

(1991) 02 MAD CK 0050

In the Madras High Court

Case No : Tax Cases No's. 720 to 722 of 1981

Untied Nilgiri Tea Estates Co. Ltd.

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 25-02-1991

Acts Referred:

Tamil Nadu Agricultural Income Tax Act, 1955 — Section 2, 20

Citation : (1991) 191 ITR 397

Hon'ble Judges : Mishra, J;Janarthanam, J

Bench : Division Bench

Advocate : Janarthana Raja, for the Appellant; Haja Nazruddin, for the Respondent

Judgement

Mishra, J.—The petitioner, a tea estate in the Nilgiris, has moved this court against the order of the Tamil Nadu Agricultural Income Tax

Appellate Tribunal holding, inter alia, that (i) the income received by way of sales of barks of wattle trees can only be treated as agricultural income

falling under the scope of section 2(a) of the Tamil Nadu Agricultural Income Tax Act and (ii) sales of cut trees (loosely termed as firewood) will

also attract tax under the said Act.

2. The cases relate to the assessment years 1973-74, 1974-75 and 1975-76. It is not in dispute that the petitioner grew tea in the estates owned

by it in the Nilgiris, It, however, sold wattle bark and firewood for Rs. 1,51,716 and timber for Rs. 1,95,000 during the assessment year 1973-74.

The Central Income Tax Officer, however, did not include these amounts in the assessment for taxes. But the Agricultural Income Tax Officer

issued notice u/s 35 and revise the assessment by including a sum of Rs. 1,51,716 being the sale proceeds of wattle bark and firewood and

Rs.1,95,000 being the sale proceeds of timber as agricultural income. This was followed by similar assessments for the years 1974-75 and 1975-

76. A sum of Rs. 47,396 being the sale proceeds of wattle bark and firewood and Rs. 3,50,000 being the sale proceeds of timber were included

in the assessment for the year 1974-75 and a sum of Rs. 1,53,324 being the sale proceeds of wattle bark and firewood was included in the

assessment for the year 1975-76. The petitioner disputed before the Assistant Commissioner the inclusion of the above items in the taxable

income. The Assistant Commissioner in his order held that wattle bark and firewood were sold for fuel purposes and timber for fibro, etc., and all

these were obtained only after carrying out agricultural operations.

3. Aggrieved by the order of the Assistant Commissioner, the petitioner preferred appeals before the Tribunal. The Tribunal held that the income

received by way of sales of barks of wattle trees and not the trees as such will be taxable u/s 2(q) of the Act. The sale of firewood on the facts as

placed before it was nothing but agricultural income. On the sale of timber, however, the Tribunal found that it was necessary to record a definite

conclusion whether the trees were specifically grown in the peripheral area as a wind belt and that such trees were only removed and sold when

the necessity for wind belt protection ceased to exist, because in the absence of such a finding, it would not be possible to include the sale of

timber cut and removed from the peripheral area of wind belt trees in the agricultural income.

4. Learned counsel for the petitioner has questioned the finding with respect to the sales of barks of wattle trees and sales of cut trees as firewood

on various grounds. His main contention, however, is that agricultural income has to be understood only as any rent or revenue derived from land

and for that, it must necessarily be found to be an income out of the agricultural operations upon the land. According to learned counsel, the two

items of income, viz., by way of sales of barks of wattle trees and the sales of cut trees (firewood) have wrongly been included in the agricultural

income.

5. There is a catena of cases decide under various taxing statutes in relation to the sale of trees, some cases holding that it is a capital receipt and

some cases concluding in different situations and different facts that it is a

revenue receipt. A Full Bench of this court, in the case of CIT v.

Manvedan Tirumalpad AIR 1930 Mad 764, has held that the receipts from the sale of timber trees by the owner of unassessed forest lands in

Malabar were chargeable to Income Tax. Such trees were treated as usufructs from mines. In Commissioner of Income Tax Vs. M.S.P. Nadar

Sons, , a Bench of this court held that sale proceeds of forest trees felled for the purpose of coffee plantation in the land was a capital receipt.

Considering, however, the cases decided by various High Courts, solely for finding out whether, the assessee who sold the trees of spontaneous

growth was liable to Income Tax or not, the Supreme Court in the case in Commissioner of Income Tax Vs. Ambat Echukutty Menon, has said

(p. 79) :

The case is one where trees of spontaneous growth were sold on condition that the purchaser would cut and remove the trunks without disturbing

the stumps and roots embedded in the soil. Where trees are so felled and removed, and the stumps and roots are allowed to remain in the land

with a view to regeneration of the trees, the intention of the owner would be to indulge in a profit-making activity, and the case falls within V.

Venugopala Verma Rajah Vs. Commissioner of Income Tax, Kerala, . The receipts from sale of the trunks would be revenue receipts. But, in the

present case, there was no intention to retain the stumps and roots for the purpose of allowing regeneration of the trees, the intention and

subsequent conduct of assessee establishes that the stipulation against removal of the stumps and roots was intended to protect the surface of the

land from indiscriminate injury because the land was to be applied to cultivation. Intention is a material factor in such cases, and each case has to

be decided on its particular facts.

Without evidence of the intention or object behind such a stipulation the mere fact that the trees were sold without stumps and roots cannot lead to

the necessary inference that a profit-making activity was involved. Where the evidence shows that the land had been acquired for the purpose of

cultivation, and that the prohibition on the purchaser against removing the stumps and roots was intended to prevent undue interference with the

soil, and the assessee did not intend to permit regeneration of the trees, and that he had in fact later put the land to cultivation, the payments

received on sale of the trunks cannot be regarded as taxable income. And yet the case is distinguishable from the facts in A.K.T.K.M. Vishnudatta

Andharjanam represented by D.V. Nambudripad Desamangalam Vs. The Commissioner of Agricultural Income Tax, Trivandrum, . That was a

case where the trees were sold with their roots, and it was held by this court that, by removal of the roots, the source from which the fresh growth

of trees could take place had also been removed and, therefore, the sale of such trees affected the capital structure, and could not give rise to a

revenue receipt. In my opinion, the present case does not fall either within V. Venugopala Verma Rajah Vs. Commissioner of Income Tax, Kerala,

or A.K.T.K.M. Vishnudatta Andharjanam represented by D.V. Nambudripad Desamangalam Vs. The Commissioner of Agricultural Income Tax,

Trivandrum, . It is a case where, although the stump and roots remained after the trees were felled and removed by the purchaser, the regeneration

of the trees was not to be allowed and, therefore, a profit-making activity could not be spelled out.

6. Our problem, however, is not fully answered by the above, as it is not disputed that the trees were sold and the Tribunal has found :

We also find from the facts available on records that these trees were regularly grown for sales of bark. When such trees were felled at regular

intervals and sold as firewood, new plants were also grown in that area and they were not of any spontaneous growth.

7. We are, however, faced with a judgment of the Supreme Court in the case of State of Kerala Vs. Karimtharuvi Tea Estate Ltd., specifically

dealing with agricultural Income Tax. In that case also. The assesseees were the owner of tea estates. They had planted grevelia trees and derived

income by the sale of such trees as firewood. They had been subjected to tax under the Kerala Agricultural Income Tax Act, wherein a similar

definition of agricultural income is found. The Supreme Court said (at p. 275) :

There is no controversy about the fact that the owners of tea estates plant grevelia trees not for the purpose of deriving any income therefrom but

solely for the purpose of providing shade for the tea plants and that such shade is essential for the proper cultivation of tea, the trees were cut

down and sold after they had become useless by efflux of time. The grevelia trees in the tea estate of the respondent constituted therefore capital

assets and the proceeds derived therefrom by sale as firewood would not constitute agricultural income under the Act.

8. That was precisely the case of the petitioner before the Tribunal. The Tribunal has noticed its pleas in these words :

It is pleaded by learned counsel that the income from firewood shown in the accounts related to the sales of shade trees, and that such receipts

cannot be treated as agricultural income. In this case, the plea that shade trees had only been sold is not capable of acceptance, since the necessity

for any such shade trees, in the estates held by the appellants in Nilgiris District, on high altitudes has not been established.

9. What the Tribunal has done is that it had taken notice of the literature on the requirements of the shade trees in tea estates and opined that, on

account of climatic conditions noticed. The shade trees have almost been given up in a tea plantation and relied upon its own observations :

We also found during our personal visit to one or two tea estates in Nilgiris District during March, 1980 that, generally, shade trees were not

grown in the teas estates in this area. Apart from this, we also find from the facts available on records that these trees were regularly grown for

sales of bark. When such trees were felled at regular intervals and sold as firewood, trees were felled at regular intervals and sold as firewood,

new plants were also grown in that area and they were not of any spontaneous growth.

10. We may, however, before proceeding further refer to a judgment of this court in United Nilgiris Tea Estates Co. Ltd., v. Government of Tamil

Nadu [1980] 45 STC 10, wherein a Division Bench of this court has taken to view that the sale of shade trees may constitute a sale of a produce

from the land and such produce may be agricultural if the trees had been planted on land on which labour had been expended. The trees would not

be agricultural produce if the trees had come up by spontaneous growth, If we may say so with respect, in the view expressed by this court is in no

way in conflict with the view expressed by the Supreme Court in the case of State of Kerala Vs. Karimtharuvi Tea Estate Ltd., . Agriculture is an

operation upon land. Land under the Act has been defined to mean agricultural land, that is to say, land which is used for agricultural purposes or

for purposes subservient thereto and is either assessed to land revenue in the State or is subjected to a local rate assessed and collected by officers

of the Government as such and includes horticultural land, forest land, garden land and plantations but does not include house sites or land used exclusively for pasture. The estate, thus, of the petitioner is an agricultural estate comprising agricultural land used for agricultural purposes. The agricultural purpose mentioned and not disputed is tea plantation, the petitioner has been planting trees also but, according to it, only for providing shade to the tea plantation. The Tribunal had noticed that these trees were regularly grown for sales of bark, but also felled at regular intervals and sold as firewood and in their place, new plants grown and they were not of any spontaneous growth. Once it is found that they were not of a spontaneous growth, what follows is to see whether they were shade trees and not part of the agricultural operations of the petitioner. If such trees were grown by them for the purpose of deriving income therefrom, undoubtedly, they use such trees for agricultural purposes, and so they sue the land upon which such trees were grown by them for agricultural purposes. But, once it is found that they had grown the trees not for the purpose of deriving any income therefrom, but solely for the purpose of providing shade for the tea plants, the trees cut and sold by them thus gave no agricultural income to them (See State of Kerala Vs. Karimtharuvi Tea Estate Ltd., . No doubt, the Tribunal has said that in Nilgiris District, during March, 1980, shade trees were not grown in the tea estate. This, however, will not answer the question whether the petitioner had grown the trees cut and sold by them solely for the purpose of providing shade to its tea plantations or not. The answer to this question alone will meet the requirements of the Revenue. We are aware that the revisional power of this court is not exercised to interfere with a finding of fact. But if some essential ingredient is overlooked and an error creeps into the facts on that account, such finding of facts are interfered with. It is a case, in our opinion, in which the essential question was required to be answered before it was held that the trees sold were not shade trees and that they were in the process of agricultural operations of the petitioner.

11. Coming, however, to the sale of barks of wattle trees, we do not think any interference is possible. The definition of land clearly covers forest land and income derived out of and agricultural operation on such land. Wattle trees which, grown in forest, peel out barks which sometimes are

also described as forest produce. None the less, if they are found in private forests and sold, such sale is the sale of an agricultural produce. The income derived from it, in our opinion, shall be covered by section 20 of the Act.

12. In the result, these tax cases are allowed in part. The order of the Tribunal in so far as the sale of cut trees (loosely termed as firewood) is

concerned is set aside and the order in so far as wattle barks is concerned, is affirmed. The Tribunal has remitted the case, in so far as sale of

timber from the peripheral area is concerned, to the assessing authority. Since we are of the opinion that a fresh look into the facts is necessary

with respect to the sale of cut trees also, it will be proper, in our opinion, if the same is also remitted to the assessing authority for a reassessment in

accordance with law. The tax cases are allowed in part as mentioned above and remitted to the assessing authority for a fresh hearing. No order as

to costs.