(2007) 05 GAU CK 0031

Gauhati High Court

Case No: None

Warren Tea Limited	APPELLANT
Vs	
State of Assam and Others	RESPONDENT

Date of Decision: May 2, 2007

Acts Referred:

- Income Tax Act, 1961 - Section 37, 40A, 80VV

Citation: (2007) 3 GLT 519

Hon'ble Judges: T. Nandakumar Singh, J

Bench: Single Bench

Final Decision: Allowed

Judgement

T. Nandakumar Singh, J.
Civil Rule No. 6135 of 1998 and Civil Rule No. 6136 of 1998 are filed by one petitioner Warren Tea Limited 31, Chowringhee Road, Calcutta which is a Company incorporated under the Companies Act, 1956 assailing the order of the Deputy Commissioner of Taxes, the order of Commissioner of Taxes, Guwahati and the judgment and order passed by the learned Board of Revenue on the similar question of facts and law and accordingly these two writ petitions are being disposed of by this common judgment and order.

2. Heard Mr. A.K. Goswami, learned senior counsel assisted by Mr. A. Talukdar, learned Counsel appearing for the petitioner as well as learned Government Advocate appearing for the respondents.

3. The sole question posed for decision by this Court in these two writ petitions is "whether or not the portion of the claim for deduction disallowed by the Income Tax Officer while making assessment because of limit provided in the Income Tax Act, 1961 and Income Tax Rules, 1962 could be allowed by the Agricultural Income Tax Officer under the Assam Income Tax Act, 1939 and the Assam Agricultural Income Tax Rules, 1939 provided the said portion of the claim relates to plantation,

manufacture and sale of tea."

4. For answering the question posed in the present writ petition, it would be apposite to make a short resume to the relevant provisions of (i) Assam Agricultural Income Tax Act, 1939 (ii) Assam Agricultural Income Tax Rule, 1939 (iii) Income Tax Act, 1961 and (iv) Income Tax Rules, 1962.

5. The concise facts which should be sufficient for answering the above question posed in the present writ petitions are that assessee/writ petitioner is a Company incorporated in India under the provision of the Companies Act, 1956 in compliance with the requirement under the Foreign Exchange Regulation Act, 1973, having 13 tea estates in Upper Assam engaged in the business of harvesting tea leaves, manufacture of black tea and the marketing of the produce. For the assessment year 1981-82 for which the Civil Rule No. 6135 of 1998 is filed, the Income Tax Department had assessed the writ petitioner and assessment order dated 5.3.1984 was passed by the Assessing Authority. The Agricultural Income Tax Officer, Assam had proceeded with the assessment of the petitioner Company u/s 20(3) of the Assam Agricultural Income Tax Act, 1939 (for short Act, 1939). On 19.11.1984 the Agricultural Income Tax Officer, Assam, Guwahati (for short AITO) had passed assessment order dated 19.11.1984 for the assessment year 1981-82 assessing Agricultural Income Tax. but the AITO had disallowed certain expenses claimed by the writ petitioner but falling under Sections 40A(5), 37(2A), 80VV of the Income Tax Act, 1961 and the Rules 6D of the Income Tax Rules, 1962 purportedly on the ground that such claims/expenses were disallowed under the provision of the Income Tax Act, 1961.

6. The petitioner being aggrieved by the said order of the AITO dated 19.11.1984 preferred an appeal before the Assistant Commissioner of Taxes (Appeals). The Assistant Commissioner of Taxes (Appeals) vide his order dated 24.4.1986 relying on the provisions of Section 8(2)(f)(vii) of the Act 1939 with reference to second proviso to Section 8 and the Rule 5 of the Assam Agricultural Income Tax Rules, 1939 held that expenditures which were not allowed u/s 40A(5), Section 80VV of the Income Tax Act and the Rule 6D of the Income Tax Rules, 1962 are allowable expenditure and accordingly reduced the amount of taxes assessed to the extent involved in the deduction of claims, but the claim for deduction u/s 37(2A) was not allowed.

7. The Deputy Commissioner of Taxes, Guwahati invoking the provision of Section 27 of the Act 1939 in respect of the assessment relating to the assessment years 1978-79, 1979-80, 1980-81 and 1981-82 issued notice to the petitioner. Ultimately, the Deputy Commissioner of Taxes passed impugned order dated 1.3.1990 cancelling the judgment and order of the Assistant Commissioner of Taxes (Appeals) dated 24.4.1986 and also consequential revised assessment made by the AITO on 28.3.1988 by directing AITO to make afresh assessment on the basis of the Central Assessment Order dated 20.3.1984. It would be pertinent to state that the learned Deputy Commissioner of Taxes, Guwahati vide his order dated 2.5.1990 held that

the revisions so far as it relates to the Assessment Year 1978-79, 1979-80 and 1980-81 were time barred.

8. The petitioner being aggrieved by the impugned judgment and order dated 1.3.1990 passed by the learned Deputy Commissioner of Taxes, Guwahati preferred an appeal before the Assam Board of Revenue and it has been registered as Case No. 5ATTA/90. But the learned Revenue Board after hearing the parties vide impugned judgment and order dated 31.3.1998 rejected the appeal preferred by the writ petitioner. The petitioner filed the Civil Rule No. 6135 of 1998 assailing the impugned judgment and order dated 1.3.1990 passed by the Deputy Commissioner of Taxes and also the impugned judgment and order dated 31.3.1998 passed by the learned Board of Revenue.

9. The Civil Rule No. 6136 of 1998 is concerned with the two assessment years 1982-83 and 1983-84. AITO passed the assessment order dated 5.11.1986 for the assessment year 1982-83 and the assessment order dated 13.7.1987 for the assessment year 1983-84. The writ petitioner preferred an appeal against the said two assessment orders before the Assistant Commissioner of Taxes (Appeals), Tinsukia. The learned Assistant Commissioner of Taxes (Appeal) vide judgment and order dated 21.11.1988 allowed the appeal to the extent indicated in his said judgment and order dated 24.4.1986 for the reasons mentioned therein. But by the impugned revisional order dated 1.3.1990 passed by the Commissioner of Taxes, Assam had set aside the said order of the Assistant Commissioner of Taxes (Appeals) dated 21.11.1988 on the similar reasons mentioned in the impugned revisional order dated 1.3.1990 passed by the Commissioner of Taxes, Assam which is impugning in Civil Rule No. 6135 of 1998. The learned Board of Revenue also rejected the appeal preferred by the writ petitioner against the impugned revisional order dated 1.3.1990 passed by the Commissioner of Taxes vide judgment and order dated 31.3.1998. Being aggrieved the petitioner filed the writ petition being Civil Rule No. 6136 of 1998 assailing the impugned revisional judgment and order dated 1.3.1990 passed by the Commissioner of Taxes, Assam and also the impugned judgment and order dated 31.3.1998 passed by the learned Board of Revenue on the ground exactly similar with the grounds for filing the Civil Rule No. 6135 of 1998.

10. "Agricultural Income" is defined in Section 2(a) of the Assam Agricultural Income Tax Act, 1939 which reads as follows:

(a) "agricultural income" means--

(1) any rent or revenue derived from land which is used for agricultural purposes, and is either assessed to land revenue in Assam or subject to a local rate assessed and collected by officers of the Government as such;

(2) any income derived from such land by--

(i) agriculture, or

(ii) the performance by a cultivator or receiver of rent-in-kind of any process ordinarily employed by a cultivator or receiver of rent-in-kind to render the produce raised or received by him fit to be taken to market; or (iii) the sale by a cultivator or receiver of rent-in-kind of the produce raised or received by him, in respect of which no process has been performed other than a process of the nature described in Sub-clause (ii);

Explanation--"Agricultural income derived from such land by the cultivation of tea" means that portion of the income derived from the cultivation, manufacture and sale of tea as is defined to be agricultural income for the purposes of the enactments relating to Indian Income Tax.

11. "Agricultural Income Tax" means the tax payable under the Act 1939 according to Section 2(b) of the Act i.e. 1939. Determination of the agricultural income is to be made u/s 8 of the Act 1939. The relevant portion of Section 8 of the Act 1939 are quoted hereunder--

8. Determination of agricultural income mentioned in Sub-Clause (2) of Clause (a) of Section 2. (1)�.

(2) Rules prescribing the manner of determining the net amounts of agricultural income for the purpose of this clause shall provide that the following deductions shall be made from the gross amounts of such income, namely�

(vii) any expenditure (not being in the nature of capital expenditure) laid out or expended wholly and exclusively for the purpose of earning or depriving the agricultural income ; provided that such expenditure, if laid out or expended wholly and exclusively for the purpose of earning income chargeable to tax under the Income Tax Act, 1961 (43 of 1961) would have been admissible for deduction under that Act;�

Provided always that no deduction shall be made under this clause, if it has already been made u/s 7 of this Act or in the assessment under the Indian Income Tax Act;

Provided further that in case of agricultural income from cultivation and manufacture of tea the agricultural income for the purposes of this Act shall be deemed to be that portion of the income from cultivation, manufacture and sale which is agricultural income within the meaning of the Indian Income Tax Act and shall be ascertained by computing the income from the cultivation, manufacture and sale of tea as computed for Indian Income Tax Act from which shall be deducted any allowance by this Act authorized in so far as the same shall not have been allowed in computation for the Indian Income Tax Act�.

12. It would be apt to see the Rule 5 of the Assam Agricultural Income Tax Rules, 1939 for determining the agricultural income from tea grown and the manufactured by the seller in the province of Assam and also the Rule 8 of the Income Tax Act, 1962. Accordingly for ready reference the relevant portion of the Rule 5 of the

Assam Agricultural Income Tax Rules 1939 and the also the relevant portion of the Rule 8 of the Income Tax Act, 1962 are quoted here under--

Rule 5 of the Assam Agricultural Income Tax Rules, 1939--

5. In respect of agricultural income from tea grown and manufactured by the seller in the Province of Assam the portion of the net income worked under the Indian Income Tax Act and left unassessed as being agricultural, shall be assessed under this Act after allowing such deductions under the Act and the rules made there under, so far as they have not been allowed under the Indian Income Tax Act in computing the net income from the entire operation:

Provided that the computation made by the Income Tax Officer shall be ordinarily accepted by the Assam Agricultural Income Tax Officer who may, for his satisfaction u/s 20 of the Assam Agricultural Income Tax Act, obtain further details from the assessee or from the Indian Income Tax Officer, but shall not without the previous sanction of the Deputy Commissioner of Taxes or when there is no Deputy Commissioner of Taxes, the Assistant Commissioner of Taxes empowered by the Commissioner of Taxes in this behalf require under the proviso to Section 49 the production of account books already examined by the Indian Income Tax Officer for determining the agricultural income from tea grown and manufactured in Assam or refuse to accept the computation of the Indian Income Tax Officer:

Rule 8 of the Income Tax Rules, 1962--

8.(1) Income derived from the sale of tea grown and manufactured by the seller in India shall be computed as if it were income derived from business, and forty percent of such income shall be deemed to be income liable to tax.

(3) In computing such income an allowance shall be made in respect of the cost of planting bushes in replacement of bushes that have died or become permanently useless in an area already planted, if such area has not previously been abandoned (and for the purpose of determining such cost, no deduction shall be made in respect of the amount of any subsidy which, under the provisions of Clause (30) of Section 10, is not includible in the total income).

13. Mr. A.K. Goswami, learned senior counsel appearing for the writ petitioner in order to answer the question posed in the present writ petition in favour of the writ petitioner by confirming the judgment and order of the learned Assistant Commissioner of Taxes (Appeals) dated 24.4.1986 in respect of C.R. No. 6135 of 1998 and the order dated 21.11.1988 in respect of C.R. No. 6136 of 1998 had strenuously submitted that the second proviso appearing after Clause (h) of 8 (2) and Sub clause (VII) of Clause (2) of Section 8 of the Act of 1939 as well as Rule 5 of the Assam Agricultural Income Tax Rules, 1939 make abundantly clear that from the Agricultural Income so determined under the Act of 1961, deductions for any allowance authorized under the Act of 1939 be made so far as the same have not

been allowed in computation of deduction for the Act of 1961. Learned Counsel further submitted that actual expenditure made for the purpose of cultivation of tea need not be found out and genuine expenses are to be deducted. The Division Bench of the Hon''ble Gauhati High Court in 1997 (3) GLT 178 (Mis George Williamson (Assam) Limited v. Assistant Commissioner of Taxes (Appeals) in paragraph 14 had clearly laid down that whatever amount spent is disallowed by the Income Tax Officer can be allowed by the AITO provided that it relates to plantation, manufacture and sale of tea. The aforesaid view was reiterated in Williamson Magor and Company Ltd. v. Assistant Commissioner of Taxes (Appeals) reported in 2007 (1) GLT 112 at paragraph 6. Learned senior counsel for the petitioner further submitted that in the instant case no expenditure wholly disallowed by the Central Income Tax Authority has been claimed for deduction under the Act of 1939. Further, no claim for deduction is also made under the Act of 1939 for the amount for which deduction was already granted under the Act of 1961.

14. For the sake of repetition the very words used by the legislature in the second proviso to Section 8(2) are reproduced here under--

Provided always that no deduction shall be made under this clause, if it has already been made u/s 7 of this Act or in the assessment under the Indian Income Tax Act;

Provided further that in case of agricultural income from cultivation and manufacture of tea the agricultural income for the purposes of this Act shall be deemed to be that portion of the income from cultivation, manufacture and sale which is agricultural income within the meaning of the Indian Income Tax Act and shall be ascertained by computing the income from the cultivation, manufacture and sale of tea as computed for Indian Income Tax Act from which shall be deducted any allowance by this Act authorized in so far as the same shall not have been allowed in computation for the Indian In-come-tax Act�.

15. From the bare perusal of the second proviso to Sub-section (2) of Section 8 of the Act, 1939 and Rule 5 of the Assam Agricultural Income Tax Rules, 1939 it is crystal clear that whatever amount spent is disallowed by the Income Tax Officer can be allowed by the Agricultural Income Tax Officer in case it relates to plantation, manufacture and the sale of tea.

16. This Court (not only once but twice) in the case of George Williamson (Assam) Ltd. v. Assistant Commissioner of Taxes (Appeals) reported in 1997(3) GLT 178 and in the case of Williamson Magor and Co. Ltd. v. Assistant Commissioner of Taxes (Appeals) reported in 2001 (1) GLT 112 had answered the question posed in the present writ petition in affirmative. Para 13 and 14 of the Judgment in M/s. George Williamson (Assam) Ltd. (supra) reads as follows:

13. From reading of these provisions of the Act and the Rules, in our opinion expenses incurred for the purpose of earning agricultural income after giving allowable deductions by the Income Tax Officer while making the assessment,

whatever amount is left out genuine expenses are to be deducted in accordance with law. In our opinion the Act and rules do not prescribe any procedure for ascertaining what amount is actually spent by the assessee for the purpose of cultivation and manufacture of tea inasmuch as it will not be possible to ascertain actually what amount is spent towards agricultural activities. For instance, an employee may be engaged in cultivation of tea as well as for sale of tea. In such cases, it will not be possible to ascertain the actual expenditure in agricultural activities. We do not agree with the submission of Dr. Todi that actual expenditure made for the purpose of cultivation of tea should be found out and be taken as expenditure to derive income from agriculture. We also find it difficult to accept the submission of Mr. Gogoi that a notional percentage of expenses should be taken out for the purpose of giving allowance to the extent of 60% in the manner prescribed for the purpose of determining the income. The legislature thought it fit to prescribed the percentage for determining the income both agricultural and business. It is the legislative wisdom not to prescribe any percentage for the purpose of ascertaining the expenses.

14. On going through all the provisions of the Act and the relevant Rules in our opinion whatever amount spent is disallowed by the Income Tax Officer can be allowed by the Agricultural Income Tax Officer. However, we make it clear that is must relate to plantation, manufacture and sale of tea.

17. Para 6 of the judgment in Williamson Magor and Co. Ltd. (supra) reads as follows--

6. Under the Statutory scheme as laid down in the Income Tax Act, 1961 vis-a-vis Agricultural Income Tax Act 1939, the Agricultural Income Tax Officer in computing the agricultural income or making assessment of agricultural income under the Act, 1939, is under an obligation to accept the assessment of the income which has already been made by the Central Income Tax authorities under Rule 8 of the Income Tax Rules, 1962. Incomes from sale of tea grown and manufactured by the seller is derived partly from business and partly from agriculture. The income has to be computed as if it were income from business under the Income Tax Act and the Rules framed there under and forty percent of the income so computed is deemed to be income derived from business and assessable to non-agricultural income tax. The explanation to Section 2(a)(2) of the Act, 1939 adopts this rule of computation and the balance sixty percent of the income so computed is agricultural income within the meaning of Agricultural Income Tax Act, 1939 (Ref. Section 2(b) of the Act, 1939). The agricultural income taxable under the Act, 1939 is sixty percent of the income so computed after deducting therefrom the allowances admissible under the Act in so far as the same has not been allowed in the assessment under the Central Income Tax Act. Accordingly, the Agricultural Income Tax Officer has no other option in making assessment of the agricultural income, but to accept the computation of the audited income already made by the Central Income Tax

authorities and assess only six percent of the income so computed less the allowable deductions as agricultural income taxable under the State Act. Under the State Act, expenditures (not being in the nature of capital expenditure) undertaken or expended wholly and exclusively for the purpose of earning or deriving agricultural income after providing for allowable deduction by the Income Tax authority in making the assessment, the net amount of the agricultural income is to be determined. This Court in George Williamson (supra), held that the expenditures incurred for the purposes of earning agricultural income after giving allowable deduction by the Income Tax Officer while making the assessment, whatever amount is left of the genuine expenses, are to be deducted in accordance with law. The Court held that the Act as well as the Rules did not specify any methodology for ascertaining physically the real amount spent on agricultural activities. Mr. D.N. Baruah, J., speaking on behalf of the Court reflecting on the statutory scheme, observed "This legislature thought it fit to prescribe the percentage for determining the income both agricultural and business. It is the legislative wisdom not to prescribe any percentage for the purpose of ascertaining the expenses." It was accordingly held that whatever amount has been disallowed by the Income Tax Officer, can be allowed by the Agricultural Income Tax Officer that are relatable to plantation, manufacture and sale of tea. Really and truly, we do not find any good reason to take a contrary view from George Williamson (supra).

18. It is cardinal rule of construction that no word should be construed redundant or surplus in interpreting the provision of a statute or rule (Ref: Dinesh Chandra Sangma Vs. State of Assam and Others, The Apex Court in State of Maharashtra and Others Vs. Santosh Shankar Acharya, held that it is too well known principle of construction of statute that the legislature engrafted every part of the statute for a purpose. The legislative intention is that every part of the statute should be given effect. Legislature is deemed not to waste its words or to say anything in vain and a construction which attributes redundancy to the legislature will not be accepted except for compelling reasons. The Apex Court in Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others, held that it is the basic principle of construction of statute that statutory enactment must ordinarily be construed according to their plain meaning and no words should be added, altered or modified unless it is plainly necessary to do so to prevent a provision from being unintelligible, absurd, unreasonable, unworkable or totally irreconcilable with the rest of the statute. Paras 24 and 25 of the Bhavnagar University v. Palitana Sugar Mills (P) Ltd. and Ors. (supra) read as follows--

24. True meaning of a provision of law has to be determined on the basis of what it provides by its clear language, with due regard to the scheme of law.

25. Scope of the legislation on the intention of the legislature cannot be enlarged when the language of the provision is plain and unambiguous. In other words statutory enactments must ordinarily be constructed according to its plain meaning

and no words shall be added, altered or modified unless it is plainly necessary to do so to prevent a provision from being unintelligible, absurd, unreasonable, unworkable or totally irreconcilable with the rest of the statute.

It is well settled that when the legislature spoken Judge cannot afford to be wiser (Ref: Shri Mandir Sita Ramji Vs. Lt. Governor of Delhi and Others,

19. For the reasons discussed above these two writ petitions are allowed by answering the question posed in the present writ petition in affirmative in favour of the writ petitions. The impugned judgment and order dated 1.3.1990 passed by the Deputy Commissioner of Taxes, Guwahati, impugned judgment and order dated 31.3.1998 passed by the learned Board of Revenue, impugned judgment and order dated 1.3.1990 passed by the Commissioner and Taxes, Assam and also the impugned judgment and order dated 31.3.1998 passed by the learned Board of Revenue are hereby set aside. Corollary of the present judgment and order are that the order of the learned Assistant Commissioner of Taxes (Appeals) dated 24.4.1986 so far as the C.R. No. 6135 of 1998 is concerned and also judgment and order of the learned Assistant Commissioner of Taxes (Appeals) dated 21.11.1988 so far as the C.R. No. 6136 of 1998 is concerned are upheld and the necessary follow up action are to be taken up. Parties are to bear their own cost.