

(1991) 04 MAD CK 0046

In the Madras High Court

Case No : Tax Cases No's. 127 to 130 of 1982

Gurumurthy Naidu

APPELLANT

Vs

State of Tamilnadu

RESPONDENT

Date of Decision : 25-04-1991

Acts Referred:

Tamil Nadu Agricultural Income Tax Act, 1955 — Section 34, 35

Citation : (1993) 203 ITR 394

Hon'ble Judges : A.S. Anand, C.J.;Raju, J

Bench : Division Bench

Advocate : P.P.S. Janarthana Raja for Subbaraya Aiyar, Padmanabhan Ramamani and K. Chandran, for the Appellant; Mrs. Chitra Venkataraman, for the Respondent

Judgement

Raju, J.—All these four tax revision cases arising under the Tamil Nadu Agrl. IT Act, 1955, are dealt with in common since they involve one

and the same assessee and the points raised also are common except some additional point in respect of Tax Cases No. 127 and 128 of 1982.

The assessment years concerned are 1974-75 to 1977-78.

2. Having regard to the nature of the submissions made and the consideration required, it is not necessary for us to reproduce the facts in respect

of the respective assessment years. The revision petitioner has been assessed to agricultural income tax by the Agrl. ITO, Kumbakonam,

separately for all these years treating the assessee as an individual. The Commr. of Agrl. IT initiated suo motu revisional proceedings and issued a

notice calling upon the assessee to show cause as to why the orders already made should not be revised. The assessee, while submitting his

explanation, claimed that he had inherited lands from his father and they should

be treated as properties belonging to the HUF and should not be clubbed with his holdings, and that there should be separate assessment orders also in respect of the HUF in respect of the lands which he got by way of partition from his father and the other in his individual capacity in respect of the land which he inherited from his uncle. That apart, the assessee also challenged the proposal to revise the orders in respect of the basis of the quantum of income arrived at. After hearing the assessee, the Commissioner passed final orders whereunder he held that the status of the assessee came to be determined as an individual at his request and on his own action of clubbing both the lands together as his individual lands on earlier occasions and that there was no justification to countenance the plea now made to the contrary in respect of the years which were under consideration before the revising authority. Liberty was given to the assessee to take up the issue with the assessing authority by producing sufficient material for future years in respect of his status. So far as the quantum of income is concerned, the revisional authority set aside the orders of the Agri. ITO and remanded the matter for fresh consideration after conducting a detailed enquiry as to the actual income realised by the assessee during the years in question. Aggrieved, the assessee has come up by way of revision.

3. As far as the question of status is concerned, the assessee reiterated the same plea as made before the Commissioner contending that, in respect of the lands he acquired from his father under a partition, they have to be assessed only in his capacity as HUF and there should be a separate assessment in his capacity as an individual in respect of the properties he inherited from his uncle and his other private properties. Mrs. Chitra Venkataraman, learned Addl. Government Pleader (Taxes), reiterated the reasoning of the revisional authority and contended that, since the petitioner himself has clubbed both the properties and was subjecting himself by submitting returns as an individual there was no justification for resiling from the said stand and the conclusions of the revisional authority are not only in accordance with law but do not call for any interference in the above revisions.

4. We are not persuaded to agree with the submission of learned counsel for the Revenue. It is not in dispute that the apex Court, on more than

one occasion, has held that, for purposes of taxation and determination of the status of a person as an HUF, it is not necessary that there should be more than one male member and the relevant criterion is to see how the properties have been obtained by the assessee concerned. That being the position and having regard to the fact that indisputably an extent of 14.80 ordinary acres of land have been got from the father, the same should be treated as properties belonging to the HUF of which the assessee is the Karta. The mere fact that, on a mistaken view of his legal rights or a misconception about his legal status, the assessee volunteered on earlier occasions to get himself assessed as an individual does not in any manner disentitle the assessee to agitate the question at the appropriate stage. Consequently, we are unable to agree with the reasoning of the revisional authority that the option exercised by the assessee for including the lands obtained from his father with the lands obtained from his uncle does not alter the real character and the determination of the status for purposes of assessment relating to these two different categories of lands. We are of the view that, in view of the declaration of the law by the apex Court on the subject, the assessee is entitled to be treated as an HUF in respect of 14.80 ordinary acres of land which he got from his father as his share of the properties. Likewise, we are of the view that in respect of the other items of property belonging to him including the one he inherited from his uncle, he has to be assessed only in his capacity as an individual and to this extent, we disagree with the conclusions of the revisional authority and set aside the findings and directions contained in paragraph 24 of the order of the Commr. of Agrl. IT which is the subject-matter of revision before us.

5. On behalf of the assessee it was next contended that having regard to the provisions of s. 34 of the Tamil Nadu Agrl. IT Act, which renders the provision ""subject to the provisions of this Act"", the power of revision, according to learned counsel, has to be exercised within five years of the end of the year as contemplated under s. 35 of the said Act and, if thus viewed, the orders passed in revision covered by Tax Cases Nos. 127 and 128 of 1982 will be beyond the period of limitation. Learned counsel for the petitioners wants to draw inspiration from the decision of this Court in *A. Velayutha Raja vs. Board of Revenue (1970) 26 STC 176*, whereunder in a matter arising under the Tamil Nadu General Sales-tax Act, this

Court while considering the scope of the revisional powers of the then Board of Revenue under s. 34 of the Tamil Nadu General Sales-tax Act,

held that the provisions as to period of limitation are subject to the other provisions of the Act including s. 16 as a consequence of which the

provisions as to the period of limitation within which escaped turnover can be brought to tax as provided in s. 16(1) was held to apply even ""when

such an order is sought to be passed by the Board in exercise of its powers under s. 34"". We are not persuaded to sustain the plea in this regard

for the simple reason that the case in *A. Velayutha Raja vs. Board of Revenue*(supra) turned on the peculiar facts and circumstances of the case

and that too in a matter arising under the Sales-tax Act. In our view, there can be no comparison between the situation considered by this Court in

the said decision with the situation now before us. If the revisional authority has the power to revise the order in question, which position is not is

dispute before us, there will be no justification to read into the provisions of s. 34 which contains its own special period of limitation, the limitations

prescribed under s. 35 of the Act. We see no merit in the plea of the petitioners in this regard.

6. So far as the quantum of income is concerned, the revisional authority has merely set aside the orders of the assessing authority and remitted the

matter for consideration afresh after conducting a detailed enquiry in this regard. That being the position, the assessee shall be at liberty to raise all

such pleas that are open to him in the matter of fixing the quantum of income, and the assessing authority shall consider and deal with the same in

accordance with law. The revisions are, therefore, allowed partly to the extent that we uphold the claim of the assessee that there shall be two

assessments, one in respect of 14.80 ordinary acres of land in his capacity as HUF and the other extent of lands in his capacity as an individual. In

other respects, the revisions shall stand dismissed. There will be no order as to costs.