

(1972) 10 MAD CK 0044

In the Madras High Court

Case No : Tax Case No. 300 of 1967 (Revision No. 174)

Stanmore (Anamallay) Estates Ltd.

APPELLANT

Vs

Government of Madras

RESPONDENT

Date of Decision : 09-10-1972

Acts Referred:

Constitution of India, 1950 — Article 366(1)

Tamil Nadu Agricultural Income Tax Rules, 1955 — Rule 7

Citation : (1973) ILR (Mad) 688 : (1973) 92 ITR 168

Hon'ble Judges : V. Ramaswami, J;G. Ramanujam, J

Bench : Division Bench

Advocate : M. Uttamma Reddi, for the Appellant; K. Venkataswami, First Assistant Government Pleader, for the Respondent

Judgement

Ramanujam, J.—The assessee in this case is a public limited company owning a tea estate in Valparai Hills. On a portion of the estate cardamom was also cultivated.. For the assessment year 1965-66, the Agricultural Income Tax Officer determined the total agricultural income of the assessee under the Madras Agricultural Income Tax Act at Rs. 5,31,112. While computing the said total, the Agricultural Income Tax Officer disallowed the following three items of expenses incurred by the assessee :--(1) a sum of Rs. 8,063 said to have been incurred in connection with the cardamom cultivation ; (2) a sum of Rs. 3,416.87 said to be the interest paid to the workers on their savings deposits ; and (3) a sum of Rs. 2,056.39 incurred for the annual sports and other social gatherings of the labourers.

2. Aggrieved against the disallowance of those items, the assessee went in appeal to the Assistant Commissioner of Agricultural Income Tax but without success. The assessee, therefore, filed a further appeal before the Tribunal. The Tribunal also substantially agreed with the view taken by the Agricultural Income Tax Officer, though it allowed a sum of Rs. 597 as a further deduction under the first head. The decision of the Tribunal is being challenged by the assessee

before us.

3. The learned counsel for the assessee contends before us that the assessee is also a Central Income Tax assessee, that the Central Income Tax authorities have determined the agricultural income from tea, that Rule 7 of the Madras Agricultural Income Tax Rules enjoins that the portion of the income worked out under the Indian Income Tax Act and left unassessed as being agricultural shall be assessed under the Agricultural Income Tax Act, that, therefore, the Agricultural Income Tax Officer cannot make a fresh computation of the agricultural income from tea except when he invokes the first proviso to that rule, and that the allowance given by the Central Income Tax Officer while determining the agricultural income to be left unassessed cannot be disallowed on a recomputation by the Agricultural Income Tax Officer. In support of the said contention reference is made to the decisions in *The Karimtharuvi Tea Estates Ltd., Kottayam and Another Vs. State of Kerala and Others*, and *Anglo American Direct Tea Trading Co. Ltd. Vs. Commissioner of Agricultural Income Tax, Kerala State, Trivandrum*, .

4. In *Karimtharuvi Tea Estates Ltd. v. State of Kerala* their Lordships of the Supreme Court, having regard to the definition of "agricultural income" in Article 366(1) and entry 46, List II of Schedule VII of the Constitution, held that the power of the State legislature to make a law in respect of taxes on agricultural income arising from tea plantations is limited to legislating with respect to the agricultural income determined in accordance with Rule 24 of the Indian Income Tax Rules, 1922, under which income derived from the sale of tea grown and manufactured by the seller is first to be computed u/s 10 of the Indian Income Tax Act, 1922, as if it were income derived from business, and of the income so computed, 60% alone will be taken to be agricultural income, that the State legislature cannot enact such a provision which would make agricultural income from tea plantations higher than what it would be if computed in accordance with Rule 24 read with Section 10 of the Indian Income Tax Act, and that the provisions of the Indian Income Tax Act and the Rules made thereunder will control the provisions of the Agricultural Income Tax Act enacted by the State legislature and the Rules made thereunder. In *Anglo-American Direct Tea Trading Co. Ltd. v. Commissioner of Agricultural Income Tax* the Supreme Court again reiterated the said principle and stated that income from the sale of tea grown and manufactured by the assessee has to be computed as if it were income from business under the Central income tax Act and the Rules framed thereunder, and 60% of the income so computed is agricultural income within the meaning of the Central Income Tax Act and the Constitution of India, that the power of the State legislature to make a law in respect of taxes on agricultural income arising from tea plantations is limited to legislating with respect to the agricultural income so determined, and that, therefore, if before the Agricultural income tax Officer proceeds to make the assessment under the State Act, an assessment of income by the Income Tax Officer under Rule 24 of the Income Tax Rules, 1922, or Rule 8 of the Income Tax Rules, 1962, has been made, then the Agricultural Income

Tax Officer acting under the State Act is bound to accept the computation of the tea income already made by the Central Income Tax authorities and to assess only 60 per cent. of the income so computed, less allowable deductions under the said Act. Dealing with the first proviso to Rule 7 of the Madras Agricultural Income Tax Rules, 1955, the Supreme Court stated in *State of Tamil Nadu Vs. Kannan Devan Hills Produce Co. Ltd.*, :

"It is noteworthy that even in the first proviso to Rule 7 the Agricultural Income Tax Officer has been enjoined to ordinarily accept the computation made by the Central Income Tax Officer."

5. In a recent decision of this court in *Commissioner of Agricultural Income Tax and Another Vs. Periakaramalai Tea and Produce Co. Ltd. and Others*, Veeraswami C.J., speaking for the Bench, while considering the question as to whether the deduction in respect of the profits from the industry contemplated u/s 80-I of the Income Tax Act, 1961, should be applied to the profits and gains attributable to the income from the tea industry before Rule 3 of the Income Tax Rules, 1962, is applied to apportion the agricultural income chargeable to agricultural Income Tax, stated :

"Under the Constitution "agricultural income" has been defined by Article 366 to mean agricultural income as defined in the Income Tax Act and any variation to that definition by the State legislature will have to receive the consent of the President under Article 274. Agricultural income has been defined under the Act. Income for the purpose of charge under the Income Tax Act would not include agricultural income. In that situation, Rule 8 of the Income Tax Rules, 1962, by Clause (1) provides that income derived from the sale of tea grown and manufactured by the seller in India shall be computed as if it were income derived from business, an forty per cent. of such income shall be deemed to be income liable to tax. The forty per cent. contemplated by the rule, is the chargeable income and that means, before applying the forty per cent. rule, the income should have been computed in accordance with the provisions of the Act, that is to say, after allowing the deductions including those under Chapter VI-A of the Income Tax Act. If that has not been done, and the Income Tax Office] for the purpose of the Income Tax Act, has, before applying Section 80-I determined the forty per cent. of the income from which he deducted the per cent. u/s 80-I, the balance of the income could not be taken to be 60 per cent. of the income for the purpose of agricultural Income Tax. The Agricultural Income Tax Officer, in order to ascertain 60 per cent. of the income for the purpose of levy under the Agricultural Income Tax Act should have to deduct 8 per cent. u/s 80-I in order to ascertain the true income."

6. Relying on the above decisions, the learned counsel for the assessee contends that the authorities below acting under the Agricultural Income Tax Act cannot modify the computation of agricultural income made by the Central Income Tax Officer by disallowing some of the items of expenses which have been actually allowed by the Income Tax Officer while determining the income from tea, and

that if such modification is permitted, it would mean that they can compute agricultural income at a figure higher than the amount computed as agricultural income by the Central Income Tax Officer. We are of the view that the learned counsel is right in the above submission. Having regard to the definition of "agricultural income" in Article 366(1) of the Constitution and that found in the Income Tax Act, it is not open to the Agricultural Income Tax Officer to reopen the computation and adopt a different method of computation than the one adopted by the Income Tax authorities so as to increase the agricultural income, for that would mean that the Agricultural Income Tax Officer can compute the agricultural income without reference to the constitutional definition as also the provisions of the Income Tax Act. The decisions referred to above clearly establish the principle that the Agricultural Income Tax Officer could assess under the Agricultural Income Tax Act only that portion of the income from tea left unassessed by the Income Tax authorities as being agricultural income. Therefore, the disallowance of items Nos. 2 and 3 by the Agricultural Income Tax Officer cannot be sustained, as these allowances have been granted by the Income Tax Officer under the provisions of the Income Tax Act while computing the agricultural income from tea.

7. However, as regards the first item disallowed by the Agricultural Income Tax Officer, the position is slightly different. There, the Income Tax Officer has apportioned the total head office expenses of the assessee-company on the basis of the extent used for cardamom and tea and allowed the proportionate share of expenditure of Rs. 8,369 in addition to what has been allowed by the Agricultural Income Tax Officer in determining the income from cardamom cultivation in his provisional assessment. In his final assessment order, the Agricultural Income Tax Officer has not accepted the apportionment made by the Income Tax Officer of the head office expenses on the basis of acreage, on the ground that the cardamom cultivation has been practically given up. Even if the view taken by the Agricultural Income Tax Officer in this regard were to be taken as correct, that would mean that the, said expenditure of Rs. 8,369 disallowed by him should be taken to be the expenditure incurred in relation to the cultivation of tea and should have been allowed as against the agricultural income from tea. This position the assessing officer has overlooked. That the assessee has incurred the said expenditure of Rs. 8,369 is not in dispute. The Income Tax Officer allowed this as a deduction in respect of cardamom cultivation after making allocation between tea and cardamom cultivation, If there is no cardamom cultivation during the year as held by the Agricultural Income Tax Officer, then the allocation cannot be sustained and the entire head office expenses including the disputed sum of Rs. 8,369 has to be taken as expenses relating to the cultivation of tea. Thus, in any case, it seems to be clear that the assessee cannot be denied the benefit of deduction. We are, therefore, of the view that the assessee's contention in respect of all the three items of deductions has to be accepted. The tax case is, therefore, allowed with costs. Counsel's fee Rs. 150.