

(1983) 11 KAR CK 0029

In the Karnataka High Court

Case No : S.T.R.P. No"s. 86 to 89 of 1978 and 99 to 103 of 1979

The State of Karnataka

APPELLANT

Vs

Consolidated Coffee Limited

RESPONDENT

Date of Decision : 22-11-1983

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 2 (1) (f-2), 2 (1) (k) (v)

Citation : (1984) 55 STC 363

Hon'ble Judges : S.R. Rajasekhara Murthy, J; Jagannatha Shetty, J

Bench : Division Bench

Advocate : S. Rajendra Babu, for the Appellant; G. Sarangan, for the Respondent

Judgement

Jagannatha Shetty, J.—These revision petitions are directed against the orders of the Karnataka Appellate Tribunal made in the appeals preferred by the respondent in which the assessments under the Karnataka Sales Tax Act for the years 1962-63 to 1970-71 were challenged. The respondent is a public limited company dealing in coffee, cardamom, pepper, minor estate produce, lubricants, motor spirits, etc. In Coorg, the company has extensive coffee estate.

2. It is a well-known accepted fact that a coffee estate requires shade trees and for the purpose of new plantation the forest area must be cleared. The company in order to facilitate new plantation cleared the forest growth with shade trees. Some trees were cut and sold as logs, timber, charcoal or firewood. In each of the assessment years, the company realised substantial amounts by the sale of such items.

3. For the assessment years 1961-62 and 1963-64 the question arose whether the sale amount of the shade trees was liable to be brought to tax under the Karnataka Agricultural Income Tax Act. The controversy ultimately reached this Court. The decision of this Court is reported in Consolidated Coffee Estates (1943) Ltd Vs. Commissioner of Agricultural Income Tax, Mysore, . It will be useful to refer to the points urged in that case and the decision rendered.

Although the case related to the liability to pay agricultural Income Tax, this Court notified the Income Tax department. From the judgment it will be seen that it was urged on behalf of the Income Tax department that the amount realised by the company was in the nature of income to be brought to tax, under the Income Tax Act. On behalf of the State it was, however, contended that the income was agricultural income which was liable to be taxed under the Agricultural Income Tax Act. But this Court held that the shade trees in the plantations of the company were of spontaneous growth and they were not found to have been planted or grown by the company. To be more precise this is what this Court observed at page 37 :

"..... The proper inference to be drawn from the material on record is that the rosewood trees were not planted by human agency or labour but they were in existence before the estates were opened and they were retained as shade trees for the coffee bushes."

The court then went on to state :

"..... It is common ground that the rosewood trees were maintained as shade trees for the coffee bushes. Shade trees are absolutely essential for the protection of coffee bushes. It is not possible to grow coffee in India without the necessary shade trees. Shade trees prevent the soil from becoming hot and dry and help to maintain an even temperature. They increase the fertility of the soil because the fallen leaves add the much desired muck to the soil. Shade trees also protect the coffee plants from the direct beat of the rain and desiccating winds. They also transport from the lower layers of the soil the necessary minor and trace elements. According to the pamphlet published by the Coffee Board Research Department, the object of maintaining shade trees is to give filtered light, free passage of air and to minimise variations in day and night temperatures. They also help in avoiding the direct impingement of the sun's rays on the foliage. Thus, it will be seen that shade trees existing in a coffee estate are as much important as the coffee bushes which yield the coffee crop

The cost of planting coffee bushes and shade trees is not treated as revenue expenditure but as capital expenditure. Therefore, it is clear that the shade trees in a coffee estate are part of the fixed assets of the planter. The payment made on the acquisition or creation of a fixed asset or a sum received on its realisation is usually a capital sum (vide Simon's Income Tax, Volume I, Second edition, page 33).

If the wood of the coffee bushes in the assessee's estates were sold when the coffee bushes become old and useless the receipts would constitute capital. So also the receipts from sale of the shade trees The business of the assessee is not to produce timber but to produce coffee and other plantation crops. It is clear that the assessee did not retain and foster the rosewood trees for the purpose of selling timber. The question whether the rosewood trees were

planted by the assessee's predecessors or they were of spontaneous growth is irrelevant for the purpose of decision on the question whether the receipts are capital assets or not. In view of the common ground that the trees were maintained as shade trees for the coffee bushes, the shade trees, in our opinion, are capital assets as much as the coffee bushes and the proceeds of also of timer of the shade trees is a capital receipt in the hands of the assessee and not taxable as income."

This Court finally observed :

"The fact that the assessee received the proceeds of sale of rosewood not in a lump sum in one year but in the course of more than one year is immaterial for the purpose of determining its nature. An income receipt is not necessarily recurring nor a capital receipt necessarily single. A single receipt may be an item of income and an annual receipt recurring over a number of years may be capital."

4. It is thus seen that the shade trees which were sold by the company formed part of the capital assets to the company.

5. The above view gets full support from the decisions of the Supreme Court. In *The Deputy Commissioner of Agricultural Income Tax Vs. Palampadam Plantations Ltd., Kottayam, ,* the Supreme Court considered the sale proceeds of the trees in an estate. The trees concerned therein were of spontaneous growth. The question arose whether that assessee could be considered as a dealer within the meaning of section 2(viii)(e) of the Kerala General Sales Tax Act, 1963. The said provision is analogous to section 2(1)(k)(v) of the Karnataka Sales Tax Act. There also the assessee sold such trees year after year with the object of earning profit. It was held that since the trees were of spontaneous growth, the assessee could not possibly be regarded as a person who sells the goods produced by him.

6. In *State of Madras Vs. K.C.P. Ltd.,* the Supreme Court considered the nature of the activities in the sale of unserviceable equipments of a company. In that case some furnaces were found to be unsuitable for the purpose for which they had been purchased. The assessee sold them to a purchaser in Calcutta for a sum of Rs. 4,20,000 and made a profit of about Rs. 2,00,000. The question was whether that sum of Rs. 4,20,000 had to be included in the turnover of the inter-State sales of the company. The Supreme Court held that the furnaces were either fixed assets or discarded goods which had been found to be unsuitable or unserviceable and that the sale proceeds could not therefore be included in the turnover of the company for the purpose of determining the tax liability under the Central Sales Tax Act, 1956.

7. In *A.K.T.K.M. Vishnudatta Andharjanam represented by D.V. Nambudripad Desamangalam Vs. The Commissioner of Agricultural Income Tax, Trivandrum, ,* the Supreme Court had an occasion to consider the sale proceeds of teak trees. Those trees were cut and completely removed from the land and sold for the purpose of planting the areas with rubber. While considering the nature of the

realisation made by the assessee therein, the Supreme Court observed :

"that the sale of the trees affected the capital structure, because by removing the roots the source from which fresh growth of trees could take place was removed, and the sale could not, therefore, give rise to a revenue receipt. The receipt from the sale of the teak trees was capital in nature."

From these decisions, it will be clear that the sale proceeds of the shade trees even in the present case although realised by the company from year to year with some profits cannot but be termed as capital in nature.

8. Mr. Babu, the learned Government Advocate, however, contended that since the company continued its activities for several years making huge profits by converting trees either as logs, charcoal or firewood, it must be held that the company was engaged in the business of selling the shade trees and the realisation must be considered as turnover liable to be taxed under the Sales Tax Act.

9. We do not think that there is any substance in this contention. The word "business" as it was then defined u/s 2(1)(f-2) reads :

""business" includes any trade, commerce or any adventure or concern in the nature of trade or commerce, with or without profit-motive in such trade, commerce, adventure or concern."

That means, the activities of the company must be primarily in the nature of trade or commerce. This definition was enlarged with effect from 1st April, 1976, by the addition of the following :

"(ii) any transaction in connection with, or incidental or ancillary to such trade, commerce, manufacture, adventure or concern."

The difference in the definitions of the word "business" is decisive and no incidental or ancillary activities to the main business could fall within the "business" prior to 1st April, 1976.

The mere fact that the company by the disposal of the trees made huge profits, cannot be an indication that the capital assets had been converted into stock-in-trade. Unless there is a proof of such conversion, it is not possible to hold that the company was doing business in the shade trees. Unserviceable or unwanted property or goods have to be disposed of in one manner or the other. If the company resorted to a most advantageous method of disposal of those capital assets and incidentally made profits in so disposing, we cannot infer that the company was engaged in the business in such goods. The method or the manner of disposal of unwanted or unsuitable assets cannot be conclusive of the matter.

9. In Deputy Commissioner (C.T.), Coimbatore Division, Coimbatore v. Sree Shanmuga Estate [1979] 43 STC 226, the Madras High Court had to consider almost a similar question. The assessee therein purchased a reserve forest for coffee plantation. The assessee cleared a portion of the estate and sold the

timber and firewood by felling and cutting the trees grown there. The assessee also converted some firewood into charcoal for the purpose of disposal. The assessing authority treated the assessee as a dealer in timber, firewood and charcoal. The Appellate Assistant Commissioner on appeal held that the assessee should be deemed to be a dealer in respect of the timber that was sized and sold, but not a dealer in respect of firewood and charcoal. The Tribunal, on appeal, held that both the sales of timber and firewood were not liable to tax. On a revision, the High Court held that the mere fact of sizing of the timber cut from the trees in order to facilitate easy transport would not make it a commercial article different from the logs of trees that were cut, so as to make the assessee a dealer in such articles.

10. We respectfully agree with the above observations. Here also, the unwanted rosewood trees or other trees in the assessee's estate have been cut, sized and sold or converted into charcoal for convenient disposal. They were not converted into stock-in-trade for the purpose of business of the company. The sale proceeds therefore cannot be taxed as a turnover under the Sales Tax Act.

Before parting with the case we may also place on record the submission made at the Bar. It is said that income realised by the company by the sale of the trees was subjected to capital gains tax and this Court has also upheld the company's liability to pay capital gains tax for the years in question. That being so, the State cannot still contend that the transactions were in the nature of business and the realisations should be taxed under the Sales Tax Act.

11. In the result, these petitions fail and are dismissed.

12. In the circumstances, we make no order as to costs.