

(1998) 12 MAD CK 0078

In the Madras High Court

Case No : T.C. No. 80 of 1997 (Revision No. 1 of 1997)

Velimalai Rubber Co. Ltd.

APPELLANT

Vs

State of Tamil Nadu (No. 1)

RESPONDENT

Date of Decision : 23-12-1998

Acts Referred:

Citation : (2002) 256 ITR 783

Hon'ble Judges : R. Jayasimha Babu, J;A. Subbulakshmy, J

Bench : Division Bench

Advocate : K.C. Rajappa and S. Devanathan, for the Appellant; K. Raviraja Pandian, for the Respondent

Judgement

A. Subbulakshmy, J.—The assessee-company owns rubber estates. It filed return of income for the assessment year 1993-94 showing the agricultural income as Rs. 24,50/850. The assessee-company claimed expenses totalling to Rs. 1,01/81,393 which represented head office expenses, estate expenses, depreciation, replanting expenses, etc. The Agricultural Income Tax Officer disallowed the expenses to the tune of Rs. 10,63,476 and computed the net income as Rs. 35,14,322 and levied a tax of Rs. 22,84,309. On appeal, the Appellate Assistant Commissioner of Agricultural Income Tax gave partial relief which was confirmed by the Tribunal. The applicant disputed with regard to the disallowances before the Tribunal on head office expenses comprised of (i) repairs and maintenance of vehicles, (ii) rent, (iii) advertisement charges, (iv) postage, telegram and telephones, (v) contribution to superannuation fund and estate expenses comprised of (i) rates and taxes (ii) repairs and maintenance of buildings, (iii) repairs to roads and drains, (iv) repairs and maintenance of vehicles, (v) repairs and maintenance of others, (vi) professional tax, (vii) telephone charges, (viii) legal and professional charges, (ix) printing and stationery, (x) provision for contingent liability. The disallowances were confirmed.

Head office expenses :

Repairs and maintenance of vehicles.--The assessee-company claimed Rs. 1,05,960.48 under this head. There were three cars. According to the Agricultural Income Tax Officer three cars were not in the estate premises and no log book was maintained by the assessee-company and so, it was not possible to ascertain the person who had actually used the vehicle and the purpose for which it was used. The Agricultural Income Tax Officer also found that the contention of the assessee that the managing director has got his own car and so, using the company car for his private use does not arise at all is not an acceptable one and he disallowed 25 per cent, of the expenses which was sustained by the Assistant Commissioner of Agricultural Income Tax. The Tribunal also found that having regard to the fact that the appellant has not maintained a separate log book personal usage cannot be ruled out and the Tribunal had confirmed the order of the authorities below.

Counsel for the assessee submitted that the managing director has got his own car for his personal use and the vehicles belonging to the company were not put to the personal use of the managing director and the cars were used only for the company purposes and the question of personal use does not arise at all and so, the claim should be allowed in full.

The assessee-company is carrying on business in production of rubber. There is nothing substantial in evidence to prove that the vehicles were put to personal use. So, we find that the disallowance made on this ground is not proper and the order of the Tribunal in this aspect is to be and is set aside.

Rent: The assessee has claimed a sum of Rs. 28,800 under this head being the amount paid as rent towards the residence of the managing director at Rs. 1,900 per month as deductible in computing the net income of the company. The Income Tax Officer found that the managing director was not an estate employee and accordingly disallowed the entire claim. The Assistant Commissioner of Agricultural Income Tax confirmed it. The Tribunal has also sustained the findings of both the authorities below.

The managing director of the company is an employee of the company. This expenditure was incurred for the services rendered by him to the company. He is eligible for rent and as the expenditure has been incurred for the residence of the managing director who is rendering services to the company and as this expenditure is incidental and necessary for the purpose of running the estate, we hold that this is an allowable deduction. The finding of the Tribunal in this aspect is set aside and the expenses claimed are allowed.

Advertisement charges.--The assessee-company has claimed Rs. 12,580.20 under this head. The Agricultural Income Tax Officer disallowed the entire claim on the ground that it has no nexus with the agriculture. The Assistant Commissioner of Agricultural Income Tax confirmed it. The Tribunal also confirmed it.

Counsel for the assessee submitted that this expenditure was incurred for

publishing the company's financial results in newspapers as per statutory requirement and for popularising the company's product. Publishing the financial results in the newspapers cannot be stated to be a statutory requirement and publication of financial results will not amount to popularising the company's product. This expenditure is in no way connected with the agricultural operations and it has to be disallowed. The authorities below have rightly rejected the claim of the assessee in this aspect. The orders of the authorities below do not warrant any interference in this aspect.

Postage, telegram and telephones.--The assessee has claimed a sum of Rs. 43,336.84 under this head on the ground that this amount has been used for estate agricultural purposes. The Agricultural Income Tax Officer disallowed 25 per cent, of this claim on the ground that the assessee has not produced any records to show that the amount has been spent solely for estate agricultural purposes. His finding is that personal calls would have been included in the assessment.

Counsel for the assessee argued that the assessee is carrying on business in processing its rubber and selling it and it has to necessarily incur this expenditure for contacting other places.

The same point came up for consideration by this court in T. C. No. 943 of 1987 (Velimalai Rubber Company Ltd. Vs. Agricultural Income Tax Officer,) and this court following the decision of the Supreme Court in the case of Purtabpore Company Ltd. Vs. The State of Uttar Pradesh,), has decided that the expenditure incurred for postage, telegrams are for the purpose and in connection with farming and it is an allowable expenditure. So, no part of this expenditure can be stated to be personal. In view of the decision taken in T.C. No. 943 of 1987 (Velimalai Rubber Company Ltd. Vs. Agricultural Income Tax Officer,), we allow this expenditure.

Contribution to superannuation fund.--The assessee claimed Rs. 15,444 under this head. The Agricultural Income Tax Officer has disallowed a sum of Rs. 9,444 and allowed only a sum of Rs. 6,000. The Assistant Commissioner confirmed it. The Tribunal sustained the order of both the authorities below.

Counsel for the assessee submitted that this amount was paid towards contribution of superannuation fund and provident fund for the managing director and it is in the discharge of the statutory liabilities and so, it is an allowable expenditure.

This amount is in respect of superannuation fund for the managing director who was an estate employee. So, we are of the view that this is an allowable expenditure. Orders of the authorities below are not sustainable.

Estate expenses :

Rates and taxes.--As far as this head of expenses is concerned, it was not pressed by the assessee.

Repairs and maintenance of buildings and repairs to road and drains and others.-- With regard to this overhead, the Agricultural Income Tax Officer disallowed 19 per cent, of the expenses for non-plantation area by stating that plantation and non-plantation areas are comprehensive and the repairs have to be carried out by the lessor and the lessee is only a tenant and will not incur any such expenditure. The Tribunal sustained the order of the authorities below.

The expenditure claimed was towards repairs and maintenance. The assessee contends that the buildings are in plantation area. There are no buildings or roads in the non-plantation area and so, the disallowance of 19 per cent, for non-plantation area is perfectly in order.

Repairs and maintenance of vehicles.--The Agricultural Income Tax Officer disallowed 19 per cent, of this expenditure by stating that the use of the vehicles and tractor is comprehensive as the entire area lies together and that the plantation and non-plantation areas are also comprehensive and inseparable. The Assistant Commissioner had confirmed the same. The Tribunal also confirmed the view of the authorities below.

The authorities below found that the expenditure related to the plantation area should be allowed in full. So, with regard to the non-plantation area, they have found that 19 per cent, is disallowable. The order of the authorities below is perfectly in order.

Telephone charges.--This expenditure was incurred for the estate only. The lower authorities found that personal usage cannot be ruled out. In the absence of any register maintained in this regard it has to be held that this expenditure was incurred in connection with the agricultural estate. Accordingly, we hold that it is an allowable expenditure.

Legal and professional charges.--The Agricultural Income Tax Officer disallowed a sum of Rs. 10,110 under this head on the ground that the appellant has not furnished the details, such as nature of the case, its number and other details.

Counsel for the assessee submitted that this amount was paid as legal charges for conducting a case relating to usage of estate roads and the litigation related to the estate and it is a revenue expenditure. Out of Rs. 53,395 claimed by the assessee, the Agricultural Income Tax Officer disallowed a sum of Rs. 10,110 on the ground that it has no nexus with the agricultural operations.

The decision in COMMISSIONER OF AGRICULTURAL Income Tax Vs. MALAYALAM PLANTATIONS LTD., , states that (headnote) :

"Section 5(j) of the Kerala Agricultural Income Tax Act, 1950, provides for deduction from the agricultural income of any expenditure laid out wholly and exclusively for the purpose of deriving the income. To confine this provision to only those expenses which are directly and immediately relatable to the derivation of income will be to import limitations which are not there, either in the language or in the context, and to hold that what is contemplated is only

"agricultural expenses" considered as an antithesis of "agricultural income". Section 5(j) of the Kerala Agricultural Income Tax Act, 1950, and Section 10(2) (xv) of the Indian Income Tax Act, 1922, represent conceptions which are kindred though distinct. No doubt, there should be connection between the item of expenditure and the earning or ensuring of income and the connection should not be remote, indefinite or fanciful. Whether there is such connection in a given case will be a question of fact, once the proper approach is seen to have been made. Expenses laid out by the assessee, who derived agricultural income from tea and rubber, for (i) obstructing encroachment into the lands used for agriculture ; (ii) protecting the plants and trees from destruction ; (iii) preventing theft and pilferage of the produce ; (iv) resisting exorbitant demands of labour and maintaining discipline ; and (v) complying with the requirements of law relating to welfare of the labour, were wholly and exclusively laid out for preserving the land and trees and for maintaining, if not augmenting, the income therefrom and the expenditure was a permissible deduction u/s 5(j) of the Act, as the amounts had been spent wholly and exclusively for the purpose of deriving the agricultural income."

In the decision in Commissioner of Income Tax, West Bengal I Vs. Birla Cotton Spinning and Weaving Mills Ltd., , it has been held that (headnote) :

"The law charges were expenses incurred for the preservation and protection of the assessee's business from any process or proceedings which might have resulted in the reduction of its income and profits. Even otherwise the expenditure was incidental to the business and was necessitated or justified by commercial expediency. The expenditure which was incurred by the assessee in opposing a coercive Government action with the object of saving taxation and safeguarding business was justified by commercial expediency and was therefore allowable u/s 10(2)(xv) of the Indian Income Tax Act, 1922."

So, the essential test which has to be applied is whether the expense is incurred for the preservation and protection of the estate from any proceedings which might have resulted in the reduction of its income and profit. The expenditure must have been incurred honestly in the litigation for preserving the estate and deriving agricultural income. So, the legal expenses incurred must have nexus with the agricultural operations and in such case, it is an allowable claim. The authorities below have found that the legal expenses incurred were in connection with road cases and the nature of the case and other details are not available and it is not connected with the agricultural operations and this expenditure of Rs. 10,110 was an expenditure being advocate fee in connection with the road cases. In the absence of any proof with regard to the nexus of this expenditure with agriculture the lower authorities are perfectly justified in making this disallowance. The lower authorities have disallowed this expenditure of Rs. 10,110 by applying the principles laid down in the above said decisions. We confirm the view taken by the authorities below with regard to this aspect.

Professional tax.--The assessee claimed Rs. 2,500 under this head. The

authorities below have disallowed Rs. 475 on the ground that 19 per cent, of this expenditure represents non-plantation area and it has no nexus with the agricultural income.

Counsel for the assessee submitted that the professional tax is a statutory obligation and has nexus with the business of rubber production.

Payment of professional tax is connected with the company and it is a statutory liability. Hence, we find that it is an allowable expenditure. The disallowance made by the Tribunal is wholly unwarranted.

Printing and stationery.--The Agricultural Income Tax Officer disallowed 19 per cent, of this expenditure representing non-plantation area and it was confirmed by the Assistant Commissioner and the Tribunal.

This court has taken the view in T.C. No. 943 of 1987 (Velimalai Rubber Company Ltd. Vs. Agricultural Income Tax Officer,), following the decision of the Supreme Court in the case of Purtabpore Company Ltd. Vs. The State of Uttar Pradesh, , that the expenditure incurred for printing and stationery and for the purpose in connection with the firm and it is an allowable expenditure. Accordingly, we allow this expenditure.

In the light of the observations made under each of the items, the tax case is allowed in part. No costs.

ORDER

A. Subbulakshmi, J.

This matter is listed today (23-12-1998) for being mentioned.

2. Counsel for the applicant submitted that under the heading "Repairs and maintenance of buildings and repairs to roads and drains" in item No. 16, "and others" is not included. It is an omission to include "and others" in item No. 16. Accordingly "and others" is included in item No. 16.

3. With regard to the disallowance of 19 per cent, for non-plantation area, finding has already been given for this item that the disallowance of 19 per cent, is perfectly in order.