
(1997) 08 MAD CK 0107

In the Madras High Court

Case No : Tax Case Petition No. 652 of 1986 (Revision No. 177 of 1986)

State of Tamil Nadu

APPELLANT

Vs

Smt. Soundara Rajas

RESPONDENT

Date of Decision : 05-08-1997

Acts Referred:

Income Tax Act, 1961 — Section 28

Citation : (2000) 241 ITR 428

Hon'ble Judges : R. Jayasimha Babu, J;Akbar, J

Bench : Division Bench

Advocate : Deokinandan, T. Mathi, for the Appellant; K.M.L. Majele, Srinivasa Moorthy, for the Respondent

Judgement

R. Jayasimha Babu J.

1. The State has come up in revision against the decision of the Tamil Nadu Agricultural Income Tax Appellate Tribunal, Chennai-104, by which the Tribunal held that the amount realised by the assessee from the sale of silver oak tree, silver oak dried, thandi green, thandi bore and albezzia green trees, did not constitute agricultural income but were capital receipts as these trees were shade trees on a coffee estate and constituted capital assets.

The fact that the assessee owns a coffee estate and that these trees grown on the coffee estate were in fact shade trees, is not in dispute. It was not the case of the authorities at any time that these trees were used solely for the purpose of gaining revenue by way of sale of trees and that they are not necessary for the cultivation of coffee.

That these trees were shade trees and are necessary for the effective cultivation of coffee is borne out by a letter sent by the Senior Liaison Officer, Coffee Board, addressed to power of attorney Moganad Group Plantations, Sommanatham PO, Yercaud, which had been extracted in the order of the Tribunal. In that letter, it has been said that "for coffee only deep rooted permanent shade trees are

recommended for planting with coffee like silver oak, albezzia, aps, jack, mosopsis, etc., when a silver oak is grown as shade trees and it grows old, it will be tall and leaky generally borer ridden with their canopy above 40 feet and will not provide the required shade to coffee underneath. It may also dry up and fall causing physical damage to coffee and in some cases may be the cause of root infection for coffee plants". He has, therefore, advised the coffee planters that it is desirable to have young and mixed type of shade for coffee. It is, therefore, clear that the shade trees when they become old and too high will have to be removed and fresh shade trees planted in their place. The shade trees are planted with the object of providing shade for the plants and not with the object of raising the trees only for eventual sale as timber or fire wood. The shade trees constitute as much fixed assets as the coffee plants in a coffee plantation.

The Government advocate, however, contended that any amount realised from the sale of any produce grown on the land would constitute agricultural income and is, therefore, liable to tax. Reliance was placed on the decision of the Supreme Court in the case of Commissioner of Income Tax, West Bengal, Calcutta Vs. Raja Benoy Kumar Sahas Roy, wherein the court after exhaustive survey of earlier decisions of the courts held as under (headnote) :

"Agriculture comprises within its scope the basic as well as the subsequent operations described above regardless of the nature of the products raised on the land. These products may be grain or vegetable or fruits which are necessary for the sustenance of human beings, including plantations and groves, or grass or pasture for the consumption of beasts or articles of luxury such as betel, coffee, tea, spices, tobacco, or commercial crops like cotton, flax, jute, hemp indigo. All these are products raised from the land but the term agriculture cannot be confined merely to the production of grain and food products for human beings and beasts; it must be understood as comprising all the products of the land which have some utility either for consumption or for trade and commerce and would also include forest products such as timber and sal and piyasal trees, casuarina plantations, tendu leaves and horra nuts."

That the shade trees grown in a coffee estate constitute products obtained from the land is evident. The question that has now arisen is not as to whether the shade trees are agricultural produce but as to whether the amounts realised from the sale of shade trees on a coffee plantation constitute taxable agricultural income. It is required to be noticed at this stage that the Tamil Nadu Agricultural Income Tax Act does not contain any provision similar to section 45 of the Indian Income Tax Act and the capital gain received by a person from the sale of a fixed asset which is agricultural in character has not been made exigible to tax. It is only revenue receipts obtained from agriculture that are subject to tax. The jurisdiction of the State Legislature under entry 46 of Schedule VII, List II of the Constitution is limited to agricultural income as defined in article 366(1) as held by the Constitution Bench in the case of The Karimtharuvi Tea Estates Ltd., Kottayam and Another Vs. State of Kerala and Others, .

If the trees had been grown on land for the purpose of sale as timber or firewood and not as shade trees, the income so derived would undoubtedly constitute agricultural income and would be subject to tax. It was so held by this court in the case of *Nellayappan Sastha and Bros. Vs. Commissioner of Agricultural Income Tax*, . Where the trees are grown primarily for the purpose of providing shade for coffee or tea plantation, such trees however cannot be regarded as trees grown for the purpose of obtaining an income from their sale as timber or firewood. Even in the case of such trees, if the trees are not uprooted, but the trees are cut above the ground, the income realised from the sale of such timber would constitute agricultural income as the capital assets would still remain, the tree being capable of being regenerated from the roots which have been left intact.

The Supreme Court in the case of *State of Kerala Vs. Karimtharuvi Tea Estate Ltd.*, held that when the grevelia trees grown on a tea plantation as shade trees are cut down and sold after they had become useless by efflux of time, the amount realised from their sale would not constitute agricultural income. That decision was rendered under the Kerala Agricultural Income Tax Act. The court in the course of the judgment observed as under (page 276) :

"There is no controversy about the fact that the owners of tea estates plant grevelia trees not for the purpose of deriving any income therefrom but solely for the purpose of providing shade for the tea plants and that such shade is essential for the proper cultivation of tea. The trees were cut down and sold after they had become useless by efflux of time. The grevelia trees in the tea estate of the respondent constituted, therefore, capital assets and proceeds derived therefrom by sale as firewood would "not constitute agricultural income under the Act."

In the case of *V. Venugopala Verma Rajah Vs. Commissioner of Income Tax, Kerala*, it was observed (page 466) :

"Where the trunks are cut so that stumps remain intact capable of regeneration, receipts from the sale of trunks would be in the nature of income. It is true that the tree is a part of the land. But by selling a part of the trunk, the assessee does not necessarily realise a part of his capital."

The apex court in the case of *A.K.T.K.M. Vishnudatta Andharjanam represented by D.V. Nambudripad Desamangalam Vs. The Commissioner of Agricultural Income Tax, Trivandrum*, held that the sale of trees by removing the roots results in the removal of the source from which fresh growth of trees could take place and the receipts from the sale of trees after uprooting would constitute a capital receipt.

The trees in question in this case-silver oak and albezzia and other trees had been grown as shade trees for the coffee plants. The ratio of the judgment of the apex court rendered in the case of tea is equally applicable to the case of a coffee plantation. The Mysore High Court in the case of *Consolidated Coffee Estates (1943) Ltd Vs. Commissioner of Agricultural Income Tax, Mysore*, has

also taken a similar view. It is not the case of the Revenue that the shade trees had not been uprooted and were capable of regeneration. We do not find any error in the order of the Appellate Tribunal. The petition is, therefore, dismissed, but in the circumstances, without cost.