

(1998) 07 GAU CK 0002**Gauhati High Court****Case No:** Income Tax R No. 10 of 1996 29 July 1998 A.Y. 1982-83 to 1984-85

Commissioner of Income Tax

APPELLANT

Vs

Bansidhar Sewbhagovan and Co.

RESPONDENT

Date of Decision: July 29, 1998**Acts Referred:**

- Income Tax Act, 1961 - Section 256, 32

Citation: (1999) 151 CTR 215**Hon'ble Judges:** V. D. Gyani, Acting C.J.; H.K.K. Singh, J**Bench:** Full Bench**Judgement**

By the Court

By this court's order dated 17-1-1994, passed in Civil Rule No. 32(M) of 1992 statement of case has been submitted with the following question of law for this court's opinion u/s 256(2) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'):

"Whether, on the facts and in the circumstances of the case and in view of the provisions of rule 8 of the Income Tax Rules, 1962, the Tribunal was justified in law in sustaining the Commissioner (Appeals)'s decision that 40 per cent of the income on sale of assets, excess liability written off and miscellaneous receipts be taken to be liable to tax instead of 100 per cent taken by the assessing officer ?"

2. The assessee is a registered firm engaged in the business of growing and manufacturing of tea. The assessing officer for the assessment years 1982-83, 1983-84 and 1984-85 taxed the entire income on the sale of assets, miscellaneous receipts and excess liability written back in the account. The assessee filed appeals before the Commissioner (Appeals). It was his contention that items which were brought to tax were intimately connected with the tea business of the assessee which was subject to tax only at 40 per cent and is not at 100 per cent as was

erroneously done by the assessing officer in bringing to tax these items to full 100 per cent. The Commissioner (Appeals) accepted the assessee's contention and directed the assessing officer to tax only 40 per cent of those items. It was the case of the revenue coming to appeal before the Tribunal contending that items that were brought to tax in full by the assessing officer had no connection with the assessee's tea business. It was also contended that there was no evidence to show that the assets sold were pertaining to tea business. As for excess liability written back as well as miscellaneous receipt, similar contentions were advanced. The assessee, on the other hand, pointed out that the assets which were sold were allowed depreciation u/s 32 of the Act which showed that they were business assets and were used for the assessee's tea business. So far as excess liability written back was concerned, the assessee submitted that the liability towards expense incurred in the earlier orders in connection with tea business, miscellaneous receipts were relating to Gelakey Tea Estate belonging to the assessee and it was also argued that this miscellaneous receipt represented compensation received as well as receipts for empty gunny bags sold. Relying on rule 8(1) of the Income Tax Rules, 1962 (hereinafter referred to as 'the Rules'), it was contended that only 40 per cent of the tea business was subjected to tax and accordingly the aforesaid three items received could only be taxed at 40 per cent. The Tribunal agreeing with the Commissioner (Appeals) that only 40 per cent of the receipts was liable to tax, dismissed the appeal filed by the revenue.

3. Learned standing counsel for the revenue referring to the order submitted, and to our mind rightly so, that the Commissioner (Appeals) without looking to the iota of contentions advanced by the assessee and without assigning any reasons whatsoever readily agreed to the submissions made as regards the profit on sale of assets, excess liability written off and miscellaneous receipts.

4. Having gone through the assessment orders for the assessment years under reference, the submissions made by learned standing counsel for the revenue cannot be lightly brushed aside. Rule 8 of the Rules, was the subject-matter of contention before this court in SOOKERATING TEA CO (P.) LTD. Vs. COMMISSIONER OF INCOME TAX, ASSAM., This was a case where the assessee contended that the loan transactions were made in the course of the tea business and the interest earned was only assessable at 40 per cent of the total income and on a reference this court dealing with rule 8 held as follows :

"In order to solve the problem we have to carefully examine the language of rule 8. This rule of 40 per cent 60 per cent is applicable to income derived from the sale of tea grown and manufactured by the seller in India."

5. It is a settled principle of law that the Tribunal is the last forum so far as the findings of facts are concerned. This court on a reference u/s 256(2) of the Act, cannot go beyond the facts as established and going through the orders passed by the assessing officer, the contentions advanced as regards the miscellaneous

receipts and assets sold, had anything to do with the tea business, is not even remotely established. There is no evidence to connect them with the tea business.

6. In view of the foregoing discussion, and following SOOKERATING TEA CO (P.) LTD. Vs. COMMISSIONER OF INCOME TAX, ASSAM., our answer to the question as referred, is in the negative, that is to say, in favour of the revenue and against the assessee.