

(1970) 03 MAD CK 0038

In the Madras High Court

Case No : Tax Case No"s. 241 of 1967 and 191 of 1968 (Revision No"s. 142 of 1967 and 129 of 1968)

A.E. Thangavelu Gounder and Another

APPELLANT

Vs

Government of Madras

RESPONDENT

Date of Decision : 03-03-1970

Acts Referred:

Tamil Nadu Agricultural Income Tax Act, 1955 — Section 2

Citation : (1971) 80 ITR 486

Hon'ble Judges : Ramaprasada Rao, J;Ramanujam, J

Bench : Division Bench

Advocate : K.S. Naidu, for the Appellant; K. Venkataswami, First Assistant Government Pleader (CT), for the Respondent

Judgement

Ramaprasada Rao, J.—We shall take up T. C. No. 191 of 1968 first. The assessment year in this case is 1963-64. The revenue estimating the income of the assessee subjected the receiver, who was in charge of the estate of the assessee, and others and levied agricultural Income Tax under the Madras Agricultural Income Tax Act, 1955. The revision to the Commissioner of Agricultural Income Tax failed. The present tax case is against the order of the Commissioner who passed the impugned order in exercise of his powers of revision.

2. It is now well-established that as against the order of the Commissioner no revision lies to this court u/s 54 of the Act, unless the order passed by the Commissioner is prejudicial to the assessee. It is not contended by the petitioner before us that an order prejudicial to the petitioner was passed within the meaning of the proviso to Section 34(1) of the Act. Thus, therefore, the revision petition is incompetent and it has to be dismissed. This is in the light of the decision in N.N. Seshadrinathan Vs. State of Madras, .. The tax case, therefore, fails and it is dismissed. But there will be no order as to costs.

T.C. No. 241 of 1967:

3. The agricultural property from which agricultural income has arisen and which is the subject-matter of this tax case belonged to three brothers. In December, 1956, the petitioner filed O. S. No. 1 of 1957 on the file of the Sub-Court, Vellore, for partition and separate possession of his share of the joint family property. Whilst the partition suit was pending, receivers, under orders of the court, were appointed from time to time. One Mr. Sadasive Rao was so appointed on April 10, 1957, and he functioned as such receiver till August 28, 1958, when he resigned. It is common ground that, thereafter, the court appointed various other receivers and the last of such receivers who held office in that capacity did so until October 17, 1962. After October 17, 1962, it is stated that there was no receiver who was in custodia legis of the estate. During that period, and to be more precise in or about January, 1962, the revenue started proceedings under the Madras Agricultural Income Tax Act, 1955, and issued a notice to Mr. Sadasiva Rao, who was the receiver from April 10, 1957, to August 28, 1958. The assessment year is 1959-60 and the relevant accounting year is April 1, 1958, to March 31, 1959. Thus, during apart of the accounting year, the receiver was indeed functioning. This probably prompted the revenue to issue notice to Mr. Sadasiva Rao. Soon after the receipt of the said notice, Mr. Sadasiva Rao filed a return on November 19, 1962, and the said return related to the income derived from the estate during his period of office. The taxing authorities, after securing the necessary materials for the other part of the accounting year from the court records determined the total agricultural income of the assessee and also determined the sum payable by him on the basis of such assessment. This was done u/s 17(3) of the Act. We have already noticed that the proceedings were initiated against Mr. Sadasiva Rao as receiver. But the assessing authority sent the original of the assessment order to the petitioner who was admittedly a co-sharer of the estate which was by then in court and it was this which persuaded the petitioner to prosecute the matter further by preferring an appeal against the order passed by the assessing officer dated June 30, 1963, a certified copy of which was served on him. It was, in such circumstances, that the petitioner came into the picture for the first time. His appeal was entertained. We may also observe that the petitioner took necessary sanction of the court for preferring the said appeal. The Appellate Assistant Commissioner heard the petitioner and the revenue and finally confirmed the order. It is significant to note that, at that time, before the Appellate Assistant Commissioner, the revenue did not take the objection that the petitioner in his personal capacity cannot prefer an appeal, as the person who submitted the return was the receiver and he alone should be deemed to be the assessee in the eye of law. After the appeal to the Appellate Assistant Commissioner was unsuccessful, the petitioner preferred a second appeal to the Madras Agricultural Income Tax Appellate Tribunal. Before the Tribunal for the first time a question was raised about the maintainability of the second appeal. It is not clear as to how and in what circumstances the State representative raised this ground as preliminary issue. Nevertheless, the Tribunal went into the question and found that the appeal was not maintainable as, in their view, the petitioner before us, who was the

appellant before them, was not an assessee under the Act. Reference was made to Sections 31 and 32 of the Act and the Tribunal expressed the view that, as the right of appeal is conferred only upon the assessee and that, as no assessment had been made on the petitioner, the petitioner had no right to prefer the appeal and seek for a decision thereon. It is as against this order the present tax case has been filed.

4. Section 2(e) of the Act defines the assessee as to mean a person by whom agricultural Income Tax or any other sum of money is payable under the Act and includes every person in respect of whom any proceeding under the Act has been taken, for the assessment of his agricultural income or of the loss sustained by him or of the amount of refund due to him. This comprehensive definition provides an answer to the objection raised by the State representative before the Appellate Tribunal. A receiver appointed in a civil proceeding certainly represents the estate, of which he is custodies legis, but by such appointment as an officer of the court, it does not mean that the shares interested in the estate as such do lose their individuality and vested rights. Any problem, may it relate to taxation or other incidental matters, arising out of and connected with the estate is essentially a problem of the sharers and the receiver acts only for the sharers.,. This is a well-established proposition. The Tribunal dismissed the appeal preferred by the petitioner on the ground that eo nomine he was not an assessee on the file of the revenue. It cannot be forgotten that, when the proceedings were initiated by the revenue for the recovery of agricultural Income Tax as against the receiver, it is obvious that such an initiation affected the rights of the co-sharers of the estate and, therefore, merely because a notice has been sent to the receiver and he acted thereon and filed a return in his name, it does not matter at all. Further, Section 2(e) makes it clear that an assessee is a person who is obliged to pay agricultural Income Tax or other moneys payable under the Act. The receiver is only a media or catalyst who passes off such Income Tax on behalf of others to the coffers of the State. But, nevertheless, the money paid by the receiver is the money belonging to the person who is primarily obliged to pay the agricultural Income Tax. Thus understood, the petitioner is one, of such persons who is responsible to pay such tax to the revenue. Even otherwise the facts disclose that a certified copy of the order was sent by the assessing officer to the petitioner in or about June, 1963. Again Section 2(e) of the Act, which is both an explanatory definition as well as an inclusive definition, includes within the fold of assessee every person in respect of whom any proceeding under this Act has been taken for the assessment of his agricultural income. Service of notice of order of assessment necessarily involves a demand consequent and resultant thereon and it is in the process of assessment that such notices of demand are made. Thus, therefore, a proceeding was indeed taken for the assessment of agricultural income in the hands of the petitioner, when the original assessment order was sent by the assessing officer to the petitioner. Viewed in any light, it appears to us that the petitioner is indeed a person who satisfies the meaning and the explanation of the word "assessee" as provided in

Section 2(e) of the Act.

5. Learned Assistant Government Pleader also brought to our notice very fairly that what the assessing officer did was correct in that he served a copy of the original order not only on the petitioner but also on the receiver, as he had to u/s 8(1)(a) and 8(1)(c) of the Act. Section 8(1)(a) enables the assessing officer to levy and recover agricultural Income Tax payable under the Act from the receiver in like manner as it would be leviable upon and recoverable from a person on whose behalf such agricultural income is receivable. This provision is again an - indication that a receiver acting under orders of court acts on behalf of another person who is entitled to receive agricultural income. This provision also prompts us to allow the appeal and reject the conclusion of the Tribunal that the appeal is not maintainable.

6. We are unable to agree with the order of the Tribunal that the appeal filed by the assessee is incompetent because appeals are only creatures of the statute and as the petitioner is not an assessee, the appeal is incompetent. No doubt, appeals are creatures of statute. But, in the instant case, the petitioner should be deemed to be an assessee as he was a person primarily interested in the payment of agricultural Income Tax along with his other cosharers. In our view, the appeal filed by the petitioner under Sections 31 and 32 of the Act before the Appellate Assistant Commissioner and before the Tribunal are competent and maintainable. In this view, the order of the Tribunal is set aside and the matter remanded for a reconsideration of the appeal on merits.

7. We may also add that for the assessment year 1964-65, this court had occasion to consider the tax liability of the petitioner. The Tribunal will take note of the ratio in C. Vs. Sadasiva Rao, Official Receiver V. Government of Madras, . whilst dealing with the appeal before it.

8. The tax case is allowed. But there will be no order as to Costs.