

(2007) 02 UK CK 0012

Uttarakhand High Court

Case No: None

Commissioner of Income Tax

APPELLANT

Vs

Green Gold Tree Farmers P. Ltd.

RESPONDENT

Date of Decision: Feb. 28, 2007

Acts Referred:

- Income Tax Act, 1961 - Section 145, 2, 22, 41

Citation: (2008) 216 CTR 115 : (2008) 299 ITR 262 : (2007) 1 UD 420

Hon'ble Judges: P.C. Verma, J; B.C. Kandpal, J

Bench: Division Bench

Judgement

1. By means of this reference, the Income Tax Appellate Tribunal has required the opinion of the High Court on the question, formulated as under:

Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was legally justified in confirming the view of the Commissioner of Income Tax (Appeals) who held that the sale proceeds of the plants raised in the nursery on the land constituted the income from agriculture?

2. The brief facts of the case are that the respondent-assessee is a private limited company which was incorporated on November 20, 1986, and the first return of income was filed for the assessment year 1988-89 for the period from November 20, 1986, to October 31, 1987. The assessment in question is in respect of the previous year November 1 1987, to March 31, 1989, being transitional year of 17 months. The Assessing Officer noticed that the assessee-company was carrying on the activities of running of nursery and of extension service and deriving income therefrom. The assessee purchased plants in its nursery and reared them and then sold it to various parties including farmers. It provided extension service to those farmers who purchased ETPs. In respect on both the activities, separate profit and loss account have been filed for the period from November 1, 1988, to March 31, 1989, yielding from nursery at Rs. 92,836 the period of five months ending with March 31, 1988,

and Rs. 2,25,904 for the year ending October 31, 1988. Both the above amounts totalling to Rs. 3,18,740 were shown as agricultural income from the sale of poplar plants. The Assessing Officer issued a notice dated November 19, 1990, to the assessee as to why the said income from nursery business be not taken as income from business instead of income from agriculture as claimed by the assessee. According to the Assessing Officer, the assessee failed to show that primary agricultural processes were carried on upon the land. He viewed that the assessee's action of preparing separate profit and loss account would not convert the activity into two activities, one being agriculture and the other business as such a separation into two activities was only an artificial one as could be seen from the facts that the agriculture requires the operations from rearing to harvesting and the assessee's case was not so and that the assessee's activity of nursery cannot be treated as agriculture in nature, particularly when the aim and object of the activity was business of providing extension service to the farmers and further that the profit and loss account for nursery revealed all elements of business like advertisement, salary, discount and depreciation. Hence, income from nursery was treated as business income and profits computed by the Assessing Officer. The assessee has also further shown loss from extension service of Rs. 2,29,947 the period of five months ending with March 31, 1989 and Rs. 3,48,146 the period of 12 months ending with October 31, 1988. The accounts of extension service were in respect of the ETPs sold and the extension charges Rs. 1,10,343 for five months and Rs. 1,66,432 for 12 months have been received from the farmers stated to have been approved by the rural bank. The loss/income under the head "Extension service" was shown by the assessee as its business income. The state of affairs with the composite business was seen from the audited accounts for the period November 1, 1987, to March 31, 1989, besides quantitative details in respect of nursery account. It was found that as on October 31, 1988, closing of work-in-progress was shown at Rs. 24,743 cuttings and the assessee gave its working as required by the Assessing Officer. The assessee also gave working of closing of the work-in-progress of ETPs and also gave reconciliation besides the figures as per the auditors' report pertaining to the quantitative details for the period ending with October 31, 1988, for 12 months and March 31, 1989, for five months. The Assessing Officer noticed inconsistencies therefrom and ultimately concluded that the profits returned at Rs. 3,18,740 (Rs. 92,836 + Rs. 2,25,904) referred to above did not reflect the true profit of the assessee and further that the facts and circumstances of the case are such that income could not be properly deduced. Hence, he viewed that profit from nursery business shown did not represent true income as the method employed was such that true profits could not be arrived at. In respect of extension service, the Assessing Officer found that the accounts thereof did not give correct income and the income was, therefore, arrived at by the following proviso to Section 145(1) of the Act.

3. Aggrieved by the aforesaid assessment order, the assessee filed an appeal before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) directed the Assessing Officer not to tax the income from nursery as it is agricultural income and the income from extension services to be recomputed treating it as business income.

4. Feeling aggrieved by the aforesaid judgment and order of the Commissioner of Income Tax (Appeals) the Revenue Department preferred an appeal before the Income Tax Appellate Tribunal. The cross-appeals were also filed by the assessee. The Income Tax Appellate Tribunal consolidated the appeals together and decided the matter by the common judgment. The Income Tax Appellate Tribunal dismissed both the appeals, i.e., filed by the Revenue Department as well as by the assessee.

5. This reference was made by the Income Tax Appellate Tribunal to the High Court for its opinion on the question of law formulated in the previous paragraph.

6. Heard learned standing counsel for the Revenue carefully and perused the record. The learned standing counsel for the Revenue has argued that the income from the nursery is taxable income and the appeal filed by the Revenue Department has been dismissed by the Income Tax Appellate Tribunal without applying the principle of law as well as the judicial pronouncements of the Supreme Court.

7. In order to appreciate the arguments it would be relevant to peruse the provision of Section 2(1) of the Indian Income Tax Act, 1922, which is extracted below:

"Agricultural income" means-

(a) any rent or revenue derived from land which is used for agricultural purposes and is either assessed to land revenue in British India or subject to a local rate assessed and collected by officers of the Crown as such ;

(b) any income derived from such land by-

(i) agriculture, or

(ii) the performance by a cultivator or receiver of rent-in-kind of any process ordinarily employed by a cultivator or received of rent-in-kind to render the produce raised or received by him fit to be taken to market, or

(iii) the sale by a cultivator or receiver of rent-in-kind of the produce raised or received by him, in respect of which no process has been performed other than a process of the nature described in Sub-clause (ii).

8. It is important to mention here that the same definition of "agricultural income" has been adopted in Section 2(1A) of the Income Tax Act, 1961.

9. From a perusal of both Clauses (a) and (b) of the definition of the "agricultural income", it is clear that the income must be derived from land which is used for agricultural purposes. The meaning of the expression "agricultural purposes" was

explained in *Raja Mustafa Ali Khan v. CIT* [1948] 16 ITR 330, wherein it has been held that (headnote) : "Though it must always be difficult to draw the line yet unless there is some measure of cultivation of the land, some expenditure of skill and labour upon it, it cannot be said to be used for agricultural purposes, within the meaning of the Income Tax Act".

10. The aforesaid decision was further considered by the hon"ble apex court in the case of [Commissioner of Income Tax, West Bengal, Calcutta Vs. Raja Benoy Kumar Sahas Roy](#), wherein it was held that-"where trees were planted and nurtured by manual labour, the income arising therefrom was agricultural income and the test laid down by the Supreme Court applied to the facts of the case before them".

11. The hon"ble Supreme Court in another case reported as [S.S. Rajalinga Raja Vs. State of Madras](#), has also held as under:

(ii) "Agricultural income" is defined (in so far as the definition is relevant in these appeals) as meaning (a) Any rent or revenue derived from a plantation, (b) Any income derived from such plantation in the State by (i) agriculture, or (ii) the performance by a cultivator or receiver of rent-in-kind of any process ordinarily employed by a cultivator or receiver of rent-in-kind to render the produce raised or received by him fit to be taken to market, or (iii) the sale by a cultivator or receiver of rent-in-kind of the produce raised or received by him, in respect of which no process of the nature described in paragraph (ii).

12. The terms "agriculture" and "agricultural purposes" not having been defined in the Indian Income Tax Act, but necessarily fall back upon the general sense in which they have been understood in common parlance. "Agriculture" in its root sense, means a gear, a field and cultivate, cultivation of field which of course implies expenditure of human skill and labour upon land. Turning to the dictionary meaning of "agriculture", Webster's New International Dictionary describing it as the art or science of cultivating the ground, including rearing and management of livestock husbandry farming, etc., and also including in its good sense farming, horticulture, forestry, butter and cheese making, etc. Murray's Oxford Dictionary describes it as the science and art of cultivating the soil, including the allied pursuits of gathering in the crop and rearing livestock, tillage, husbandry, farming in the widest sense. In Bouviers' Law Dictionary quoting the Standard Dictionary agriculture is defined as the cultivation of soil for food products or any other useful or valuable growths of the field of garden, tillage, husbandry, also by extension, farming, including any industry practised by cultivator of the soil in connection with such cultivation as breeding and rearing of stock, dairying, etc. The science that treats of the cultivation of the soil. In Corpus juris Secundum the term "agriculture" has been understood to mean, art or science of cultivating the ground, especially in fields of large quantities, including the preparation of soil, the planting of seeds, the raising and harvesting of crops, and the rearing, feeding and management of livestock tillage, husbandry and farming. In its general sense, the word also includes gardening or horticulture.

Century Dictionary and Anderson's Dictionary of Law : The primary meaning of "agriculture" is the cultivation of the ground, and in its general sense, it is the cultivation of the ground for the purpose of procuring vegetables and fruits for the use of man and beast including gardening or horticulture and the raising or feeding of cattle and other stock. Wharton's Law Lexicon adopts the definition of agriculture, in 8 Edn. VII, C. 36. As including horticulture, forestry and the use of land for any purpose of husbandry, etc. In 10 Edn. VII, C8, Section 41, it was defined so as to include the use of land as meadow or pasture land or orchard or osier or woodland or for market gardens, nursery grounds, or allotments, etc. In 57 and 58 Vict C 30 Section 22, the term "agricultural property" was defined so as to include agricultural land, pasture, and woodland, etc.

13. The hon"ble Supreme Court in a case [Commissioner of Income Tax, West Bengal, Calcutta Vs. Raja Benoy Kumar Sahas Roy](#), has held that:

the term "agriculture" cannot be confined merely to the production of grain and food products for human beings and beasts but, must be understood as comprising all the products of the land which have some utility either for consumption or for trade and commerce and would also include forest products such as timber, sal and piyasal trees, casuarina plantations, tendu leaves, horranuts, etc.

14. Therefore, on the facts of the case, as well as on the basis of the judicial pronouncements detailed above, we have no hesitation in holding that the sale proceeds of the land belonging to the assessee constitute income from agriculture, hence exempt from tax under the Income Tax Act. We do not find any good ground to interfere with the findings recorded by the Income Tax Appellate Tribunal. The question of law framed in this reference is answered against the Revenue Department and in favour of the assessee. The Income Tax reference is disposed of accordingly.