
(2003) 02 CAL CK 0048

Calcutta High Court

Case No: IT Reference No. 21 of 1998 26 February 2003

Commissioner of Income Tax

APPELLANT

Vs

Tasah Tea Ltd.

RESPONDENT

Date of Decision: Feb. 26, 2003

Citation: (2003) 129 TAXMAN 647

Hon'ble Judges: Maharaj Sinha, J; D.K. Seth, J

Bench: Full Bench

Advocate: D.K. Shome and P.K. Bhowmick for the Revenue Srinik Singhvi, for the Assessee, for the Appellant;

Judgement

@JUDGMENTTAG-ORDER

D.K. Seth, J.

The following question was referred for our answer :

"Whether, on the facts and in the circumstances of the case, the Hon'ble Income Tax Appellate Tribunal was justified in law in holding the view that provisions of rule 8(2) was applicable to the case of the assessee and that the allowance by way of deduction be granted ?"

2. Learned counsel for the revenue has submitted that there was no evidence to show that the Nursery was maintained by way of replantation of dead or useless plants within the meaning of rule 8(2) of the Income Tax Rules, 1962. He has pointed out from the paper book that there was no such evidence. Therefore, the allowance by the Tribunal under rule 8(2) of the expenses for maintaining Nursery cannot be sustained and the question referred to is to be answered in the negative in favour of the revenue.

3. Learned counsel for the assessee, on the other hand, points out that even though it is a stage prior to the replantation, still it comes within the ambit of rule 8(2) since without a Nursery there cannot be a replantation. The application of rule 8(2) cannot

be confined only to the stage of replantation, which includes the raising of plant as well. Alternatively, he claimed that even if it does not come under rule 8(2) but the expenditure incurred for raising plants in a Nursery for the purpose of replantation without expanding the plantation is a revenue expenditure otherwise allowable. According to him, there is no material to show that the plants raised in this Nursery were utilized in the relevant year for expansion of the plantation conferring character of capital expenditure on the said transaction. Therefore, according to him, the question should be answered in the affirmative or, in the alternative, if that cannot be done then the order should not be interfered with.

4. Learned counsel for the revenue, in reply, has contended that in the absence of any materials as to whether these plants raised in the Nursery are used for expansion of the plantation, no definite conclusion can be arrived at. Therefore, the matter requires to be remitted for taking appropriate decision.

5. After having heard the learned counsel for the parties, it appears that the facts are not in controversy. The plants are being raised within the plantation area where the plants became dead or useless. It is also not in controversy that the area in which the Nursery is being maintained is not an abandoned area, namely, it was within the plantation area the plants whereof were either dead or useless.

6. All along the assessee had claimed that the plants raised in the Nursery were used for in filling, namely, replacement of useless or dead plants by replanting the bushes within the plantation area. It had never claimed to have used these plants for expansion of the plantation. There was no suggestion at any point of time on the part of the revenue that these plants were used for the purpose of expansion of the plantation. The learned counsel for the revenue has pointed out many things in order to obtain an order of remission. But on a reference, the court cannot travel beyond the materials already on record. No additional evidence can be taken. Neither any submission made from the Bar can be looked into. Having regard to the order at page 51 of the Paper Book, we find that the expenditure of Rs. 4,68,615 was spent towards raising and maintenance of Nursery in the vacancy caused due to death and weeding out of old plants. It is also found that this expenditure was incurred for the purpose of replacement of unproductive tea bushes. Commissioner (Appeals) had it to be a capital expenditure, not a revenue expenditure, whereas the Tribunal had allowed the benefit of rule 8(2).

7. As we understand from the expression used in rule 8(2), it applies only in respect of replacement of useless or dead plants in an area, which is already under cultivation and not abandoned earlier. It cannot be stretched to a stage prior to the replacement of the useless or dead bushes. The maintenance of Nursery for the purpose of raising bushes to be utilized for replantation of dead or useless bushes within the plantation area does not come under rule 8(2). It is the replantation of dead or useless bushes within the plantation area that comes within the scope and ambit of rule 8(2). This cannot be extended to a stage prior to actual replacement or

replantation. Therefore, we are unable to answer the question in the affirmative in favour of the assessee. We answer the question in the negative in favour of the revenue.

8. But, however, we are not inclined to interfere with the order allowing the expenditure of Rs. 4,68,615 as a revenue expenditure, though on different grounds, inasmuch as if the plants are raised and maintained in a Nursery for being utilized for the purpose of replantation without any expansion of the plantation area or replantation in an abandoned area, then it cannot be said to be a capital expenditure. Capital expenditure involves an investment increasing the capital for higher profit. The expansion means extension of plantation to an additional area. An area already abandoned, if replanted would be an expansion of the area under cultivation for the previous year concerned. The maintenance of an area already under cultivation cannot be treated to be an expansion of the plantation nor can it be treated to be an investment or expansion adding to the capital already invested. On the other hand, it would be a maintenance of the plantation itself and, therefore, is a revenue expenditure.

9. In our view, neither the assessing officer nor the Commissioner (Appeals) have given any reason for holding this expenditure as capital expenditure except curtly saying that these are capital expenditure. This is not supported by any reason. If we look at the nature and character of the expenditure and the purposes for which the Nursery is being maintained, then, it seems that it is definitely a revenue expenditure for the maintenance of the plantation for the purpose of carrying on the business itself. It is not an investment of fresh capital unless it is utilized for the purpose of expanding the plantation.

10. With this observation, we dispose of this reference as above.