

(1990) 01 KL CK 0041

High Court Of Kerala

Case No: Original Petition No"s. 8281 and 8282 of 1989-S

Commissioner of Income Tax

APPELLANT

Vs

Kilkotagiri Tea and Coffee
Estates Co. Ltd.

RESPONDENT

Date of Decision: Jan. 16, 1990

Acts Referred:

- Companies (Profits) Surtax Act, 1964 - Rule 2

Citation: (1990) 183 ITR 145

Hon'ble Judges: K.S. Paripoornan, J; D.J. Jagannadha Raju, J

Bench: Division Bench

Advocate: P.K. Ravindranatha Menon and N.R.K. Nair, for the Appellant; Jose Joseph, V.V. Asokan and K.I. Mayankutty Mather, for the Respondent

Judgement

K.S. Paripoornan, J.

The Revenue is the petitioner in these two cases. The same assessee is the respondent in both these original petitions. The matter relates to the assessment years 1977-78 and 1978-79. It arises under the Companies (Profits) Surtax Act. The Revenue prays that the common question of law, formulated in para 7 of the original petitions, may be directed to be referred to this court. The question is as follows :

"Whether, on the facts and in the circumstances of the case, secured loans from the banks and the provision for taxation should be adjusted against the value of investments while computing the capital under Rule 2 of the Second Schedule to the Companies (Profits) Surtax Act ?"

2. The short question that arises for consideration is whether, in computing the capital for the purpose of surtax assessment, secured loans from the banks and the provision made for taxation should be adjusted against the value of investments, in view of Rule 2 of the Second Schedule to the Companies (Profits) Surtax Act. The

plea made in this behalf by the assessee was negated by the assessing authority as also by the first appellate authority. But, in second appeal, the Appellate Tribunal accepted the plea of the assessee and granted relief. The Tribunal proceeded on the ground that the matter was concluded by the Appellate Tribunal's decision for the earlier year on both the points. The decision rendered by the Tribunal for the earlier year is not part of the paper book. In declining to refer the question of law formulated by the Revenue, the Appellate Tribunal, by its common order dated February 24, 1989, referred to the earlier order and observed that the revenue's application for reference of an identical question was dismissed for an earlier year.

3. We heard counsel for the Revenue, Mr. N. R. K. Nair, as also counsel for the assessee, Mr. Jose Joseph. Neither the appellate order passed by the Appellate Tribunal for the earlier year nor the dismissal of the reference application filed in that behalf was produced before us. Both sides were not able to produce before us either the order for the earlier year, referred to by the Appellate Tribunal, or the order declining to refer the matter to this court. Be that as it may, the question that is posed for consideration involves the interpretation of Rule 2 of the Second Schedule to the Companies (Profits) Surtax Act.

4. We are satisfied that the question of law, formulated in para 7 of the original petitions, is a question of law which the Appellate Tribunal should be directed to refer to this court. We hereby direct the Appellate Tribunal to refer the said common question of law for the decision of this court.

5. The original petitions are allowed;

6. The Registrar shall send a copy of this judgment to the Income Tax Appellate Tribunal, Cochin Bench, for compliance.