Rehabilitation Plantations Ltd. Vs Commissioner of Income Tax

Court: High Court Of Kerala

Date of Decision: Feb. 21, 2012

Acts Referred: Income Tax Act, 1961 â€" Section 10, 260A

Hon'ble Judges: C.N. Ramachandran Nair, J; Babu Mathew P. Joseph, J

Bench: Division Bench

Advocate: A.K. Jayasanker, E.K. Nandakumar, K. John Mathai, P. Benny Thomas, P. Gopinath, Kuryan Thomas and Smt. Preetha S. Nair, for the Appellant; P.K.R. Menon and Jose Joseph, for the Respondent

Final Decision: Dismissed

Judgement

C.N. Ramachandran Nair, J.
Agricultural income is not liable to be assessed under the Central IT Act by virtue of the exemption

specifically provided under s. 10 of the Act. However when planters process or manufacture agricultural produce converting it into intermediary or

final products for sale in the market, the income attributable to processing or manufacture becomes business income that attracts tax under the

Central IT Act (hereinafter referred to as the Central Act for short). From the very beginning income from tea was assessable partly as agricultural

income and partly as business income and specific provision is provided in r. 8 of the Central IT Rules (hereinafter referred to as the Rules) for

assessment of income from tea and for bifurcation of the same in the ratio given thereunder for the purpose of assessment under the Agrl. IT Act

and under the Central Act. In fact r. 7 of the Rules makes a general provision for assessment of income, partly agricultural and partly from

business. Even though rubber planters were also engaged in processing of the crop derived from rubber plants, namely, field latex into centrifugal

latex and other allied products, which are value added products, there was no specific provision in the Rules until the asst. yr. 2002-03 for

assessment and bifurcation of income from processing of rubber for assessment under the State Agrl. IT Act as well as under the Central Act.

However, from the asst. yr. 2002-03, r. 7A was introduced specifically providing for assessment of income from processed rubber and bifurcation

of the same in the ratio of 65:35 for assessment under the State Agrl. IT Act and under the Central Act respectively. When r. 7A was introduced,

it was specifically provided therein that already concluded assessments for past years will not be reopened for the purpose of levying tax on

income from processed rubber under the Central Act. The appellant is a plantation company jointly set up by the State and Central Governments

and is engaged in rubber cultivation in Kerala. Since the appellant is engaged in processing of rubber latex into centrifugal latex, the appellant is

liable to be assessed under the Central Act under r. 7A of the Rules, which provides for assessment of 35 per cent of the income from processed

rubber under the Central Act.

2. The question that arises for consideration in this batch of appeals filed by the appellant for the asst. yrs. 2004-05, 2005-06 and 2006-07 is

whether the appellant is entitled under r. 7A of the IT Rules for deduction of expenditure incurred on replantation of rubber. Admittedly,

expenditure for new planting and for upkeep until the plants start yielding which in the case of rubber is 6 to 7 years from the year of planting is to

be capitalized as there is no income from the new immature plantation against which expenditure can be set off. Until the Central IT '' Department

started assessment under r. 7A of the IT Rules from 2002-03 onwards, the appellant was being assessed under the State Agrl. IT Act treating the

entire income from rubber as 100 per cent agricultural income against which the appellant could not claim deduction of the entire expenditure

incurred in replantation and for maintenance of immature plants, which was treated as capital expenditure. Even though the State Agrl. Act

prohibits deduction of expenditure incurred on replantation and maintenance of immature area, the Agrl. IT Rules in Kerala provides an incentive in

r. 3 thereof, which provides for deduction of replantation allowance subject to a ceiling of a certain percentage of income from plantation. In fact

under r. 3 of the Agrl. IT Rules, the deduction provided for replantation by rubber planters is upto 2.5 per cent of the agricultural income from

rubber. This is only by way of incentive for planters to keep on replacing old and unyielding trees with new plantation. Obviously in order to avail

the incentive provided in r. 3, the assessee should have both yielding area and unyielding/immature area, and only when there is income from

yielding area, replantation allowance can be claimed in respect of immature area that too upto 2.5 per cent of the income from yielding area.

Admittedly, the appellant is not entitled to replantation expenditure claimed by them in the computation of agricultural income for assessment under

the State Agrl. IT Act. The question therefore to be considered is whether a claim of deduction which is inadmissible in the computation of income

under the State Agrl. IT Act can be allowed under r. 7A(2) of the IT Rules in the computation of agricultural income as well as income assessable

as ""business income"" under the Central Act by the Central ITO. The claim made by the assessee for all the above years was disallowed in the

assessment by the ITO, which is confirmed by the CIT(A) and also by the Tribunal, against which these appeals are filed under s. 260A of the IT

Act.

3. We have heard learned senior counsel Shri A.K. Jayasankar Nambiar appearing for the appellant-assessee and also learned standing counsel

appearing for the respondent.

4. Before proceeding to consider the claim made specifically under r. 7A(2) of the Rules, we have to consider the nature of the rubber cultivation

in contrast with other plantations, namely, tea and coffee. Rubber seedlings are planted in a pattern providing a distance of around 15 ft. between

two plants and in the course of 6 to 7 years the plants mature into full trees and start yielding. Modern clones give economic yield for 20 to 25

years and thereafter the trees are cut and removed and the area is fully replanted, which again start yielding after 6 to 7 years. Since the foliage fully

cover the planted area preventing entry of sunlight, even grass does not grow in rubber plantation. Therefore, dead plants within the plantation

cannot be replaced or substituted through infilling. In fact the appellant also has no case that infilling is done in yielding area, which is not possible in

rubber plantation because under the foliage without sunlight new plants cannot grow. Even though replacement of plants is not possible In a rubber

plantation, tea bushes and coffee bushes can be replanted in existing plantation through infilling. The rule making authority under the Central Act

probably was unaware of the limitations in the rubber plantation, and therefore, they have made f. 7A(2), in same lines as rr. 7B(2) and 8(2), which

provide for deduction of expenditure incurred for replacement of plants in coffee as well as tea estates.

5. For easy reference we extract hereunder r. 7A(2) and the corresponding provisions applicable for coffee and tea plantations, namely, r. 7B(2)

and r. 8(2) of the IT Rules :

7A(2). In computing such income, an allowance shall be made in respect of the cost of planting rubber plants in replacement of plants 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 cl. (31) of s. 10, is not

includible in total income.

7B(2). In computing the incomes referred to in sub-rr. (1) and (1A), an allowance shall be made in respect of the cost of planting coffee plants in

replacement of plants 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 cl.

(31) of s. 10, is not includible in the total income.

8(2). 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 cl. (30) of s. 10, is not includible in the

total income.

6. Even though we have stated that r. 7A(2) has no application because rubber saplings are not planted in yielding plantation in replacement of

plants that have died or have become permanently useless because the saplings cannot grow under the shade of foliage and therefore no planter

does infilling in yielding area, still we feel if the assessee is able to prove that they have made infilling in existing plantation, they are entitled to

deduction of replanting expenditure in terms of r. 7A(2) of the Rules. However, in this case, admittedly, the appellant has claimed deduction

towards replanting expenditure of above Rs. 1.90 crores each for the first two years i.e. 2004-05 and 2005-06, and around Rs. 2.49 crores for

the asst. yr. 2006-07. Since the expenditure so claimed is not for infilling or replacement of dead or useless plants as contemplated under r. 7A(2)

of the Rules and on the other hand, the replanting expenditure claimed is for replantation of certain areas after cutting and removal of old trees

therein, the expenditure claimed for replanting such area cannot be allowed as a deduction under r. 7A(2), which provides deduction of

expenditure only for infilling by way of replacement in existing yielding plantation, which Is not the case here. Learned senior counsel appearing for

the assessee contended that after the introduction of r. 7A, income from processed rubber has to be assessed by the Central ITO and 65 per cent

of the income so determined by the Central ITO is to be assessed for assessment under the State Agrl. IT Act by the Agrl. ITO. There can be no

dispute on this position because the law is settled by various decisions of the Supreme Court In the context of assessment of tea income under r. 8,

wherein the Supreme Court held that assessment of the income partly as agricultural and partly as business income by the Central ITO is binding

on the Agrl. ITO for assessment under the Agrl. IT Act. Learned standing counsel appearing for the Revenue also did not oppose the legal position

but he supported the assessment confirmed in two level appeals by contending that r. 7A(2) does not authorise deduction of replantation

expenditure for replanting an area, which is capital in nature. There can be no dispute that the investment in planting and development of plantation

upto maturity i.e. until the plants start yielding has to be treated as capital expenditure for development of a capital asset which starts yielding after

6 to 7 years of planting. The assessee''s counsel submitted that there is no difference between infilling in an yielding plantation and replantation of an

area because expenditure in both cases is of the same nature i.e. for planting and maintaining immature trees upto 7 years. He therefore contended

that the Central Act overrides the State Agrl. IT Act. and so much so, the claim is allowable under r. 7A(2) of the Rules.

After hearing both sides, we are unable to accept the case of the assessee for more than one reason. In the first place, expenditure covered by r.

7A(2) does not cover expenditure incurred for replantation of an area. On the other hand, r. 7A(2) only provides for deduction of expenditure for

infilling through replacement of dead trees or other trees that have become useless, which is not the case here. As already stated by us, r. 7A(2) is

In the same line as r. 7B(2), which provides for replacement of dead or old or unyielding coffee plants in yielding coffee plantation, and r. 8(2)

which provides for replacement of dead or useless tea bushes in tea plantation. Yielding healthy rubber plantation does not admit replacement of

dead plants within such area as new saplings cannot grow under shade and it is never done by any planter. So much so, expenditure for

replantation of an area is not covered by r. 7A(2) and in our view the lower authorities including the Tribunal rightly rejected the claim. We also

feel that the Central ITO while determining income in the nature of agricultural as well as business income under r. 7A should keep in mind the

principles of computation of agricultural income under the State AIT Act and as far as possible, assessment should be made without violating the

provisions of the State Agrl. IT Act. If the appellant''s claim is allowed, certainly so much of the portion of the agricultural income determined by

the Central ITO will be in direct conflict with the scheme of assessment of agricultural income under the State Agrl. IT Act which prohibits

deduction of expenditure on replantation of an area and only an incentive is provided by way of replantation allowances under r. 3 of the State

Agrl. IT Rules as stated above. We are of the view that the Tribunal rightly held that the expenditure on replantation of an area wherefrom no

income is derived by the assessee is not to be reckoned or considered in the computation of income from yielding area. Expenditure incurred for

planting and development of the plantation upto maturity has to be necessarily capitalised and is not allowable as a revenue expenditure. Since the

assessee has no case that they have incurred any expenditure for infilling the yielding area and the expenditure incurred is only for replantation after

cutting and removing old plantation, there is no question of considering or allowing the claim under r. 7A(2). The assessee''s claim is thoroughly

misconceived and the lower authorities including the Tribunal rightly held so. Consequently, we dismiss all the appeals.