

THE COMMISSIONER OF AGRICULTURAL
INCOME-TAX, KERALA

A

v.

THE PLANTATION CORPORATION OF
KERALA LTD., KOTTAYAM

NOVEMBER 29, 2000

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[S.P. BHARUCHA, DORAISWAMY RAJU AND
MRS. RUMA PAL, JJ.]

Agricultural Income Tax

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*Kerala Agricultural Income-tax Act, 1950—Section 5; Explanation 2—
Rent paid to landlord for the entire estate including the area covered by
immature plants and interest paid on the loan obtained and utilised for the
purpose of cultivation both mature yielding and unyielding immature plants—
Whether could be allowed deduction—Held, no.*

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Interpretation of Statutes:

*Explanation under a section—Whether applies to the whole section or
to a particular clause of the section—Held, Explanation applies to the whole
section—Kerala Agricultural Income-Tax Act, 1950—Section 5 clause (j)
Explanation 2.*

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**Respondent-assessee claimed deduction for rent paid to landlord in
respect of the entire estate including the area covered by immature oil palm
plants and for interest paid on the loan obtained and utilised for the purpose
of cultivation both mature yielding and unyielding immature oil palm plants
in the returns filed under the Kerala Agricultural Income-Tax Act, 1950. The
Revenue as well as the Tribunal disallowed the deductions on the basis of
Explanation 2 to Section 5 of the Act. In appeal by the assessee, the High
Court allowed the deductions holding that Explanation 2 to Section 5 of the
Act is an explanation only to clause (j) of the Section and not to the other sub-
clauses of the Section. Hence the appeals by the Revenue.**

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Allowing the appeals, the Court

HELD : 1.1. Section 5 in providing for computation of agricultural

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A income for the purpose of the Kerala Agricultural Income-Tax Act, 1950 stipulates that the agricultural income of a person shall be computed after making the various deductions enumerated in Clauses(a) to (n) to the extent mentioned and also in the manner specified therein. It is an admitted position and the High Court also proceeded on such basis that clause (j) of Section 5 of the Act is in the nature of a residuary provision, in which event, it necessarily means that the other clauses are in relation to a few of the enumerated items of expenditure envisaged for deduction and the mere fact that some alone are illustrated specifically do not render those provisions to be read in to truncated or disjointed manner from the residuary clause ignoring the avowed object of section 5 as a whole, viz., computation of agricultural income, as defined in Section 2(a) of the Act after making the deductions to which an assessee is found eligible. When Explanation 2 specifically uses the words, “nothing contained in this section shall be....” expressing a specific intention to encompass the entire Section 5 of the Act reading it otherwise and to confine its relevance and application to only clause (j) of Section 5 would amount to not only rewriting the statutory provision by the Court, but also doing violence to the plain and simple language used. When an Explanation or Proviso was to apply to any one clause or limb alone of Section 5, the legislature has chosen to incorporate it even in the very Section below the specific or particular clause which it was meant to explain or except as in clause (c) or (1) and (n). The fact that instead of doing so Explanation 2 has been incorporated at the end of Section 5 along side Explanation 1, which also used the words “for the purpose of this section....”, the intention of the legislature must be considered to have been made certain, positive and unambiguous, leaving no room or scope whatsoever for having recourse to either internal or external aids for interpretation or construction of the said provision. [142-A-F]

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1.2. The High Court appears to have been carried away by the fact of some assumed similarity of the purpose of expenditure envisaged in clause (j) of Section 5 and those covered by Explanation 2 and from the further fact of retrospective effect having been given to the said Explanation with effect from 1.4.1951, to presume that in doing so the legislative intention indicated was to avoid refunds being made on account of Travancore Rubber & Tea Co. Ltd. case. This is fallacious and cannot be so presumed. The decision declaring the position of law on the scope of clause (j) to Section 5 might have been the occasion for the legislature to enact Explanation 2, and that too with retrospective effect but the said occasion would have equally enlightened and served as an eye opener about the need for enacting the Explanation in such

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a manner as to avoid similar claims being projected in respect of expenditure or deductions envisaged in the various other limbs of Section 5 as well, apart from clause (j) alone. This Court has always been reiterating that if the intendment is not in the words used, it is nowhere else and so long as there is no ambiguity in the statutory language resort to any interpretative process to unfold the legislative intent becomes impermissible and the need for interpretation arises only when the words in the statute are on their own terms ambivalent and do not manifest the intention of the legislature. That apart, an Explanation is intended to either explain the meaning of certain phrases and expressions contained in a statutory provision or depending upon its language, it might supply or take away something from the contents of a provision and at times even to, by way of abundant caution, clear any mental cobwebs surrounding the meaning of a statutory provision spun by interpretative process to make the position beyond controversy or doubt.

[142-G-H; 143-A-D]

1.3. The reasoning of the High Court as to the need for having recourse to internal or external aids to interpret Explanation 2 to Section 5 as well as its ultimate conclusion to whittle down the otherwise wide range and area of operation and application of Explanation 2 to the entirety of Section 5 of the Act. Explanation 2 to Section 5 of the Act, cannot be approved, therefore explains generally as to what are not deductible as expenditure for the purpose of computing the agricultural income in the light of the various clauses of Section 5 of the Act, as a whole. [143-E-F]

1.4. The claims of the respondent, be it in respect of rent or interest paid to the creditors by the assessee on the loans obtained and utilised for the purpose of cultivation etc. shall not be eligible for deduction so far as it relates to the respective portions spent in respect of land or the bringing up of the immature oil palm plantation. [143-G]

Travancore Rubber & Tea Co. Ltd., (1961) 41 ITR 751 SC; *M/s. Doypack Systems Pvt. Ltd. etc. v. Union of India & Ors. etc.*, [1988] 2 SCC 299 and *M/s Keshavji Ravji & Co. & Ors. v. Commissioner of Income Tax*, [1990] 2 SCC 231, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2243-49 of 1993.

From the Judgment and Order dated 17.11.92 of the Kerala High Court in T.R. C. Nos. 106, 111, 129, 133, 143 and 162 of 1991.

A T.L.V. Iyer, G. Prakash and Jyothish for the Appellant.

S. Ganesh (A.C) for the Respondent

The Judgment of the Court was delivered by

B **RAJU, J.** The correctness of a decision of the Full Bench of the Kerala High Court construing Explanation 2 to Section 5 of the Agricultural Income-Tax Act, 1950, inserted by Kerala Act 9 of 1961, to be confined in its application only to Clause (j) of Section 5 and not to Section 5 as a whole is put in issue in these appeals. Section 5 of the Agricultural Income-Tax Act reads as follows:

C “5. *Computation of agricultural income.*—The agricultural income of a person shall be computed after making the following deductions, namely :-

(a) any sums paid in the previous year on account of -

D (i) land revenue or any tax in lieu thereof due to the Government, the Sreepandaravagai or the Sreepadam;

(ii) Jenmikaram;

(iii) Thiruppuvaram; and

E (iv) local rates and cesses and municipal taxes, in respect of the land from which the agricultural income is derived.

(b) any rent paid in the previous year to the landlord or superior landlord, as the case may be, in respect of land, from which the agricultural income is derived;

F (c) any expense incurred in the previous year on the maintenance of any irrigation or protective work constructed for the benefit of the land from which the agricultural income is derived;

G *Explanation*—“Maintenance” includes current repairs and includes also in the case of protective dykes and embankments all such work as may be necessary from year to year for repairing any damage or destruction caused by flood or other natural causes.

H (d) any expenses incurred in the previous year on repairs in respect of any capital asset which was purchased or constructed for the benefits of the land from which the agricultural income is derived;

(e) any interest paid in the previous year on any amount borrowed and actually spent on any capital expenditure incurred for the benefit of the land from which the agricultural income is derived; A

(f) where land from which the agricultural income is derived is subject to a mortgage or other capital charge, any interest paid in the previous year in respect of such mortgage or charge; B

(g) any interest paid in the previous year on any debt, whether secured or not, incurred for the purpose of acquiring the land from which the agricultural income is derived;

(h) any sum paid in the previous year as interest in respect of agricultural loans taken and expended on the land from which agricultural income is derived; C

(i) interest paid on any amount borrowed and actually spent for the purpose of re-claiming, improving or cultivating the property from which agricultural income is derived; D

(j) any expenditure (not being in the nature of capital expenditure or personal expenses of the assessee) laid out or expended wholly and exclusively for the purpose of deriving the agricultural income;

(k) such other deductions as may be prescribed generally or in particular cases; E

(l) in respect of depreciation of buildings, machinery, plant and furniture which are the property of the assessee and are required for the purpose of deriving the agricultural income, a sum equivalent to such percentage on the written down value, thereof as may in any case or class of cases be prescribed and where the buildings have been newly erected or the machinery or plant newly installed a further sum subject to such conditions as may be prescribed; F

Provided that full particulars have been duly furnished:

Provided further that the aggregate of all such allowances made under this Act shall in no case exceed the original cost to the assessee of the buildings, machinery, plant or furniture, as the case may be; G

(m) in the case of agricultural income under the head rent or revenue derived from land referred to in sub-clause (l) of clause (a) of section 2 - (agricultural income from rent or revenue) :- H

- A (i) any expenses actually incurred in the previous year in the collection of agricultural income;
- (ii) any expenses incurred in the previous year on repairs in respect of any capital asset used in connection with the collection of rent due in respect of the land from which the agricultural income is derived;
- B (n) in the case of *agricultural income* referred to in sub-clause (2) of the clause (a) of section 2-(agricultural income from agriculture) :-
- C (i) the expenses other than capital expenditure incurred in the previous year of cultivating the crop from which the agricultural income is derived and of transporting such crop to market, including the maintenance of agricultural implements and cattle required for such cultivation and transport or both;
- (ii) any tax, cess or rate paid on the cultivation or sale of the crop from which such agricultural income is derived;
- D (iii) the cost incurred in the previous year in the purchase of replacement of cattle or implements, which are necessary for cultivation, to such extent as may be prescribed, less the amount realized by sale of the cattle or implements replaced or their estimated value;
- E (iv) any sum paid in the previous year in order to effect an insurance against loss or damage of crops or property from which the agricultural income is derived or insurance against loss or damage in respect of building, machinery, plant and furniture necessary for the purpose of deriving the agricultural income: Provided that any amount received in respect of such insurance in any year shall be deemed to be agricultural income for the purposes of this Act, and shall be liable to agricultural income-tax after deducting the portion, thereof, if any, which has been assessed to income-tax under the Indian Income-tax Act, 1922;
- F (v) any expenses incurred in the previous year on the maintenance of any capital asset if such maintenance is required for the purposes of deriving the agricultural income:
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Provided that no deduction shall be made under this section if it has already been made in the assessment under the Indian Income-tax Act, 1922.

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Explanation 1—For the purpose of this section “paid” means actually paid or incurred according to the method of accounting upon the basis of which agricultural income is computed under this section; A

“Plant” includes vehicles and Scientific apparatus purchased for the purpose of deriving the agricultural income; and “written down value” means- B

- (i) in the case of assets acquired in the previous year, the actual cost to the assessee and
- (ii) in the case of assets acquired before the previous year the actual cost to the assessee less such sum as may be prescribed. C

Explanation 2—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.” D

The appeals before us relate to three Assessment Years 1975- 76, 1976-77 and 1977-78. Revisions came to be filed before the High Court in respect of the three assessment years against the original remand orders and orders subsequently passed by the Tribunal on appeals filed before it against orders giving effect to earlier orders of remand. The respondent-assessee projected claims for deduction of the rent paid to its landlord in respect of the entire estate including the area covered by immature oil palm plants, which did not as also could not yield any income and interest paid on the loan obtained and utilised for the purpose of cultivation etc. in respect of the entire estate comprising both mature yielding as well as unyielding immature oil palm plants. It is in adjudicating the tenability or otherwise of these claims that the High Court has chosen to consider the role of Explanation 2 to Section 5 and held that Explanation 2 is to be an Explanation to only Section 5 (j) and not to the other sub-clauses of Section 5. The High Court has chosen to come to such a conclusion despite the opening words used, “nothing in this section.....” in Explanation 2 by adopting and applying what it chose to describe as internal as well as external aids of construction. In the opinion of the High Court, its conclusion about the limited role and applicability of Explanation 2 only to Section 5 (j) arrived at on the basis of internal aids gets confirmed by construction with reference to external aids also. E F G

Heard the learned senior counsel for the appellants-State and the learned H

- A counsel for the respondent-assessee. Section 5 in providing for computation of agricultural income for the purposes of the Act stipulates that the agricultural income of a person shall be computed after making the various deductions enumerated in Clauses (a) to (n) to the extent mentioned and also in the manner specified therein. It is an admitted position and the High Court also proceeded on such basis only having regard to some of the decisions of this
- B Court as well as of the Kerala High Court that Clause (j) of Section 5 of the Act is in the nature of a residuary provision, in which event in our view, it necessarily means that the other clauses are in relation to a few of the enumerated items of expenditure envisaged for deduction and the mere fact that some alone are illustrated specifically do not render those provisions to
- C be read in a truncated or disjointed manner from the residuary clause ignoring the avowed object of Section 5 as a whole, viz., computation of agricultural income, as defined in Section 2 (a) of the Act after making the deductions to which an assessee is found eligible. Thus, viewed when Explanation 2 specifically use the words, "nothing contained in this section shall be" expressing a specific intention to encompass the entire Section 5 of the Act
- D reading it otherwise and to confine its relevance and application to only clause (j) of Section 5 would amount to not only rewriting the statutory provision by the Court, but also doing violence to the plain and simple language used. When an Explanation or Proviso was to apply to any one clause or limb alone of Section 5, the legislature has chosen to incorporate
- E it even in the very Section 5 below the specific or particular clause which it was meant to explain or except as in clause (c) or (l) and (n). The fact that instead of doing so the Explanation 2 has been incorporated at the end of Section 5 along side Explanation 1, which also use the words "for the purpose of this section.....", the intention of the legislature must be considered to have been made certain, positive and unambiguous, leaving no room or scope
- F whatsoever for having recourse to either internal or external aids for interpretation or construction of the said provision.

- The High Court appears to have been carried away by the fact of some assumed similarity of the purpose of expenditure envisaged in Section 5 (j) and those covered by Explanation 2 and from the further fact of retrospective effect having been given to the said Explanation with effect from 1.4.51, to
- G presume that in doing so the legislative intention indicated was to avoid refunds being made on account of the Supreme Court judgment reported in (1961) 41 ITR 751 SC: *Travancore Rubber & Tea Co. Ltd.* case which, in turn, concerned Section 5 (j) of the Act. This in our view is fallacious and cannot
- H be so presumed. The decision of the Supreme Court declaring the position

of law on the scope of Section 5 (j) might have been the occasion for the legislature to enact Explanation 2, and that too with retrospective effect but the said occasion would have equally enlightened and served as an eye opener about the need for enacting the Explanation in such a manner as to avoid similar claims being projected in respect of expenditure or deductions envisaged in the various other limbs of Section 5 as well, apart from clause (j) alone. This Court has always been reiterating that if the intendment is not in the words used it is nowhere else and so long as there is no ambiguity in the statutory language resort to any interpretative process to unfold the legislative intent becomes impermissible and the need for interpretation arises only when the words in the statute are on their own terms ambivalent and do not manifest the intention of the legislature. (vide [1988] 2 SCC 299 (*M/s Doypack Systems Pvt. Ltd. etc. v. Union of India & Ors. etc.*) and [1990] 2 SCC 231 (*M/s Keshavji Ravji & Co. & Ors. v. Commissioner of Income Tax*). That apart an Explanation is intended to either explain the meaning of certain phrases and expressions contained in a statutory provision or depending upon its language it might supply or take away something from the contents of a provision and at times even to, by way of abundant caution, clear any mental cobwebs surrounding the meaning of a statutory provision spun by interpretative process to make the position beyond controversy or doubt.

Consequently, we are unable to approve the reasoning of the High Court as to the need for having recourse to internal or external aids to interpret the Explanation 2 to Section 5 as well as its ultimate conclusion to whittle down the otherwise wide range and area of operation and application of Explanation 2 to the entirety of Section 5 of the Act. In our view, Explanation 2 to Section 5 of the Act, therefore explains generally as to what are not deductible as expenditure for the purpose of computing the agricultural income in the light of the various clauses of Section 5 of the Act, as a whole.

The appeals pertaining to all the assessment years involve in common the question of deduction of rent and the further question of deduction of interest arises only in respect of the appeals for the assessment years 1975-76 and 1976-77. The claims of the respondent, be it in respect of rent or interest paid to the creditors by the assessee on the loans obtained and utilised for the purpose of cultivation etc. shall not be eligible for deduction so far as it relates to the respective portions spent in respect of land or the bringing up of the immature oil palm plantation. The appeals, therefore, have to be and are allowed. Cost on parties.

B.S.

Appeals allowed. H