(1942) 10 MAD CK 0008

In the Madras High Court

Case No : C.R.P. No. 1405 of 1942 (A.A.O. No. 110 of 1940, converted into C.R.P.)

ANNAM VENKATAKUTUMBA RAO — APPELLANT

Vs

YENDURI VEERABHADRUDU AND OTHERS. — RESPONDENT

Date of Decision : 06-10-1942

Acts Referred:
Income Tax Act, 1961 — Section 25A(3)

Citation : AIR 1943 Mad 469 : (1943) 11 ITR 181

Judgement

The petitioner was second defendant in a suit which was decreed against him and his uncle, the first defendant. He has been refused relief u/s 19 of

Act IV of 1938 on the ground that he was not an agriculturist having been assessed took Income Tax. In fact he became divided from his uncle as

a result of a partition suit decreed on March 30, 1936. In ignorance of this division the Income Tax Officer assessed the first defendant to Income

Tax as manager of a joint family for 1936-37. This assessment is valid with reference to Section 25A(3) of the Income Tax Act and having regard

to Section 14(1) of that Act the assessment cannot be regarded as the assessment of the second defendants share of the income.

Under Act IV of 1938, the family which has been assessed to Income Tax notwithstanding it disruption, cannot be deemed to be a person after

March 30, 1936. The petitioner is himself a person who has not in fact been assessed to Income Tax and whose income could not be deemed to

have been assessed by this assessment having regard to the provisions of Section 14(1) of the Income Tax Act. We are therefore constrained to

hold that the petitioner is not disentitled to the benefits of Act IV of 1938. We allow the revision petition with costs and direct that the decree be amended so as to make the petitioner liable for Rs. 2,500 with interest at 6 per cent. from October 1, 1937, and costs Rs. 619-3-0 with interest

thereon at 5 per cent. from April 3, 1935, to March 22, 1938, and thereafter at 6 per cent.

petition allowed.

