

(1996) 07 KL CK 0030

In the High Court Of Kerala

Case No : T.R.C. No's. 240, 253 and 254 of 1992

Vaniampara Rubber Co. Ltd.

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 16-07-1996

Acts Referred:

Citation : (1998) 230 ITR 449

Hon'ble Judges : V.V. Kamat, J;P.A. Mohammed, J

Bench : Division Bench

Advocate : Markose Vellapally and Joseph Kodianthara, for the Appellant; V.C. James, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

P.A. Mohammed, J.—These three tax revision cases arise from a common order of the Agricultural Income Tax Appellate Tribunal, Additional Bench, Palakkad, dated September 9, 1991. The assessment years involved are 1975-76, 1976-77 and 1977-78.

2. The petitioner is a company incorporated under the Companies Act, 1956, and is carrying on business of growing and planting rubber in its estate known as "Vaniampara Rubber Estate". The petitioner was an assessee under the Kerala Agricultural Income Tax Act, 1950 (hereinafter referred to as "the Act"), on the files of the Inspecting Assistant Commissioner of Agricultural Income Tax, Trichur. The petitioner executed an agreement dated July 25, 1974, in favour of a purchaser to sell 13,600 old and uneconomic rubber trees from an area of about 100 acres of its estate for a total consideration of Rs. 4,08,000. Annexure "A" is a copy of the said agreement as per which the purchaser was permitted to uproot and remove the trees within a period of three years. While completing the assessments for the years in question, the Assessing Officer proposed to assess a portion of the consideration received on execution of the agreement as income from slaughter tapping assessable to agricultural Income Tax. The said proposal was objected to by the petitioner. However, after the enquiry, rejecting the

contention of the petitioner, the entire income received by the petitioner during the previous year relevant to the assessment year 1975-76, viz., Rs. 81,600, was treated as agricultural income and the same was brought to tax. Likewise, a sum of Rs. 1,78,200 received during the previous year relevant to the assessment year 1976-77 and also Rs. 1,48,200 received during the previous year relevant to the assessment year 1977-78 were treated as agricultural income and assessed to tax. In the appeals filed by the petitioner, the Deputy Commissioner (Appeals) confirmed the treatment of receipt of the amount for the sale of rubber trees as income. In respect of disallowance of expenses, the Deputy Commissioner (Appeals) directed the assessing authority to reconsider the issue with certain observations. As a result of that, the impugned assessments were set aside and the cases remitted back to the assessing authority for fresh disposal according to law and in the light of the observations made therein. The petitioner being aggrieved by the order so passed by the Deputy Commissioner (Appeals) filed appeals before the Appellate Tribunal. Before the Tribunal, there were two other appeals by the petitioner relating to the years 1973-74 and 1974-75 with which we are not concerned in these cases. The Tribunal by a common order found that there was no evidence on record for the assessing authority to believe that all the rubber trees sold were uprooted only during the last year of the agreement, that is to say, during the previous year relevant to the assessment 1977-78. The Tribunal did not approve the ratio of bifurcation of income adopted by the assessing authority. After considering the entire matter, the Tribunal directed 60 per cent. of the receipt to be treated as the sale value of rubber trees which is not exigible to agricultural Income Tax and the balance 40 per cent. alone as income from slaughter tapping exigible to agricultural Income Tax. It is against the said common order that the present revision cases are filed.

3. The questions of law raised before us for decision are as follows :

"(1) Whether, on the facts and in the circumstances of the case and on a proper interpretation of annexure A agreement dated July 25, 1974, the Appellate Tribunal was right in treating 40 per cent. of the consideration received under-annexure A agreement dated July 25, 1974, by the petitioner as taxable agricultural income from slaughter tapping and only the balance 60 per cent. as the sale proceeds of the rubber trees ?

(2) Whether the Appellate Tribunal was right in holding that the entry in annexure E balance-sheet and profit and loss account of the petitioner was conclusive as to the nature of the receipts under annexure "A" agreement dated July 25, 1974, in the hands of the petitioner ?"

4. At the outset, we may state that the questions raised before us are purely questions of fact arising from the findings rendered by the Tribunal. However, we will examine the contention raised by the petitioner particularly with reference to annexure "A" agreement dated July 25, 1974. Annexure "A" agreement was executed on July 25, 1974, between the petitioner and the purchaser, that is to

say, during the previous year relevant to the assessment year 1975-76. The consideration fixed for the sale of 13,600 uneconomic rubber trees was Rs. 4,08,000. The abovesaid consideration was agreed to be paid by the purchaser in twenty instalments, the last instalment being due on October 31, 1976. As per clause 3 of the agreement, the purchaser shall remove from the vendor's property as soon as possible and in any case on or before June 30, 1977, whereas clause 4 of the agreement specifies that the scheduled property on which the rubber trees sold are standing, shall continue in the possession of the vendor and since the said property is intended to be replanted in 1977 the vendor shall have the full and unrestricted right to make pits, fence, and to cut roads and paths, etc. On an anxious reading of the different clauses of the agreement, we do not see any provision with regard to the yield which will be derived from the trees which are agreed to be sold and on that aspect the agreement is silent, even though counsel for the petitioner points out that the petitioner has transferred the trees to the purchaser for uprooting and removing them. The question is whether by reason of the execution of an agreement between the petitioner and the purchaser the trees involved in the agreement will not have any yield. We cannot perceive a situation that the trees will not have any yield till they are uprooted as per the agreement. Yield from the trees will be available till they are uprooted or removed by the purchaser. What we are concerned about is the availability of agricultural income from the properties wherefrom the trees were uprooted and removed. While executing annexure "A" agreement for the sale of uneconomic rubber trees and uprooting the same from the estate the assessee acted as a prudent businessman. That being so, it was expected of him to make some provision for slaughter tapping till the trees are finally uprooted. As pointed out above, such a provision is significantly absent in the agreement. The Assessing Officer perused the agreement and came to the conclusion that it is a composite document. That finding was concurred by the Appellate Tribunal. On seeing the different clauses in the agreement and noting the opinion expressed by the assessing authority and the Appellate Tribunal, we are of the view that the agreement involved in these cases is a composite one involving the right of slaughter tapping and the sale of timber.

5. The contention of learned counsel for the petitioner is not that there was no income from slaughter tapping after the execution of the agreement ; but such income belonged to the purchaser to whom the trees were sold. The case being that there was income from the property, the provision should have been there in the agreement and in the absence of any provision in that regard this court cannot accept the contention that by reason of sale deriving of income from the property ceased to exist.

6. The assessing authority, in view of the composite nature of the agreement, apportioned Rs. 3,06,000 towards income from slaughter tapping and the balance of Rs. 1,02,000 towards the value of timber. In other words, three-fourths of the total consideration was treated as agricultural income and one-fourth was treated as value of timber. However, in appeal, the Tribunal came to

the conclusion that this provision has to be altered. Accordingly, considering all the aspects of the case, the Tribunal said that 60 per cent. of the receipts shall be treated as sale value of the rubber trees and the balance 40 per cent. as income from slaughter tapping, which is exigible to agricultural Income Tax. The Tribunal further ordered that apportionment shall be made for every year and the same cannot be deferred and fastened to the third year of the agreement. In other words, the assessing authority shall take only 40 per cent. of the receipt of the particular year as income of that year. We feel that the conclusion arrived at by the Tribunal is reasonable and fair in the circumstances of the case. What is involved is satisfaction of relevant material by the Tribunal and its reasonable conclusion therefrom. We do not see any warranting circumstances to hold that the Tribunal has acted erroneously. That being the position, we confirm the order passed by the Tribunal in respect of the assessment years in question.

7. Learned counsel for the petitioner argued that the Tribunal has not properly appreciated the entries in the balance-sheet and profit and loss account. Of course, the balance-sheet and profit and loss account have been considered by the Tribunal. The question is what the assessee is going to gain out of them in this case. The assessee will not get anything more by reason of a balance-sheet or profit and loss account than what he is otherwise eligible to get. In what manner the receipt has been shown or dealt with in the balance-sheet is not a material or determinative fact. What is material is as to how it has to be treated and in what manner. Therefore, considering the findings of the Tribunal, we do not feel that the balance-sheet and profit and loss account have any determinative effect in this case.

8. In view of the aforesaid discussion, we reiterate that the questions before us are purely questions of fact and no question of law arises for decision. The tax revision cases are dismissed. No order as to costs.