
(1993) 06 KL CK 0027
In the High Court Of Kerala
Case No : T.R.C. No. 53 of 1993

Vazhakkala Estates Pvt. Ltd.

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 24-06-1993

Acts Referred:

Kerala Agricultural Income Tax Act, 1950 — Section 78

Citation : (1994) 209 ITR 461

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

Bench : Division Bench

Advocate : S.A. Nagendran, K.B. Subhagamani and Premjit Nagendran, for the Appellant;

Judgement

K.S. Paripoornan, J.—This is a revision filed by an assessee to agricultural Income Tax. The revision is filed u/s 78 of the Kerala Agricultural Income Tax Act, 1991. The respondent is the Revenue. The assessee assails the order passed in revision by the Commissioner of Agricultural Income Tax, Thiruvananthapuram, dated December 16, 1992, affirming the order of assessment passed by the Inspecting Assistant Commissioner, Agricultural Income Tax and Sales Tax, Kottayam, dated September 18, 1990. We are concerned with the assessment year 1985-86, for which the previous year ended on March 31, 1985,

2. The petitioner-assessee is a private limited company. It reported for the particular assessment year a total loss of Rs. 1,38,686.80. It owned the estates, Graceland Estate and Janasree Estate. The Agricultural Income Tax Officer found that the books of account and the returns cannot be accepted. It was noticed that the account produced was not written in the usual course of business. The accounts were seen written at a stretch in regular intervals. So it was held that the above documents could not be relied upon. It was further noticed that the yield returned from the estate was very low. Similarly, for Keezhar and Parayankulam Estates, the yield from slaughter tapping as returned by the assessee was not accepted. The assessing authority referred to the

preassessment notice dated December 11, 1989, as also the subsequent notice dated April 20, 1990, and held that the income returned from slaughter tapping in Keezhar and Parayankulam Estates cannot be accepted and that the income thereon will be estimated. The reason stated was that the average income from slaughter tapping comes only to Rs. 19 per tree. On the other hand, in similar other estates nearby, the average income from slaughter tapping returned is much more and there are other similar cases also. The average value of a tree given for slaughter tapping by the assessee worked out to Rs. 47, whereas, in similar cases, viz., Padinjarekara Estate Limited, it worked out to Rs. 234 per tree and similar other cases showed Rs. 210. On that basis, the income from slaughter tapping was fixed reckoning the average value of the tree as Rs. 210 and the latex value at 2/3 of the above Rs. 140. So, for 1,050 trees, the latex value was fixed at Rs. 1,47,000 and allowing deduction for the tapping expenses at 30 per cent., the balance income was fixed at Rs. 1,02,900. The plea of the assessee that the agreement relating to slaughter tapping should be accepted was negatived for the reason that the agreement was not a registered one and its credibility was open to doubt since the date of issue of the stamp paper is not recorded. Moreover, the plot was inspected by the Agricultural Income Tax Officer, Kottayam, on August 1, 1984, and at that time, the agreement was not produced before the officer. It was for these reasons, the Agricultural Income Tax Officer, by order dated September 18, 1990, fixed the total income from all the trees at Rs. 2,39,240.20 before depreciation and levied tax thereon.

3. In revision, the Commissioner of Agricultural Income Tax, Thiruvananthapuram, by order dated December 16, 1992, affirmed the said order. After advertng to the facts in the case, the Commissioner of Agricultural Income Tax held that the crop register was not maintained in the ordinary course of business and there is no satisfactory explanation for the steep fall in yield compared to the earlier year and the assessee did not produce any evidence for the expenses claimed, such as miscellaneous expenses, legal expenses, bank commission, etc. The Commissioner also found that the crop register was seen written at a stretch and so unreliable. For these reasons, the Commissioner of Agricultural Income Tax held that the accounts could not be accepted as correct. With regard to the quantum of income, the Commissioner of Agricultural Income Tax held that no sufficient reason has been offered for the steep fall in income in this year and the income from slaughter tapping was found to be very low. The Agricultural Income Tax Officer was justified in adopting the figures in comparable or similar other cases and in fixing the value of latex at Rs. 140 per tree. The rejection of accounts and also the fixation of the quantum of income were confirmed. The revision was dismissed. The assessee has come up in further revision in this court.

4. We heard counsel for the revision petitioner.

5. The questions as to whether the books of account and the returns were acceptable and if not acceptable and a best judgment assessment is warranted,

what should be the estimate to be adopted are all largely questions of fact. In this case, the assessing authority has given cogent and sufficient reasons for non-acceptance of the accounts. The accounts were not kept in the regular course of business. They were written at a stretch. The crop register was not written in the regular course of business, the authenticity of the accounts was open to doubt. Besides, the yield returned from the estates was low compared to the previous years. These findings were affirmed by the Commissioner of Agricultural Income Tax also. On these premises, the rejection of accounts cannot be attacked.

6. It was vehemently contended that even if the accounts are rejected, the quantum of yield should be based on material. The gravamen of the charge is that the trees were given for slaughter tapping as per an agreement executed between the parties and the authorities are not giving effect to the said agreement. The assessing authority as well as the Commissioner found that the agreement is not acceptable. In paragraph 3 of the assessment order dated September 18, 1990, the assessing authority found that the agreement is not a registered one and the date of issue of the stamp paper is not recorded and hence the credibility of the agreement is open to doubt. The plot was inspected by the Agricultural Income Tax Officer on August 1, 1984, and the agreement was not produced before him. There was no material to show that the agreement relied on was credible or acceptable. Moreover, the total value of the trees given for slaughter tapping was found to be incredibly low compared to similar other cases nearby. It was so found by the assessing authority and even in the pre assessment notice, this matter was brought to the notice of the assessee. The objection raised by the assessee in this regard was considered. The assessing authority as well as the Commissioner of Agricultural Income Tax found on the basis of similar transactions in the nearby estates that the value of the trees, including the income from slaughter tapping, should be at least Rs. 140. This is largely a finding on a question of fact arrived at by the assessing authority and by the Commissioner of Agricultural Income Tax on the basis of the materials available before them. We do not find any error of law in the said finding. In the result, we are of the view that the order of the Commissioner of Agricultural Income Tax does not suffer from any error of law nor has the Commissioner failed to decide any question of law. There is no scope for interference u/s 78 of the Agricultural Income Tax Act. There is no merit in this revision.

7. The revision is dismissed.