

(1967) 04 MAD CK 0055

In the Madras High Court

Case No : Tax Cases No's. 52 and 62 to 72 of 1964 (Revision No's. 22 and 27 to 37)

A.M.C. Muthuvaithilingam Chettiar and Others

APPELLANT

Vs

Government of Madras

RESPONDENT

Date of Decision : 29-04-1967

Acts Referred:

Tamil Nadu Agricultural Income Tax Act, 1955 — Section 2(q), 54(1)

Citation : (1969) ILR (Mad) 337 : (1968) 69 ITR 330

Hon'ble Judges : Ramaprasada Rao, J

Bench : Single Bench

Judgement

Ramaprasada Rao, J.—This batch of tax revision cases filed u/s 54(1) of the Madras Agricultural Income Tax Act, 1955, is directed against the common order passed by the Commissioner of Agricultural Income Tax in proceedings initiated by him suo motu. The relevant and material facts are as follows :

2. Under a partition deed dated May 31, 1954, two brothers, Muthuvaithilingam Chettiar and Paramasivam Chettiar, divided their agricultural holdings. Thereafter, there was a partition in each of the branches of Muthuvaithilingam Chettiar and Paramasivam Chettiar. On June 12, 1954, Muthuvaithilingam Chettiar effected a partition of his lands between himself and his four minor sons. On June 16, 1954, Paramasivam Chettiar effected a partition between him and his three minor sons. It may be noted that Muthuvaithilingam Chettiar settled a portion of his holdings in favour of his wife on June 15, 1964, and Paramasivam Chettiar settled a portion of his holdings in favour of his wife and minor daughter on June 18, 1964. For the year 1958-59, Muthuvaithilingam Chettiar, Paramasivam Chettiar, their respective wives and eight children (minors represented by their respective guardians), filed individual returns of agricultural income under the Madras Agricultural Income Tax Act, 1955, and their individual returns were accepted and admitted by the Agricultural Income Tax Officer, Nagapattinam, and they were assessed accordingly. The Commissioner of

Agricultural Income Tax started suo motu proceedings u/s 34 of the Act and revised the orders of the Agricultural Income Tax Officer by rejecting the individual assessments and treating all the twelve persons concerned as an association of individuals. The said order of the Commissioner of Agricultural Income Tax dated October 8, 1962, is sought to be impugned in this batch of revision petitions.

3. The Commissioner of Agricultural Income Tax set aside the orders of individual assessments made by the Agricultural Income Tax Officer on the following grounds :

(1) Muthuvaithilingam Chettiar and Paramasivam Chettiar are partners of a firm styled "A.M.C.T. & Sons" and it is this firm which is predominantly featuring in the entire agricultural operations concerning the lands in that the entire paddy is conserved by the firm and sold by it;

(2) the totality of the transactions relating to the lands are reflected in the accounts of the firm;

(3) the income is also apportioned by the firm, but unequally to the members of the family;

(4) the management by the brothers and respective heads of each of the branches of the family can only be deemed to be as partners of the firm;

(5) there is a common farm and common management;

(6) the chemical manure for the entire lands is purchased by the firm and utilised for common benefit;

(7) there is therefore sufficient indicia that all the twelve persons constituted themselves into an association of individuals and the two brothers were constituted as common managers by the rest of the members.

4. Accordingly, the Commissioner of Agricultural Income Tax held that the 12 persons, having thus constituted themselves as an association of individuals, cannot be individually assessed as was sought to be done by the Agricultural Income Tax Officer. He, therefore, set aside the assessment orders for the year 1958-59 passed by the Agricultural Income Tax Officer and directed the above twelve persons to be taxed as an association of individuals.

5. The concept of association of individuals has to be understood in its popular sense and not in any highly technical sense. In section 2(q) of the Madras Agricultural Income Tax Act, 1955, hereinafter referred to as the Act, the word "person" has been defined so as to include an association of individuals as well. The very idea of association of a group of individuals having an identified and identifiable interest in property, including agricultural lands, postulates that they have so linked themselves with a defined and definite purpose of one or a few of them in unison doing an act for the benefit of and with the express authority derived or granted for the purpose, by the rest of the constituted group. The

fixed, exact and clear demarcation of interests of the individuals forming the group; provides material to decide in the facts of each case, whether persons having such interests each in themselves have constituted into an association of individuals or not. If, by an overt act, some of such individuals in a group have authorised some others in the same group, or even a third party for the matter of that, to look after their interests and manage their affairs, then it might be said that such a group is an association of individuals within the meaning of section 2(q) of the Act. Thus, there should be an express grant of such authority or, in the alternative, there should exist circumstances for a fair inference by necessary implication to be drawn therefrom to enable one or a few of the members of such an association or a third party to do or refrain from doing such acts or things for the common good. An element of investiture of such authority to look after, manage or conduct the affairs of the association of individuals by them to some amongst themselves or to others, be they called managers, agents, etc., is an essential sine qua non to determine whether persons constituting such an association are indeed an association of individuals within the meaning of the Act.

6. The mere fact that the affairs of a group of persons or individuals are managed by a common manager or managers by itself is not enough to bring those persons into the net of taxation of individuals. Each case has to be decided on its peculiar circumstances and facts. In a case where the heirs of a deceased proprietor of a beedi business carried on and continued the erstwhile trade through a common person is indeed the nearest example to illustrate what an "association of individuals" connotes. That was a case wherein there was an election amongst the heirs to retain the property and manage it as a joint venture. There was unitary control by the consent of parties. In such circumstances, the Supreme Court in *Mohamed Noorulla v. Commissioner of Income Tax*, held that the heirs did constitute themselves into an association of individuals. In the words of their Lordships there has been a combination of individuals who engaged themselves in a joint enterprise and banded together as if they were "co-adventurers". It is seen, therefore, that the heirs in that case elected, apparently after mutual discussions amongst themselves, to vest control in some amongst them and this was enough to hold that all the heirs of the late proprietor constituted an association of individuals. A more lucid test is laid down by the Supreme Court in *Commissioner of Income Tax v. Indira Balkrishna*. It may be stated in their own words which runs as follows :

There is no formula of universal application as to what facts, how many of them and of what nature, are necessary to come to a conclusion that there is an association of persons within the meaning of section 3; it must depend on the particular facts and circumstances of each case as to whether the conclusion can be drawn or not.

7. An "association of persons" must be one in which two or more persons join in a common purpose or common action. But, as already stated by us, there should

be a clear and positive intention on the part of the group of individuals to vest such control in a common man. It is this insignia of investiture of authority on another that creates a dividing line between an ordinary group of persons and an association of persons within the meaning of the Act and who are liable to be taxed as such under the Act.

8. But in the instant case what has happened is a normal feature availing in every Hindu family. After the partition between the two main branches consisting of the father and the uncle, and after a division inter se between the father, the uncle, and their respective branches, it is not uncommon to expect the father or the uncle or both, to look after the properties allotted to the junior members of the respective branches, whether they are majors or minors. By such an undertaking on their own volition to manage the agricultural lands which formed the subject-matter of the deeds of partition referred to, can it be predicated that the father and the uncle secured authority from the others so as to result in the constitution of an association of individuals. As each case has to be decided on its peculiar facts and circumstances, following the test laid down by the Supreme Court in *Commissioner of Income Tax v. Indra Balkrishna*, it cannot justifiably be concluded that all the twelve assesseees in the batch of cases before us did constitute themselves into an association of individuals. The combination should be a result of a discussion inter se between the individuals. They should have knitted themselves together with a common object. The primary and resultant object of such unison should be to earn agricultural income pursuant to such a common enterprise. If there are minors in the picture, their respective guardians should have joined in such a discussion to nominate and appoint one or more amongst the group to look after their affairs. Thus, therefore, it ultimately resolves itself into a question of intention and proof of the existence of such a knitting together by the individuals. There should be ample evidence to substantiate the above features, without the establishment of which, there could be no association of individuals. Recently, a Division Bench of this court, in *State of Madras v. Subramania Iyer*, considered a similar problem as that confronting us in this case, and the following observations therein are apposite :

It appears to us that when the question arises also in the case of persons who own separate parcels of land defined by metes and bounds, and who for the cultivation of their respective shares or parcels engage one and the same manager, agent or lessee, the crucial test will always be whether the individuals had become knit together for a joint endeavour or effort or enterprise for the joint cultivation of their lands and the common manager, agent or lessee was engaged only in pursuance of the joint purpose thus formed between them.

9. Applying, therefore, the above tests laid by the Supreme Court and this court, we have to consider whether the Commissioner of Agricultural Income Tax in this case has come to a correct conclusion on the facts that the twelve assesseees in question did form into an association of individuals within the meaning of section 2(q) of the Act.

10. The main circumstances relied upon by the Commissioner are that the father and the uncle were partners in a firm known as "A.M.C.T. & Sons" and that the firm represented by its partners was looking after the cultivation of these lands and that such cultivation was done jointly, that the entire sale proceeds were taken by the firm to its accounts and that they were divided later on between the persons entitled thereto and that the company purchased chemical manure for purposes of utilising the same for the agricultural operations in the lands in question. It is very significant that all the above factors relied upon by the Commissioner ignored the crucial test which determines whether a group of persons is an association of individuals and which could be treated as such for purposes of taxation under the Madras Agricultural Income Tax Act. We have already laid down the tests and it is unnecessary to repeat them at this juncture. The learned Commissioner, while disposing of these proceedings suo motu, assumed that the data quoted by him and referred to by us as above was sufficient to hold that the business was that of the twelve persons and that they should be deemed to be knitted together as an association of individuals. We are afraid that the law has not been properly adverted to by the Commissioner and he has failed to invoke the necessary ingredients to constitute in the eye of law an association of individuals. Reference is made in his order that the income from the lands is divided unequally between the sharers and a credit entry in the name of each sharer is made in the accounts of the firm. Mr. T.V. Balakrishnan, appearing for the petitioners, states that this finding that there is an unequal division of the income arising from the lands is incorrect. Even apart from this, we are very strongly of the view that the approach to the question which is really involved in these petitions by the Commissioner is wrong. Further, the factual finding that there is an unequal division of the income is also challenged before us. Whilst, therefore, setting aside the order of the Commissioner and allowing these tax cases, we remit the entire batch of cases to the Commissioner for reconsideration in the light of the observations as above. There will be no order as to costs.