
(1994) 10 MAD CK 0108

In the Madras High Court

Case No : Tax Case (Revision) No. 274 of 1987

Younus Sait Sons

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 25-10-1994

Acts Referred:

Citation : (1995) 215 ITR 132

Hon'ble Judges : P. Shanmugam, J; K.A. Thanikkachalam, J

Bench : Division Bench

Advocate : K. Vaitheeswaran, for the Appellant; Mrs. Chitra Venkataraman, for the Respondent

Judgement

Thanikkachalan, J.—The assessee is the petitioner. The assessee has claimed deduction of Rs. 65,000 realised from the sale of trees. According to the assessee, the trees grew spontaneously. Therefore, the sale proceeds of these trees are not amenable to tax. However, the Agricultural Income Tax Officer took the view that even trees grown spontaneously or planted, since they are forming a "thope", the sale proceeds of the trees would be amenable to tax. The addition made by the Agricultural Income Tax Officer was sustained by the appellate authority and the Tribunal. According to the assessee, if the sale proceeds come from the sale of the trees spontaneously grown, such sale proceeds are not taxable. Similarly, it was contended that if the trees are grown for the purpose of giving shade, then also the sale proceeds of these trees are not taxable. Reliance was placed on the decisions in State of Kerala Vs. Karimtharuvi Tea Estate Ltd., ; Untied Nilgiri Tea Estates Co. Ltd. Vs. State of Tamil Nadu, and Viswanatha Chettiar v. Agrl. ITO [1965] 55 ITR 692.

2. However, the learned Additional Government Pleader (Taxes) sub-mitted that these trees are grown in a thope numbering about 351 trees and the sale proceeds of such trees which are grown in a thope are taxable. It remains to be seen that in the order, the Assessing Officer has mentioned that the sale proceeds would have been related to the sale of shade trees like silver-oak, etc.

This view was taken by the Assessing Officer, since the sale proceeds amounted to Rs. 65,000. In *Viswanatha Chettiar v. Agrl. ITO* [1965] 55 ITR 692, while considering the provisions of sections 2(1)(a) and (3) of the Coorg Agricultural Income Tax Act, 1951, the Mysore High Court held that income from the forest trees growing naturally and without the intervention of human agency, even if the land is assessed to land revenue, is not agricultural income within the meaning of section 2(1)(a) of the Income Tax Act. In *State of Kerala Vs. Karimtharuvi Tea Estate Ltd.*, , the Supreme Court held that the grevelia trees which are grown for giving shade were capital assets and the proceeds derived by sale as firewood of those trees did not constitute agricultural income under the Kerala Agricultural Income Tax Act, 1950. In *United Nilgiri Tea Estates Co. Ltd. v. State of Tamil Nadu* [1991] 191 ITR 597, this court held that if the trees are spontaneously grown, the sale proceeds of the said trees are not amenable to tax. Similarly, if the trees are grown for giving shade to the crops, then also the sale proceeds as of such trees cannot be taxed under the Agricultural Income Tax Act. According to the facts arising in this case, the Assessing Officer pointed out that the sale proceeds would have come out of the trees like silver-oak, meant for giving shade to the crops. According to the assessee, the trees are grown spontaneously. When the trees are grown spontaneously or when the trees are grown for giving shade to the crops, in both these cases, the sale proceeds of those trees are not taxable under the Agricultural Income Tax Act. Accordingly, the authorities below were not correct in adding the sum of Rs. 65,000 realised from the sale of trees. Hence, we delete the addition of Rs. 65,000.

3. The second point arising in this revision is with regard to the deduction of Rs. 52,540 being the interest paid to the State Bank of India. The assessee has paid a sum of Rs. 55,517.50 towards interest to the State Bank of India. According to the assessee, these amounts were utilised for the purpose of maintaining coffee crops and running the estate. However, the Assessing Officer came to the conclusion that only a sum of Rs. 2,977.40 is allowable as expenditure. According to the Assessing Officer, the relief claimed u/s 5(e) is not correct. The addition made by the Assessing Officer was sustained by the appellate authority and the Tribunal. Before us, learned counsel for the assessee submitted that out of the amount claimed, a portion relates to expenditure incurred u/s 5(k) and the rest of the amount, is incurred for the purpose of expenditure as mentioned u/s 5(e) of the Act. If a claim is made for expenditure, u/s 5(e), that can be allowed, only if the said expenditure is incurred in the previous year and laid out and expended wholly and exclusively for the purpose of the land. In the return filed by the assessee, it is not stated as to what was the amount that was expended for the purpose of the land as contemplated u/s 5(e) of the Act and what was the amount that was expended for the purpose of allowing the relief u/s 5(k) of the Act. It is only on the estimated basis that the Agricultural Income Tax Officer allowed Rs. 2,977.40, u/s 5(k). Unless it is shown that the rest of the amount was incurred wholly and exclusively for the purpose of the land, the assessee's

claim cannot be allowed u/s 5(e). However, learned counsel appearing for the assessee submitted that, even according to the Assessing Officer, the interest paid was for running the estate. Therefore, the rest of the expenditure, disallowed by the Assessing Officer, is not correct. We have also heard the learned Additional Government Pleader (Taxes), on this aspect. The learned Additional Government Pleader (Taxes) contended that inasmuch as no bifurcation of the expenses was shown by the assessee, it is not possible to grant relief as claimed u/s 5(e) of the Act. According to the assessee, part of the loan amount was incurred for the purpose of running the estate. What are the items of expenditure which were incurred for the purpose of running the estate are not known. However, in order to give an opportunity to the assessee to establish his case on this point, we remit back this issue to the file of the Assessing Officer with a direction to ascertain what would be the amount on which relief can be granted u/s 5(e) of the Act on the basis of the particulars furnished by the assessee. If the assessee fails to furnish the particulars with regard to the relief claimed u/s 5(e) of the Act, then the assessee is not entitled to the relief asked for. Accordingly, the revision is allowed in part. No order as to costs.