IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN

Before Shri Chandra Poojari, AM & Shri George George K, JM

ITA No.239/Coch/2018: Asst.Year 2014-2015

M/s.The Plantation Corpn of Kerala Limited Muthambalam P.O. Kottayam **PAN : AAACT7596H.**	Vs.	The Asst.Commissioner of Income-tax, Circle – 1, Kottayam.
(Appellant)		(Respondent)

ITA No.381/Coch/2018: Asst.Year 2011-2012

M/s.The Velimalai Rubber Co. Limited, K.K.Road Kottayam **PAN : AABCT2047E.**	Vs.	The Asst.Commissioner of Income-tax, Circle – 1, Kottayam.
(Appellant)		(Respondent)

Appellants by : Sri.Joseph Marcose / Sri.Iype John
Respondent by : Smt.A.S.Bindhu, Sr.DR

Date of Hearing : 22.07.2019		**Date of Pronouncement : 01.08.2019**

O R D E R

Per George George K, JM

These are appeals at the instance of the assessees. These appeals arise out of order of the CIT(A) dated 28.03.2018 concerning assessment year 2014-2015 in the case of M/s.The Plantation Corporation of Kerala Limited and order of the CIT(A) dated 12.06.2018 concerning assessment year 2011-2012 in the case of M/s.The Velimalai Rubber Co. Limited.

2. Common issue is raised in these appeals, hence, they are being disposed off by this consolidated order. We shall narrate

the facts concerning ITA No.239/Coch/2018 in the case of M/s.The Plantation Corporation of Kerala Limited.

3. The grounds raised in ITA No.239/Coch/2018 read as follows:-

> *"1. The order of the Ld.Commissioner of Income Tax (Appeals), Kottayam is opposed to law, facts and circumstances of the case.*
>
> *2. The Ld.Commissioner of Income Tax (Appeals) has erred in sustaining the disallowance of the claim of deduction on cost of replanting, under Rule 7A of the Income Tax Rules in the sum of Rs.6,75,49,321/-.*
>
> *3. The Ld.Commissioner of Income Tax (Appeals) erred in applying the ratio of the decision of the Kerala High Court in the case of M/s.Rehabilitation Plantations as reported in 251 CTR 343.*
>
> *4. The Ld.Commissioner of Income Tax (Appeals) ought to have found that the deduction claimed by the assessee is in respect of cost of replanting Rubber Plants and not infilling as held by the jurisdictional High Court.*
>
> *5. For the above and other grounds that may be advanced at the time of hearing it is submitted that the order of the Commissioner of Income Tax (Appeals) be set aside."*

4. The assessee has also raised an additional ground vide petition dated 02.04.2019 and the same reads as follows:-

> *"1. The Commissioner of Income Tax (Appeals), erred in sustaining the disallowance of Rs.6,75,49,321/- as Replanting Expenses which includes Maintenance Expenses of immature area also.*
>
> *2. The Commissioner of Income Tax (Appeals) ought to have found that Maintenance Expenditure is an allowable expenditure.*
>
> *3. The Commissioner of Income Tax (Appeals) ought to have found that Rule 7A, applicable to Rubber is on similar*

lines as Rule 8(2) of the Income Tax Rules, 1962, applicable to Tea in respect of allowance of cost of replanting and not for infilling.

4. For the above and other grounds already raised, it is submitted that the order of the Commissioner (Appeals) be set aside."

5. The assessee is a plantation company, which is fully owned by the Government of Kerala. The assessee undertakes processing of latex into value added forms like centrifuging latex. Income from sale of centrifuging latex, a portion of the same is liable to be taxed under the Central Income tax. The return of income was filed by the assessee on 30.l1.2014 admitting total income of Rs.14,38,15,260.The assessee had claimed deduction under Rule 7A(2) amounting to Rs.6,75,49,321.16 towards replanting and maintenance expenditure. The Assessing Officer disallowed the claim of the assessee by following the judgment of the Hon'ble Kerala High Court in the case of M/s.Rehabilitation Plantations Limited v. CIT [(2012) 251 CTR 343 (Ker.)]. The relevant finding of the Assessing Officer in disallowing the claim of the assessee reads as follows:-

"2. Allowability of claim towards cost of replanting under Rule 7A has been a persistent issue in assessee's case for the past several years. The jurisdictional High Court in the case of M/s.Rehabilitation Plantations (251 CTR 343 (Kerala)) had considered an identical issue and had come to the conclusion that eh claim towards cost of replanting under Rule 7A cannot be entertained unless it is a case of infilling in an existing rubber plantation.....

3. Here, the assessee does not have a case that it has incurred any expenditure for infilling in a yielding area. The expenditure incurred is for planting in an area which had

been cleared off an existing plantation that had become unproductive. Therefore, assessee's case clearly falls outside the ambit of the allowance as envisaged in Rule 7A(2). Hence, the deduction claimed under Rule 7A(2) to the tune of Rs.6,75,49,321/- is hereby disallowed.

4. `Cost of replanting' has been claimed under direct expenses. 100% of the direct expenses have gone into the cost of production in factory. 35% of the income from the sale of centrifuged of the claim of Rs.6,75,49,321/- towards the cost of replanting would translate to an addition of Rs.2,36,42,262/- to the income offered under central income tax (Rs.6,75,49,321/ x 100% x 35%)..... Rs.2,36,42,262/-."

6. Aggrieved by the disallowance made by the Assessing Officer, the assessee preferred an appeal to the first appellate authority. The CIT(A), after elaborately analyzing and quoting the relevant portion of the judgment of the Hon'ble Kerala High Court in the case of M/s.Rehabilitation Plantations Ltd. (supra), decided the issue against the assessee. The relevant finding of the CIT(A) reads as follows:-

"4.2.1 In the above decision, Hon'ble High Court has held in unequivocal terms that expenditure incurred for planting and development of the plantation upto maturity has to be necessarily capitalized and is not allowable as a revenue expenditure. Therefore, the decision clearly covers the case of the Assessee and the expenditure claimed for cost of replantation cannot be allowed as expenditure under Rule 7A of the I.T.Rules, 1962. The argument of the learned AR that certain issues have not been considered by the Hon'ble Court would not be of any help as the decision of the High Court is binding on the CIT(A) and merits of the said decision of High Court cannot be examined by lower authorities. Hence, it is held that there is no merit in the ground raised by the Assessee on this issue and the same is dismissed."

7. The assessee being aggrieved by the order of the CIT(A), has filed the present appeal before the Tribunal. The assessee

has filed an elaborate written submission and the same reads as follow:-

1. (i) The main ground in this appeal relates to the disallowance of the claim of deduction of replanting allowance under Rule 7A of the Income Tax Rules in the sum of Rs.6,75,49,321/- relying on the decision of the Kerala High Court in the case of Rehabilitations Plantations Ltd. as reported in 251 CTR 343. Copy of the judgment is at running pages 1 to 4 of Annexure I

(ii) The case of the Officer is that the issue in the said case is identical as that of the assessee's case. It may kindly be noted that in view 01 the following submissions the issue is not exactly identical and hence the decision of the jurisdictional High Court may not quite be applicable to the facts of this case.

2. Against the assessment order an appeal was filed before the Commissioner (Appeals), Kottayam. However, the Appeal was dismissed by order dated 28-03-2018. Against the order of the Commissioner (Appeals) the Second Appeal was preferred before this Hon. Tribunal on 18-05-2018. Additional grounds of appeal was filed on 02-04-2019.

3. (i) During the year under reference the total income returned by the assessee was Rs.14,38,15,260/-. This is after claiming the amount of Rs.6,75,49,321.16 towards Replanting & Maintenance Expenditure of immature rubber area the details of which are as follows:

(ii) Rule 7 A was introduced from the year 2001-02 whereby the income from value added rubber is computed as business income as per which the income derived from the sale of such rubber is to be computed as if it were income derived from business at 35% of such income and is deemed to be income liable to tax under the Income Tax Act The balance 65% is liable to State Agrl. Income Tax. It is also judicially recognized that the State Officers has to accept the proportionate computation as made by the Central Officers has to accept the proportionate computation as made by the Central Officers under the Income Tax Act.

Year-wise cost of maintenance and replantation			
Year	*Maintenance Rs.*	*Replantation*	*Total*

		(Rs.)	
2005	2,07,043.00		
2006	16,932.00		
2007	6,84,065.00		
2008	15,88,423.00		
2009	11,76,602.00		
2010	1,31,49,545.60		
2011	84,17,325.64		
2012	1,75,70,510.68		
2013	4,28,10,446.92	2,47,38,874.24	6,75,49,321.16

(iii) At the outset it is submitted that the disallowance of deduction of Maintenance Expenses is clearly erroneous as Rule 7A(2) applies only to Replanting expenses and not Maintenance expenses.

4 (i) As to the issue of Replanting expense of Rs.2,47,38,874.24, it may kindly be noted that Rule 7 A applicable to Rubber is on similar lines as Rule 8 of the Income Tax Rules, 1962 applicable to Tea under which income derived from the sale of tea grown and manufactured IS to be computed as if it were income derived from business and 40% of such income IS deemed to be income liable to tax under the Income Tax Act 1961 and the balance 60% is deemed to be income liable to Agricultural Income Tax.

(iv) The Hon'ble Supreme Court in The Travancore Rubber & Tea Co. Ltd. vs. Commissioner of Agricultural Income Tax reported in AIR 1961 SC 604 or 41 ITR 751 has held that maintenance expenditure incurred on tending of immature rubber trees cannot be disallowed on the ground that the immature rubber trees have not come into bearing during the year and thereby confirming that the maintenance expenditure is a revenue expenditure wholly and exclusively laid out for the purpose of deriving income. Copy of the judgment is at running pages 5 to 7 of Annexure II. Likewise in Karimtharuvi Tea Estates vs. State of Kerala reported in AIR 1963 SC 760 or 48 ITR 83 the Hon'ble Supreme Court held "The contention that the amount spent for the upkeep and maintenance of the immature plants till they become mature is in the nature of a capital expenditure is also not sound. It is a running expenditure and not of the nature of capital expenditure". The further contention that treating maintenance expenditure as deductible revenue expenditure would make the Proviso to Rule 24 of the Indian Income Tax Rules, 1922 (similar to Rule 8(2) of the Income Tax Rules, 1962) redundant was also rejected. The Supreme Court held "The proviso allows deduction of the cost of replanting bushes in replacement of bushes which died or became permanently

useless in an area already planted. It deals with the cost of planting bushes and not the expenses incurred in the upkeep and maintenance of bushes already planted". Copy of the judgment is at running pages 8 to 12 of Annexure III.

The maintenance expenditure of Rs.4,28,10,446.92 is therefore clearly allowable as a revenue expenditure under section 37 of the IT Act and is not to be considered under Rule 7 A (2).

4 (i) As to the issue of Replanting expense of Rs.2,47,38,874.24, it may kindly be noted that Rule 7 A applicable to Rubber is on similar lines as Rule 8 of the Income Tax Rules, 1962 applicable to Tea under which income derived from the sale of tea grown and manufactured is to be computed as if it were income derived from business and 40% of such income is deemed to be income liable to tax under the Income Tax Act 1961 and the balance 60% is deemed to be income liable to Agricultural Income Tax.

[ii] In making such computation of income from tea the Income Tax Officer grants benefit for an allowance of the cost of replanting of tea bushes under Rule 8 (2) of the Income Tax Rules which is extracted below:-

"In computing such income, an allowance shall be made in respect of the cost of planting bushes in replacement of bushes that have died or become permanently useless in an area planted, if such area has not previously been abandoned and for the purpose of determining such cost, no deduction shall be made in respect of the amount of any subsidy which under the provisions of cl. (30) 01 section 10, is not includible in the total income."

[iii) This provision is identical to the deduction granted under Rule 7 A(2) which provides for deduction in respect of replanting of rubber plants. Rule 7 A(2) is extracted below:-

"In computing such income, an allowance shall be made in respect of the cost of plantinq rubber plants in replacement of plants that have died or become permanently useless in an area planted, if such area has not previously been abandoned and for the purpose of determining such cost; no deduction shall be made in respect of the amount of any subsidy which under the provisions of cr. (31) of section 10, is not Includible In the total income."

(iv) During this time, a controversy arose when some assessee's, in addition to claiming deduction for replantation as per Rule 8(2), also claimed depreciation on the value of Tea bushes under section 32 of the IT Act on the ground that (tea bush' is a (plant'. This was, apparently, based on the definition of 'plant' as per section 43(3) which reads:

"(Plant' includes ships, vehicles, books, scientific apparatus and surgical equipment used for the purpose of business or profession".

Since some High Courts gave judicial recognition to such claim, the legislature realizing that assesses were now getting 100% deduction of the cost of replanting under Rule 8(2) and thereafter also getting depreciation for the same amount treating tea bushes as a plant, amended section 43(3) by Finance Act 1995 with retrospective effect from 1-4-1962 to settle at rest the controversy as to whether tea bush is a plant Section 43(3) was therefore amended retrospectively as under:-

" 'Plant' includes ships, vehicles, books, scientific apparatus and surgical equipment used for the purpose of business or profession and does not include tea bushes or livestock".

(v) In the memorandum explaining the amendment (reported in 212 ITR (St) 356 it was explained as under:-

"Amendment of section 43(3) of the Income Tax Act to exclude plantations and livestock from the definition of plant.

Under subsection (3) of section 43 the term "plant" includes ships, vehicles, books, scientific apparatus and surgical equipment used for the purposes of business or profession.

In certain judicial pronouncements, it has been held that the term "plant" includes tea bushes and, therefore, they would also be eligible for depreciation under section 32. Rule 8(2) of the Income Tax Rules, already provide for a deduction in respect of the expenditure incurred on replacement of old tea bushes by an assessee. The deduction under rule 8(2) is allowed in lieu of depreciation. As a result of the judicial pronouncements, double deduction is now being claimed on the tea bushes, one as replacement cost and then as depreciation allowance."

With a view of setting at rest the aforesaid controversy, section 43(3) is being amended to provide that the term "Plant will not include tea bushes and livestock.

The proposed amendments will take effect, retrospectively, from 1st April, 1962 and will accordingly, apply in relation to assessment year 1962-63 and subsequent years".

Extract of 212 ITR CSt) 356 is at running page 33.

The amendment makes it clear that the deduction under Rule 8(2) for Replantation Expenses is allowed in lieu of depreciation. The legislative intention is therefore clear that the entire cost of replanting is allowed as a deduction in lieu of the depreciation meaning thereby the full replantation cost is allowed to be claimed as a deduction.

6. It may kindly be noted that it is well settled that Rule 8 which was introduced to provide the manner of assessment with respect to Income from tea, considering the composite nature of cultivation and manufacture and the difficulty in bifurcating expenses as attributable separately to cultivation and manufacture. With effect from AY 2002-03, the Income Tax Act was amended to make similar provision with respect to composite income from rubber and coffee. While introducing Rule 7 A and 7B similar deduction for cost of replantation, as is available to tea under Rule 8(2), was introduced under Rule 7 A (2) and 7B(2). The rules of interpretation therefore required that the interpretation granted to Rule 8(2) is equally applied to Rule 7 A (2) and 7B(2).

7. (i) It may also kindly be noted that though subsidy given by the Tea Board for replantation or replacement of tea bushes is exempt under Section 10(30) of the IT Act, Rule 8(2) provides that the said subsidy is not required to be deducted from the cost of replantation. Likewise, Rule 7 A(2) also provides that similar subsidy given for replantation of rubber plants though exempt under section 10(31) is not required to be reduced from the cost of replantation. Section 10(31) reads as under:

"In the case of an assessee who carries on the business of growing and manufacturing rubber, coffee, cardamom or such other commodity in India, as the Central Government may, by notification in the Official Gazette, specify in this behalf, the amount of any subsidy received from or through the concerned Board under any such scheme for re-plantation or replacement of rubber plants, coffee plants, cardamom plants or plants for the growing of such other commodity or for rejuvenation or consolidation of areas used for cultivation of rubber, coffee, cardamom or such other commodity as the

Central Government may, by notification in the Official Gazette, specify".

(ii) It is thus further clear that by linking Rule 7A(2) with section 10(31), the legislature wanted to give full deduction of cost of re-plantation of rubber under Rule 7 A(2), even though subsidy itself is not taxable.

8. It is thus clear that Rule 7 A(2) of the Income Tax Rules 1962 provides for 100% deduction in respect of the expenditure incurred on cost of replanting rubber plants in replacement of plants that have died or become permanently useless in an area already planted and this deduction is allowed in lieu of depreciation. The only condition is that replanting of new rubber plants should be in replacement of old rubber plants in an area already planted and such area has not been previously abandoned. When the rubber trees standing in an area becomes old and unyielding after giving yield for several years together, the same should necessarily be replaced with new plants to continue the plantation. The use of the words "if such area has not previously been abandoned" makes it clear that the deduction is allowed with respect to replanting in an area earlier planted and not for infilling a few plants in place of damaged plants. The total replanting expenditure in this regard is allowed as deduction in lieu of depreciation and since all tea assesses are getting such a deduction under Rule 8(2) for the past many years the same interpretation has to be given for Rule 7 A(2) and 7B(2) also.

9. The Assessing Officer while denying the deduction has relied upon a decision of this Honourable Court in the case of Rehabilitation Plantation reported in 251 CTR 343. In the said decision this Hounourable Court while observing that Rule 7 A(2) is in the same lines as Rule 8(2) has erroneously interpreted the said Rules as applicable only to 'infilling' of plants in the place of dead plants in an existing plantation. This court further observed that the rule making authority while incorporating Rule 7 A(2) in the same lines as Rule 8(2) was probably "unaware of the limitations in the rubber plantation" to the effect that while infilling may be possible in existing tea and coffee plantations on account of the height of the tea and coffee plants it is not possible in an existing rubber plantation because of the height of the rubber trees. The Honourable Court appears not to have considered the fact that deduction under section 8(2) has always been granted for replacement of useless tea bushes in an entire area and not just for infilling and this has always been accepted by the Department, the explanation given for amendment under

section 43(3) where the Legislature has accepted that the entire cost of replanting is fully allowed as a deduction in lieu of depreciation. Replantation Expenses were disallowed only where the Replantation was undertaken in an abandoned area. Kindly refer to 262 ITR 388 which is at running pages 31 to 32 of this argument note. Please see para D.

10. A analysis of the findings in the Kerala High Court judgment, as stated in para 8, could be found to be inconsistent with the provision and reality in plantation based on the following arguments:

(a) Rule 7A(2) only provides for deduction of expenditure for infilling through replacement of dead trees or other trees that have become useless (please see running page 4 of para 8 of Annexure I).

The rule nowhere mentions "infilling". Instead the rule provides for –

(i) An allowance
(ii) For cost of
(iii) Planting of Rubber Plants (and not plant)
(iv) In replacement of
(v) Plants (and not plant)
(vi) That have died
(vii) Or
(viii) Become permanently useless
(ix) In an area already planted
(x) If such area has not previously been abandoned.

It is a provision, both for infilling and re-plantation since the expression

i) That have died or an area already planted, qualifies infilling and
ii) OR
iii) Become permanently useless in an area already planted qualifies replantation
iv) In an area already planted, if such are has not previously been abandoned.

This clearly indicates an area which is qualified as one that was already planted i.e. to say an area which has been in use already and not a new opening. To say for example:

If a planter has 100 hectares in his ownership which is comprised as follows:

Planted Area	*75 Hectares*
Non Planted Area	*25 Hectares*
(Reserved Area / Unopened Area)	
Of the Planted Area	
Yielding Area	*50 Hectares*
Cleared for replanting	*25 Hectares (This 25 hectares would qualify as in an area already planted since it is out of the 75 Hectares of Planted area.)*

If, considering the same extent, the planter undertakes replanting of 35 Hectares, then 10 hectares would be from Non Planted area and not be eligible as it qualifies as an area previously abandoned, "if such area has not previously been abandoned" and consequently be a capital expenditure.

(b) If the assessee's claim is allowed, so much of the portion of the agricultural income determined by the Central ITO will be in direct conflict with agricultural income assessment of the State Agricultural Income Tax Act.

This finding is, it is respectfully submitted, not consistent with the provision, in so far as the provision clearly states that the income determined by the CTO will be adopted by the State Officer and to that extent there can be no conflict Moreover, by virtue of the Supreme Court decision referred to above there is no case of conflict The said decision was omitted to be considered there in the Kerala High Court judgment

(c) Expenditure on re-plantation of an area where from no income is derived by the assessee is not to be reckoned in computation of income from yielding area

This view is also inconsistent with the decision of the Supreme Court in the case of The Travancore Rubber & Tea Company and Karimtharuvi Tea Estates referred to above. Please also refer 262 ITR 388 at running pages 31 to 32 of Annexure VIII.

(d) Investment in planting and development of plantation up to maturity i.e., until the plants starts yielding has to be treated as capital expenditure for development of a capital asset.

This observation is also clearly inconsistent with the decision of the Supreme Court referred to above and hence cannot be applied.

(e) Rule 7 A(2) does not cover expenditure incurred for re-plantation of an area but only expenditure for infilling through replacement of dead trees or trees that are become useless which is not the case here.

The wording in the Rule does not give an interpretation so as to restrict it to infilling. If it was so, the word "infilling' was not alien for the law makers and could have imposed such a restriction at the time of drafting. This can only be seen as a conscious omission to give a beneficial interpretation for the purpose of growth and development In this connection we refer to the decision of the Supreme Court in 255 ITR 147. Copy of the judgment is at running pages 13 to 18 of Annexure IV. Moreover it is not the function of the Court to supply a supposed omission, which can only be done by the Parliament (2013) 180 Company Cases 311. Copy of the judgment is at running pages 19 to 26 of Annexure V.

11.(i) The Income Tax Appellate Tribunal, Kolkatta in the case of ACIT Vs. Gillanders Arbuthnot & Co. Ltd. has observed that so far as there is no expansion of plantation to an additional area adding to the capital already invested the re-plantation expenses would be in revenue nature. Copy of the judgment is at running pages 27 to 30 of Annexure VI. This decision is based on an earlier decision of the Calcutta High Court in the case of CIT Vs. Tasati Tea Ltd. as reported in 262 ITR 388. Copy of the judgment is at running pages 31 to 32 of Annexure VII. The High Court, in this case, was deciding the issue whether maintenance of nursery for the purpose of re-plantation would amount to a capital or revenue expenditure. The High Court found that maintenance of nursery cannot be extended to come under Rule 8(2) and hence cannot be extended to a stage prior to actual replacement or re-plantation but also found that such plants utilized for the purpose of re-plantation without any expansion of the plantation area or re-plantation in an abandoned area cannot be said to be a capital expenditure.

(ii) This Honourable Tribunal, in the case of Mahavir Plantations Pvt Ltd. Vs. Income Tax Officer, as reported in 31 ITO 128 as held that "Rule 8(2) of the IT Rules

specifically provides that in computing income from manufacture of Tea, allowance shall be made in respect of the cost of planting bushes in replacement of bushes that had died or become permanently useless in an area already planted, if such area has not previously been abandoned. Since the assessee is entitled to claim deduction in respect of Replanting Expenditure in view of Rule 8(2), we are of the opinion that the assessee is entitled for deduction.

[iii] In the light of the above and, backed by the said judgments, the expression "An area already planted" has a wider meaning and possibly sufficient clarity for a different view and interpretation of Rule 7 A (2) as opposed to the findings, with due respect, in the judgment of Rehabilitation Plantations Ltd. Moreover it is not clear from the judgment whether the difference between "An area already planted" and. "an abandoned area" was considered. Since the assessee has undertaken replantation only in an area already planted and not in an abandoned area.

12. (i) It is therefore respectfully submitted that the decision in the case of Rehabilitation Plantation reported in 251 CTR 343 is not directly applicable.

(ii) It is also submitted that though SLP filed against the decision was dismissed by the Honourable Supreme Court, it is settled law that a mere dismissal of SLP does not declare any law nor does it approve the decision appealed against. Hence the disallowance of Maintenance expenditure of Rs.4,28,10,446.92 and Replantation expenditure of Rs.2,47,38,874.24 totaling to Rs.6.75.49.321.16 may be directed to be allowed."

8. The learned Departmental Representative supported the orders passed by the Income-tax authorities.

9. We have heard the rival submissions and perused the material on record. The Hon'ble Kerala High Court in the case of M/s.Rehabilitation Plantations Ltd. (supra) had categorically held that the expenditure incurred for planting and development of plantation up to maturity has to be necessarily

capitalized and it cannot be allowed as revenue expenditure. The relevant finding of the Hon'ble High Court reads as follows:-

> *"After hearing both sides, we are unable to accept the case of the assessee for more than one reason. In the first place, expenditure covered by Rule 7A(2) does not cover expenditure incurred for replantation of an area. On the other hand, Rule 7A(2) only provides for deduction of expenditure for infilling through replacement of dead trees or other trees that have become useless, which is not the case here. As already stated by us, Rule 7A(2) is in the same line as Rule 7B(2), which provides for replacement of dead or old or unyielding coffee plants in yielding coffee plantation, and Rule8(2) which provides for replacement of dead or useless tea bushes in tea plantation. Yielding healthy rubber plantation does not admit replacement of dead plants within such area as new saplings cannot grow under shade and is never done by any planter. So much so, expenditure for replantation of an area is not covered by Rule 7A(2) and in our view the lower authorities including the Tribunal rightly rejected the claim. We also feel that the Central Income Tax Officer while determining income in the nature of agricultural as well as business income under Rule 7A should keep in mind the principles of computation of agricultural income under the State AIT Act and as far as possible, assessment should be made without violating the provisions of the State AIT Act. If the appellant's claim is allowed, certainly so much of the portion of the agricultural income determined by the Central Income Tax Officer will be in direct conflict with the Scheme of assessment of agricultural income under the State AIT Act which prohibits deduction of expenditure on replantation of an area and only an incentive is provided by way of replantation allowances under Rule 3 of the State Agricultural Income Tax Rules as stated above. We are of the view that the Tribunal rightly held that the expenditure on replantation of an area wherefrom no income is derived by the assessee is not to be reckoned or considered in the computation of income from yielding area. Expenditure incurred for planting and development of the plantation up to maturity has to be necessarily capitalised and is not allowable as a revenue expenditure. Since the assessee has no case that they have incurred any expenditure for infilling the yielding area and the expenditure incurred is only for replantation after cutting and removing old plantation, there is no question of considering or allowing the claim under Rule 7A(2). The assessee's claim is thoroughly misconceived and the lower authorities including the Tribunal rightly held so. Consequently, we dismiss all the appeals."*

9.1 The assessee does not have a case that the expenses incurred under the head replanting and maintenance are for infilling through replacement of dead trees or other trees that have become useless. On the contrary, it is an admitted position that the replanting expenses and maintenance expenses are incurred for planting new area of rubber and not an area already planted with yielding rubber. The finding of the Hon'ble Kerala High Court being very clear and categorical, the judgment is binding on the lower authorities. Hence, the appeal filed by the assessee in ITA No.239/Coch/ 2018 is dismissed.

ITA No.381/Coch/2018

10. As the facts in this case is identical to the facts of ITA No.239/Coch/2018, for the detailed reasoning mentioned in paragraph 9 above, we dismiss this appeal filed by the assessee. It is ordered accordingly.

11. In the result, the appeals filed by the assessee are dismissed.

Order pronounced on this 01st day of August, 2019.

Sd/-	Sd/-
(Chandra Poojari)	**(George George K.)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Cochin ; Dated : 01st August, 2019.
Devdas*

Copy of the Order forwarded to :

1. The Appellants
2. The Respondent.
3. The CIT (Appeals) Kottayam.
4. The Pr.CIT Kottayam.
5. DR, ITAT, Cochin
6. Guard file.

BY ORDER,

(Asstt. Registrar)
ITAT, Cochin