

(1972) 09 MAD CK 0045

In the Madras High Court

Case No : Tax Case No. 64 of 1967 (Revision No. 30 of 1967)

A. Graham and Brothers

APPELLANT

Vs

State of Madras

RESPONDENT

Date of Decision : 25-09-1972

Acts Referred:

Tamil Nadu Agricultural Income Tax Act, 1955 — Section 10(2), 2, 3(3)

Citation : (1973) ILR (Mad) 674 : (1973) 91 ITR 412

Hon'ble Judges : V. Ramaswami, J;G. Ramanujam, J

Bench : Division Bench

Advocate : K. Srinivasan and K.C. Rajappa, for the Appellant; K. Venkataswami, First Assistant Government Pleader, for the Respondent

Judgement

Ramaswami, J.—The petitioner was a partnership firm. The partners of the firm were one A. Greha Durai and his three brothers, who were the sons of one P. Iya Nadar. The partnership was evidenced by a partnership deed dated March 21, 1960. For the assessment years 1960-61 and 1961-62, the partnership firm applied for registration under the Agricultural Income Tax Act, 1955, and the same was granted. But, for the assessment year 1962-63, which is the year now in dispute, the firm did not apply for registration. But the partnership was continued. On April 1, 1963, the partnership was dissolved. For the assessment year 1962-63, the four partners submitted four separate applications for composition of agricultural Income Tax. Since the partnership was in existence during the assessment year, they were asked to submit a single composition application for all the lands. The assessee-firm replied on May 4, 1962, stating that the partners were not making their applications in their capacity as partners of a firm but they were submitting as individual members. But the Agricultural Income Tax Officer refused to permit the composition by individual members, as the partnership continued and was in existence throughout the assessment year. The Agricultural Income Tax Officer, therefore, directed them to submit their return of income for the assessment year 1962-63. The assessee then submitted a return of the income but claimed the status of the individuals as " tenants-in-

common " and required to be assessed u/s 3(3) of the Agricultural Income Tax Act. The Agricultural Income Tax Officer held that since the partnership was entered into for the specific purpose of earning agricultural income and the firm was dissolved only as and from April 1, 1963, subsequent to the assessment year, the assessee was liable to be assessed as an unregistered firm and assessed it accordingly. The Assistant Commissioner of Agricultural Income Tax and the Tribunal confirmed the order.

2. In this revision, the learned counsel for the petitioner-firm raised the same contention and argued that the four partners were tenants-in-common during the assessment year 1962-63, and that, therefore, they are to be assessed only as provided u/s 3(3) of the Act. It is seen from the partnership deed dated March 21, 1960, and the order of the Tribunal that the four brothers entered into a partnership called " A. Graham and Brothers " for cultivating their agricultural lands as a partnership firm and during the accounting period in question the partnership was unregistered under the Agricultural Income Tax Act but cultivated the lands and derived the income. Prior to the partnership the partners were divided brothers owning definite portions of lands. The partnership was entered into for joint management of the entire lands with a view to ensure efficiency, economy and convenience and with a view to expand and improve agricultural production and carry on and continue the agricultural business in partnership among themselves on the terms and conditions set out in the deed. Under Clause 1, the parties shall manage the business pertaining to the agricultural lands held by them jointly and individually under the name and style of " A. Graham and Brothers ". The capital of the partnership shall be a sum of Rs. 20,000 and to be contributed equally by the four partners. Under Clauses 4 and 5, the profits and losses of the agricultural business shall be divided among the partners in equal proportion; the bank account shall be operated by one of the partners and the bank account is to be opened in the name of the partnership. The partnership was one of will and to be governed by the provisions of the Indian Partnership Act. These facts and provisions in the partnership deed clearly show that they associated themselves together and have decided upon common exploitation of the lands for their common benefit. The common object was to carry on the agricultural business and earn agricultural income. But the firm has not been registered during the accounting period under the Agricultural Income Tax Act and, therefore, liable to be assessed as an unregistered firm on the total income during the accounting period.

3. The learned counsel for the petitioner contended that the partnership firm in this case was not an assessable entity on the ground that the definition of " person " is Section 2(q) of the Madras Agricultural Income Tax Act, 1955, would not take this firm within it. The argument is that the firm does not hold any property and unless a firm holds property it cannot be treated as a " person " within the meaning of Section 2(q). We are unable to agree with this contention of the learned counsel. u/s 3(1), agricultural Income Tax at the rate or rates

specified in Part I of the Schedule to the Act shall be charged for each financial year on the total agricultural income of the previous year of every person. The term " person " is defined in Section 2(q) as follows:

" "Person" means any individual or association of individuals, owning or holding property for himself or for any other, or partly for his own benefit and partly for another, either as owner, trustee, receiver, common manager, administrator or executor or in any capacity recognised by law and includes an undivided Hindu Mitakshara family, an Aliyasantana family or branch, a Marumakkathayam tarwad or a tavazhi possessing separate properties, or a Nambudiri or other family to which the rule of impartiality applies, a firm or a company, an association of individuals, whether incorporated or not, and any institution "capable of holding property."

It would be seen from this definition that, in the main part, " owning and holding property either as owner, trustee, receiver or common manager, administrator or executor or in any capacity recognised by law" is essential. But the definition is an inclusive definition and includes " a firm, or a company or an association of individuals, whether incorporated or not, and any institution capable of holding property ". Holding or owning property by the firm itself has not been made a condition for treating the firm as an assessable entity. This is also clear from the fact that an association of individuals comes both in the main part and in the inclusive definition. Further, it could be seen from Section 10(2)(c) of the Act that an unregistered firm is treated as a separate entity and if the tax under the Act has been levied on the agricultural income of the firm the individual partner shall not be made liable to pay tax on his share of income. Section 2(1) defines " firm ", " partner " or " partnership " as having the same meaning respectively as in the Indian Partnership Act, 1932. Section 4 of the Partnership Act defines that:

" "Partnership" is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all.

Persons who have entered into partnership with one another are called individually " partners " and collectively " a firm ...".

Owning of property by the partnership was not a condition precedent for the existence of the firm. The-partnership was carrying on the agricultural business during the accounting period and derived agricultural income. Clearly, therefore, the firm is liable to be assessed to agricultural Income Tax in respect of the agricultural income derived by it.

4. The learned counsel then contended that in any case the relationship between the parties or partners are in the nature of tenants-in-common and that, therefore, they are liable to be assessed only u/s 3(3) of the Act. This contention may be considered with reference to the decided cases on the meaning of the words " tenants-in-common ". In *State of Madras Vs. S. Subramania Iyer and Other*, the facts were these: One Subramania Iyer was the assessee. He, his son and son's son were divided in status and the properties also were partitioned

and defined and particular items of properties corresponding to their specific shares were allotted to each of them in that partition. But all the lands were managed by Subramania Iyer himself. For that purpose he maintained a single pannai or farm, met the entire expenses, realised the profits from the entire lands together and then divided the net income in the ratio of the shares of each individual to whom the lands belonged. It was held that these facts do not establish that the parties were tenants-in-common. While so holding, the learned judges observed:

" The main incidents of such tenancy (tenancy-in-common) will be that all the co-sharers have a right to joint possession over the entire property and no one co-sharer can claim for himself any specific part in the common property save by obtaining partition. A tenant-in-common who receives more than his share of the rents and profits will be liable to account to others (vide *Kamamma v. Pichamma* I.T.R [1949] Mad. 770 ; AIR 1949 Mad. 503). Possession by one co-tenant of the common property in the absence of proof to the contrary will enure to the benefit of all; such possession by itself will not amount to adverse possession against the other co-sharers unless there is clear proof of ouster. In the present case, from the proved fact that Subramania Iyer's daughter's sons on the first part, Subramania Iyer's son and son's son on the second part and Subramania Iyer on the third part held definite and localisable items in the properties, there is no unity of possession and, therefore, no question of a tenancy-in-common arises in this case."

The facts of the present case are very similar to the facts of the case cited above. In this case also the four brothers are divided in status and they have also partitioned their lands by metes and bounds. They have entered into a partnership for common exploitation of their lands and to earn agricultural income. That the common object was the exploitation of the land for benefit is also clear from the fact that the income from the lands is divided in equal proportion among the partners irrespective of the fact as to whether the income was derived from a particular land belonging to a particular party or from the entirety of the holdings. It is, therefore, manifest that Section 3(3) of the Act is not applicable to the facts and circumstances of this case.

5. The revision petition, therefore, fails and it is dismissed with costs. Counsel's fee Rs. 150.