(1971) 01 KAR CK 0015

In the Karnataka High Court

Case No : Writ Petition No. 493, 792 and 1681 of 1970

Ganapathi Subbaraya Hegde APPELLANT

Vs

State of Mysore RESPONDENT

Date of Decision : 29-01-1971

Acts Referred:

Mysore Agricultural Income Tax Act, 1957 — Section 37

Citation : (1972) 84 ITR 523 : (1971) 2 MysLJ 266

Hon'ble Judges : K. Jagannatha Shetty, J;G.K. Govind Bhat, J

Bench : Division Bench

Advocate : B.M. Krishna Bhat, for the Appellant; H.K. Vasudeva Reddy and B.V. Krishnaswamy Rao, for the Respondent

Judgement

Govinda Bhat, J.—These writ petitions preferred by a common assessee under the Mysore Agricultural Income Tax Act, 1957, hereinafter called "the Act", are directed against three orders of rectification made u/s 37 in respect of the assessment years 1964-65, 1965-66 and 1966-67.

2. The first petitioner, Ganapathy Subbaraya Hegde, is the elder brother of the third respondent Narayana Subbaraya Hegde. After the Act came into force, the petitioner as well as the third respondent were assessed separately and they were treated as two separate Hindu undivided families. Two assessments were made on the petitioner as well as the third respondent for the assessment years 1964-65, 1965-66 and 1966-67.

3. On July 17, 1969, the Agricultural Income Tax Officer, North Kanara, Sirsi (respondent No. 2), issued a notice to the petitioner as well as the third respondent u/s 37 of the Act, proposing to rectify the separate assessment for 1964-65 made on the petitioner as well as the third respondent. Similar notices were issued in respect of the assessments made for the assessment years 1965-66 and 1966-67. The ground set out in the notice for rectification was that for the assessment year 1967-68 the petitioner as well as the third respondent had produced a partition deed from which it was disclosed that the family

became partitioned only in the year 1966 and that the separate assessments made on the basis that the petitioner and the third respondent had been divided was an error apparent from the record. Therefore, the second respondent proposed to rectify the separate assessments made on the petitioner and the third respondent and to make one assessment in respect of the properties of both in the name of the petitioner. The petitioner and the third respondent filed their statements and, thereafter, the second respondent made three orders which are impugned in these writ petitions.

4. Section 37 of the Agricultural Income Tax Act which confers the power of rectification of mistake empowers the Agricultural Income Tax Officer to rectify a mistake which is apparent from the record. It is clear that the mistake must be apparent from the record of the assessment for the relevant assessment year. For the purpose of invoking the jurisdiction u/s 37, the Agricultural Income Tax Officer cannot take into consideration matters outside the record in the original assessment proceedings.

5. The notice referred to earlier stated that the Agricultural Income Tax Officer came to know that the petitioner and the third respondent were undivided and that they became partitioned only in the year 1966 when they produced the partition deed in the assessment proceedings for the year 1967-68. The second respondent is not entitled to look into the records of the proceedings for the year 1967-68 for the purpose of invoking his jurisdiction u/s 37 of the Act. The second respondent does not state either in his notice or in the impugned orders that there was any mistake apparent on the record of the assessment proceedings for the three assessment years in question. Therefore, the second respondent has acted illegally in the exercise of his jurisdiction u/s 37 of the Act and, consequently, the impugned orders of rectification cannot be sustained.

6. In the result, for the reasons stated above, these writ petitions are allowed and the impugned orders of rectification dated September 25, 1969, September 25, 1969 and July 29, 1969, marked as annexure "A" to these writ petitions, are quashed. No costs.