
(1998) 08 KL CK 0037
In the High Court Of Kerala
Case No : T.R.C. No. 272 of 1994

Travancore Rubber and Tea Co. Ltd.

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 19-08-1998

Acts Referred:

Kerala Agricultural Income Tax Act, 1950 — Section 5

Citation : (1999) 239 ITR 351

Hon'ble Judges : Om Prakash, C.J.;J.B. Koshy, J

Bench : Division Bench

Advocate : Joseph Markos, for the Appellant; V.V. Asokan, Special Government Pleader, for the Respondent

Judgement

Om Prakash, C.J.—One of the questions arising in this revision for consideration is whether the Agricultural Income tax Appellate Tribunal was right in holding that pension of Rs. 39,999.96 paid to the ex-general manager of the company, was not an allowable deduction u/s 5(j) of the Kerala Agricultural Income Tax Act, 1950 (briefly "the Act").

2. Section 5(j) of the Act--read properly--provides that the agricultural income of a person shall be computed after making deduction, namely, any sum paid in the previous year on account of any expenditure (not being in the nature of capital expenditure or personal expenses of the assessee) laid out or expended wholly and exclusively for the purpose of deriving the agricultural income. The language used in Section 5(j) of the Act is analogous to that used in Section 37(1) of the Income Tax Act, 1961, which allows deduction in respect of any expenditure laid out or expended wholly and exclusively for the purposes of the business.

3. The facts, as stated by the Appellate Tribunal in connection with the deduction claimed, are that one Shri S. Sivaramakrishna Iyer, who was taken into service as a general manager of the company on contract basis initially for a period of five years, which was extended for another five years (aggregate period of service being ten years), was paid pension of Rs. 39,999.96 for the assessment year

1980-81. The revision petitioner (hereinafter referred to as "the assessee") claimed deduction u/s 5(j) of the Act. The Appellate Tribunal confirming the order of the Deputy Commissioner who disallowed the deduction claimed by the assessee, held as under :

"In the case before us, pension is paid to a general manager who was no longer in the service of the company. It has not been established before us as to what benefit the company has derived by payment of pension to the ex general manager. Considering all the above facts, we are of the view that the authorities below were justified in disallowing the claim of pension paid to the ex-general manager."

The question is whether pension paid to an employee, who has gone out of service, can be said to be an expenditure laid out or expended wholly and exclusively for the purpose of deriving the agricultural income and whether only that expenditure can be allowed, which was incurred on an employee during his service tenure. The approach of the Tribunal seems to be that unless there is immediate nexus between the expenditure and the income being derived from agriculture, any expenditure incurred cannot be said to have been expended for deriving agricultural income. In our view, the question should not be considered in a narrow and pedantic fashion. Pension paid to an employee, who has gone out of service, can, in no case, be said to be a gratuitous payment. Pension is always paid to an employee for his past services. An employer, of course, does get the benefit while an employee is in service. But so many payments in the nature of pension, gratuity, etc., are, made by employers to keep the members of the staff in good stead and any expenditure incurred on employees from that point of view is for commercial expediency, which does not take within its sweep only that expenditure which has immediate nexus with the income derived, but also other expenditures incurred to make the employment attractive, so that the employees, while in service, may continue to be loyal, sincere and hard working. When the general manager was employed by the assessee, a contract was made and payment of pension was a service condition. In discharge of that condition, pension was paid to the general manager. Post-retirement benefits are paid to the employees, so that they may give their best while in service.

4. In *Sassoon J. David and Co. Pvt. Ltd., Bombay Vs. Commissioner of Income Tax , Bombay*, , the Supreme Court, relying on its earlier decision in *Gordon Woodroffee Leather Manufacturing Co. Vs. The Commissioner of Income Tax, Madras*, and adverting to Section 10(2)(xv) of the Indian Income Tax Act, 1922, analogous to Section 5(j), laid down, inter alia, the test of commercial expediency and held that if any sum of money was expended on the ground of commercial expediency, that could be said to have been laid out wholly and exclusively for the purpose of the business.

5. Moreover, payment of pension was as a part of service condition, which was incorporated into the contract entered into between the assessee and the general manager when the latter was inducted into the service. Therefore, pension,

though paid after retirement, was paid for service consideration and hence such expenditure was made for commercial expediency and, as such, it could be said to have been laid out or expended for deriving agricultural income.

6. In *Indian Overseas Bank Ltd., Madras Vs. Commissioner of Income Tax, Madras*, , the Madras High Court considered the question relating to the payment of pension and held that as the pension was resolved upon when the employee was still in service and it was paid on condition that the employee did not accept service elsewhere, the payment was made in the interests of the business and was allowable u/s 10(2)(xv) of the Act of 1922, which is in pari materia with Section 5(j) of the Act. The Madras High Court held that it is not difficult to appreciate that payment of pension was apparently thought of as a business expediency in the interests of the assessee's business and that, in fact, the premises of the resolution relating to payment of pension were as a part of the terms of service, as it is in the case at hand.

7. In *Purtabpore Company Ltd. Vs. The State of Uttar Pradesh*, , the Supreme Court, interpreting the provisions of Section 6(2)(b)(iv) of the U. P. Agricultural Income Tax Act, 1948, held that the words "for raising crops" cannot be confined simply to the ploughing of the land, sowing the seed and cutting the harvest and that Section 6(2)(b)(iv) is "not to be construed in a narrow and pedantic sense and must be given its full effect in the background of modern large scale farming and the organization required for it. In that case, the appellant claimed certain amount as expenses incurred on the staff establishment. The question was whether the same was allowable deduction u/s 6(2)(b)(ib) of the U.P. Agricultural income tax Act. The Court held that the amount claimed by the appellant was incurred for the management, supervision, organisation, technical knowledge and assistance and other allied matters for the purpose of raising of crops, their marketing and transportation and hence was allowable deduction.

8. We therefore, do not agree with the narrower view taken by the Appellate Tribunal and hold that the expenditure in the nature of pension was incurred for commercial expediency and hence is allowable deduction u/s 5(j) of the Act. Then the second question for consideration is whether the Appellate Tribunal was right in holding that listing fee of Rs. 2,000 paid to the stock exchange is not an allowable deduction u/s 5(j) of the Act. This question is fully covered by the decision of this court in *Cochin Malabar Estates and Industries Ltd. Vs. Commissioner of Agricultural Income Tax*, , in which it was answered by this court against the assessee and in favour of the Revenue, with which we fully agree. The revision is, therefore, partly allowed.