
(1986) 01 KL CK 0056

In the High Court Of Kerala

Case No : Income Tax R. No. 364 of 1980

The Commissioner of Income Tax

APPELLANT

Vs

Ms Alanickal Co. Ltd.

RESPONDENT

Date of Decision : 21-01-1986

Acts Referred:

Income Tax Act, 1961 — Section 2(14), 256(1), 45

Citation : (1986) 23 KLJ 241

Hon'ble Judges : P.C. Balakrishna Menon, J; M. Fathima Beevi, J

Bench : Division Bench

Advocate : P.K. Ravindranatha Menon and N.R.K. Nair, for the Appellant; V. M. Kurien, for the Respondent

Judgement

Fathima Beevi, J.—This reference under S. 256 (1) of the Incometax Act, 1961 by the Incometax Appellate Tribunal, Cochin Bench raises an important question of law relating to capital gains. The assessee. during the previous year relevant for the assessment year 1975-76, sold under three sale deeds of even date, 15.5 acres of rubber estate in Arakulam Village of Thodupuzha Taluk for an aggregate amount of Rs. 60,000/-. The Incometax Officer, drawing support from the decision in Travancore Tea Estates Co. Ltd. Vs. Commissioner of Income Tax, . held the view that the slandering rubber trees in the estate do not form part of the land and being capital asset the gains arising from the sale thereof had to be brought to tax Accordingly, the Incometax Officer bifurcated the transaction as sale of land and sale of trees separately and artificially apportioned the consideration received and computed the capital gains on the sale of rubber trees at Rs. 6568/-. The assessee challenged the assessment in appeal. The Appellate Assistant Commissioner allowed the appeal accepting the contention of the assessee that the standing rubber trees in the estate form part of the agricultural land and do not constitute a capital asset and no capital gain is assessable

2. The revenue carried the matter in further appeal before the Appellate Tribunal and contended that when a rubber estate is sold, the rubber trees in the estate

constitute a capital asset and capital gains arise on the transfer of the trees involved in the sale of the estate. The Tribunal found that 15 5 acres of rubber estate was sold by the assessee under the three documents, with trees standing thereon, and what was sold under each document was land with standing trees. The Tribunal held that what, was sold under each of the three documents mentioned was only agricultural land and hence gains arising from such sales is not liable to be taxed under S. 45 of the Incometax Act. The Tribunal relied on the principles laid down by the Supreme Court in *A.K.T.K.M. Vishnudatta Andharjanam represented by D.V. Nambudripad Desamangalam Vs. The Commissioner of Agricultural Income Tax, Trivandrum*, that so long as the trees remain uncut, they form part of the land sold, in concluding that what was sold is only land. The Tribunal also said that the transaction of the sale cannot be split up as sale of land and sale of trees. The appeal preferred by the revenue was dismissed by the Tribunal by its order dated 14-3-1979 copy of which is annexure II to the statement of the case. At the instance of the revenue the following question of law is referred as arising out of that order:

Whether on the facts and circumstances of the case, it is open to the Department to consider transactions evidenced by the three sale deeds executed by the assessee on 16-1-1974, by which 151/2 acres of rubber estate together with trees standing thereon were sold, as consisting of two sales, namely sales of land and sales of trees and then proceed to bring to tax the capital gains arising from the sale of the trees?

3. In order to sustain the claim that capital gain is exigible on the trees comprised in the rubber estate sold by the assessee. it has to be shown that such trees constitute a capital asset within the meaning of the term in S. 2 (14) of the Incometax Act. Agricultural land in rural areas continues to be excluded from the definition of "capital asset". The estate sold by the assessee is in a rural area and the revenue has no case that Arakulam Village is an urban area. The case put forward is that the rubber trees in the estate do not form part of the agricultural land, on the principle stated in the case of *Travancore Tea Estates Co. Ltd v. C. I. T.* 93 I. T. R. 314 and the trees standing in the estate are different and separate from the land and could be property of any kind held by the assessee attracting levy of incometax on capital gains when transferred. Reliance is also placed on *Commissioner of Agricultural Income Tax, Kerala Vs. Kailas Rubber and Co. Ltd.*, and another decision of this Court in *Clen Leven Estates Ltd. Vs. Commissioner of Income Tax*, .

4. The three sale deeds executed by the assessee on 16-1-1974 are annexures A, B and C in the paper book. The finding of fact recorded by the Tribunal is that what was sold under each document was land with standing trees. It is not as if the land was sold to one person and the standing trees were sold to another person to be cut and removed by the latter. It is an integral sale of the land with standing trees in favour of one set of purchasers under each document. It is not contended before us that the land and the trees had been sold separately even

though it is argued that the sale being a composite one involving sale of land and sale of trees it has to be split up accordingly.

5. It cannot now be disputed that the standing trees had not been sold separately apart from the land on which they were standing. The assumption that the standing trees are separate and distinct from the land on which they stand is clearly wrong. Standing timber is very much immoveable property as the land itself. The trees, until they are cut and removed, form an integral part of such land. Trees being things attached to the earth, together with the earth to which it is attached constitute one asset, viz., the land. When the land with the standing trees is transferred the sale is an integral one in respect of that asset only and it cannot involve a separate sale of the trees as a distinct asset. A bifurcation of the asset can happen if at all only when the trees are sold separately for being cut and removed while the right over the soil is retained by the owner. Where the land is agricultural land and it is sold along with the trees thereon, the sale is only in respect of agricultural land of which the trees form an integral part.

6. Authority on the proposition which we have adopted in arriving at our conclusion is not wanting. The Supreme Court had in *V. Venugopala Verma Rajah Vs. Commissioner of Income Tax, Kerala*, pointed out that tree is a part of the land. In *Vishnudatta Antharjanam v. Commr of Agrl I.T.* 781. T. R. 58 the proposition was reiterated while considering the question whether income arising from sale of teak trees cut and removed for the purpose of planting the area with rubber trees could be brought to tax under the Agricultural Income tax Act. The court pointed out that so long as the trees remain uncut they form part of the land on which they stand and the sale of trees cut and removed once and for all affects the capital structure. These decisions of the Supreme Court do not appear to have been noticed by this Court in *Clen Leven Estates Ltd. v. C. I. T.*, 91 I. T. R. 391 rendered in different context. In this decision the Division Bench, in rejecting the contention that what is attached to the land belongs to the land and that the character of the thing attached to the land will be the same as the character of the land, observed that no decision has been quoted which supports this contention and stated that the principle that what is attached to the land belongs to the land is not applicable in India. This view was re-affirmed in *Travancore Tea Estates Co. Ltd. v. C. I. T.*, 93 I. T. R. 314 (Ker). In the case of *den Leven Estates Ltd. v. C. I. T.* I. T. R. 391 the question considered was whether "coolie lines" situated in agricultural land sold separately would fall within sub-clause (iii) of S. 2 (14) of the income tax Act and the court said that "coolie lines" attached to agricultural land cannot be held to be agricultural land and will not be excluded from the definition of capital asset. The question whether there was a transfer of capital asset when standing trees in an agricultural land is sold along with land was not considered or decided in that case. That question was specifically left open stating thus

The questions referred to us also proceed on the basis that there have been sales

of estates and "coolli lines" separately. So there is no scope for the argument for the first time raised before us by counsel that there was only a sale of an estate and that being the real transaction the consideration for such sale should not be bifurcated in an artificial manner so as to arrive at some figure which formed a part of the consideration as that applicable to the sale of a part of the property that was sold. In such cases whether there can be said to be a sale of agricultural land or, what is more important, whether there was a transfer of a capital asset does not arise for consideration in this case.

This decision is not therefore an authority for the position that on sale of an estate with standing rubber trees there is a transfer of capital asset.

7. In the decision in Travancore Tea Estates Co. Ltd. Vs. Commissioner of Income Tax, the assessee sold old shade trees and the court held that the trees in question would be property of any kind mentioned in S. 2 (14) of the Act defining capital asset on the reasoning that the maxim what is attached to the land belongs to the land is not applicable to India. The Division Bench observed:

We cannot therefore, postulate that the trees attached to the land belong to the land. It is difficult to say that trees are agricultural land in India.

The decision of the Supreme Court in Commissioner of Agricultural Income Tax, Kerala Vs. Kailas Rubber and Co. Ltd., was followed in holding that the receipt by the transfer of trees such as mentioned is not a revenue receipt but a capital receipt arising from the transfer of a capital asset. In the case of Kailas Rubber Co. Ltd. (60 I. T. R 435) the Supreme Court held that the sale proceeds of old and unyielding rubber trees felled and sold is capital asset. The Supreme Court noticed in that case that there was enough evidence in the record justifying the conclusion that the rubber trees form part of the capital asset of the assessee. The above decisions which have been relied on for the revenue were decided in the context of there being separate sale of trees apart from the land, The question whether the sale of agricultural land with trees would involve a transfer of capital asset had not been considered in those decisions. The sale of rubber trees in an estate can attract capital gains only when the rubber trees form part of the capital asset. In the view that the rubber trees so long as they remain in the land form part of the agricultural land, it is difficult to hold that a transfer of the agricultural land with the standing rubber trees thereon involves a transfer of capital asset.

We are therefore of the view that it is not possible to consider the transaction of sale of the rubber estate as consisting of a sale of land and sale of trees for the purpose of bringing to tax the capital gains arising from such transfer. The question referred to us is accordingly answered in the negative and against the revenue. We direct the parties to bear their respective costs,

A copy of the judgment under the seal of the High Court and signature of the Registrar will be forwarded to the Incometax Appellate Tribunal, Cochin Bench.