

(1984) 03 KAR CK 0022
In the Karnataka High Court
Case No : C.R.P. No. 1848 of 1979

C.M. Aleemullakhan

APPELLANT

Vs

Commissioner of Agricultural Income Tax

RESPONDENT

Date of Decision : 21-03-1984

Acts Referred:

Mysore Agricultural Income Tax Act, 1957 — Section 2 (p), 3 (3), 35, 55

Citation : (1984) 148 ITR 696

Hon'ble Judges : S.R. Rajashekhara Murthy, J; Mohammad Sharif, J; Jagannatha Shetty, J

Bench : Full Bench

Advocate : S. Rajendra Babu, for the Respondent

Judgement

Jagannatha Shetty, J.—This revision petition arises out of the order of the Commissioner, dated July 18, 1978, made in AIT. S.R. No. 22/77-78, made under s. 35 of the Agricultural Income Tax Act, 1957 ("the Act"), directing the Agrl. ITO to assess the income of the assessee as an association of individuals and not as tenants-in-common.

2. A certain Sattar Khan died leaving behind, his wife, son and daughter with some agrl. lands. The son was managing the entire estate including the shares belonging to his mother and sister. For the years 1971-72 to 1975-76, the Agrl. ITO assessed the income of the estate treating the heirs of the deceased as tenants-in-common. But the Commissioner in exercise of his revisional powers thought that treating the assessee as a tenant-in-common was erroneous and prejudicial to the interest of the Revenue and he called upon the assessee to show cause why the assessment should not be set aside and why the agrl. income should not be brought to tax treating the legal representatives of the deceased, Sattar Khan, as an association of individuals. The son while resisting the proposed action, inter alia, contended that upon the death of Sattar Khan, the heirs automatically became entitled to their definite shares in the properties of Sattar Khan and he was only managing the properties belonging to his mother

and sister and, therefore, there was no scope for calling into aid the concept of association of persons while assessing the income of those heirs. He also urged that in the year 1975-76, the estate left behind by the deceased was divided by metes and bounds as per the respective shares of the heirs.

3. The Commissioner, however, rejected the contentions observing thus :

"The statements of agricultural income and expenditure filed by the parties do not show any evidence of separate arrangements for cultivation or sale of crop or of separate accounting of receipts and expenditure by or on behalf of each of the three parties. The statements filed by the assessee before the Agricultural Income Tax Officer, on the other hand show clearly that there has been pooling of the expenditure and income. It is, therefore, difficult to accept the contention of the parties that the arrangement is only that of appointment of a common manager for the separate management of their properties. The statements filed by the parties before the Agricultural Income Tax Officer, at the time of assessment proceedings, provide strong evidence of common exploitation of lands by the three parties concerned for the purpose of earning agricultural income. As the element of the parties joining in a common purpose of earning agricultural income is present, the parties in question should rightly be treated as an association of persons."

4. Finally, the Commissioner set aside the assessment for the year 1972-73, 1973 - 74 and 1974-75 with a direction to the Agrl. ITO to redo the assessment treating the three persons in question as association of persons. The Commissioner's reference in his order to "association of persons" appears to be wrong and it must be in the context only "association of individuals". He did not disturb the assessment for the year 1971-72 since the computation of income resulted in a loss. He also did not disturb the assessment for the year 1975-76, since the parties have availed of the benefit of composition under s. 67 of the Act.

5. The petitioner has moved this court with an application under s. 55 of the Act challenging the correctness of the view taken by the Commissioner.

6. The primary question that arises for consideration is whether, upon the death of Sattar Khan, his widow, son and daughter should be assessed as tenants-in-common or association of individuals ? The Commissioner in support of the latter view has observed that amongst the parties, there was no separate arrangement for cultivation, or sale of crop, or separate accounting of receipts and expenditure by or on behalf of each of the three individuals, and they have been pooling together their income and collectively incurring the expenditure. These reasons, in our opinion, are not very much relevant, if not beside the point.

7. The "person" as defined under s. 2(p) of the Act, to mean "any individual or association of individuals, owning or holding property for himself or for any others, or partly for his own benefit and partly for another, either as owner, trustee, receiver, common manager, administrator or executor or in any capacity recognised by law and includes..... a firm or a company, an association of

individuals, whether incorporated or not, and any institution capable of holding property."

8. There is no definition of the term "association of individuals" which is included in the definition of "person", but the term has acquired a definite connotation under the law relating to taxation. It is well settled that an association of person must be one in which two or more persons join in a common purpose or common action, and as the words occur in a section which imposes a tax on income, the association must be one the object of which is to produce income, profits or gains [see Commissioner of Income Tax, Bombay Vs. Smt. Indira Balkrishna, and Commissioner of Agricultural Income Tax, Hyderabad Vs. Raja Ratan Gopal,

9. On the facts found in this case, can we say, then, that the heirs of the deceased Sattar Khan joined together with a common purpose to earn agrl. income ? There was no such common venture or collective bargain. As usual, the estate was cultivated, both before and after the death of Sattar Khan, and the income therefrom was divided amongst themselves. It is a well accepted proposition that on the death of a Mohamedan leaving a number of heirs, the latter take the estate as tenants-in-common and each of them has separate rights and interest in the property inherited by them. Unlike in Hindu joint family, the heirs of a deceased Mohammedan inherit a specified share in the property and the status they acquire on inheritance is not affected by continued joint possession and joint management of the property either through one of themselves or through manager. Each sharer may have different interest, but as to his own share, he is precisely in the position of the owner of the entire and separate estate. He can transfer his share during his lifetime or by a will. On his death intestate, his share would devolve on his heir.

10. In AIR 1942 75 (Nagpur) , a Bench consisting of Stone C.J., and Vivian Bose J., observed :

"The legal position as regards Mohammedans is prima facie that when the owner dies leaving a number of heirs those heirs take the estate as tenants-in-common. They have each a separate right and at any moment any one can demand administration of the estate so as to demarcate the property that falls to that one's share."

11. A similar case under the Hyderabad Agrl. I.T. Act, 1950, came up before the Supreme Court in Commissioner of Agricultural Income Tax, Hyderabad Vs. Raja Ratan Gopal, . It was a case of four nephews of certain Raja Khaja Prasad. Those nephews succeeded to the estate as co-sharers and each one of them was entitled to 1/4th share of the income from the estate, but one of them collected the entire income from the estate. It was observed that they could not be regarded as an association of individuals as they did not form a unit or did not have any joint venture to earn the income.

12. In B.T.R. Punja and Others Vs. Commissioner of Agricultural Income Tax, Mysore and Another, this court, while considering the agrl. income derived by

certain legatees under a will, observed that the legatees constituted tenants n-in-common and not an association of individuals for the purpose of assessment under s. 3(3) of the Act.

13. Mr. Rajendra Babu, learned Government advocate, however, strenuously relied upon the decision of the Patna High Court in Sharafat Hussain and Others Vs. Commr. of Income Tax, , in support of the conclusion reached by the Commissioner. It is no doubt true that in that case the heirs of a Mohammedan who derived income from an estate were held to constitute an association of individuals for the purpose of assessment under the Indian I.T. Act, 1922. We have perused the decision. The conclusion therein proceeded on the peculiar facts found. In addition to the joint management and possession of the properties, there was joint appropriation of income. There was no specification of shares in the revenue records. The leases in respect of lands were granted by all the heirs jointly, and the receipts in respect of the lands were granted by all the heirs jointly, and the receipts in respect of ground rent were also granted jointly on behalf of all. Above all, the assessee themselves came forward with a return to treat them as an association of individuals. It was so assessed for several years. That case is, therefore, clearly distinguishable.

14. In the result, we allow the revision petition. While reversing the order of the Commissioner, we restore the order of assessment.

15. In the circumstances of the case, we make no order as to costs.