

**(1996) 04 KL CK 0024**

**High Court Of Kerala**

**Case No:** Original Petns. No's. 3839 and 4551 of 1995

M.N. Mani (Executor for K.K.  
Vijayan and Others)

APPELLANT

Vs

Commissioner of Agricultural  
Income Tax

RESPONDENT

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**Date of Decision:** April 1, 1996

**Acts Referred:**

- Kerala Agricultural Income Tax Act, 1950 - Section 60

**Citation:** (1996) 134 CTR 492

**Hon'ble Judges:** V.V. Kamat, J

**Bench:** Single Bench

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### **Judgement**

V.V. Kamat, J.

These are the two petitions wherein in regard to the order dt. 24th Jan., 1990 of the Kerala Agrl. ITAT, Additional Bench, Kozhikode an application was preferred for making a reference under s. 60 of the Agrl. IT Act, 1950, which having been declined. There is a prayer for a direction of reference in regard to the following five questions :

- Whether, on the facts and circumstances of the case is the finding of the Tribunal that the income from 60.79 acres of unregistered coffee area is not included in the accounts of assessee supported by any material or evidence ?
- Was the Tribunal right in law in holding that the burden is really on the assessee to prove with evidence that the disclosure of income made by it is full and complete ?
- In the absence of any allegation or finding that the assessee has concealed any yield or income, was the Tribunal right in law in holding that addition of income from 60.79 acres is called for merely because in the statutory registers and in the excise registers this area was not included for want of registration under the Coffee

Act of 1942 ?

(iv) In view of the facts that the production, manufacturing and marketing of coffee area controlled by the Coffee Act, 1942, the Central Excise Act and the Pooling System, should not the Tribunal have found that addition can be made only if suppression or concealment is found and there is no presumption to the contrary merely because some of the assessee's area is not registered ?

(v) Whether, on the facts and circumstances of the case, was the Tribunal right in ignoring the fact that the assessee has disclosed the planting of unregistered area in 1968 and ever since the receipt of income from the same is returned for all the years and no separate addition on account of unregistered area is made upto the year 1983-84 and in sustaining the addition ?

2. At the outset a position was contended that by reason of the introduction of the Kerala Agril. IT Act, 1991 coming on the statute on and from 1st April, 1991 the remedy would be by way of a revision as provided by s. 76 of the said Act. The said contention need not pose any difficulty in view of the fact that the impugned order of the Tribunal which is the origin of the present original petition is obviously passed much before on 24th Sept., 1990 on the basis of which according to the law then governing the position an application was made for a reference which was rejected, requiring the petitioners to approach this Court by this petition. Therefore, it is not possible to conceive how provisions of s. 76 of the 1991 Act would govern the situation. Be that as it may, on hearing the learned counsel for the parties, we find that the basic jurisdictional aspect or question requires a real probe and, therefore, for the following reasons such direction would have to be issued.

3. The land in question is Revenue Survey No : 519/4 of Kalpetta, originally in possession of one Paithal Nair. This was under an agreement of lease. The situation is as old as the year 1942 when coffee plantation commenced under Coffee Registration Certificate No. 1301 dt. 20th March, 1944. A contiguous extent of 100 acres also came under plantation soon thereafter under the said amended coffee registration certificate on 8th May, 1946. Late one Miss. Fletcher happened to lease the land to this Paithal Nair, main condition being the payment of revenue of the entire land to the extent of 540.46 acres. He having been put in possession as far back as on 5th Jan., 1946. The revenue of the entire acreage was paid by him as well as the plantation tax under the Kerala Plantations (Additional Tax) Act 1960. The land was gradually developed as a coffee plantation estate, commonly known as Woodland Estate.

4. It appears that Paithal Nair expired in 1967 when the land admeasuring 218.94 acres was being planted by him. It appears that a coffee registration certificate came to be issued to M/s E. K. Vijayan and E. K. Devadas with regard to the land admeasuring 194.64 acres. They applied for an additional coffee registration certificate to include the land to the extent of 100 acres in addition to the 194.64

acres out of land survey No : 519/4. It appears that this application was rejected by the registering authority by an order dt. 9th June, 1971 holding that the land which is known as "Woodland Estate" had been declared as escheated to Government.

5. The record shows that there was Original Petn. No. 1919/77 to this Court dealing with the problem of registration of 100 acres of land. A copy of the judgment of this Court in the said petition

6. In these two petitions relating to the asst. yrs. 1982-83 and 1983-84 relates to the estimated addition of income from coffee from an area admeasuring 60.79 acres out of this large extensive land. Throughout the contention on behalf of the assessee has been that a separate estimation with regard to this 60.79 acres of land is not warranted as the coffee yield shown in the accounts included yield from this area also. In fact the Tribunal has considered this aspect relating to the addition of Rs. 3,95,135 for 1982-83 and Rs. 4,55,925 for 1983-84, relating to this area admeasuring 60.79 acres in Woodland Estate, Kalpetta for which no coffee registration was obtained. It is observed in this context as would be clearly seen from the contents of paragraph 14 of the Appellate Tribunal judgment that Woodland Estate covered a total of 540 acres taken on lease, in regard to which to the extent of 100 acres, according to the Government had escheated to the State. The Tribunal has also referred the ultimate feature that on 8th July, 1988 coffee registration certificate was granted with regard to this land admeasuring 60.79 acres. It is also stated by the Tribunal that already a coffee registration for 194.64 acres, a portion of the Woodland Estate was already granted. It is observed in this connection, by way of a submission that during all the years agricultural Income Tax assessments were made on the basis of the total receipts from the Pooling Agents - M/s Pierce Leslie India Ltd. and also the expenses were allowed on the basis of the books of accounts for the entire estate. No question having been left in regard to any escapement of income for all the years.

7. It is also contended before the Tribunal that till 1987 the actual extent of the estate was not ascertained and it was only when the Taluk Surveyor surveyed the land in 1987 it was found that the total planted area presumed to be 300 acres was reduced to 194.64 + 60.79 totalling to 250.43 acres, with the addition of 24.30 acres of Kaniambetta Estate located 8 kms. away from the Woodland Estate in question. It was also contended that under the Coffee Act, 1942 coffee produced should be pooled with the approved pooling agent alone and in the situation coffee pooled is not sold to any others than the pooling agent -M/s Pierce Leslie India Ltd.

8. Reading the judgment of the Tribunal the extent of the land would be in the following manner :

Woodlands	194.64
Estate	acres
Handakamoola	24.30
	acres
New CRC	60.79
Area	acres

9. It is in regard to the above specified woodland only land admeasuring 194.64 acres from and out of Woodland Estate and 24.30 acres from and out of Kaniambetta Estate was shown. The Tribunal as well as the authorities below, instead of concentrating on the jurisdictional factual question relating to the pooling of the coffee produced from the land known as Woodland Estate, which was the case of the assessee throughout, proceeded to be influenced from the record with regard to the ownership only an area of 194.64 acres of land out of Woodland Estate was shown by the assessees in their returns, thereby observing in the process of inference that the coffee produced from an area of land admeasuring 60.79 acres from and out of the land known as Woodland Estate is now shown in regard to the coffee produced and all these leading to an inevitable inference that the income in regard to the said acreage is conceded (concealed).

10. What is required to be considered in the matter of concealment of income with land to this land admeasuring 60.79 acres from and out of the land known as Woodland Estate would be to find out as to whether what is deposited could be said to have been the income of the produce only from the land admeasuring 194.64 acres and not including the land admeasuring 60.79 acres as is contended by the assessee.

11. Reading the three judgments we find with the conclusion regarding the concealment is only a matter of inference drawn from the position that the assessee contended that their land out of the Woodland Estate admeasures 194.64 acres and a reasonable inference therefrom that the amount of coffee produce pooled must have been the produce of the land admeasuring 194.64 acres only. It is not possible to jump in this manner. Firstly for all the years earlier the position was the same and was accepted. Apart therefrom that there is a dispute, the State Government urging that the land escheated to the Government and the assessees urging title thereto, there being no dispute with the actual and physical possession and cultivation of the land in question (60.79 acres) was with the petitioners and along with thereto the land admeasuring 194.64 acres was known both to the State as well as to the assessees and others in the neighbourhood as the Woodland Estate.

12. During the course of hearing of these petitions we sent for the records relating to the assessment proceedings for the years in question and seeing the return or statement appended thereto it is necessary to emphasize that the very first column relating to 66,542 kgs. is seen to have been described as "coffee pooled from Woodland Estate during the year". In other words, the assessee took the land as Woodland Estate and the picture is available through the material on record itself that with regard to a portion thereof the question of title and ownership is under dispute and agitation as seen hereinbefore. It is possible to probabilise that the claim of the assessee on the basis of title with regard to the land admeasuring 194.64 acres appears in the assessment proceedings and it is not possible to accept an inference therefrom that the coffee pooled would have to be understood as the produce of only that land which is of ownership, to be 194.64 acres. These aspects would require a deeper factual probe in view of the specific contention of the petitioners that they have not sold coffee to anyone other than M/s Peirce Leslie India Ltd., the pooling agents.

13. For all the above reasons a direction is necessary to the Kerala Agrl. ITAT, Additional Bench, Kozhikode to refer the questions to this Court after drawing up a statement of case according to law. Reading these questions we find that it is question No. 1 which deserves reference. With regard to other questions, reading them, it is clear that they are facts of question No. 1 only in regard to which there is no need of direction of reference specifically.

For all the above reasons both the petitions succeed, the Tribunal is directed to refer question No. 1 to this Court according to law within a period of three months from the receipt of the record. Order accordingly.