

**(2002) 02 MAD CK 0180**

**Madras High Court**

**Case No:** Tax Case No. 905 of 1995 5 February 2002

Balamore Estate (P) Ltd.

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

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**Date of Decision:** Feb. 5, 2002

**Citation:** (2002) 174 CTR 460

**Hon'ble Judges:** V.S. Sirpurkar, J; K. Raviraja Pandian, J

**Bench:** Full Bench

**Advocate:** Vikram Ramakrishnan, for the Assessee Mrs. Chitra Venkataraman, for the Revenue, for the Appellant;

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### **Judgement**

@JUDGMENTTAG-ORDER

V.S. Sirpurkar, J.

The question referred to us is :

"Whether on the facts and in the circumstances of the case, the Tribunal is right in law in holding that the sale proceeds of cattle and meat is taxable under the Income Tax Act particularly when the entire estate being used for agricultural operations?"

2. The assessee is a tea company having a tea estate. It grows tea in that estate and sells them. The concerned assessment year is 1984-85. In the assessment order, the assessing officer had found that the assessee had not estimated any income arising on sale of meat and cattle amounting to Rs. 73,550 and, therefore, he assessed the profits at 10 per cent considered Rs. 7,355 as the business income for being added. In the appeal, the Commissioner (Appeals) however, found that this income was not liable to be considered as taxable income at all, particularly because the sale proceeds were in the nature of agricultural income. This was probably on the ground that the cattle were in Kodamadi Estate, where only agricultural operations in the form of cultivation of tea were carried out and there was no manufacturing activity there and the entire income from the estate was treated as agricultural

income, which is not subject to Income Tax. He, therefore, directed that this income should be ignored.

3. The matter was taken to the Tribunal (hereinafter referred to as "the Tribunal") at the behest of the department and the Tribunal actually found by way of facts that the cattle sales were to the tune of Rs. 70,800, while the meat sales were to the tune of Rs. 2,749.50 for the year ending 31-12-1983. The closing stock was shown to be Rs. 5,000 as on 31-12-1982. It was then observed by the Tribunal that the assessee had not brought on record the exact number of cattle that it had on 31-12-1983, the number of cattle purchased or as to how the number of cattle grew and in what proportion. The Tribunal found that the Commissioner (Appeals) had not examined these issues at all. The Tribunal also observed that no explanation could be given by the assessee as to how the figure of sale proceeds at Rs. 73,550 was arrived at. The Tribunal observed as follows :

"When we put it to the assessee's counsel for reconciliation and clarification, he has nothing to say except relying on the order of the Commissioner (Appeals).

Under the circumstances, the Tribunal recorded a finding that :

"Some revenue receipts which are taxable under the Income Tax Act, 1961, are camouflaged in the guise of sale proceeds of meat and cattle. In the absence of any details forthcoming from the assessee in this regard, we reverse the order of the Commissioner (Appeals) and restore the order of the Income Tax Officer on this issue."

4. It is on the basis of these findings that the present question has been referred to us. We are of the clear opinion that there is no scope for the question referred. In order that we should consider as to whether the income by sale of cattle and meat would amount to agricultural income and, therefore, would be outside the purview of the Act, there has to be a finding of fact that there was certain income on that account. What we find from the Tribunal's order is that there was no such income. Perhaps, on the other hand that income was in fact shown to camouflage some other revenue receipts, which were taxable.

5. Once this finding is arrived at, there would be no question of going into the academic finding as to whether such income would be amenable to the Income Tax. Since the basic fact is not established that this is in fact the income from the sale of cattle and meat, there would be no question of answering the reference regarding the taxability of such income. We, therefore, return the reference holding that the question referred could not arise.

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