
(1977) 11 MAD CK 0018

In the Madras High Court

Case No : Writ Petition No's. 3864 to 3869 of 1975 and 1581, 1948 and 1972 of 1976

His Holiness Silasri Kasivasi Muthukumaraswami Thambiran and Another APPELLANT

Vs

Agricultural Income Tax Officer and Others RESPONDENT

Date of Decision : 22-11-1977

Acts Referred:

Income Tax Act, 1961 — Section 11, 12, 13

Tamil Nadu Agricultural Income Tax Act, 1955 — Section 4

Citation : (1978) 113 ITR 889

Hon'ble Judges : Mohan, J

Bench : Single Bench

Advocate : B. Kumar and R. Kunchithapatham, for the Appellant; K. Venkataswami, Addl. Govt. Pleader, for the Respondent

Judgement

W.P. Nos. 2960/75, 1581/76, 1948/76 and 1972/76

Mohan, J.—All these writ petitions raise a common question of law as to the scope of Section 4(b) introduced in the Tamil Nadu

Agricultural Income Tax Act, 1955 (V of 1955). The said Section 4(b) came to be introduced by the Tamil Nadu Act No, 4 of 1973 with effect

from April 1, 1972.

2. Suffice it for me to note the facts of W.P. No. 2960 of 1975. The petitioner had been assessed under the Tamil Nadu Agricultural Income Tax

Act (hereinafter referred to as "the Act") for an extent of 124.50 acres equivalent to 72.37 standard acres up to the assessment years 1972-73,

on a composition basis. The petitioner had settled an extent of 50.46 ordinary acres in the name of a private trust called Nagakulam Bungalow

Krishna Pooja Trust on May 14, 1955. Since the Agricultural Income Tax Officer

was of the view that this trust cannot be a public or religious or charitable trust and as it would attract Section 4(b) of the Act, the extent was clubbed in the holdings of the petitioner from 1973-74 for the purpose of assessment. The petitioner filed a revision petition before the Commissioner of Agricultural Income Tax u/s 34 of the Act. After hearing the advocate for the petitioner, it was rejected on February 4, 1975. Aggrieved by this order, the petitioner has preferred this writ petition to quash the order of the Agricultural Income Tax Officer made in GIR. No. 108/A-73-74 dated October 16, 1974, in so far as it relates to the year 1973-74.

3. W. P. No. 1581 of 1976 relates to 1975-76, while W. P. No. 1948 of 1976 relates to 1974-75 and W. P. No. 1972 of 1976 relates to 1969-

70. It is the contention of the learned counsel for the petitioner, Mr. R. Kunchithapatham, that a careful reading of Section 4(b) of the Act would

disclose that the agricultural income derived by a charitable or religious trust like the petitioner trust is exempt under the Income Tax Act, in view of

Section 10 of the Income Tax Act, and, therefore, inasmuch as reference is made to that provision of the Income Tax Act, by Section 4(b) of the

Tamil Nadu Agricultural Income Tax Act, the very basis of taxation is illegal. In support of this contention, reliance is placed upon my judgment in

W. P. Nos. 422 and 423 of 1976 (Rajan Chettiar Annadhana etc., Chanties v. Agricultural Income Tax Officer).

4. Mr. K. Venkataswami, the learned Additional Government Pleader in meeting this submission states that my judgment in W. P. Nos. 422 and

423 of 1975 (Rajam Chettiar Annadhana, etc., Charities v. Agricultural Income Tax Officer) requires reconsideration, since when the amending

Act introduced Section 4(b), it was with the avowed object of subjecting agricultural income derived by a charitable and religious trust to tax. All

the more so, when the very purpose of the Act, namely, the Tamil Nadu Agricultural Income Tax Act, is to levy tax on agricultural income.

Therefore, if Section 10 of the Indian Income Tax Act alone got incorporated, the agricultural income held by a religious or a charitable trust would

be exempt. That would frustrate the very amendment. Consequently, what have to be looked into are Sections 11, 12 and 13 of the Income Tax

Act, 1961. Having regard to the language of Section 4(b) of the Act, namely, ""

to the same extent to which income derived from property held under trust wholly or partly for charitable or religious purposes ""', it should have reference only to the non-agricultural income. In other words, what has to be found out is how under the Income Tax Act, income derived from non-agricultural property held by a charitable or religious trust is taxable, to the same extent agricultural income would be taxable u/s 4(b) of the Act. Any other interpretation would lead to utter confusion. It would amount to attributing unwisdom to the legislature, as if the legislature was not aware of Section 10(1) of the Income Tax Act, which confers a specific exemption as far as the agricultural income is concerned.

5. Man grows wiser by experience ; and this principle is aptly illustrated in this case. In my judgment in W. P. Nos. 422 and 423 of 1975 (Rajam Chettiar Annadhana, etc., Charities v. Agricultural Income Tax Officer) the aspect which is now put forth by the learned Additional Government Pleader was not ever urged. By stating so, I do not propose to disown the responsibility for my judgment. In fact, the interpretation sought to be placed by the learned counsel for the petitioner found acceptance at my hands as a result of which I held that the agricultural income would be exempt. By such an interpretation, the very object and the purpose of Section 4(b) of the Act got thwarted. As rightly contended by the learned Additional Government Pleader, the object of the Agricultural income tax Act is to tax agricultural income. Such an income derived from a charitable or religious trust was exempt till the amending Act 4 of 1973. It was this exemption which was sought to be withdrawn so that, that income also would become liable for taxation. Could it be said, under those circumstances, that the Tamil Nadu legislature looked at Section 10(1) alone and wanted to incorporate that provision of the Income Tax Act ? If that be so, how could this purpose be achieved ? Of course, it may be possible to contend that, however well intentioned it might have been, it was not carried out in effecting the amendment. In fact, that is the contention urged on behalf of the petitioner. I am unable to accept this contention since it would lead to not only frustrate the object of the section but it does not even appear to be a good construction. As to why I held so will be evident from the following. Section 4 defines the scope of total agricultural income. Originally, all agricultural income derived from land situated

within the State, which is received by the assessee or which accrued to him within or without the State was assessable. But that income did not include, in view of Clause (b) as it stood then, any agricultural income derived from property held under trust or other legal obligation wholly for religious or charitable purpose, and in the case of property so held in part only for such purpose, the income applied thereto. This exemption is withdrawn by the amending Section 4(b). That amendment reads any agricultural income derived from property held under trust, wholly or partly for charitable or religious purposes to the same extent to which income derived from property held under trust wholly or partly for charitable or religious purpose, is not included in the total income for purposes of the Income Tax Act, 1961 (Central Act 43 of 1961) "" the income derived from the property held under trust wholly or partly for charitable or religious purposes "" mean ? Is it to mean only non-agricultural income? Otherwise, the legislature could have either said agricultural income or, to avoid redundancy, such income, meaning thereby agricultural income and this is spoken to in the beginning of this clause. If this is the interpretation, reference to Section 10(1) of the Income Tax Act was not in contemplation. What then are the sections of the Income Tax Act that are sought to be incorporated ? It is where Sections 11, 12 and 13 of the Income Tax Act require to be looked at. These sections occur under Chapter III which deals with incomes which do not form part of the total income.

6. Section 11 deals with income from property held for charitable or religious purposes. Obviously, therefore, it is this section to which reference by incorporation will have to be made, since the well-accepted principle of law is, special excludes the general (generalibus specialia derogant).

Section 12 deals with income of trusts or institutions from contributions.

7. Section 13 lays down the conditions for exemption. Having exempted the agricultural income derived by a charitable or religious trust u/s 10(1), could it be said that the same income is sought to be taxed under Sections 11 to 13 ? On the contrary, when both Clauses (a) and (b) of Section 11(1) say income derived from property held under trust, it could only mean the income derived from non-agricultural property. This is the only way to construe harmoniously all the sections. Therefore, the learned Additional Government pleader is well-founded in his submission.

Consequently, I hold that my judgment in W. P. Nos. 422 and 423 of 1975 (Rajam Chettiar Annadhana, etc., Charities v. Agricultural Income

Tax Officer] does not lay down the correct law.

8. As regards individual cases, in W.Ps. Nos. 1948 and 1972 of 1976, the petitioner has not still exhausted the statutory remedy to appeal to the

Tribunal; and it is well open to him to urge that the clubbing of his private income with that of the trust is not warranted under the provisions of the

Act. The petitioner will file the appeals within two weeks from to-day before the Tribunal in which event the plea of limitation cannot be put against

him. I am sure this question will be considered in its proper perspective. Hence W. Ps. Nos. 1948 and 1972 of 1976 are dismissed with costs.

Counsel's fee Rs. 200 (one set).

9. W.P. No. 1581 of 1976 is directed against the order u/s 17(4) of the Act. The matter will stand remitted to the Agricultural Income Tax Officer

who will proceed to issue fresh notices and assess or continue the composition in the light of the observations made above after affording the

petitioner an opportunity to make representations either in person or through counsel.

10. W. P. No. 2960 of 1975 : The matter will stand remitted to consider the question whether the private income of the petitioner could be

clubbed with that of the trust and assessment made. Therefore, the impugned assessments are hereby set aside and the assessing authority will

proceed to issue fresh notices and assess or continue the composition in the light of the observations made above, after affording an opportunity to

the petitioner to put forth his representations either in person or through counsel.

W. Ps. Nos. 3864 to 3869 of 1975

11. Applying my judgment in W.P. No. 2960 of 1975, these writ petitions will stand dismissed with costs. Counsel's fee Rs. 500 (one set). Since

these writ petitions are directed against notices u/s 16(2) of the Act and inasmuch as I have dismissed these writ petitions, the assessing officer will

proceed to continue this assessment, however, after affording an opportunity to the petitioner to file his representations either in person or through

counsel. The said representations will be filed within six weeks from this date before the assessing authority.