

KERALA HIGH COURT

Commissioner of Income-Tax

Vs.

Woodland Estates Ltd

Income Tax Referred Case No. 41 of 1963 from R.A. No. 349 of 1962-63 in I.T.A. No. 12485 of 1960-61

(M.S. Menon, C.J. and M. Madhavan Nair, J.)

18.08.1964

JUDGMENT

M.S. Menon, C.J.

1. This is a reference by the Income Tax Appellate Tribunal, Madras Bench, under section 66(1) of the Indian Income Tax Act, 1922. The question referred is:

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was correct in holding that the income from the sale of latex after its conversion into sole crepe was agricultural income under section 2(1)(b)(ii) of the Indian Income Tax Act, 1922?"

2. Section 2(1) of the Act defines the expression "agricultural income" and section 4(3)(viii) of the Act provides that "agricultural income" shall not be included in the total income of an assessee. The relevant portion of the definition reads as follow:-

"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 the taxable territories or subject to a local rate assessed and collected by officers of the Government as such;

(b) any income derived from such land by -

(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."

3. The primary condition regarding the quality of the land is satisfied in this case. The sole

question for determination is whether the conversion of latex into sole crepe by the assessee is a process ordinarily employed by a cultivator to render the produce raised fit to be taken to market.

4. The extract from the definition of "agricultural income" given above makes it quite clear that two conditions have to be satisfied in order to come within its ambit. They are:

- (1) The process to which the agricultural produce is subjected, whether manual or mechanical, should be one which is ordinarily employed by a cultivator; and
- (2) The said process should be employed in order to render the produce fit to be taken to market and not for any other purpose.

In other words, as stated in *Brihan Maharashtra Sugar Syndicate Ltd. v. Commissioner of Income-tax¹*,

"The produce must retain its original character in spite of the process unless there is no market for selling it in that condition. If there is no market to sell the produce then any process which is ordinarily employed to render it fit to reach the market, where it can be sold, would be covered by the definition."

5. Latex, as it comes out of the tree, is an opaque liquid resembling milk. The latex itself has a limited market and is bought by the manufacturers of foam rubber, dipped goods and other similar products. It has, however, to be preserved to prevent coagulation and deterioration during transport and storage. It has also to be homogenised and concentrated to reduce the transport charges. The three familiar varieties are creamed latex, evaporated latex and centrifuged latex.

6. The more important forms in which plantation rubber is usually sold are as sheets and crepe. The Encyclopaedia Britannica deals with them as follow:

"The details of the methods employed in the preparation of plantation rubber depend upon the shape and appearance of the produce to be put on the market, but in nearly all cases the outlines of the procedure adopted are the same. The sieved and diluted latex containing 15 - 25 per cent. rubber is treated with a coagulant such as acetic or formic acid or sodium silicofluoride. This causes the rubber to rise to the surface as a wet, white, doughy coagulum leaving in solution a small quantity of mineral and organic matter. The coagulum is then pressed between rollers until it is of the required consistency, thickness and shape. After that it is hung to dry and eventually packed in wooden cases and shipped to its destination.

The two most important forms of plantation rubber are sheet and crepe. Sheet is generally dark brown in colour because it is dried in smoke whilst crepe is of straw colour and is dried in air.

Sheet is obtained from latex coagulated in shallow tanks divided into compartments of

suitable dimensions, each piece of coagulum being pressed by light machinery to the required thickness.

In the preparation of crepe the coagulum is machined much more drastically, heavy rollers being necessary. During this process the coagulum is torn and pressed until it is sufficiently thin to dry in air without artificial heat. The

¹ AIR 1947 Bom 166

rubber is dried by hanging on racks in well ventilated sheds for about a week.

Sheet is thicker than crepe and requires artificial heat to dry it in a reasonable time. It is therefore exposed to the smoke of a wood fire for about 14 days." (14th edition, volume 19, page 604).

7. Several grades of rubber have been defined by the Rubber Manufacturers Association of America according to which natural rubber is bought and sold in the markets of the world. They consist of six qualities of ribbed smoked sheet:

RMA No. 1 X Superior quality

1. Standard quality
 2. Good fair average quality
 3. Fair average quality
 4. Low fair average quality
 5. Inferior fair average quality;
- three qualities of thick latex crepe:

1 X Superior quality

No. 1. Standard quality

2. Fair average quality;

and three qualities of thin latex crepe:

1 X Superior quality

No. 1. Standard quality

2. Fair average quality.

8. The Central Government has fixed with effect from April 28, 1962, the maximum and minimum prices for the various grades and qualities of rubber and latex of different concentrations. The grades and qualities of rubber are as given below:

Grade of rubber	Quality of rubber
Group 1	R.M.A. 1 X R.M.A. 1
Group 2	R.M.A. 2

	R.M.A. 3 Cuttings No.1
Group 3	R.M.A. 4 R.M.A. 5 Cuttings No.2
Group 4	Precoagulated Crepe Pale Latex Crepe 1 X Pale Latex Crepe 1 Pale Latex Crepe 2 Pale Latex Crepe 3 F.A.Q. E.B.C. Super IX
Group 5	Estate Brown Crepe 1 X Estate Brown Crepe 2 X Smoked Blanket Remilled Crepe 2
Group 6	Estate Brown Crepe 3 X Remilled Crepe 3 Remilled Crepe 4
Group 7	Flat Bark

9. What we are concerned with in this case is sole crepe. The making of pale crepe, and of sole crepe therefore, is dealt with as follow in the Rubber Growers Companion, 1964, issued by the Rubber Board constituted under the Rubber Act, 194:

"The wet coagulum is fed into creping machines where flowing water washes the rubber continuously. It is stretched and shredded into thin lace-like strips. The resulting crepe is of high purity and is dried at room temperature (not in smoke house). The long strips are hung from rails in well ventilated rooms or hot air at 38-50C. is passed through the rooms for 5-6 days. Several layers of thin pale crepe are placed one over the other and subjected to pressure to make sole crepe. This fetches a higher price than smoked sheets."

10. It will be seen from paragraphs Nos. 7 and 8 above that sole crepe is not mentioned either by the Rubber Manufacturers Association of America in the grading of natural rubber or by the Central Government in the fixation of the maximum and minimum prices. It may be that this is due to the fact that sole crepe is a commodity manufactured for a specific purpose for use as soles of shoes and other types of foot-wear. And if such is the case, the conclusion may follow

that the process employed in the making of sole crepe is far more than is necessary for rendering the plantation produce fit to be taken to market.

11. The maximum and minimum prices are fixed by the Central Government under section 13 of the Rubber Act, 1947, which says that the Central Government may, by order published in the Official Gazette, fix the maximum price or the minimum price or the maximum and minimum prices to be charged, in the course of a business of any class specified in the order, for rubber of any description so specified. The expression "rubber" is defined in section 3(h) of the Act. According to that definition "rubber" means-

- "(1) Crude rubber, that is to say, rubber prepared from the leaves, bark of latex of any rubber plant;
- (ii) the latex of any rubber plant, whether fluid or coagulated, in any stage of the treatment to which it is subjected during the process of conversion into rubber;
- (iii) latex (dry rubber content) in any state of concentration, and includes scrap rubber, sheet rubber, rubber in powder and all forms and varieties of crepe rubber, but does not include rubber contained in any manufactured article."

If sole crepe is a mere variety of crepe rubber and not a manufactured article, it is not clear why it was not include in the notification issued by the Central Government fixing the maximum and minimum prices of rubber under section 13 of the Act.

12. Counsel for the assessee contends that whether the process employed is one that is necessary, or more than one that is necessary, for rendering the produce fit to be taken to market is essentially a question of fact, that as the order of the Tribunal amounts to a finding of fact in favor of the assessee and that in view of the finding, we must answer the question referred in favor of the assessee. We are inclined to accept this contention.

13. The order of the Tribunal consists of three short paragraphs. It reads as follow:

"The only question, which this appeal raises for our consideration, is whether the process of conversion of latex into sole crepe is a process employed by the cultivator of rubber to make the produce marketable. The departmental officers have held that latex itself is a marketable commodity and its conversion into sole crepe would involve a process other than agricultural process and that this process would not constitute a process employed by a cultivator to make the produce marketable within the meaning of section 2(1)(b)(ii) of the Act. Hence this appeal.

2. The matter is not res integra. It is covered by ample authority. In *Deputy Commissioner of Agricultural Income Tax and Sales Tax v. Sherneilly Rubber and Cardamom Estates Ltd., reported in¹*, the High Court of Kerala has held that where latex is hardened by the application of sulphuric acid, shaped in the form of sheets and dried with the help of

smoke for purposes of preserving the latex and making it fit for marketing, the rubber is still "produce from land". The principle of this decision would govern the case. We uphold the assessee's contention.

3. The appeal is allowed."

14. The case referred to by the Tribunal, *Deputy Commissioner of Agricultural Income Tax & Sales Tax v. Sherneilly Rubber and Cardamom Estates Ltd.*, 1961 12 STC. 519 (*Supra*) was a case relating to smoked sheets and when the present case, reverses the finding of the department that the process employed in the making of sole crepe is more than what is necessary to render the produce fit to be taken to market and upholds the assessee's contention, we cannot but conclude that in the view of the

¹1961-12 STC. 519

Tribunal smoked sheets and sole crepe should be treated alike and that both have undergone only processes that are necessary to render the produce fit to be taken to market. That smoked sheets should be considered as having undergone only a process necessary for rendering the plantation produce fit to be taken to market is clear from *Muhammed v. Sales Tax Officer*², and *Deputy Commissioner of Agricultural Income Tax and Sales Tax v. Travancore Rubber and Tea Co. Ltd.*³, as well. Paragraph 3 of the latter decision will also show that it was not even disputed that the usual method is conversion into smoked sheets and that the said conversion is not a manufacturing process but a process essential for the transport and marketing of the produce concerned.

15. In the light of what is stated above, we answer the question referred in the affirmative, that is, in favour of the assessee and against the department. We would like to add, however, that a fuller investigation is indicated in regard to sole crepe, and that the answer we have given should not form a precedent for the future. We say this particularly because we are not satisfied with the thoroughness of the investigation that has been made, and have answered the question in the way we have done only because questions of fact are not within our purview but within the exclusive jurisdictions of the Tribunal.

16. The reference is answered as in the last preceding paragraph, but without any order as to 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 (5) of section 66 of the Indian Income Tax Act, 1922.

²1961 KLT. 843

³1964 KLT. 393