

Kalpetta Estates Ltd.

Vs

Commissioner of Income Tax, Cochin

Civil Appeal Nos. 9188-90 with 9191-9203 and 9205-9220 of 1996

(B. P. Jeevan Reddy, K. S. Paripoornan JJ)

16.07.1996

JUDGEMENT

PARIPOORNAN, J:-

1. Special leave granted in all cases. In a few cases there is delay in filing the special leave petitions. The said delay is condoned.

2. This batch contains 32 appeals. They are filed in 20 different sets. The same assessee has filed more than one set of S.L.P. Broadly speaking two questions were posed for consideration in this batch of appeals. They are (i) exigibility to capital gains (tax) when old and unyielding rubber trees were sold by the assessee; (ii) whether the rubber replantation subsidy received by the assessee is a revenue receipt or not. Only in a few cases both the questions arise for consideration. In some other cases, one or the other of the above questions arise for decision.

3. The appellants are assesseees to income-tax. They owned rubber estates. During the accounting years relevant to the assessment years in question for which they were assesseeed (1968-69, 1969-70, 1971-72, 1972-73, 1973-74, 1975-76, 1976-77, 1977-78 and 1978-79, as the case may be), the assesseees sold old, unyielding and uneconomic rubber trees. The Income-tax Officer, brought to tax the difference in amount between the sale price of the uneconomic rubber trees sold and the price nationally fixed for rubber trees as on 1-1-1954 and 1-1-1964, as the case may be [S.55(2)]. It was on the basis that capital gains accrued to the assessee when old and uneconomic rubber trees were sold by them. He worked out 'the capital gains' on the basis of a principle stated in his order. The plea put forward by the assesseees was that the rubber trees when sold were uneconomic and unyielding and were useless, but on the other hand, they were fully yielding on the respective valuation date specified in S.55(2) of the Act i.e. 1-1-1954 or 1-1-1964, as the case may be, and in this view of the matter, no capital gains arose or accrued to the assessee when the old and unyielding rubber trees were sold. The principle adopted to arrive at the capital gains was also assailed. The Income-tax Appellate Tribunal in a majority of cases, accepted the plea of the assesseees, and directed the Revenue to delete the capital gains on the sale of old and uneconomic rubber trees. The basis or principle on which capital gains was worked out by the officer was interfered with by the Appellate Tribunal. However, the High Court in the main case dealt with by it. ITR Nos. 111 and 49 of 1981 upheld the principle of valuation adopted by the officer. This was followed in all the later cases including the cases in the present batch of appeals. The High Court also took the view that 'capital gains' arose or accrued when old and uneconomic rubber trees were sold by the various assesseees. It was concluded that the levy of capital gains in the circumstances, was sustainable.

Similarly, the assessee had received rubber plantation subsidy from the Rubber Board. The Revenue treated the same as revenue receipt and taxed the same as income of the assessee. The High Court in this batch of appeals upheld the said view of the Revenue.

4. Aggrieved by the judgments rendered by the High Court on the above two aspects - (1) assessment of capital gains tax when old and uneconomic rubber trees were sold, and (2) holding that rubber replantation subsidy is a revenue receipt and so could be taxed as income, the assessee filed the special leave petitions in this Court, which have resulted in the appeals.

5. At this stage, we should make certain aspects clear. (A) Only in few cases both the above points are involved. They are SLPs No. 11058/88 and 15594-95/88. (B) Regarding the other cases, in a few of them, the very question of exigibility or assessability to capital gains (tax) when old and uneconomic rubber trees were sold, is involved. They are - SLP Nos. 11118-19/88, 12603-4/87, 15685/88, 13937-38/88 and 11740-42/88. (C) In the following cases, the only or sole question posed before the High Court was "Whether the method of valuation of rubber trees adopted by the Tribunal for the computation of capital gains is factually and legally correct?" The question as to whether any capital gains arose - (exigibility to capital gains) - was not mooted. It was accepted or assumed but the principle adopted by the Revenue was alone in issue. The cases in this group are SLPs Nos. 2416-18/95, 12599-600/87, 14071/88, 14072/88, 14073/88 and 12300/87. Before us, no argument was addressed attacking "the method of valuation", the only aspect covered by the question decided by the High Court. The larger question - regarding exigibility to 'capital gains' will not arise in this group of cases. We, therefore, need not adjudicate as to whether the "method of valuation" adopted was correct or not, since no argument was addressed on this aspect. (D) In the rest of the cases, the sole question involved is whether the rubber replantation subsidy received by the respective assessee can be treated as a revenue receipt and brought to tax. The cases wherein this point is involved are - SLP Nos. 11446-47/88, 11068/88, 13321/88, 11042/88, 15742-43/88, 15744-45/88 and 15747/88, (E) In SLP Nos. 15594-95/88, the question of allowance of depreciation and its quantum, on maintenance of bungalows, motor cars etc. owned by the assessee were posed. But this Court in granting leave by order dated 31-7-1995, has confined the grant of leave only to the two questions - assessability to capital gains tax when old and uneconomic trees were sold, and whether rubber replantation subsidy received by the assessee from the Rubber Board can be taxed as revenue receipt. So, the question of the applicability or otherwise of S.40A(5) need not be considered. (F) In SLP Nos. 15594-95/88 and so also in SLP Nos. 15742-43/88, in submitting the points involved for consideration the assessee has confined it to assessability of tax on rubber replantation subsidy alone. So, the additional point regarding the allowance under S.40A(5) of the Act need not be considered in the said cases. We do not propose to deal with the additional point.

6. In the way events have turned out, it has become unnecessary to consider in detail the merits of the rival pleas in adjudicating the only two issues posed before us at the time of hearing in this batch of appeals - (i) regarding the exigibility or assessability to capital gains (tax) when old and uneconomic rubber trees were sold (covered by (A) and (B) groups stated in para 5 above), and (ii) whether the rubber replantation subsidy can be considered to be revenue receipt and taxed (covered by (A) and (D) groups stated in para 5 above).

7. An identical question arose before the High Court of Kerala in ITR Nos. 208 and 209 of 1987 regarding the assessability of capital gains, when a plantation company sold old uneconomic rubber trees. A Division Bench of the Kerala High Court in ITR Nos. 208 and 209 of 1987 by judgment dated 19th September, 1989, agreed with the finding of the Income-tax Appellate Tribunal to the effect that the fair market value of the old and uneconomic rubber trees, as they were in 1954 or

later in 1964, as the case may be, will be either equal or higher than the sale price it fetched at the time of the relevant sale, which took place later during the relevant accounting year, and that no capital gains arose when such old and unyielding rubber trees were sold. The Court also took the view that it is a matter of common knowledge that in respect of rubber trees which were fully yielding as on the valuation date specified in S.55(2) of the Act (1954 or 1964), but which became old and unyielding at the time of sale, there could be no capital gains arising on such sale.

8. Against the above said decision, the Revenue filed SLPs Nos. 12571 and 12572/93 in this Court. This Court (J.S. Verma and S.P. Bharucha, JJ.) on 23-7-1993 dismissed the said SLPs on merits (203 ITR Statutes p.2). The same view was taken by the High Court vide its judgment dated 30-1-1991 in ITR Nos.159-160/88, Commissioner of Income-tax, Cochin v. Malayalam Plantations (India) Ltd., Cochin. In the said decision, the Court referred to a few unreported cases and also the reported decision in Kanthimathy Plantation Pvt. Ltd. v. CIT. (1990) 184 ITR 1 (Kerala) wherein the same view was taken. In ITR Nos. 159-160/88, the question whether rubber replantation subsidy received by the assessee from the Rubber Board is income, was also considered and it was held that it cannot be said to be revenue receipt and taxed. In doing so, the High Court followed the earlier decision in Commr. of Income-tax v. Ruby Rubber Works Ltd., 178 ITR 181 : (1989 Tax LR 512) (Kerala) (FB).

9. Pointedly referring to the above subsequent events, in the counter-affidavit filed by the Revenue in SLP Nos. 15594/95/95 (Harrison Malayalam Ltd. v. CIT) available at pages 96 to 104, at pages 101-102 it is stated thus :-

"..... In this connection, it is submitted that in the assessee's own case for the assessment years 1977-78, 1978-79, the High Court in its order in ITR Nos. 159 and 160 of 1988 dated 30-1-1991 and also in ITR No. 2/1988, dated 9-1-1991 for the assessment year 1980-81 has held that replantation subsidy received by the Planters from Rubber Board cannot be held to be revenue receipt and taxed as income in view of its decision of the High Court in the case of Ruby Rubber Works Limited, 178 ITR 181 : (1989 Tax LR 512). The High Court in the same order has held that in the light of the decision in Kanthimathy Plantations (P) Ltd. (1990) 184 ITR 1, and unreported decisions of the High Court in certain cases, where old and unyielding rubber trees were sold, no capital gains arose on such transaction. It is understood that the Department had accepted the above decision of the High Court.

(viii) It is respectfully submitted that replantation subsidy received from Rubber Board is exempt under Section 10(31) of the I.T. Act. Regarding the capital gain on the sale of rubber trees, the Special Leave Petition filed by the department in the case of Malankara Rubber and Produce Co. (ITR 203 Statute) has been dismissed by this Hon'ble Court".

(Emphasis supplied)

It should also be stated that a counter-affidavit substantially on the above lines has also been filed by the Revenue in SLP Nos. 11740-42/88 - paras (iv) and (v) - at pages 72-73 of the Paperbook.

10. The net result of the above discussion is that regarding the exigibility or assessability to capital gains (tax) on the sale of rubber trees, the matter is concluded by the dismissal of the SLP Nos.

12571 - 12572/93 (ITR 203 Statutes P.2) by this Court. Moreover, the decision of the High Court vide judgment dated 30-1-1991 in ITR 156-160/88, holding that rubber replantation subsidy received by the planters cannot be held to be revenue receipt and that when old and unyielding rubber trees were sold no capital gains arose, has been accepted by the Department (Revenue).

11. In the light of the above, we hold that the judgments of the High Court under appeals, coming within group Nos. (A), (B) and (D) mentioned in para 5 of this judgment, are unsustainable and the appeals covered by the said SLPs are allowed. The judgments of the High Court covered by groups (C), (E) and (F), mentioned in para 5 above, do not require any interference and we, therefore, dismiss the cases falling under these three groups. We hold that when old and unyielding rubber trees were sold by the various assessees during the relevant accounting year, no capital gain arose or accrued on such transactions. We further hold that the replantation subsidy received by the planters from the Rubber Board can be treated as revenue receipt and taxed as income.

12. The appeals are allowed, to the extent indicated hereinabove. There shall be no order as to costs. Order accordingly.