(1995) 04 MAD CK 0101

In the Madras High Court

Case No : Tax Case (Revision) Petition No. 1294 of 1984

W.P.A.S. Krishnamurthy — APPELLANT

Vs

State of Tamilnadu — RESPONDENT

Date of Decision : 04-04-1995

Acts Referred:
Income Tax Act, 1961 — Section 28

Citation : (1996) 217 ITR 464

Hon'ble Judges : T. Jayarama Chouta, J;K.A. Thanikkachalam, J

Bench : Division Bench

Advocate : Deokinandan, K.M.L. Majele, for the Appellant;

Judgement

Thanikkachalam, J.—The assessee is the petitioner herein. The assessee is aggrieved over the disallowance of expenditures made by the Tribunal with regard to the expenditures claimed under the heads "Nursery, Livestock maintenance, Banana culture operation and Tractor expenses".

2. Under the head "Nursery expenses", the assessee claimed a sum of Rs. 1,842. The assessee contended that the expenditure was revenue in nature, since it represents only in filling of vacancies. It was also pointed out that out of a total extent of 160 acres, only 10 to 15 acres were utilised for planting in the accounting year. The Tribunal found that the claim made by the assessee is excessive. Considering the area under cultivation, the Tribunal sustained 50 per cent of the disallowance. Thus a relief of Rs. 921 was given. Aggrieved, the assessee is in revision before this Court. Learned counsel appearing for the assessee submitted that the Tribunal was not correct in disallowing 50 per cent of the expenditure involved for nursery. But it remains to be seen that out of 160 acres, the assessee was planting only 10 to 15 acres. In such circumstances, we consider that disallowance of expenditure at 50 per cent appears to be not on the lower side. Accordingly, we are not inclined to interfere with the disallowance made by the Tribunal in regard to the expenditure claimed under the abovesaid head.

3. Under the head "Livestock maintenance", the assessee claimed expenditure of Rs. 4,000. According to the assessee, the expenditure incurred was on the maintenance of cattle. The assessee contended that the entire expenditure was incurred as manure for purposes of the estate. The Tribunal noted that the assessee has also utilised a considerable amount of chemical manure also. According to the Tribunal, the yield of coffee does not indicate heavy use of natural manure besides chemical manure. Therefore, the Tribunal considered that the disallowance made by the authorities below is in order. Aggrieved over this order, the assessee is in revision before this Court. Learned counsel for the assessee submitted that the cattle were maintained for the purpose of obtaining natural manure to be used on the land. According to learned counsel for the assessee, natural manure along with chemical manure was used and, therefore, the Tribunal was not correct in disallowing the entire expenditure claimed under this head. The Tribunal doubted the genuineness of the claim made by the assessee with regard to use of natural manure. Further, there is also no evidence on record to show as to how the natural manure was valued at Rs. 4,000. In the absence of those particulars and the finding arrived at by the Tribunal, that the claim made by the assessee is not genuine, we are unable to interfere with the order passed by the authorities below in regard to the expenditure claimed under the abovesaid head.

4. Under the head "Banana culture operation", the assessee claimed an expenditure of Rs. 7,000. The Agrl. ITO disallowed the entire expenditure. According to the Revenue, the banana trees have been planted for the purpose of providing shade to the coffee bushes and there will not be heavy expenditure for bananas separately, as the expenditure on coffee takes care of this aspect. According to the assessee, the income was low, because of virus disease affecting the plantation. The assessee produced a letter from the horticulture department regarding the disease prevalent in that area. Considering all these facts and circumstances, the Tribunal allowed a sum of Rs. 3,000 as expenditure under this head. Aggrieved, the assessee is in revision before this Court. Learned counsel appearing for the assessee submitted that the Tribunal was not correct in restricting the expenditure claimed by the assessee. According to learned counsel, the plantations were affected by virus disease. It was further submitted that the Department was not correct in stating that the expenditure incurred for coffee would take care of the bananas and, therefore, separate expenditure for banana culture is not necessary. On the other hand, the Addl. Government Pleader (Taxes), while supporting the order passed by the Tribunal had contended that no further allowance is necessary towards the expenditure claimed under this head. It remains to be seen that the assessee has produced a certificate from the horticulture department, regarding the disease prevalent in that area, as a result of which the yield was reduced. It is no doubt true, that the banana trees were planted for the purpose of providing shade to the coffee bushes. No doubt, the assessee would have incurred certain expenditure for the maintenance of the banana trees. That the expenditure on coffee would take

care of the maintenance of the banana trees appears to be a little out of context. Considering these aspects, we are of the opinion that 50 per cent of the expenditure claimed can be disallowed. In that process, the assessee will get benefit of Rs. 3,500.

5. Under the head "Tractor expenses", the assessee has claimed a sum of Rs. 10,390 and under the head "Depreciation on tractor", a sum of Rs. 283 was claimed. The assessee claimed under the abovesaid head before the Assessing Officer (AO) an expenditure of Rs. 21,560.25. The AO disallowed 50 per cent, which was upheld by the Asstt. Commr. On appeal before the Tribunal, the assessee submitted that the assessee owns an extent of 145 acres of plantations and 15 acres of non-plantation crops and the tractor was used only for the purpose of plantation. According to the Department, the tractor was used for non-plantation crops. The assessee pointed out that the non-plantation crops are only in a few acres. The Tribunal was of the view that some disallowance is called for. Accordingly, it restricted the disallowance to 1/4th, i.e., Rs. 5,390. In so far as the depreciation is concerned, the claim was remanded with a direction to grant as per the rules. Aggrieved, the assessee is in revision before this Court. Learned counsel appearing for the assessee submitted that the Tribunal was not correct in disallowing 1/4th of the expenditure towards tractor expenses. On the other hand, the Addl. Government Pleader (Taxes) submitted that the disallowance made by the Tribunal was quite correct. It remains to be seen that the assessee owns an extent of 145 acres of plantations and 15 acres of non-plantation crops. The tractor was used only for the purpose of plantations according to the assessee. But the Department contended that the tractor was used for non-plantation crops. The non-plantation crops are only in a few acres. Considering all these aspects, 1/4th of the expenditure was disallowed by the Tribunal. On an appraisal of facts arising in the case, we are of the opinion, that the disallowance of 1/4th of the expenditure appears to be reasonable. In so far as the depreciation is concerned, that issue was remanded back to the AO to allow the same in accordance with the Rules. Accordingly, we are not inclined to interfere with the order passed by the Tribunal, on this item of expenditure.

6. In the result, the tax case (revision) is partly allowed. There will be no order as to costs.

