

(1994) 10 KL CK 0021

In the High Court Of Kerala

Case No : T.R.C. No's. 28, 31, 43 and 44 of 1993

V.M. Kurian

APPELLANT

Vs

State of Kerala and Another

RESPONDENT

Date of Decision : 25-10-1994

Acts Referred:

Citation : (1995) 213 ITR 314

Hon'ble Judges : T.L. Viswanatha Iyer, J;K.P. Balanarayana Marar, J

Bench : Division Bench

Advocate : P.V. Jyothi Prasad, for the Appellant; Smt. Lalitha Nair, Government Pleader, for the Respondent

Judgement

T.L. Viswanatha Iyer, J.—These tax revision cases relate to the assessment years 1986-87, 1987-88, 1988-89 and 1989-90. The only ground urged before us relates to the quantum of expenses allowed by the Tribunal. The assessee has got ten acres of land, of which the effective yielding area is 7.5 acres. The area is mainly a coffee plantation, inter-planted with pepper, arecanut and coconut, there being 330 pepper-vines, 160 arecanut trees and 4 coconut trees. The dispute before the Tribunal centred only on the quantum of the expenses to be allowed. The Appellate Assistant Commissioner had allowed expenses for the first three years at the rate of Rs. 2,100, Rs. 2,350 and Rs. 2,500 and for the last year at the rate of Rs. 2,850 per acre. The assessee's contention was that the expenses should be allowed at the rates mentioned in the guidelines issued by the Board of Revenue in the year 1985, i.e., at the rate of Rs. 4,000 per acre. The Tribunal did not accept his contention in toto but substantially increased the amount of expenses to be allowed per year to Rs. 2,800, Rs. 3,000, Rs. 3,100 and Rs. 3,500 per acre for the four years. The petitioner is not satisfied with this enhancement and claims that the expenses ought to be allowed at the rate of Rs. 4,000 per acre as per the guidelines. The question is whether this should be allowed or not.

2. Admittedly, the assessee has not kept any accounts. Therefore, the expenses

can only be estimated as in the case of the income. The Appellate Assistant Commissioner estimated the same at the figures mentioned earlier which were enhanced by the Tribunal. This enhancement has been made with their knowledge of the prevailing assessments and the rates in the region. Necessarily and in the absence of accounts, an estimate has to be made and so long as it is not unreasonable, it will not brook interference from this court. But counsel for the assessee insists that the expenses should be allowed at the rates mentioned in the guidelines. Now, as per the guidelines, the yield per acre for coffee is 400 kgs., and it is with reference to such an area that the expenses are estimated at Rs. 4,000 per acre. Though it is mentioned that the petitioner's estate is a well-maintained one, there is no case that the yield is anywhere near 400 kgs. of coffee mentioned in the guidelines. The assessee has accepted the estimate of yield made by the Assessing Officer. The assessee cannot take one part of the guidelines and rely on it, and at the same time ignore the other part. We have to read the guidelines as a whole and arrive at a decision. Even otherwise what is provided are only guidelines, i.e., facts and figures, which may be kept in mind while making the assessment. They are not totally binding. The quantum of expenses will depend upon the area where the estate is situate, the nature of maintenance and so on. It will vary from case to case, so that it cannot be said that the guidelines should be applied without any deviation in all cases where accounts are not kept. On the facts of this case, the consequence of accepting the contentions of the petitioner will be to leave very little surplus as income, after meeting the expenses at the rate mentioned in the guidelines. We cannot for a moment conceive that the assessee carried on the cultivation without any tangible benefit to himself. Having regard to all these circumstances, and since it is essentially a question of fact, we are not inclined to interfere with the estimation of the expenses made by the Tribunal which is by all accounts reasonable.

3. Counsel for the petitioner relied on the decision of this court in *M.K.C. Nabeesa Beevi Vs. Agricultural Income Tax Officer and Sales Tax Officer and Another*, to contend that the guidelines issued by the Board of Revenue are relevant material in allowing the expenses. That was a case where there was no inspection of the estate and no other materials were available before the Assessing Officer to arrive at an estimate of the yield. In these circumstances, this court stated that though the guidelines were not conclusive, they were relevant material in the matter of taking the yield and the assessing authority must explain why he was departing therefrom. That is not the position here, The material available in the case itself is sufficient to dispel the applicability of the guidelines regarding the expenses, one of the valid reasons being what we stated earlier that the expenses as per the guidelines will not be commensurate with the yield from the estate as found by the assessing authority.

4. Counsel for the assessee made a further plea, very fervently, that at least the expenses, so far as pepper is concerned, should be separately dealt with and granted. We cannot agree. The expense allowed by the Tribunal is a consolidated

amount for the entire estate, the estate being one which is inter-planted with coffee, pepper, arecanut and coconut. It is not possible to dissect one item from the rest and allow separate expenditure in the absence of any material to sustain such a grant.

5. The orders of the Tribunal do not, therefore, suffer from any infirmity. They are eminently reasonable ones. We decline to interfere with them. The tax revision cases are dismissed. No costs.