Commissioner of Income-tax, Kerala

Vs

Kilkotagiri Tea & Coffee Estate Co. Ltd.

Civil Appeal No. 190 of 1979

(S. C. Sen, B. P. Jeevan Reddy JJ)

13.02.1996

JUDGEMENT

SEN J.

1. This case relates to the assessment year 1970-71 for which the relevant accounting period was the year ended 31-3-1971. The following question of law was referred to the High Court under Section 256 (1) of the Income-tax Act :

> "Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the asseessee was not entitled to Development Allowance at 50% on the sum of Rs. 71,500/- being a part of the expenditure incurred during the assessment year 1966/67 and 1967/68 on 1967 Tea clearing under the provisions of Section 33A of the Income-tax Act for assessment year 1971-72?"

2. Section 33-A of the Income-tax Act, 1961 provides for development allowance for clearing land and planting of tea bushes by a tea company. In this case, the clearing of land and planting of the tea bushes was done in July, 1967 (within the accounting year ended on 31-10-1967). The expenses for that year and the subsequent year ended on 31-10-68 were taken into consideration in the assessment for the assessment year 1969-70 for the purpose of computation of development allowance under Section 33-A (1) (a). The Tribunal found:-

"The Company chose to claim the allowance in respect of 1965 clearing fully, i. e., Rs. 30,846/- and in respect of 1967 clearing although they had incurred an expenditure of Rs. 89,800/- and entitled to Rs. 44,900/- they restricted the claim to the difference between Rs. 40,000/- the total claim for which they had provided reserve and Rs. 30,846/- the claim of 1965 clearing. The figures are as follows :-

1967 Tea clearing - Plantation July, 1967

(13.63 Hectares)

1st year 1966/67 Rs.44,525

2nd year 1967/68 Rs. 45,275

Rs. 89,800

Less cost of clearing to be considered in the 4th year, i. e. A. Y. 71-72 Rs. 71,500

Rs.18,300

50% thereof Rs. 9,150

Balance of expenses for which no claim was made Rs. 71,500

5. For the year 71-72, the fourth year of 1967 clearing the further expenses incurred were :-

3rd year Rs. 26,832

4th year Rs. 35,172

Rs. 62,004

To this was added the expenditure of 1st and 2nd year not covered by claim in that year of Rs. 71,500/-. In 1969, there was another clearing of 3.59 hectares for which 71-72 would be the 2nd year. The expenses incurred were Rs. 33.861/-. In that year, the company claimed development allowance on the following figures:-

1967 clearing :

Unclaimed expenses of 67& 68 Rs. 71,500

Expenses for 69 and 70 Rs. 62,004

1969 clearing :

1st and 2nd year expenses Rs. 33,864

Rs. 167,365

50% thereof Rs. 83,682

The company had created a reserve of Rupees 70,000/-."

3. For the assessment year 1971-72, the Income-tax Officer allowed the claim in respect of 1969 clearing, i. e., the expenses in respect of the first and second year at that clearing. For the 1967 clearing, the assessee claimed that a part of the expenses of the first and second year (1967 and 1968) which was neither claimed nor allowed in the earlier assessment years should be taken into consideration. The Income-tax Officer disallowed the claim. The Appellate Assistant Commissioner agreed with the Income-tax Officer and observed that in respect of the expenses actually incurred in the fist two years, the assessee had to claim deduction in the second year and only in respect of the expenses incurred thereafter and not taken into account earlier, extra allowance could be claimed in the fourth year. If the assessee chose to claim only a part of what he was actually entitled to in the first year, he could not claim the balance in the fourth year.

4. On further appeal, the Tribunal upheld the order of the Appellant Assistant Commissioner. The Tribunal was of the view that development allowance for the first two years should have been claimed in the year 1969-70. The Tribunal pointed out that the amount allowable under clause (a) of Section 33A (1) was not limited to the amount which either the Income-tax Officer cared to allow or

the assessee cared to claim. The amount which was allowable depended upon the expenses incurred in the first and second year.

5. The High Court held that Section 33-A (1) (a) dealt with "computation at the first instance" of the development allowance. This implied that computation was not final. Sub-clause (b) provided that "development allowance shall again be computed with reference to the actual cost of planting." Thus, sub-clause (b) contemplated recomputation of actual cost of planting. The High Court was of the view that if after the computation, it was found that recomputed amount exceeded the amount allowed as deduction under clauses (a), the excess will have to be allowed as deduction. This provision, according to the High Court was mandatory. The High Court, therefore, concluded that the claim of the assessee should have been allowed by the Tribunal. The question referred to it was answered in the negative and in favour of the assessee. The Commissioner of Income-tax has now come in appeal against the decision of the High Court.

6. Section 33A (1) provides :-

> "33-A. Development allowance.- (1) In respect of planting of tea bushes on any land in India owned by an assessee who carries on business of growing and manufacturing tea in India, a sum by way of development allowance equivalent to-
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> (i) where tea bushes have been planted on any land not planted at any time with tea bushes or on any land which had been previously abandoned, fifty per cent of the actual cost of planting; and
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> (ii) where tea bushes are planted in replacement of tea bushes that have died or have become permanently useless on any land already planted, thirty per cent of the actual cost of planting, shall subject to the provisions of this section, be allowed as a deduction in the manner specified hereunder, namely:-
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> (a) the amount of the development allowance shall, in the first instance, be computed with reference to that portion of the actual cost of planting which is incurred during the previous year in which the land is prepared for planting or replanting, as the case may be and in the previous year next following, and the amount so computed shall be allowed as a deduction in respect of such previous year next following, and
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> (b) thereafter, the development allowance shall again be computed with reference to the actual cost of planting, and if the sum so computed exceed the amount allowed as a deduction under Clause (a), the amount of the excess shall be allowed as a deduction in respect of the third succeeding previous year next following the previous year in which the land has been prepared for planting or replanting, as the case may be :
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> Provided that no deduction under Clause (i) shall be allowed unless the planting has commenced after the 31st day of March, 1965, and no deduction shall be allowed under Clause (ii) unless the planting has commenced after the 31st day of March, 1965, and been completed before the 1st day of April, 1970.

7. Sub-section (2) provides for set-off and carry forward of unadjusted development allowance to the following assessment years. Sub-section (3) provides that the deduction under sub-section (1) shall be allowed only if the prescribed particulars had been finished by the assessee and a reserve

was created of an amount equal to 75 per cent of the development allowance to be actually allowed. Having regard to the object the clear language of Section 33-A, we are of the view that the High Court has come to a correct decision in this case. The scheme of development allowance was to encourage tea industry to expand. Unlike some other provisions of the Income-tax Act, for expenditure incurred for planting tea bushes in one particular year, allowance under Section 33A may be given in a subsequent year. In view of the specific provisions of Section 33-A the grant of the allowance cannot be limited only to the year in which the expenditure was actually incurred or the immediate next year thereafter. This allowance is given "in respect of planting of tea bushes on any land on which tea bushes had not been planted at any time earlier or on any abandoned land." Development allowance is also permissible where fresh tea bushes are planted in replacement of useless tea bushes that have died. The basis for calculation of the allowance is a percentage of "actual cost of planting" of tea bushes which has been defined by Section 33-A (7) to mean the aggregate of (i) the cost of preparing the land; (ii) the cost of seeds, cutting and nurseries; (iii) the cost of planting and replanting; and (iv) the cost of upkeep thereof for the previous year in which the land has been prepared and the three successive previous years next following such previous year. The aggregate amount of the costs on the aforesaid heads has to be reduced if any of these costs have been met directly or indirectly by any person or authority. In other words, if any financial assistance or subsidy or any other form of aid is received from the Government or any other agency or person, that will go to reduce the amount of costs which will form the basis of calculation of development allowance. All these things may not take pale in one particular year.

8. The very definition of "actual cost of planting" indicates that a span of four years has to be taken into account for the purpose of computation of development allowance. Section 33-A (1) (a) and (b) makes it clear that deduction on account of development allowance will be granted in two stages. The first stage is under Clause (a) under which the development allowance bill have to be computed "in the first instance" and will be limited to that portion of actual costs of planting which was incurred during the previous year in which the land was prepared for planting or replanting, as the case may be. In computing the income of the previous year following the previous year in which the land was first prepared for planting or replanting, the actual costs will be calculated and in the assessment of the second years' income, development allowance will be granted to the assessee provided he has taken the other seats for claiming the allowance including creation of sufficient reserves. In the instant case, the assessee had made sufficient reserves for the claim he had made under Clause (a) of Section 33-A. But merely because, the assessee had not claimed the full amount of development allowance in the first instance, will not disentitle him from claiming the outstanding amount at the second stage under Clause (b). Development allowance under Clause (b) has to be given by computing the actual costs of planting once again. Clause (b) states that "development allowance shall again be computed with reference to the actual cost of planting...." That means, notwithstanding the computation made under Clause (a) and grant of development allowance on the basis of that computation, the assessee will be entitled to compute the allowance once again on the basis of actual costs of planting tea bushes at the second stage in the assessment of the third succeeding previous year reckoned from the previous year in which the land was prepared for planting or replanting. There is nothing in Section 33-A to suggest that development allowance for expenditure incurred in respect of first two years must be calculated and claimed at the very first stage, i. e., at the stage of the second year of assessment after planting of tea bushes. Because of the protracted work invoked in preparation of the land, planting of seed,s cutting and nurturing nurseries and also the cots of planting and replanting of tea bushes as well as the cost to upkeep thereof besides various other factors like setting off of subsidies or other grants from the Government or any other agencies, an assessee has been permitted to claim the deduction even up to

the third succeeding year next following the previous year in which the land has been prepared for planting or replanting, as the case may be. The High Court was right in pointing out the significance of the phrase "development allowance shall again be computed" which means the actual costs that had been computed under Clause (a) will have to be computed afresh. This is what the assessee has done in the instant case.

9. We are of the view that the High Court had come to a correct decision in answering the question referred by the Tribunal in the negative and in favour of the assessee. The Civil Appeal is, therefore, dismissed. Each party will pay and bear its own costs. Appeal dismissed.