**(1993) 12 KL CK 0021**

**In the High Court Of Kerala**

**Case No :** T.R.C. No''s. 94 and 95 of 1992

Vazhakala Estate APPELLANT

Vs

State of Kerala RESPONDENT

**Date of Decision :** 17-12-1993

**Acts Referred:**

**Citation :** (1994) 210 ITR 451

**Hon'ble Judges :** K.S. Paripoornan, J;K.P. Balanarayana Marar, J

**Bench :** Division Bench

**Advocate :** S.A. Nagendran and Premjit Nagendran, for the Appellant; V.C. James, Government Pleader, for the Respondent

## Judgement

K.S. Paripoornan, J.—The revision petitioner is an assessee to agricultural Income Tax. The assessee is a registered firm. It owns agricultural properties. It derives considerable income from cardamom. We are concerned with the assessment year 1983-84. The Agricultural income tax Appellate Tribunal, Additional Bench, Kottayam, passed a common order in A. I. T. A. Nos. 76 and 206 of 1988, dated March 15, 1989. The revisions are against the said common order in A. I. T. A. Nos. 76 and 206 of 1988. One of the appeals was filed by the Revenue and the other by the assessee.

2. The facts of the case are a little complicated. The firm was granted renewal of registration for the year 1983-84. The books of account produced in support of the return were found not acceptable. The Agricultural Income Tax Officer passed an order dated September 17, 1984. He stated a few reasons for the rejection of the returns. Amongst them, the following important aspects were stressed :

(i) The crop register for cardamom maintained and produced was not written in the ordinary course of harvesting ;

(ii) Though weekly statements of the yield of cardamom along with the statements of expenses were received from the estate by the head office, the weekly statements of yield of cardamom, except for the week ending October 22, 1982, were not produced for verification. The yield of cardamom accounted for was only 35 per cent. of the actual yield ;

(iii) The value of 150 kgs. of coffee taken for own use was not accounted ;

(iv) The yield of pepper accounted for was not based on any proper accounts ; and

(v) The inspection report of the Agricultural Income Tax Officer, Vythiri, dated April 10, 1978, disclosed planted cardamom and also immature cardamom and coffee area. But no separate records were maintained for the expenses incurred for the upkeep and maintenance of the immature area. Inadmissible expenses were claimed.

3. A pre-assessment notice was issued. The assessee filed its objections. The Agricultural Income Tax Officer held that the weekly (crop) report for the week from October 18, 1982, to October 22, 1982, happened to be available with the accounts produced for verification and established that the crop register produced had nothing to do with that, as per the weekly statement from the estate to the head office. The particular weekly statement was traced from the books of account produced. It is not known with what intention the details of yield of cardamom were furnished from the estate to the head office in the scrap of paper. The weekly report detected at the time of verification of the accounts is only the weekly statement obtained from the estate and the same reflects the actual crop position. The yield of cardamom was estimated based on the particular weekly statement found in the books of account produced. A best judgment assessment was made, estimating the total income at Rs. 6,74,839.60. A total tax of Rs. 2,29,486.14 was levied.

4. The assessee carried the matter in appeal before the Appellate Assistant Commissioner, Kottayam. He modified the order of assessment, by order dated January 24, 1987. We are not concerned with the details of the modification ordered by the first appellate authority. One of the important aspects that was urged and dealt with by the Appellate Assistant Commissioner was that the yield estimated by the officer is highly excessive and arbitrary. The assessee objected to placing reliance on a scrap of paper alleged to have been recovered from one of the accounts produced for verification. The Appellate Assistant Commissioner held that the piece of paper under reference was produced before him for verification. But the paper docs not contain any entry regarding the year anywhere therein. The name of the crop is not mentioned in the slip of paper nor does it find a place in the slip. The Appellate Assistant Commissioner accepted the plea of the assessee that there is nothing in the slip of paper which indicates or from which a reasonable inference could be drawn that it relates to cardamom production for the year 1982. The estimate of yield of cardamom on the basis of the scrap of paper was, therefore, found unsustainable. Even so, the Appellate Assistant Commissioner felt that the yield conceded cannot be accepted. The accounts produced cannot be accepted as correct and complete. In the light of

 

the relevant facts and circumstances, the Appellate Assistant Commissioner found that it will be fair and reasonable to fix the production for the year by adding an equal amount of yield conceded.

5. The Revenue as well as the assessee filed appeals against the order passed by the Appellate Assistant Commissioner in Income Tax Appeal No. 925 of 1984, dated January 24, 1987. In the appeal filed by the Revenue, the main grievance was against the quantum of yield of cardamom refixed by the first appellate authority. The Appellate Tribunal, for the various reasons stated in its order dated March 15, 1989, held that the estimate of yield of cardamom made by the assessing authority is justified and the direction of the first appellate authority in interfering with the estimate made was uncalled for. The yield of cardamom originally assessed by the assessing authority was restored. The appeal filed by the Revenue was allowed. In the appeal filed by the assessee, some modifications were made in respect of the claim regarding the expenses. The appeal filed by the assessee was allowed in part. The assessee has come up in revision against that portion of the common order passed by the Agricultural Income Tax Appellate Tribunal whereby the estimate of yield of cardamom originally made by the assessing authority was sustained and the modification effected by the Appellate Assistant Commissioner was set aside. Disallowance relating to car is questioned in the other revision.

6. We heard counsel for the revision petitioner-assessee, Mr. S.A. Nagendran, as also counsel for the respondent-Revenue, Senior Government Pleader, Mr. V.C James.

7. In the revision petitions, the following six questions-of law have been formulated for the decision of this court : .

"(a) Whether, on the facts and in the circumstances of the case, the Tribunal is right in holding that the book results are liable to be rejected ?

(b) Whether, on the facts and in the circumstances of the case, the Tribunal is right in restoring the yield of cardamom originally estimated by the assessing authority ?

(c) Whether, on the facts and in the circumstances of the case, there was any justification on the part of the Tribunal to sustain the estimate of 1,508.750 kgs. of cardamom to the admitted yield of 734.500 kgs. ?

(d) Having found that the scrap of paper found in the ledger is not containing the name of the petitioner or the date or the yield of cardamom in kilograms, whether the Tribunal is legally correct in drawing a presumption that the piece of paper related to the yield of cardamon obtained by the assessee ?

(e) Whether the vehicle expenses incurred till July 28, 1982, the date of sale of Ambassador car, are allowable ? and

(f) Whether the depreciation on the Ambassador car is allowable?"

 

7. Though six questions have been raised, questions Nos. (e) and (f) specified in paragraph 7 (supra) can be disposed of easily. Those questions relate to the vehicle expenses incurred and the depreciation on the Ambassador car. Those questions were not seriously argued before us. It will also be relevant to note that those two questions arise only from the appeal filed by the assessee--T. A. No. 206 of 1988. Firstly, we can consider questions Nos. (e) and (f). We find from paragraph 7 of the order of the Appellate Tribunal that it was not proved that the legal ownership of the Ambassador car was with the firm and that in the balance-sheet of the firm, there was no mention that the car belonged to the firm. It is for this reason, the Appellate Tribunal declined to allow the expenses for the vehicle as also declined to grant depreciation for the motor car. On the merits, the conclusion of the Appellate Tribunal on those two aspects is justified. We concur with the view of the Appellate Tribunal and hold that the Appellate Tribunal was justified in negativing the vehicle expenses and also in not allowing depreciation for the car. No material was placed before us to take a different view. In this view, the order of the Appellate Tribunal negativing the relief sought by the assessee is found to be justified in law. We hold so.

8. The four different questions formulated in paragraph 7 (see page 456) (a), (b), (c) and (d)--centre round the quantum of estimate sustained by the Appellate Tribunal regarding cardamom. Those questions arose for consideration in the appeal filed by the Revenue before the Appellate Tribunal. The assessing authority found a weekly report for the week from October 18, 1982, to October 22, 1982, along with the accounts produced for verification. He also found that the entries in the crop register produced before him have nothing to do with the weekly statement that was found out. He held that there is no doubt that the weekly report detected at the time of verification of the accounts is the only weekly statement obtained from the estate and the same reflects the actual crop position. The weekly statements were not properly maintained or produced. The crop register did not reflect the correct state of affairs. Of course, for the reasons stated in paragraph 4 of the appellate order dated January 24, 1987, the first appellate authority declined to place any reliance on the slip which was seen along with the accounts and which was again produced before him. Nevertheless, the return regarding the cardamom crop was found to be unacceptable and the first appellate authority took the view that it is reasonable to fix the production for the year by adding back an equal amount of the yield conceded. Modification was made in the quantum of cardamom estimated by the assessing authority. On this aspect, the Revenue filed an appeal before the Appellate Tribunal and after adverting to the rival contentions placed before it by the Revenue as well as the assessee, as also the piece of paper, which was again produced before the Appellate Tribunal by the assessee, the Appellate Tribunal, in paragraph 6 of its common order dated March 15, 1989, stated thus :

"...... we also verified the said piece of paper produced before us. It is true that there is no date or reference in kgs. or any other indicative details as submitted by the assessee, but it is very clear that the piece of paper contains the details of the weekly yield of cardamom, because when comparing this piece of paper with the regular crop register maintained by the assessee, we find that this piece of paper contains the details and information and identically in the case of the crop register but for the details of a specific day and other details. But the different days of that particular week is available in the paper i.e., the days from October 15 to October 22, The details of the cardamom yield are recorded in the regular crop register day-wise under the separate heads--green cardamom and dry cardamom. The particular piece of paper also contains the same pattern of details and also the paper is initialled by some of the staff of the assessee. The piece of paper is recovered from the regular books of account maintained by the assessee. It contains certain information and details in the same pattern as available in the regular books of account. So the natural presumption is that the piece of paper relates to the yield of cardamom obtained by the assessee. The yield of cardamom is regularly detailed in kgs. Hence it is not possible to overrule the validity of the paper simply because the yield was not detailed in kgs. It is very important to note that individual days of the particular week, the quantity of green cardamom and the quantity of dry cardamom, etc., which are the substance of any weekly statement, are very much available in the piece of paper. It is common knowledge that the incriminating documents or papers will not be maintained as explicitly and clearly as in the case of regular accounts and records. Moreover, the weekly statements other than the seized one have not been produced before the assessing authority for his verification. Another particular feature worth mentioning, as rightly observed by the assessing authority, is the proportion between green and dry cardamom obtained. For the immediately preceding assessment year, i.e., 1982-85, the assessee had returned an yield of 1,879.20 kgs. For the assessment year 1981-82, the assessee had returned an yield of 1,010 kgs. When these figures are compared it is only reasonable to presume that the yield conceded by the assessee for the impugned assessment year 1983-84 is nothing but a made up figure. In the circumstances, we justify the estimation of yield of cardamom made by the assessing authority. The direction of the first appellate authority in this respect is reversed. The yield of cardamom originally estimated by the assessing authority is restored."

9. The above reasoning and conclusion of the Appellate Tribunal is severely attacked by Mr. Nagendran, counsel for the revision petitioner-assessee. We have to remember that the Appellate Tribunal is the final fact-finding authority and it had the benefit of perusing the piece of paper produced before it and appreciating the rival pleas urged before it by the parties. The Appellate Tribunal also noticed that the piece of paper did not contain any date or reference in kilograms or any other details, but found that it was clear that the piece of paper contained details of the weekly yield of cardamom. It compared the details contained in the piece of paper with the regular crop register maintained by the assessee and found that the details and information contained therein are identical. It was also found that the piece of paper contained the same pattern of

 

details and initialled by some of the staff of the assessee. In the light of the above facts brought out in the case the Appellate Tribunal held that the natural presumption is that the piece of paper related to the yield of cardamom obtained by the assessee and so it is not possible to ignore the validity of the piece of paper and the necessary inference flowing therefrom simply because the yield was not detailed in kilograms. The other facts were also adverted to by the Appellate Tribunal to substantiate its finding. The weekly statements regarding the crop were not produced before the assessing authority for verification. For the immediately preceding two years, the yield returned was much more, which pointed out that the yield conceded for the present year 1985-84 is nothing but a made up figure.

10. Counsel for the revision petitioner-assessee submitted that the piece of paper has nothing to do with the weekly yield of cardamom. Since this was very much challenged, we thought we ourselves will look into the matter over again. When the matter came up before us on July 26, 1993, we directed the Revenue to produce the piece of paper. It was not produced by the Revenue. Again when the matter came up before this Bench on August 10, 1993, we were informed by the Government Pleader that the piece of paper did not form part of the assessment records and so, counsel for the Revenue is not in a position to produce the same. We felt that the entire episode regarding the piece of paper seems to be a little obscure or vague. We adverted to the details as also how it has been dealt with by the assessing authority, the first appellate authority and the Appellate Tribunal, and opined that it is not clear from the order of the Tribunal as to who produced the piece of paper before the Tribunal. We also stated that since the said piece of paper was produced before the Appellate Assistant Commissioner by the assessee''s representative, it should have been with him and the natural inference is that it should have been produced before the Appellate Tribunal by the representative of the assessee. We gave an opportunity to the assessee as well as the Revenue to file statements or affidavits in that behalf. In pursuance of the said order, the matter again came up before us on August 17, 1993. Counsel for the assessee filed an affidavit of the chartered accountant who appeared before the Tribunal. It is dated August 14, 1993. It is stated therein that the slip or piece of paper was produced before the Appellate Assistant Commissioner by the assessee and it was returned to him. It is further stated that it was again produced before the Appellate Tribunal by the assessee and the Tribunal took possession of the same. The records of the Appellate Tribunal did not contain the said piece of paper. The chairman of the Sales Tax Appellate Tribunal, along with the communication dated August 28, 1993, forwarded the remarks of the members who heard the appeals. It is stated therein that the piece of paper or slip was produced before them by the assessee. Such papers produced at the time of hearing are not taken possession of by the Tribunal. It is further stated thus :

"..... In the present case, the ''piece of paper'' was all along in the possession of the assessee. The piece of paper was obtained by the assessing authority from the books of account of the assessee at the time of hearing. The same was returned to the assessee. Later it was produced before the Appellate Assistant Commissioner who returned the paper back to the assessee after verification. It was further produced before the Tribunal and in all logic and fairness, the paper ought to have been returned to the assessee ..."

11. In the explanation dated August 27, 1993, Mr. O.K. Narayanan, Member of the Appellate Tribunal, has in effect stated that the piece of paper was not retained by the Tribunal. We recorded these aspects in our order dated September 13, 1993. When the matter was finally heard by us, it was submitted by the learned Government Pleader that the piece of paper is not seen in the records of the Appellate Tribunal. It was not retained by it. In the normal course, it should have been returned to the assessee''s representative who produced it at the time of hearing.

12. On a totality of the facts and the circumstances of the case, we are of the view that the piece of paper or slip was recovered from the regular books maintained by the assessee, that it was produced by it before the Appellate Tribunal for perusal, that though it did hot contain a date or reference in kilograms or other details, it was clearly found by the Appellate Tribunal that the piece of paper contained the details of the weekly yield of cardamom. It was so stated on comparing the piece of paper with the regular crop register maintained by the assessee. Moreover, the history and background disclose that the return for the two previous years was much more than the present year and it is in these circumstances, the Appellate Tribunal sustained the yield of cardamom originally made by the assessing authority and reversed the decision of the first appellate authority on that aspect. We are satisfied, on a perusal of the detailed order of the Appellate Tribunal, that the Tribunal has given cogent reasons to reverse the decision of the first appellate authority regarding the yield of cardamom. Moreover, the Appellate Tribunal had the benefit of looking into the piece of paper or the slip and comparing it with the books of account and other documents and came to the conclusion that the piece of paper related to the yield of cardamom obtained by the assessee and so, the estimate of cardamom made by the assessing authority placing reliance on the piece of paper or the slip found from the accounts book is justified and proper. By the same token, the Appellate Tribunal took the view that the first appellate authority was not justified in discarding the piece of paper or slip and in holding that it had no relevance in estimating the yield of cardamom. All these aspects are in the realm of facts. The findings entered by the Appellate Tribunal are pure findings of fact. The reasoning and conclusion of the Appellate Tribunal are based on material. There is no error of law in the aforesaid reasoning and findings entered by the Appellate Tribunal. On this short ground, we decline to accept the plea of the revision petitioner-assessee that the Appellate Tribunal erred in placing reliance on the slip or piece of paper found out from the account books and which was produced before the first appellate authority and the Appellate Tribunal. We are also of the view that in the normal circumstances and the way in which events

have turned out, the piece of paper produced before the Appellate Tribunal by the representative of the assessee at the time of hearing should have been returned to him. The said piece of paper was not produced as additional evidence and there is no reason or material to say that the Appellate Tribunal took possession of the same. At any rate, the said piece of paper or slip was not with the Revenue nor did it form part of the records of the assessing authority or the Appellate Tribunal. The plea to the contrary is unacceptable.

13. We, therefore, uphold the estimate of the cardamom crop sustained by the Appellate Tribunal. The estimate made by the assessing authority regarding the cardamom crop is based on proper material. For valid reasons, the Appellate Tribunal has upheld the said estimate. There is no error of law on that score. We, therefore, answer the questions formulated hereinabove in the following way : The book results were rejected for proper reasons by all the statutory authorities. It is a finding of fact. There is no error of law on that score. The Appellate Tribunal was justified on the facts in restoring the yield of cardamom originally estimated by the assessing authority. The estimate sustained at 1,508.750 kgs. is based on proper materials. For very valid reasons, the Appellate Tribunal held that the scrap of paper or slip found in the ledger related to the yield of cardamom. The presumption drawn by the Appellate Tribunal that the piece of paper related to the yield of cardamom obtained by the assessee is valid and proper in the facts and circumstances of the case. The tax revision cases are without merit. The common order passed by the Appellate Tribunal dated March 15, 1989, does not merit interference in revisions. We dismiss both the revisions. There shall be no order as to costs.

14. Before concluding, we would like to highlight one aspect of the matter which discloses a disturbing feature in many of the tax revision cases coming up before this court. We had occasion to notice in many cases that the first appellate authority or even the Appellate Tribunal is adverting to or taking into consideration documents or papers placed before them for the first time in the course of arguments. In many cases, it appears that no notice is given to the opposite party about the matter. A copy of the said document does not form part of the records of either the first appellate authority or the Appellate Tribunal. When the matter comes up before this court, we are left in the dark as to how the document was produced at all or looked into by the statutory authorities or the nature and contents of the documents. We would only stress that all materials which are relied on and which form the basis of assessment (except original account books or similar records) should be available in the assessment records. It may be that the materials are gathered by the Revenue (assessing authority) or produced by the assessee and in certain rare cases even by a third party. But they should form part of the assessment records. In cases where the materials relied on are huge or voluminous or to be returned to the assessee, as far as possible, photo copy or certified copy of such records, duly authenticated, should be made part of the assessment records. As to who gathered the information or who produced the document and when, the date and reasons for

 

the return of the document, all should be evident from the records. These vital matters cannot be left to guess work. Documents or materials which were not produced before the assessing authority should not, ordinarily, be looked into by the first appellate authority or the second appellate authority (Appellate Tribunal) unless such materials or documents are produced by way of additional evidence in the appeal. For admitting such documents, there should be cogent reasons to show as to why they could not be produced before the assessing authority. It is open to the appellate authority, either on application or on its own motion to admit such additional evidence. But it should state the reasons for admitting such additional evidence. The opposite party should have the opportunity to know the same and to contradict the same by producing relevant materials. The additional materials or evidence so produced should form part of the records of the authority which admitted it. It is not open to the assessing authority or the appellate authority to simply rely upon documents or materials "shown" to it or produced for "simple perusal" (often at the time of hearing), without making such documents or papers part of the records. The documents or materials produced or relied on should be properly indexed with all relevant proceedings, from stage to stage and must be available for perusal when the matter comes up before this court in revision or taken up before higher forums. If such procedure is not followed, it may, in many cases, result in failure of justice either to the assessee or to the Revenue. It is unfortunate that the above well-known minimal norms and safeguards are not adhered to either by the assessing authority or by the first appellate authority or by the second appellate authority (Appellate Tribunal) even !! We are distressed that proper procedure is not followed, in the matter of receiving and perusing documents or papers, by the assessing authority, the first appellate authority or the second appellate authority and the well-settled norms and forms that should be followed in such cases are not borne in mind. The records relating to the assessment are perfunctorily kept. Vital aspects or matters are left to guess work. This is, indeed, unfortunate. We are stating the above aspects for future guidance, so that the Board of Revenue (Taxes) as also the Appellate Tribunal may notice the above matters and issue appropriate instructions or guidelines to all the concerned authorities in the matter. We are inclined to think that earnest efforts should be made by the Government to impart effective and practical training to all concerned persons in the Revenue to keep themselves up to date in substantive and procedural laws and equip such persons properly in the larger interests of the Revenue itself.

15. Both the revisions are dismissed. No costs.

 