V. S. S. V. Meenakshi Achi and Another

Vs

Commissioner of Income-Tax, Madras

Civil Appeals Nos. 157 and 158 of 1965

(K. Subba Rao, J. C. Shah, S. M. Sikri JJ)

17.12.1965

JUDGMENT

SUBBA RAO J. –

These appeals, by special leave, raise the familiar but difficult question, whether a "receipt" is a capital or a revenue receipt.

The appellant in C.A. No. 157/1965, Meenakshi Achi, owns 5/6ths share in Sungei Chour Estate in Malaya.

V.R.K.R.S. Firm, the appellant in C.A. No. 158/1965, owns rubber estates in Kaualakangsar, Malaya. During the Second World War, rubber estates in the Federated Malay States were either destroyed or denuded. In order to encourage planting or re-planting of rubber trees, the Government of the Federated Malay states issued an Ordinance styled, The Rubber Industry (Re-planting) Fund Ordinance, 1952, whereunder a Board was constituted to administer the funds accumulated in terms of the Said Ordinance. In the accounting year relevant to the assessment year 1955-56, Meenakshi Achi received $5,962 as re-plantation cess from the said board. So too, the firm received $10,336 in the accounting year corresponding to the assessment year 1955-56. During the assessment proceedings before the Income-Tax Officer, the appellant claimed the said amounts as capital receipts. The Income-Tax Officer treated them as revenue receipts on the ground that the said payments were made to cover the re-planting expenses of the assessees.

> "Whether, on the facts and in the circumstances of the case, the re- plantation cess receipt of 5,962 dollars is income assessable to tax ?"

At the instance of the firm, the following question was referred to the High Court :

> "Whether on the facts and in the circumstances of the case, the sum of 10,336 dollars constitutes income assessable to tax ?"

The High Court answered the two questions in the affirmative. Though it agreed with the conclusion of the Tribunal, it gave different reasons for its conclusions. It held that the source of the amounts was the production or the export of the rubber itself by the owners of the plantations and as the amount was paid back to the producers it was only a trading receipt. Hence the present appeals.

The argument of Mr. K. Srinivasan, the learned counsel for the appellant, may be briefly stated :

The premise accepted by the High Court was wrong. The fund was not collected from the producers

like the assessees, for they were neither producers in Penang nor exporters in Federation estates from whom, under the Ordinance, the cess was collected and pooled. They were only planters and were not running any business. The income of the assessees from the said plantations was brought to tax in India as a foregin income though it was derived from agriculture. The exigibility to tax of that income depended wholly on the object for which it was paid. If it was paid ex gratia as an inducement to develop rubber plantations, it would be a revenue receipt; if it was paid to the assessees to recoup them for the expenditure incurred by them for maintaing the plantations, it would be revenue expenditure. In the instant case, though a particular yardstick dependent upon rubber produced was adopted, the amounts were paid only to encourage planting or re-planting of high-yielding rubber trees and therefore they were "Capi

Mr. Viswanatha Sastri, appearing for the revenue, contended that no scheme was framed in accordance with the principles laid down in the First schedule annexed to the Ordinance, that the disbursemsnts were made in terms of the second Schedule, that the payments were correlated to rubber produced which was the "trading asset" of the appellants and, therefore, the amounts paid were revenue receipts. Alternatively, he argued that even if the First Schedule applied, the payments were made to the appellants to enable them to recoup the revenue expenditure incurred for running and maintaining the plantations and, therefore, the payments were revenue receipts.

At the outset, it would be convenient to clear the ground. Throughout the proceedings, it was assumed that a scheme was framed embodying the principles laid down in the first Schedule to the Ordinance and that the payments were made in terms of the scheme. We cannot, therefore, permit the learned counsel for the revenue to change his ground and base his case on the Second Schedule. It may also be made clear that the assessees were only planters and were maintaining the plantations : they were not carrying on any business in rubber; the said amounts in their hands were assessed as income derived from plantations.

As much of the argument turned upon the provisions of the said Ordinance, it would be convenient to notice its relevant terms. The long title of the Ordinance described it as an Ordinance to provide for the collection of a cess on the production and export of rubber, for the establishment of a fund into which money collected as cess was to be paid and for the constitution of a board to administer the fund. Under section 4 the Rubber Industry (Re-plantation) Board was constituted. Section 7(1) authorised the High Commissioner in Council, on the recommendation of the Board, for the imposition and collection of a cess or cesses on rubber produced in Penang and rubber exported from Federation other than Panang. Under sub-section (4) of section 7 any customs or excise duties declared by the High Commissioner in Council to have been imposed with the same objects as the Ordinance should be deemed to be cess or cesses imposed Under sub-section (1) of the section 7 and should be credited to the said Fund. Under sub s

> "4. The balance in the fund after setting aside the sum mentioned in the previous paragraph will be credited to the accounts of the respective participants in the fund in such proportions as in the opinion of the Board correspond to the amount of rubber produced by each participant in the period during which the moneys being credited were collected. The Board may however exclude from consideration, for the purpose of this paragraph, any rubber which in the opinion of the Board has not been the subject of payment of cess.
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> 5. The administrators will repay to the participants in the fund the sums credited to them individually in the fund against expenditure actually incurred since 1st January,

1946, by the participant concerned on the re-planting or new planting of high-yielding rubber trees or the planting of other crops in substitution for rubber as approved by the Board. Proof of such expenditure must be established to the satisfaction of the Administrators either by the submission of audited and certified statements prepared by the accountants approved by the Board or by other evidence of a character approved by the Board.

6. A participant in the fund who can show to the satisfaction of the Administrators that the planted area of his property is planted entirely with high-yielding rubber trees shall be entitled to a refund of all moneys standing to his credit in the fund without being called upon to show evidence of expenditure on planting or new planting.

Second schedule

1. The Board shall from time to time divide the moneys referred to in sub-section (5) of section 7 of this Ordinance in the manner provided in sub-section (2) of section 10 thereof.

2. The moneys so apportioned to Fund A shall be credited to the accounts of the respective participants in Fund A in such proportions as in the opinion of the Board correspond to the amount of rubber produced by each such participant in the period during which the moneys being credited were collected, and each participant shall be repaid all the amounts so credited to him unconditionally and without under delay. The Board may however exclude from consideration for the purpose of this paragraph any rubber which, in the opinion of the Board, has not been subject of payment of cess.

3. The moneys so appointed to Fund B shall be dealt with in accordance with schemes to be prepared under the provisions of sub-section (3) of section 10 of this Ordinance."

The gist of provisions relevant to the present enquiry may be briefly stated. The funds collected were under two categories : (1) the cess or cesses collected on rubber produced in Penang and rubber exported from the Federation other than Panang; (2) customs duties and excise or other duties collected and declared by the High Commissioner in Council to have been imposed with the same objects as the Ordinance. The first fund was distributed in accordance with the provisions of the scheme or schemes made under section 10(3) and the second fund was distributed in terms of the Second Schedule. Both the funds were divided again into Fund A and Fund B. Fund A was established on behalf of owners of property of which an area of not less than Ac. 100 - 00 was planted and Fund B on behalf of owners who owned an area of less than Ac. 100 - 00.

In this case, though Mr. Sastri contended to the contrary, as we have pointed out earlier, the whole proceedings were conducted on the basis that there was a scheme embodying the principles of the First Schedule. It was not disputed that the property of the appellants was not planted entirely with high-yielding rubber trees within the meaning of clause 6. If so, the only question is, what was the nature of the payments made.

Advertising to the First Schedule of the Ordinance, under clause (4) the cesses collected on rubber

produced in Penang and rubber exported from the Federation other than Panang were credited to the accounts of the appellants in such proportions corresponding to the amount of rubber produced by them in the period during which the said cesses were collected. Thereafter, the said amounts were paid to the appellants against expenditure actually incurred since 1st January, 1946, by the appellants on the maintenance of the plantations.

On what basis the amounts were paid from the fund to the assesses, there is dearth of material. We have to proceed only on the terms of clauses (4) and (5) of the First Schedule and the admissions recorded by the Tribunal. The Tribunal recorded in its order the concessions made by the assessee to the following effect :

> "The assessee has conceded before us that it did not have any high- yielding rubber trees. So next position is it is based upon expenditure incurred after 1st January, 1946. It is also admitted that he has claimed such expenses and had them allowed. But these expenses, we find from the records, are based on the production and not on actual expenses shown as having been incurred by the assessee. So it will be difficult, in our opinion, to hold that this is a reimbursement of any expenditure outlay. The assessee might have incurred more or less than the expenses reimbursed to it on the basis of production."

The following facts therefore emerge. The assessees owned rubber plantations before 1st January, 1946; the assessees being only planters did not pay any duty for rubber exported; the cess or cesses were collected only on rubber produced in Penang and on rubber exported from the Federation other than Penang; the amounts were credited against the appellants corresponding to the amount of rubber produced by them and payments were made from the said amounts to the assessees against expenditure incurred on the maintenance of the plantations.

The High Court held the said payments were revenue receipts on the following reasoning :

> "It is perfectly clear that the source of the amounts was the production or the export of the rubber itself by the owners of the plantations. If the money had been paid over as a deduction or an abatement of duty at the stage of production or export, it would not be possible to urge, as the assessees purport to do, that it was anything other than a trading receipt. The mere fact that the statue intervened, collected all of these amounts together in the shape of a fund in which the sums were undeniably earmarked to each and every one of the plantation owners and made payable on the fulfillment of certain conditions does not affect the character of the source of the receipt. It would still remain a trading receipt and the condition that the sums should not be utilised or were to be paid against the sums expended for replanting would not affect the nature of the receipt itself."

Briefly stated, the basis of the High Court's judgment is that the assessees contributed to the Fund by paying duty on the export of rubber and therefore the repayment made to them from out of the Fund must be correlated to the production of rubber. It was clear from the facts narrated above that the assessees were only partners and they were not exporters and therefore they did not pay any duty under the Ordinance to the Government. Mr. Sastri, the learned counsel for the revenue, did not support the principle accepted by the High Court that the source of payment was material and not the nature of expenditure. Indeed his argument was contrariwise, namely, that the expenditure was revenue expenditure and therefore the amounts paid to recoup it partook of that character.

The decision in Higgs v. Wrightson is rather apposite. There the appellant was a dairy farmer, the greater part of whose land was, before the war, permanent pasture. Under the Agricultural Development Act, 1939, and the Agriculture (Miscellaneous War Provisions) Act, 1940, he received grants in respect of the ploughing and bringing into a state of cleanliness and fertility land previously under grass for a period of seven years or more. The court held that the ploughing grant was a revenue receipt. Macnaghten J. observed :

> "Since the amount of the grant depends on the area ploughed, it would seem to be a grant towards the expense of the ploughing...."

So too, in the instant case, the payments to the planters were made against the expenditure incurred for maintaining the rubber plantations.

Having regard to the aforesaid facts, we must hold that the amounts from the fund earmarked for the appellants on the basis of the rubber produced by them were paid against the expenditure incurred by them for maintaining the rubber plantation and producing the rubber. If so, it follows that the receipts by the assessees during the accounting year were revenue receipts and, therefore, liable to be included in their assessable income. We therefore hold, though the different reasons, that the High Court has rightly answered the questions against the assessees. The appeals fail, and are dismissed with costs. One hearing fee.

Appeals dismissed.

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