Pullangode Rubber Produce Co. Ltd. vs State Of Kerala And Anr. on 22 September, 1971

Equivalent citations: [1973]91ITR18(SC)

Author: K.S. Hegde

Bench: A.N. Grover, H.R. Khanna, K.S. Hegde

JUDGMENT

K.S. Hegde, J.

1. This appeal by special leave arises from a decision of the Kerala High Court refusing to direct the Tribunal to submit the two questions set out by the assessee in its application under Section 60(2) of the Kerala Agricultural Income-tax Act, 1950 (Act 22 of 1950). The questions that the assessee wanted the Tribunal to refer to the High Court and which the Tribunal refused to refer are :

> (1) Whether the fact that the applicant apportioned the sum of Rs. 79,680/-out of the general revenue expenses of its estate towards the immature area and capitalised the same for purposes of its accounts precluded the appellant from claiming the same as revenue expenses for the purpose of agricultural income-tax assessment.
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> (2) Whether the Tribunal ought not to have considered the nature of the expenses amounting to Rs. 79,680/-for the purpose of determining whether it is allowable expenditure or not irrespective of the way it was dealt with by the applicant for the purpose of its accounts.

2. The Tribunal in his order refusing to refer those questions observed:

> The assessees have treated a sum of Rs. 79,680/-being a portion of the general charges as capital expenditure for all purposes including working out the managing agents' commission. If the general charges were not in any way connected with maintenance of immature area, the Company would not have apportioned and capitalised a part of such expenditure as attributable to immature area. It is, therefore, a matter of fact that even according to the assessee, the above expenditure relates to maintenance of immature area. The claim is therefore not allowable as per explanation (2) to Section 5 of the Act

3. This question was considered by the Tribunal while dealing with the assessee's appeal before it and the Tribunal observed in its order :

> The first contention raised before us is that the Deputy Commissioner went wrong in upholding the disallowance of Rs. 79,680/-on the sole ground that the expenditure has been capitalised in the appellant company's accounts. The identical question under similar circumstances, relating to the assessment on the appellant company for 1963-64 in Appeal AITA. 224/64. We have as per our order dated 19-11-1965 found the contention against the appellant company. For the reasons discussed therein, we find that the authorities below are perfectly justified in disallowing the claim and we accordingly confirm it as correct.

4. The High Court rejected the application of the assessee with a very short order and that order reads:

> We are not satisfied that the questions suggested arise from the Order of the Tribunal. We, therefore, decline their request to compel a reference under Section 60(2) of the Agricultural Income-Tax Act, 1950. We dismiss this petition. There will be no order as to costs.

5. There is material on record to show that in respect of the assessment year 1963-64, the year previous to the one with which we are concerned in this case, the Tribunal refused to refer similar questions which the assessee wanted it to refer to the High Court. But at the instance of the assessee those questions were referred to the High Court as ordered by the High Court and the High Court answered those questions in favour of the assessee. It is no doubt true that the entries in the account books of the assessee amount to an admission that the amount in question was laid out or expended for the cultivation, upkeep or maintenance of immature plants from which no agricultural income was derived during the previous year. An admission is an extremely important piece of evidence but it cannot be said that it is conclusive. It is open to the person who made the admission to show that it is incorrect.

6. Section 5 deals with computation of agricultural income-tax. That section also provides for deduction of certain items of expenditure incurred by the assessee. Explanation (2) to that section reads :

> Nothing contained in this section shall be deemed to entitle a person deriving agricultural income to deduction of any expenditure laid out or expended for the cultivation, upkeep or maintenance of immature plants from which no agricultural income has been derived during the previous year.
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> According to Dr. Seyid Muhammed the books of accounts maintained by the assessee clearly show that the assessee itself has held out that the sum of Rs. 79,680/-, with which we are concerned in this appeal, were expended or laid out for the cultivation, upkeep of maintenance of immature plants. It may be so, but what the assessee complaint is that it should have been given an opportunity to show that the books of accounts maintained by them do not disclose the correct state of facts. From the order of the Tribunal it is not clear that such an opportunity was afforded to the

> assessee. The Tribunal appears to have been unduly influenced by its decision relating to the year immediately previous to the year of assessment and consequently, it appears that it ignored thi: assessee's assertion that their account books do not correctly show the facts. If the Tribunal had examined the plea of the assessse that their account books do not correctly disclose the real facts and thereafter rejected that contention then the finding of the Tribunal would have been a finding of fact and this Court would not have interfered with such a finding.

7. Dr. Seyid Muhammed urged that the decision of the High Court relating to the assessment of the assessee in the earlier year is wrong. An uncertified copy of that order was produced before us. Therein the High Court purported to follow an earlier decision of that court That decision was placed before us. We have not gone into the question whether the decision of the High Court was right or wrong. The only question that we have consider is whether from the order of Tribunal, we can come to the conclusion that the assessee was given a proper opportunity to establish its plea-about that we are not satisfied.

8. Hence we are of the opinion that the questions set out in the application of the assessee do arise for consideration and therefore the High Court should have directed the Tribunal to refer those questions to the High Court for its opinion.

9. In the result, we allow the appeal and direct the Tribunal to refer the two questions set out in the application of the assessee to the High Court for its opinion. In the circumstances of the case, we make no order as to costs in this appeal.