 5(k) is a special provision, and if section 5(k) applies to certain interest charges the application of

section 5(e) would be excluded even if all the statutory requirements of section 5(e) are satisfied.

21. The decision in State of Madras Vs. Thiru Arooran Sugars Ltd., , we rather feel, had been very often misinterpreted and misquoted by the

assessing authorities. The said authorities expressed as if this decision laid down the ratio that once interest deduction on borrowed capital by the

assessee is not admissible as a deduction under clause (k) of section 5 of the Act, the same cannot at all be construed as an item eligible for deduction under clause (e) of the said section, even if the parameters prescribed under the said clause (e) of that section are satisfied. That is the

wrong approach adopted by the assessing authorities. The said decision did not say so at all and what the decision lays down is that once the

interest on borrowed capital is allowed as a deduction, on satisfaction of the parameters prescribed therein, the same cannot at all figure again by

way of deduction under clause (e) of the said section and nothing further.

22. We may say, at this juncture, that this decision is not expressing any opinion, contra to the decision in Puthutotam Estates (1943) Ltd. Vs.

State of Tamil Nadu, , wherein it is laid down that clauses (e) and (k) of section 5 of the Act operate in different areas.

23. Our attention had been drawn to two unreported decisions of this court in Bonaventure Estate Vs. State of Tamil Nadu,) and M. S. P. Rajes

v. State of Tamil Nadu in T.C. No. 378 of 1986 dated September 26, 1995.

24. In Bonaventure Estate Vs. State of Tamil Nadu, (Appex.)), a sum of Rs. 2,91,664 was claimed as a deduction towards interest on borrowed

capital under clause (k) of section 5 of the Act. It appears, that the assessee sustained a net loss for the assessment year in question. In such a

situation, the question that arose for consideration was whether the deduction claimed under clause (k) of section 5 of the Act is permissible and

allowed to be deducted for computing the agricultural income u/s 5 of the Act.

25. Learned counsel appearing for the Revenue appeared to have submitted that the deduction under clause (k) of section 5 of the Act is not

permissible, although the same could be allowed as a permissible deduction under clause (e) of section 5 of the Act. The rationale or reasoning

adopted by learned counsel for the Revenue is twofold. One is, as found by the Tribunal, that when there is net loss, there cannot be any deduction

under clause (k) of section 5 of the Act. The other reasoning is that a portion of the borrowal was not utilised on the land from which the

agricultural income was derived.

26. On the basis of the rationale or reasoning of the said learned counsel for the Revenue, a Division Bench of this court expressed in paragraphs

5, 6 and 7 (pages 216-17)

Anyway, since learned counsel for the Revenue herself submits that the abovesaid entire amount of Rs. 2,91,664 would fall u/s 5(e) of the Act and, hence, deductible, the assessee will in no way be aggrieved. No doubt, learned counsel for the assessee sought to initially argue that the term

''agricultural income'' used in the abovesaid proviso to section 5(k) of the Act would also include a loss. But, he could not press that point very

much. In our view also, that term would mean only a plus figure and not a minus figure. It must be noted that the term used in the said proviso is

only ''agricultural income'' as defined u/s 2(a) of the Act, and from which all the deductions u/s 5 of the Act are allowed. The term used in the

abovesaid proviso is not ''total agricultural income'' as defined in section 2(x) of the Act, which alone is charged to tax under the charging provision

viz., section 3 of the Act. Though total agricultural income may also include a minus figure (loss) the term ''agricultural income'' would not include a

minus figure or loss.

At any rate, as already stated, since learned counsel for the Revenue herself fairly submits that the abovesaid entire sum of Rs. 2,91,664 would be

deductible u/s 5(e) of the Act, the assessee must be fully satisfied and there could be no grievance on the part of the assessee. Even before giving

the abovesaid deduction of Rs. 2,91,664 there is a loss which, it is said, could be carried forward in accordance with the provisions of the Act.

Then, the abovesaid figure of Rs. 2,91,664 also could be carried forward in accordance with the provisions of the Act.

Accordingly, the tax case revision is allowed. The order of the authorities below are set aside. No costs.

27. In M. S. P. Rajes, the order is a short and crisp one and it reads as below :

In the tax case revision filed u/s 54(1) of the Tamil Nadu Agricultural Income Tax Act, 1955, relating to the assessment year 1983-84 only a short

question is involved. The claim by the assessee is for deduction u/s 5(k) of the Tamil Nadu Agricultural Income Tax Act (hereinafter referred to as

''the Act'').

There is no dispute that the claim made is with reference to the interest spoken to therein, namely, interest paid in the previous year on any amount

borrowed and actually spent on the land from which agricultural income is derived. But in the above referred to assessment year in question there

was only a minus figure under the caption ''agricultural income''. In such a situation, we have already held in our judgment dated August 1, 1995 in

T.C. (R) No. 83 of 1986 that the term ''agricultural income'' that is used in the second proviso to section 5(k) of the Act could not mean a loss or

minus figure. In other words, when ''agricultural income'' is a minus figure, as per our abovesaid earlier judgment the second proviso became

inoperative. Therefore, in the present case the main part of section 5(k) of the Act alone will operate, that is, the deduction has to be given in

entirety and without any limit as provided in the abovesaid second proviso. In the present case, the allowance has been given only partly and by all

the authorities including the Tribunal, which is not correct. We hold that in view of the abovesaid reasoning, the assessee is entitled to full allowance

without any monetary limit u/s 5(k) of the Act. Accordingly, we set aside the orders of the authorities below including the Tribunal with reference to

the abovesaid deduction claimed by the assessee u/s 5(k) of the Act. The assessing authority has to work out the deduction in accordance with this

judgment. The tax case is allowed accordingly. No costs.

28. We may also add that while dealing with this question, in our abovereferred judgment dated August 1, 1995, in Tax Case No. 83 of 1986 at

the end of the paragraph 5 thereof we had stated thus :

''Though total agricultural income may also include a minus figure (loss) the term ""agricultural income"" would not include a minus figure or loss'' and

that evidently, this observation would apply only with reference to the term ''agricultural income'' used in the abovesaid second proviso to section

5(k) of the Act.

29. The decision in Bonaventure Estate Vs. State of Tamil Nadu, (Appex.) proceeded on the concession made by learned counsel for the

Revenue. Such being the case, the said decision, as such, cannot at all be relied upon, as a precedent laying down any ratio or dictum in respect of

a question raised and considered by giving a rationale or reasoning, in answering such a question.

30. From the question in M. S. P. Rajes, we are able to discern that the said decision purports to follow the earlier decision rendered by the same

Division Bench in Bonaventure Estate Vs. State of Tamil Nadu, (Appex.). While doing so, the Bench explained its earlier decision as to the

meaning of the term ""agricultural income"" as traceable to the second proviso to clause (k) of section 5 of the Act. Having stated so, the Bench further expressed that the second proviso to clause (k) of section 5 will become inoperative and the main part of clause (k) of section 5 alone

would operate, that is to say, the deduction has to be given in its entirety and without any limit, as provided for in the second proviso. While so

holding, the Bench gave the assessee, full allowance without any monetary limit prescribed under clause (k) of section 5 of the Act. While doing so,

we rather feel, the said Bench did not at all take into consideration, the earlier view expressed by a Division Bench of this court in Cauvery Peak

Estate and Others Vs. Government of Madras, and that apart, the ratio of the said decision of the Division Bench is contrary to the scheme of the

Act. For saying so, we should not be misunderstood and the said decision can be brushed aside also on the salutary principle of per incuriam.

Therefore, the decisions of the said Division Bench of this court in Bonaventure Estate Vs. State of Tamil Nadu, (Appex.) and M. S. P. Rajes

(supra) are not binding on us, in the face of the decision of Cauvery Peak Estate and Others Vs. Government of Madras, , and in the face of the

salutary and sanguine provisions adumbrated under the second proviso to clause (k) of-section 5 of the Act.

31. Bearing in mind the principles as laid down in the decisions, as referred to above, if we analyse the factual matrix of all these actions now

before us, we rather feel, the authorities below did not at all apply their mind to the applicability of the sanguine provisions adumbrated under

clauses (e) and (k) of section 5 of the Act. For the sake of emphasis, we may state that none of the authorities below recorded any finding that the

need for the borrowing was genuine, having due regard to the assets of the assessee at that time. There is also no finding recorded by any of them

as to the gross income of the assessee relating to the previous year in question. Further, there is no semblance of materials traceable to the orders

of the authorities below as to the quantifying of the allowable interest under the second proviso to clause (k) of section 5, in the sense of finding out

initially an amount equivalent to 25 per cent. of the gross income and then again arriving at nine per cent thereof that is to say, on an amount

equivalent to twenty-five per cent. of the gross income in giving relief to the respective assessees. What all the authorities recorded was the interest

claimed, interest allowed or disallowed, either under clause (e) or clause (k) of section 5 of the Act and nothing further. In such state of affairs, it is not at all possible for this court to determine the question as to whether the interest claimed is capable of being allowed or not either under clause

(e) or (k) of section 5 of the Act. We having been placed in such a predicament position there is no other go for us, except to remit all those

matters back to the Tribunal for consideration afresh of the question relatable to the claim of interest made by the respective assessee under clause

(e) or (k) of section 5 of the Act. The Tribunal, within six weeks from the date of receipt of the records from this court, shall dispose of all these

actions, by analysing the factual matrix of the cases of the individual assessees, as relatable to the claim of interest on borrowed capital either under

clause (e) or (k) of section 5 of the Act and give a proper legal fitment, in the manner indicated by us, by referring to a catena of decisions

emerging from this court and the apex court as well.

32. In Tax Case (Revision) Nos. 519 to 522 of 1985, apart from the claim of disallowance of interest, what is agitated further is the addition of

yield of rubber in the assessment years in question. While making the addition, the Agricultural Income Tax Officer took into consideration the

increase in the yield year by year relatable to the previous assessment years and that being so, he would say, the consequent fall in the yield

relatable to the assessment year in question cannot at all be accepted, when especially the rubber trees yield more on growing older and, therefore,

an addition so made, on the facts and circumstances of those cases, we rather feel, is quite reasonable not calling for interference.

33. All these tax (revision) cases are thus disposed of. No costs.

