
(1992) 08 MAD CK 0011

In the Madras High Court

Case No : T.C. No's. 1154 to 1156 of 1984 (Revisions No's. 137 to 139 of 1984)

A. Kannan

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 12-08-1992

Acts Referred:

Tamil Nadu Agricultural Income Tax Act, 1955 — Section 34

Citation : (1993) 201 ITR 205

Hon'ble Judges : Raju, J;Abdul Hadi, J

Bench : Division Bench

Advocate : P.P.S. Janarthana Raja, for the Appellant; Mrs. Chitra Venkataraman, for the Respondent

Judgement

Raju, J.—The petitioner in all the above three revision petitions is one and the same and the above three revisions have been filed since a

common order in respect of the three assessment years, viz., 1980-81, 1981-82 and 1982-83, have been passed by the Commissioner of

Agricultural Income Tax in exercise of the suo motu powers of revision u/s 34 of the Tamil Nadu Agricultural Income Tax Act, 1955 (hereinafter

referred to as ""the Act"").

2. The revision petitioner was an assessee on the files of the Agricultural Income Tax Officer-II, Nagercoil, during the assessment years in question

and the petitioner was permitted to compound the tax payable by him on payment of Rs. 3,731 for each of the above assessment years. The tax

was determined by applying the provision for computation of 41.31 ordinary acres determined as equivalent to 80.06 standard acres. The

Commissioner of Agricultural Income Tax apparently on a report from the Assistant Commissioner of Agricultural Income Tax, Nagercoil, initiated

proceedings u/s 34 of the Act on the ground that the calculation and determination of standard acres have not been properly arrived at and that

there had been an error in actually working out the standard acres. According to the Commissioner, the extent of the land held really worked to

121-95 standard acres and, therefore, the Commissioner proposed to cancel the assessment orders by making an assessment u/s 17 of the Act on

income basis for the respective assessment years.

3. There is no controversy over the fact that the show cause notice dated October 14, 1983, issued u/s 34 of the Act was served upon the

petitioner on October 29, 1983. On the ground that though the petitioner acknowledged the notice he has not sent any objections to the proposals

within the stipulated time of fifteen days, the Commissioner passed final orders confirming the proposals and thereby setting aside the orders

passed u/s 65 of the Act by the Assessing Officer and directed the Assessing Officer to proceed with the matter u/s 17 of the Act. Aggrieved, the

above revisions have been filed.

4. Mr. Janarthana Raja, learned counsel appearing for the petitioner, contended that the petitioner was denied an effective opportunity to defend

the proceedings initiated against him and that the first proviso to section 34 of the Act is violated. The petitioner has filed along with the typed set of

papers, the explanation which according to the petitioner has been sent on October 29, 1983 itself, objecting to the proposals and requesting the

Commissioner to drop the suo motu proceedings. The petitioner is not in a position to produce any acknowledgment for having sent the

explanation pursuant to the show-cause notice issued by the Commissioner. The files relating to the revisions also do not disclose the actual receipt

of any explanation from the petitioner. In the light of the materials available before us, we are unable to come to a positive finding that the

Commissioner passed orders without considering the explanation which was stated to have been sent. In the absence of positive materials, no

exception could be taken to the statement contained in the order that no explanation was received from the petitioner pursuant to the show-cause

notice.

5. Be that as it may, we have to consider the claim on behalf of the petitioner with reference to the peculiar facts and circumstances of the case and

the mere fact that the petitioner was not able to produce any acknowledgment for the explanation claimed to have been sent by him should not be

put against the petitioner to deprive him of the right of hearing. The first proviso to section 34 of the Act stipulates that the Commissioner shall not

pass any order against the assessee without hearing the assessee or giving him a reasonable opportunity of being heard. The intention of the

Legislature in making such a stipulation is to ensure real and substantial justice being done to the assessee and to further ensure that effective

opportunity should be given before an order detrimental to the interest of the assessee is passed. Even de hors a specific stipulation of the nature

enshrined in the first proviso to section 34 of the Act referred to superior, the requirements of the principles of natural justice would also envisage

such an opportunity. Neither in the show-cause notice nor in the final order passed could we see any details as to how a different calculation than

the one adopted by the Assessing Officer has been made. The ultimate order of revision passed does not also demonstrate in unequivocal terms

the error that has been committed by the Assessing Officer in the matter of computation of the standard acres. The error as pointed out in the show

cause notice by itself is not a sufficient answer to justify the passing of the laconic order under challenge since the substantial rights of the assessee,

which statutorily provide him to have a composition, are effected by the different method of calculation adopted by the commissioner. It could not

be asserted with justification that the Commissioner had properly dealt with the matter objectively in the order finally passed.

6. In view of the above, we are of the view that the order, as passed, cannot be sustained and that the interests of justice require that the same

should be set aside and the assessee should also be given a fair and reasonable opportunity of being heard before proceeding further in the matter.

The impugned order is set aside. The tax revision cases are allowed. The Commissioner of Agricultural Income Tax shall restore the proceedings

and proceed in the matter afresh in accordance with law. The assessee shall submit his explanation, if any, within four weeks from today and the

Commissioner shall thereafter fix a date for hearing and dispose of the matter in accordance with law.