

(1989) 11 MAD CK 0016

In the Madras High Court

Case No : Tax Case No"s. 598 to 601 of 1979 (Revision No"s. 259 to 262 of 1979)

Sakthi Estates

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 30-11-1989

Acts Referred:

Tamil Nadu Agricultural Income Tax Act, 1955 — Section 5

Citation : (1990) 185 ITR 601

Hon'ble Judges : Venkataswami, J;K.M. Natarajan, J

Bench : Division Bench

Advocate : K.J. Chandran, for the Appellant; R. Karuppan, Addl. Govt. Pleader, for the Respondent

Judgement

K.M. Natarajan, J.—These revisions are directed by the assessee against the common order passed by the Tamil Nadu Agricultural Income

Tax Appellate Tribunal, Madras, in respect of the levy of assessment for the years 1973-74 to 1976-77. The revision-petitioner is the assessee,

namely, Messrs. Sakthi Estates, Pollachi. The abovesaid estate consisted of lands on which coffee, cardamom, etc., were grown. According to the

assessee, only on a portion of the lands, there were mature plants from which income was actually derived. There were immature coffee plants and

on some lands, new planting work was done which yielded no agricultural income during the years. The assessee claimed deduction of the interest

on the loan borrowed in connection with the maintenance of the said estate. The question that arose for consideration before the Tribunal was

whether deduction is to be given u/s 5(k) or u/s 5(e) of the Tamil Nadu Agricultural Income Tax Act, 1955. It was contended by the assessee,

revision-petitioner herein, that section 5(k) of the Act applies only to the amount borrowed and actually spent on the land from which agricultural income is derived, and any interest other than this would be governed by section 5(e) of the Act, and as such, even in respect of establishment expenses, such portion incurred on land which actually yielded income during the accounting year has to be segregated from expenses incurred in respect of lands on which immature plants existed and the same procedure must be adopted in computing the agricultural income. The Tribunal, after considering the respective contentions of the assessee as well as the Department, remanded I.T.A. No. 144 of 1978 and in respect of the other three appeals, I.T.A. Nos. 20, 21 and 22 of 1978, they are partly allowed and partly remanded.

2. The grievance of the assessee is with respect to the observations in para 5 of the order, where it is stated : ""We may, at the outset, state that the interpretation placed by learned counsel, if pressed to its logical end, would mean that the Agricultural Income Tax Officer had to find out whether each mature plant actually yielded any income during the relevant accounting year or was infested by pests, etc.,"" According to learned counsel for the petitioner, the said observation of the Tribunal is not correct and it was not the interpretation put forward on behalf of the assessee by learned counsel. On the other hand, the only contention put forward on behalf of the assessee was that only in cases where any interest is paid in the previous year on any amount borrowed and actually spent on the land from which the agricultural income is derived, deduction has to be allowed in accordance with section 5(k) of the Act and the remaining portion has to be dealt with u/s 5(e) of the Act. Learned counsel also submitted that the Tribunal has not properly interpreted the distinction between sections 5(k) and 5(e) of the Act and erred in holding that the interest on monies borrowed for cultivation expenses have to be brought u/s 5(k) of the Act no matter whether there was any mature or immature plant. It was also submitted that the Tribunal is not correct in saying that, in determining the expenditure incurred on the land from which the agricultural income is derived, it is not possible to make this dubious distinction between land which yielded some produce and the rest. Though the assessee is not disputing the order of remand, the said finding of the Tribunal, according to learned counsel, will work great hardship, that it is against the very

provisions, that the Tribunal has not properly appreciated the distinction between sections 5(e) and 5(k) of the Act and that it is only for the

purpose of clarification that these revision-petitions are filed. In this connection, learned counsel drew our attention to the relevant provisions of

sections 5(e) and 5(k) of the Tamil Nadu Agricultural Income Tax Act, 1955, as well as the decision of this court in Puthutotam Estates (1943)

Ltd. Vs. State of Tamil Nadu, . The scope of sections 5(e) and 5(k) of the Act had been dealt with by three Division Benches of this court. In

State of Madras Vs. Thiru Arooran Sugars Ltd., , it was observed (at p. 345 of 148 ITR) :

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), that 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 agricultural income and that 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). The court observed that "section 5(k) being a

special provision, 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".

3. In Kil Kotagiri Tea and Coffee Estates Co. Ltd. Vs. Government of Madras, , another Division Bench of this court held that section 5(e) is in

the nature of a residuary clause and would take in not only the 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, that the expression ""for the purpose of the land"" is much wider in

the scope than the expression ""for the purpose of deriving the agricultural income from the land"", that section 5(e) 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 and that those expenses will come under the expression ""for the purpose of the land"" and will have to be dealt with u/s 5(e). In

Puthutotam Estates (1943) Ltd. Vs. State of Tamil Nadu, . A Division Bench of this court held (headnote) :

The expenditure incurred on immature coffee plants was a revenue expenditure and not a capital expenditure, and interest paid on the borrowings

made for maintaining the immature plants would clearly fall u/s 5(e) and not u/s 5(k).

It is further held (headnote) :

Section 5(k) would apply only in relation to the interest payments on the amounts borrowed and actually spent on the land from which the income

had been derived in the previous year.

4. On a careful analysis of the ratio laid down in the above decisions with regard to the distinction between section 5(e) and section 5(k), we are of

the view that the very purpose of having a provision like section 5(k) is to see that while giving an allowance for the interest payments on the

amount borrowed for spending on the land which yields income, there should be a limit as. Otherwise, it is possible for the assesseees to claim a

substantial portion of the income as an expenditure incurred for maintaining the crop which yields the income while such limitation is not necessary

in respect of the interest payments on other borrowings for the maintenance of immature coffee plants. It is further clear that section 5(k) applies

only to interest paid on the amounts borrowed and actually spent on the existing crop in the land from which income is derived and it 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. In view of the above ratio laid down, the finding of the Tribunal with regard to the distinction between section 5(e) and section

5(k) is liable to be set aside.

5. For all these reasons, while sustaining the remand passed by the Tribunal, we direct the Assistant Commissioner, Agricultural Income Tax, to

apply section 5(k) only in relation to the interest payments on the amounts borrowed and actually spent on the land from which income had been

derived in the previous year and not in respect of the interest paid on the amounts borrowed for maintaining the immature plants which would

clearly fall u/s 5(e) and not u/s 5(k). The assessee will be entitled to costs.
Counsel's fee Rs. 250 (One set.)