
(1993) 06 KL CK 0042
In the High Court Of Kerala
Case No : T.R.C. No. 155 of 1991

Teekoy Rubbers (India) Ltd.

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 09-06-1993

Acts Referred:

Citation : (1994) 205 ITR 293

Hon'ble Judges : K.S. Paripoornan, J; K.P. Balanarayana Marar, J

Bench : Division Bench

Advocate : Markose Vellapaly, for the Appellant; V.C. James, Senior Government Pleader, for the Respondent

Judgement

K.S. Paripoornan, J.—The petitioner is an assessee under the Agricultural Income Tax Act. The Revenue is the respondent. The matter relates to the assessment year 1979-80. The petitioner, a limited company, is carrying on business, inter alia, of rubber planting. By three agreements dated March 15, 1976, April 30, 1976, and April 20, 1977, the assessee sold some of the uneconomic rubber trees to third parties. During the accounting period relevant to the assessment year 1979-80, the assessee received a sum of Rs. 1,86,395 under the aforesaid agreements. The assessee treated the receipts as capital receipts. The assessing authority, however, held that the consideration received under the agreements related to sale value of rubber trees as well as income from slaughter-tapping. According to him, two-thirds of the consideration received during the year should be treated as representing income from slaughter-tapping. It was included in the agricultural income for the year and assessed to tax under the Agricultural Income Tax Act. The order of assessment is dated October 27, 1980. It was confirmed in appeal by the Deputy Commissioner (Appeals) by order dated August 13, 1981. In second appeal, the Agricultural Income Tax Appellate Tribunal, by its order dated January 12, 1989, confirmed the inclusion of two-thirds of the total consideration received as agricultural income from slaughter-tapping. The appeal for this year 1979-80, was disposed of along with the

appeals for the years 1972-73, 1973-74, 1974-75, 1975-76, 1976-77, 1977-78, 1978-79, etc. In considering the various aspects for the assessment year 1979-80 in paragraphs 8 and 9 of the appellate order dated January 12, 1989, the Appellate Tribunal came to the conclusion that, in view of clause 5 of the agreement which shows that the purchasers under the agreement shall not have the right to assign the benefits under the contract or to resell any of the said rubber trees while the same remains on the said estate and the further fact that the assessee did not produce any evidence to show that no .slaughter tapping had taken place, the consideration received as per the agreement was for slaughter-tapping as well as for cutting and removal of trees. The finding of the assessing authority in this regard was confirmed. The inclusion of two-thirds of the consideration as income from slaughter-tapping was also confirmed. The assessee assails the said order of the Appellate Tribunal dated January 12, 1989, in so far as it relates to the assessment year 1979-80, and the inclusion of a portion of the amount received under the agreement for sale of rubber trees as income.

2. We heard counsel for the assessee and also counsel for respondent, Senior Government Pleader, Shri V. C. James. Annexure-A to the paper book is one of the agreements dated March 15, 1976. It is common ground that the other agreements dated April 30, 1976, and April 20, 1977, are similar in import. Clause 5 of the agreement available at page 9 is to the following effect :

"The purchasers shall not have the right to assign the benefits under this contract or to resell any of the said rubber trees while the same remains on the said estate and no persons advancing any claim from or through the purchasers or any of them shall have any right to enter on the said estate."

3. According to the Appellate Tribunal, the benefits referred to in clause 5 of the agreement should invariably mean the right to slaughter-tapping. In paragraph 8 of the appellate order, the Tribunal stated thus :

"Let us reproduce clause No. 5 of the agreement "the purchasers shall not have the right to assign the benefits under this contract or to resell any of the said rubber trees while the same remains on the said estate and no persons advancing any claim from or through the purchasers or any of them shall have any right to enter on the said estate". If we accept the contention of the appellant that the agreement was only for cutting and removal of old rubber trees then what are the "other benefits" under this contract that could be assigned to anybody. It is clear from a reading of this clause that apart from the sale of rubber trees there were other benefits also available to the purchasers under this contract. In circumstances like this the benefits invariably mean the right for slaughter-tapping. Surprisingly there is no clause in the agreement putting restriction on the purchasers from slaughter-tapping."

4. In paragraph 9, the Appellate Tribunal has accused the assessee of not informing the assessing authority that it had entered into an agreement for the

sale of old rubber trees and the trees were cut and removed. The Appellate Tribunal has also stated that the assessee did not produce any evidence to show that no slaughter-tapping had taken place. We are of the view that the reliance placed on clause 5 of the agreement by the Appellate Tribunal is totally fallacious. So also the approach to the question is a clear error and from a wrong perspective, Clause 5 only states that the purchasers shall not have the right to assign the benefits under the contract or to resell any of the said rubber trees. There is no indication whatsoever in the said clause about "other benefits" which the Tribunal has wrongly assumed. It is only the benefits under the contract. On what basis the Tribunal surmised that, in circumstances like this, the benefits invariably mean the right for slaughter-tapping is anybody's guess. We are of the view that clause 5 has been misread by the Appellate Tribunal. Firstly, the term "other benefits" does not occur therein as assumed by the Tribunal. Secondly, there is no basis to say that benefits invariably mean the right for slaughter-tapping. There is no material to say so. The Revenue should have examined parties or gathered material if there was any custom or practice which will point out that the benefits invariably mean the right for slaughter-tapping. Moreover, the Appellate Tribunal has stated that the agreement does not put any restriction on the purchasers from slaughter-tapping. Such an approach, according to us, is faulty. Perhaps the question of slaughter-tapping was not in the mind of the parties at all. So they need not deal with the matter. Apart from the above interpretation of clause 5 of the agreement, the Appellate Tribunal was clearly in error in stating that the assessee should produce evidence to show that no slaughter-tapping had taken place. If the Revenue had a case that the agreement did not contain the right for slaughter-tapping, it was open to it to discard the agreement or otherwise demonstrate by gathering materials that what is stated in the agreement is not true or correct or the real state of affairs. The burden is on the Revenue to prove that the assessee effected slaughter-tapping. The burden is not on the assessee to prove that no slaughter-tapping had taken place nor is it for the assessee to produce the purchasers or to produce confirmation letters from the purchasers that no slaughter-tapping took place. Nothing debarred the Revenue from conducting a proper investigation including examination of the purchasers or other persons and ascertain whether slaughter-tapping was in fact effected. No such attempt was made. The very fact that the assessee had taken a stand before the Central Income Tax authorities that a portion of the amount received is agricultural in nature is of no consequence. So considering the order of the Appellate Tribunal as a whole, we are left with the impression that the Appellate Tribunal surmised that the consideration received as per the agreement was for slaughter-tapping as well as cutting and removal of trees. There was no material to say so. In this state of affairs, the Appellate Tribunal should have held that the sum of Rs. 1,86,395 received under the agreement in question was for sale of trees. We are of the view that there is absolutely no material on record to show that any portion of the said consideration was received by the assessee for slaughter-tapping. The reasoning and finding of the Appellate Tribunal to the contrary is wholly

conjectural and due to faulty reasoning and wrong assumption of facts. We, therefore, set aside the order of the Appellate Tribunal in so far as it holds that the consideration received as per the agreement was for slaughter-tapping as well as for cutting and removal of trees. To this extent, the common order of the Appellate Tribunal dated January 12, 1989, in so far as it relates to assessment year 1979-80 is set aside.

5. This revision is allowed. The Appellate Tribunal as well as the assessing authority shall give effect to this order. There shall be no order as to costs.