

KERALA HIGH COURT

State of Kerala

Vs

Karimtharuvi Tea Estate Ltd

(M.S. Menon C.J.)

25.03.1963

JUDGMENT

M.S. Menon C.J.

This is a reference under section 60 (1) of the Agricultural Income-tax Act, 1950, by the Kerala Agricultural Income-tax Appellate Tribunal, Trivandrum. The accounting period with which we are concerned is the year ended December 31, 1956, and the assessment year is the financial year 1957-58. Two questions have been referred to this court for decision. They are;

- "(i) Whether the amount realised by the sale of gravelia firewood is a revenue receipt liable to tax under the Kerala Agricultural Income-tax Act ?
- (ii) Whether any surcharge can be levied on the agricultural income-tax payable for the assessment year 1957-58 ?"

The gravelia trees were grown and maintained for the sole purpose of providing shade to the tea bushes in the tea estates of the assessee. That such shade is essential for the proper cultivation of tea cannot be disputed; and the trees should hence be considered to be as much a part of the capital assets of the company as the tea bushes themselves or the equipment in its factories. Some of the gravelia trees became old and useless with the efflux of time and they naturally had to be cut down and sold. The sale proceeds of such trees cannot possibly amount to a revenue and we must answer the first question referred in the negative and against the department. The Kerala Surcharge on Taxes Act, 1957, came into force after the expiry of the accounting period, but before the expiry of the assessment year. The contention of counsel for the assessee is the fact that the Act came into force only after the expiry of the accounting period precludes its application to the case before us. It is true that the subject of the charge is the income of the previous year. But, as pointed out by the Supreme Court in Commissioner of Income-tax v. Isthmian Steamship Lines, the law to be applied in income-tax matters is the law in force in the assessment year unless otherwise stated or implied. There is no such statement or implication available and it must follow that the second question referred had to be answered in the affirmative and against the assessee. The reference is answered as above. No costs. A copy of this judgment under the seal of the High Court and the signature of the Registrar will be forwarded to the Appellate Tribunal as required by sub-section (6) of section 60 of the

Agricultural Income-tax Act, 1950.