
(2007) 01 KL CK 0033
In the High Court Of Kerala
Case No : ST Rev. Case No. 113 of 2003

Chandraprabha Charitable Trust

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 11-01-2007

Acts Referred:

Kerala Agricultural Income Tax Act, 1991 — Section 35, 35(1), 35(2), 37(5), 39

Citation : (2007) 209 CTR 432 : (2007) 292 ITR 122

Hon'ble Judges : M.N. Krishnan, J;K.S. Radhakrishnan, J

Bench : Division Bench

Advocate : C. Kochunny Nair and Dale P. Kurien, for the Appellant; V.V. Ashokan, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Radhakrishnan, J.—Assessee is the revision petitioner and the assessment relates to the year 1993-94. Assessee is a charitable trust which was assessed to a net agricultural income of Rs. 2,28,560. Aggrieved by the order, assessee took up the matter, before the AAC. Contention was raised that the assessment was barred by limitation. It was pointed out that as per Section 39(6) of the Agrl. IT Act, 1991 any assessment other than those pending on the date of commencement of Agrl. IT Act, 1991 be completed within a period of two years from the date of filing of the return. It was stated that the return of income was filed as early as May, 1994 and hence the order should have been passed u/s 39(6) by May, 1996. But the assessment order was passed only on 15th June, 1998 and hence it was barred by limitation. Contention was repelled by the appellate authority. Assessee took up the matter before the Tribunal. Tribunal also rejected the appeal and hence this revision. Following are the questions of law raised for our consideration.

(1) Was the Tribunal correct in law in not holding that the assessment as evidenced by Annex.-A is not time barred by limitation u/s 39(6) being beyond 2 years from the date of filing of return ?

(2) In the absence of a notice for reassessment u/s 41(2) calling for a second return and in the wake of prospective nature of the amendment brought in by the Finance Act of 2000, was the Tribunal correct in holding that it is the limitation prescribed u/s 41 for reassessment which is the one which is applicable and not the one u/s 39(6) which deals with original assessment?

(3) in the absence of an express provision during the relevant period of 1993-94, which deals with returns filed after the due date, will not the general period of limitation for completing assessment as per Section 39(6) apply, especially when there is a proviso allowing an extension of time for filing return, under the scheme of original assessment u/s 35 ?

Counsel appearing for the assessee submitted that even though the return was filed voluntarily by the assessee in May, 1994 since the order of assessment was passed on 15th June, 1998, i.e., after the expiry of more than 2 years from the date of filing of return, the assessment is barred by limitation. Counsel appearing for the Revenue on the other hand, contended that u/s 35(1) of the Agrl. IT Act, the return ought to have been filed in this matter before 1st July, 1993 and since it was filed on 19th May, 1994, Section 39(6) of the Agrl. IT Act, 1991 would not apply. Learned Counsel appearing for the Revenue made reference to the judgment of a Division Bench of this Court in ST Rev. No. 78 of 2004.

2. We may point out that as per Section 39(6) of the Agrl. IT Act, 1991 any assessment, other than those pending on the date of commencement of the Act shall be completed within a period of 2 years from the date of filing of the return. For easy reference we may extract Sub-section (6) of Section 39.

39(6) Any assessment other than those pending on the date of commencement of this Act shall be completed within a period of two years from the date of filing of the return.

Provided that in the case of assessment of agricultural income derived from manufactured tea, if the assessment under the IT Act, 1961 (Central Act 43 of 1961), is not completed when the Agrl. ITO proceeds to complete the assessment, he may provisionally accept the agricultural income as per the return filed by him and revise such assessment in accordance with the order of the IT authority and the limitation fixed under any of the provisions of this Act shall not apply to such revision of assessment:

Provided further that a person who is in receipt of agricultural income from manufactured tea, fails to submit copy of the assessment order of appellate or revisional order under the IT Act, 1961 (Central Act 43 of 1961), within thirty days of its receipt by him, he shall be liable to pay interest as provided under Sub-section (4) and penalty as provided under Sub-section (5) of Section 37 on the balance of tax payable in accordance with the order of the IT authority on the expiry of ninety days from the date on which he received such order.

Explanation : The time-limit of two years mentioned in Sub-section (6) shall

apply only in the case of assessee who has filed return and it shall run from the date of receipt of the return by the Agrl. ITO. In the case of those who are liable to submit return under Sub-section (1) of Section 35, but has failed to furnish such return, the time-limit prescribed u/s 41 shall apply.

Section 39(1) specifically refers to Section 35. We may extract Sub-section (1) of Section 39 for easy reference.

39. Assessment of Agricultural income.-(1) If the Agrl. ITO is satisfied that a return furnished u/s 35 by an assessee is correct and complete, he shall by order in writing, make an assessment and determine the sum payable by the assessee on the basis of such return.

On a combined reading of Section 39(1)(b) and Section 35(1) it can be seen that the return referred to in Section 39(6) is a return filed u/s 35 of the Act. As per Sub-section (1) of Section 35 of the Act every person who is liable to pay tax under the Act, shall furnish a return in the prescribed form before the 1st July of the assessment year and as per Sub-section (2) of Section 35, the Agrl. ITO can issue notice to any person before the end of the relevant assessment year requiring him to furnish the return within 30 days from the date of service of the notice. In the instant case the assessment year with which we are concerned is 1993-94 and hence as per Section 35(1) of the Agrl. IT Act, return should have been submitted prior to 1st July, 1993. But, admittedly, the return was filed by the assessee voluntarily only in May, 1994 i.e. after the expiry of the date and the expiry of the assessment year. Hence it cannot be treated as a return filed u/s 35(1) of the Act. This position is made very clear by the Finance Act, 2000 by adding Explanation to Section 39(6). Explanation was made effective from 11th April, 1991. Explanation and the time-limit mentioned in Sub-section (6) would apply only in the case of assessee who has filed return and it shall run from the date of receipt of the return by the Agrl. ITO. In the case of those who are liable to submit return under Sub-section (1) of Section 35, but has failed to furnish such return, the time-limit prescribed u/s 41 shall apply. Section 41 deals with income escaping assessment which says that if for any reason agricultural income chargeable to tax under the Act has escaped assessment in any financial year or has been assessed at too low a rate, the Agrl. ITO may at anytime within ten years of the end of that year and subject to the provision of Sub-section (2), serve on the person liable to pay the tax, a notice containing all or any of the requirements which may be included in a notice under Sub-section (2) of Section 35 and may proceed to assess or reassess such income and the provisions of this Act, shall, so far as may be apply accordingly as if the notice were a notice issued under that sub-section. Explanation to Section 39(6) refers to the time-limit prescribed u/s 41. Time-limit prescribed u/s 41 is ten years and therefore the final assessment order is within the time-limit prescribed u/s 41 of the Act.

3. Under such circumstance we are of the view that the Tribunal is justified in holding that assessment order was not barred by limitation. We also fully endorse the view endorsed by the Division Bench in ST Rev. No. 78 of 2004.

Revision therefore lacks merit and the same is dismissed.