(1978) 03 KL CK 0008

In the High Court Of Kerala

Case No : Income-tax Reference No. 13 of 1976

Tropical Plantations Ltd. APPELLANT

Vs

State of Kerala RESPONDENT

Date of Decision : 03-03-1978

Acts Referred:
Kerala Agricultural Income Tax Act, 1950 — Section 5

Citation : (1978) 03 KL CK 0008

Hon'ble Judges : V.P. Gopalan Nambiyar, C.J;G. Balagangadharan Nair, J

Bench : Division Bench

Advocate : K.P. Radhakrishna Menon and K.K. Ravindranath, for the Appellant; Government Pleader, for the Respondent

Judgement

Gopalan Nambiyar, C.J.—The Kerala Agricultural Income Tax Appellate Tribunal has referred the following two questions of law for our determination :

"(1) Whether, on the facts and in the circumstances of the case, and in the light of the decision of the Hon''ble High Court of Kerala as reported in COMMISSIONER OF AGRICULTURAL Income Tax, KERALA Vs. T??HNSONS ESTATES AND AGENCIES (P.) LTD., and as decided in ITRC Nos. 13, 14 and 15 of 1968, the Tribunal is justified in confirming the disallowance of proportionate general charges of Rs. 4,058 in respect of Chittady Estate, Rs. 4,598 in respect of Venga-thanam Estate and of Rs. 8,462 in respect of Vellandy Estate ?

(2) Whether, on the facts and in the circumstances of the case, and in the light of the decision as reported in Commissioner of Income Tax, Madras Vs. Mahalakshmi Textile Mills Ltd., the Tribunal is justified in disallowing the boundary wall repairs of Rs. 1,275 and cart road maintenance of Rs. 4,418?"

2. The assessee, the Tropical Plantations Ltd., Kottayam, filed a return for the year 1968-69 disclosing a net income of Rs. 3,77,270. On scrutiny of the return, the assessing officer was of the view that some of the expenses claimed by the assessee were either of a capital nature or were not admissible under the Act.

The officer was also of the view that some of the expenditure claimed both from the immature and mature area of rubber plantations had been completely claimed as revenue expenditure, although a portion of it had been spent for the upkeep and maintenance of the immature area. After pre-assessment notice and objections the assessment was finalised and an order of best of judgment assessment was passed fixing the net income at only Rs. 4,22,360. A portion of the general item of expenditure claimed by the appellant was disallowed. The order of the assessing authority was confirmed on appeal by the Deputy Commissioner of Agriculture and Sales Tax with slight modifications. There was a further appeal before the Appellate Tribunal. The Tribunal dismissed the appeal and substantially disallowed the expenditure claimed by the assesses. The relevant part of the Tribunal''s discussion is in paragraph 7 of its order, which is as follows :

"7. The last point urged is that regarding the disallowance of a portion of certain common expenses in Chittady, Vengathanam and Vellandy Estates as relating to immature area, it is pointed out that the apportionment has been made in valuation on the principles laid down in Johnson''s case reported in COMMISSIONER OF AGRICULTURAL Income Tax, KERALA Vs. T??HNSONS ESTATES AND AGENCIES (P.) LTD., . The details of the expenses apportioned are available in the records. They are medical expenses excluding the salary to the doctor, contingencies, cart road repairs, provident fund, advance expenses, maternity benefits, sickness benefits, etc., which are common to mature and immature area. The apportionment is on acreage basis. We find that the same is only in order. It is therefore confirmed."

3. The common expenses in respect of the Chittady Estate and Venga-thanam Estate and Vellandy Estate were claimed to relate to the immature area of the rubber plantation in the estate. The assessee''s complaint was that the apportionment between the immature and the mature area of the estate violated the principle laid down in COMMISSIONER OF AGRICULTURAL Income Tax, KERALA Vs. T??HNSONS ESTATES AND AGENCIES (P.) LTD., . In that case, a Division Bench of this court surveyed the legislative history and the course of decisions leading to the enactment of new Expl. 2 to Section 5 of the Kerala Agricultural Income Tax Act and the decisions of the Supreme Court in The Karimtharuvi Tea Estates Ltd., Kottayam and Another Vs. State of Kerala and Others, and Travancore Rubber and Tea Co. Ltd. and Another Vs. State of Kerala and Another, , and COMMISSIONER OF AGRICULTURAL Income Tax, KERALA Vs. T??HNSONS ESTATES AND AGENCIES (P.) LTD., :

"Whether a particular item of expenditure is ''laid out or expended for the cultivation, upkeep or maintenance of immature plants'' is essentially a question of fact and cannot be decided on any general principle of law. All that can be said ia that the connection between the item of expenditure and the cultivation, upkeep or maintenance of immature plants must be definite and real, and not vague or illusory.

One way of finding out whether any portion of the estate or overhead expenses has been laid out or expended for the cultivation, upkeep or maintenance of immature plants is to see whether the said portion of those expenses would have been incurred in the absence of the ''immature'' area within the estate. If it would not have been incurred but for the existence of the ''immature'' area, it is certainly connected with the cultivation, upkeep or maintenance of the immature plants. It will come within the Explanation and will not be admissible for deduction.

The Tribunal has come to the conclusion that the disallowance of Rs. 4,915 was not proper and there is no material before us--even the sheet No. 31 mentioned by the Tribunal is not part of the paper book--to differ from its Conclusion even if we have the power and the inclination to do so on this question of fact. What the department has done is to divide the total of the estate or overhead expenses by the number of acres comprising the estate and then multiply the expenses per acre by the number of acres covered by the immature plants in the estate of the assessee. This is an arbitrary approach which cannot be justified."

4. To complete the discussion, we may quote Section 5(j) of the Agricultural Income Tax Act, and Expl. 2 to the said section. These are as follows:

"5. Computation of agricultural income.--The agricultural income of a person shall be computed after making the following deductions, namely :--

(j) 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 :.....

Explanation 2.--Nothing contained in this section shall be deemed to entitle a person deriving agricultural income to deduction of any expenditure laid out or expended for the cultivation, upkeep or maintenance of immature plants from which no agricultural income has been derived during the previous years."

5. Counsel for the assessee also referred us to an unreported judgment of a Division Bench of this court in I. T. R. Nos. 13, 14 and 15 of 1968. COMMISSIONER OF AGRICULTURAL Income Tax, KERALA Vs. T??HNSONS ESTATES AND AGENCIES (P.) LTD., was referred to and followed. It was held that the question of the expenses to be deducted was a question of fact and what has been expended for the cultivation, upkeep and maintenance of immature plants can alone be taken as the expenses for the purpose. In other words no definite portion of the expenses can be said to be expended or laid out for the cultivation, upkeep and maintenance of immature plants. In the light of the principle of these decisions, we have little doubt that question No. 1 must be answered in the negative, i.e., in favour of the assessee and against the department. The actual amount of deduction to which the assessee would be entitled in pursuance of our answer to question No. 1 would be re-computed and decided afresh by the Tribunal.

6. Question No. 2: We may mention at the outset itself that the decision in Commissioner of Income Tax, Madras Vs. Mahalakshmi Textile Mills Ltd., , cited by the Tribunal in referring question No. 2, seems to have no application. The assessee claimed deduction of expenses spent for the upkeep of a cart road and a boundary wall. These were claimed as necessary expenses incurred for the purpose of deduction and preservation of the rubber estate. The deduction was sought to be justified with respect to the provisions of Sections 5(d) and 5(m)(ii) of the Agricultural Income Tax Act. Counsel for the assessee contended before us that he was relying also on Clause (j) of Section 5. The principle of the decision of the Supreme Court in Lakshmiji Sugar Mills Co. P. Ltd. Vs. Commissioner of Income Tax, New Delhi, seems to support the contention of the assessee. In that case, the assessee had paid to the Cane Development Council certain amounts by way of contribution for the construction and development of roads between the various sugarcane producing centres and the sugar factories of the assessee. This expenditure was incurred under a statutory obligation for the development of roads which were originally the property of the Government and remained so even after the improvement had been done. There was no finding that the roads were to be altogether newly laid or that the assessee would get an enduring benefit from those roads. In such circumstances, it was held that the expenditure was not of a capital nature, and had to be allowed as an admissible deduction in computing the profits of the assessee''s business u/s 10(2)(xv) of the Indian Income Tax Act, 1922. The expenditure was held to be incurred for the purpose of facilitating the running of its motor vehicles and other means employed for transportation of sugarcane to its factories and was, therefore, incurred for running the business or working it with a view to producing profit without the assessee gaining any advantage or an enduring benefit to itself. The assessee also relied upon the decision of the Punjab High Court in COMMISSIONER OF Income Tax, DELHI Vs. S. B. RANJIT SINGH., where it was laid down that a sum can be allowed as the cost of repairs and can be held not to be a capital expenditure even though the expenditure in a particular year is heavy on account of the fact that it is undertaken to remedy the effect of several years of wear and tear or neglect and also in spite of the fact that such expenditure may not be necessary for several years to come after the repairs have been effected. It appears to us that the principle of these decisions had not been kept in mind by the Tribunal and the basic facts had not been either assessed or found to enable us to give an answer to question No, 2 ; we would direct the Tribunal to re-hear the appeal in accordance with law and in the light of the observations made herein and of the principle of the decisions referred to in the course of this judgment. In the result, question No. 1 is answered in the negative, i.e., in favour of the assessee and against the department and the Tribunal is directed to re-compute the actual deduction to which the assessee will be entitled ; and regarding question No. 2, we decline to answer the question and direct the Tribunal to go into the matter afresh in accordance with law and in the light of the observations made in this judgment. No order as to costs.

7. A copy of this judgment under the seal of the court and the signature of the Registrar will he communicated to the Tribunal as required by law.