

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

&

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

TUESDAY, THE 22ND JANUARY 2008 / 2ND MAGHA 1929

OTC.No. 1 of 2005()

AITA.70/2002 of AGRL.I.T.APPELLATE TRIBUNAL,
ADDL.BENCH,ERNAKULAM
.....

PETITIONER

VANIAMPARA RUBBER CO.LTD.,
VAZHAKKALA BUILDING, K.K.ROAD,
KOTTAYAM-686 001.

BY ADV. SRI.JOSEPH MARKOSE (SR.)
SRI.MITHUN MARKOS

RESPONDENTS:

STATE OF KERALA,
REPRESENTED BY THE SECRETARY (TAXES),
TRIVANDRUM.

BY GOVERNMENT PLEADER SRI.K.P.PRADEEP

THIS OTHER TAX CASES HAVING BEEN FINALLY HEARD
ON 22/01/2008, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

C.N.RAMACHANDRAN NAIR &
T.R.RAMACHANDRAN NAIR, JJ.

.....
Other Tax Case No.1 of 2005
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Dated this the 22nd day of January, 2008.

JUDGMENT

C.N.Ramachandran Nair, J.

This is a tax revision case filed under Section 78 of the Agricultural Income Tax Act, 1991 (hereinafter called "the Act") challenging the order of the Agricultural Income Tax Appellate Tribunal confirming disallowance of deduction claimed by the assessee under Section 9(4) of the Act on investment in the equity of a company which set up an industry for centrifuging latex. We have heard Senior counsel Sri.Joseph Markose, appearing for the petitioner and the Government Pleader appearing for the respondent.

2. During the accounting year relevant for the assessment year 1996-97 the assessee invested Rs.68 lakhs towards equity in a company by name Confoams Ltd. which set up a new industrial unit for centrifuging rubber latex. The agricultural income of the assessee computed for the relevant assessment year without deduction under Section 9(4) was Rs.39,67,570/-, whereas the investment by the assessee in the equity of the company which started new industrial undertaking during the previous year in respect of

which 50% of the claim was made under Section 9(4) was Rs.68 lakhs. While completing the assessment, the Assessing Officer disallowed deduction claimed under Section 9(4) of the Act on two grounds. First ground of disallowance is that the new industry set up by the company in which investment in the form of equity was made by the appellant, was engaged in centrifuging rubber latex which is the agricultural produce of petitioner and being an industry engaged in processing of agricultural produce to make it centrifuged latex, the investment in it's equity does not qualify for deduction. The other ground on which disallowance is made is that investment made in the equity is Rs.68 lakhs, whereas the income computed exclusive of deduction is Rs.39,67,570/- which is not permissible under Section 9(4) of the Act. The first appellate authority as well as the Tribunal concurred with the Assessing Officer and held that the industry in which investment is made does not qualify for deduction. Since this issue was decided against the assessee, the Tribunal did not consider the other ground on which disallowance was made. In order to appreciate the contentions raised, we have to refer to the relevant Section which is extracted hereunder:

"S.9(4) In computing the total agricultural income of a company engaged in plantation business, which has invested any amount in the equity of a company registered under the Companies Act, 1956 (Central Act 1 of 1956) which establishes new industrial undertakings within the State out of its agricultural income in the previous year, there shall be deducted a sum not exceeding fifty per cent of the amount so invested,

which shall not exceed the total agricultural income in the previous year of that company, computed without deduction provided under this sub-section or rupees one crore whichever is less, provided-

(i) such investment is not in plantation industry or agricultural activities ancillary there to which is directly a downstream industry of the produce of that plantation;

(ii) the amount invested is fully utilised within the State within a period of three years from the date of investment or before the commencement of commercial production of such industrial undertaking, whichever is earlier; and

(iii) there is no transfer of investment within a period of five years of such investment."

3. Sub-section (4) first introduced with effect from 1.4.1994 was amended by Finance Act 1998 with retrospective effect from 1.4.1994. One important change made through the amendment relevant for this case is the qualification introduced to the negative clause to the effect that a downstream industry of the produce of the plantation industry is not eligible.

4. Senior counsel appearing for the assessee referred to Division Bench judgments of this court in COMMISSIONER OF INCOME TAX V. KANAM LATEX INDUSTRIES P. LTD. (1996) 221 ITR 1, M/S.SUPERSONIC INDUSTRIAL COMPLEX, MUVATTUPUZHA V. DY. COMMISSIONER OF SALES TAX (LAW), ERNAKULAM and the Full Bench decision of this court in KURIAN ABRAHAM PVT. LTD. V. ASST. COMMISSIONER (ASSMT)II and contended that centrifuged latex

is a product and the industry engaged in the production of centrifuged latex from field latex is engaged in manufacture of a product. According to him, the manufacture of centrifuged latex from rubber latex is neither a plantation industry nor is an agricultural activity auxiliary to plantation industry to bring it within the negative clause of Section 9(4) of the Act and so much so, the claim is allowable. Government Pleader on the other hand contended that negative items in Section 9(4) covers not only plantation industry, but any industry engaged in agricultural activities which include processing of agricultural produce to make it fit for marketing. He further contended that the amendment made by Finance Act 1998 with retrospective effect from 1.4.1994 makes it very clear that a downstream industry of the produce of assessee's plantation is not entitled for the benefit of deduction. The amended provision provides in first proviso to Section 9 (4) that investment in plantation industry or in an industry engaged in agricultural activities auxiliary to plantation industry does not qualify for deduction. The agricultural activity auxiliary to plantation industry need not always be an industrial activity and in order to clarify what is the agricultural activity auxiliary to plantation industry that is disqualified from the benefit, the amendment is introduced which makes it clear that a downstream industry of the produce of the plantation of the assessee is not entitled to benefit. The assessee is admittedly engaged in rubber cultivation and its produce is field latex. It is accepted position that centrifuging of

field latex is a process by which water is skimmed out to make it 60% concentrated latex. In other words, even after centrifuging, the product continues to be a thick liquid with high concentration of rubber at 60%. Centrifuged latex is preserved concentrated rubber latex used as raw material in making tubes for tyres, gloves for clinical examination purposes etc. In other words, petitioner's investment is in a downstream industry of the produce of petitioner's plantation i.e. field rubber latex. Therefore, after the amendment, the industry in which the petitioner made the investment squarely falls within the negative list. We are of the view that the amendment is only clarificatory because even before the amendment, industry engaged in agricultural activities auxiliary to the plantation industry does not qualify for exemption in respect of investment made in such industry. Agricultural activities auxiliary to plantation industry is essentially processing of agricultural produce. Rubber latex which is the produce of the petitioner's plantation is a highly perishable commodity with short life. Normally marketing is done only by processing the rubber latex that is, either by conversion into sheet-rubber with addition of acid and after drying it or by concentrating it and preserving it in the form of centrifuged latex. Therefore, even without the amendment, the industry, centrifuging field latex in which the assessee made the investment does not qualify for the benefit of deduction made by the investor as it is only processing the produce of plantation industry. Further we find that the

purpose of Section 9(4) is not to give benefit on additional investments made by the plantation in the allied industries for processing of its produce. What the legislature intends is investment in other industries unconnected with plantation or its produce to promote industrial growth. We are therefore of the view that investment in the industry engaged in centrifuging of field latex is not entitled for deduction under Section 9(4) of the Act. We, therefore, uphold the order of the Tribunal on this issue.

5. Even though the Tribunal has not decided on the second ground on which disallowance is made by the Assessing Officer, for the sake of completeness we feel we should consider that question also. It is very pertinent to note that the investment qualifying for deduction under Section 9(4) of the Act should be from out of agricultural income of the assessee. It is made clear that investment shall not exceed total agricultural income for the year computed without providing for deduction under Section 9(4). In other words, the investment should be equal to or less than the income computed under the Act without deduction under Section 9(4). If the assessee's contention that ceiling of 50% is with reference to total agricultural income before computation is accepted, then assessee will be able to borrow funds and invest in the eligible industry and claim deduction which is not intended under the Act. In other words, the investment is expected out of the total agricultural income computed without providing for deduction under Section 9(4) of the Act. In this particular case

assessee whose agricultural income is computed at Rs.39,67,570/- has made an investment of Rs.68 lakhs in an industry engaged in manufacture of centrifuged latex. Obviously since the investment exceeds the income, it does not qualify for deduction. Therefore, even if our answer to the first question was in favour of the assessee, we do not think the assessee would have got benefit because as against the agricultural income computed at Rs.39,67,570/-, the assessee has made investment of Rs.68 lakhs which is not permissible under Section 9(4) of the Act.

In view of our findings above, we dismiss the tax revision case.

C.N.RAMACHANDRAN NAIR
Judge

T.R.RAMACHANDRAN NAIR
Judge

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