
(1991) 04 MAD CK 0043
In the Madras High Court
Case No : TC No. 1568 of 1981

K. Md. Iqbal and Others

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 29-04-1991

Acts Referred:

Tamil Nadu Agricultural Income Tax Act, 1955 — Section 2(2), 3

Citation : (1991) 04 MAD CK 0043

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

Bench : Division Bench

Advocate : K.J. Chandran, for the Appellant; Government-Advocate (Taxes), for the Respondent

Judgement

Dr. A.S. Anand, C.J.—This tax revision case is directed against the order of the Tamil Nadu Agrl. ITAT, dt. 3rd March, 1981, passed in

ATA No. 258 of 1980.

2. The petitioners were assessed on a net agricultural income of Rs. 12,010 for the asst. yr. 1978-79 in the status of an association of individuals.

Before the Assistant Commissioner, the petitioner disputed the status of association of individuals as also the estimated income. The plea of the

petitioners was that since the sale deed had been taken jointly in the name of ten persons, there was a presumption in law that where there is no

indication in the sale deed that the buyers would take unequally, then, they shall take equally and they could not be assessed as association of

individuals. It was argued before the appellate authority that the mere fact that the land had been purchased jointly and cultivated through one of

them would not render them liable to be assessed in the status of association of individuals. The plea, however, did not find favour with the

Assistant Commissioner. A further appeal before the Tamil Nadu Agri. ITAT also failed. Before the Tribunal, no arguments, however, were

advanced during the course of the hearing as regards the estimate of income. The Tribunal noticed that even before the Assistant Commissioner,

the estimate of income had not been seriously questioned. In the revision before us, no arguments have also been raised with regard to the estimate

of income. The only question raised before us is about the correctness of the order of the Tribunal upholding the assessment in the status of

association of individuals. Learned counsel for the petitioners reiterated the submissions which had been raised before the statutory authorities

including the Tribunal, and vehemently argued that neither the joint ownership nor the common enjoyment of the property could give rise to any

inference that the assesseees had the status of association of individuals. It was argued that the assesseees were tenants-in-common because they

held joint ownership. Reliance has been placed on certain judgments, which we shall deal with at the appropriate place in this judgment.

3. Learned Government Advocate (Taxes), on the other hand, submitted that the findings recorded by the statutory authorities, on questions of

fact, do not call for any interference in exercise of the revisional jurisdiction of this Court.

4. Some facts, which are not in dispute are : that the assesseees filed the returns noting the status as "tenants-in-common". The assesseees had jointly

purchased the land from the vendors by means of two sale deeds. In the sale deeds, however, neither the shares of the individuals were specified

nor was there any indication regarding the contributions made by each of the ten persons, who had jointly purchased the land. The cultivation of the

land also was done only through one purchaser, viz., Thiru Kayoom. What is the status of the assesseees, as deductible from the aforesaid facts, is

the only question requiring our consideration. To answer this question, it is desirable to refer to the relevant statutory provisions first.

5. The relevant portion of s. 3(1) of the Tamil Nadu Agricultural Income Tax Act (hereinafter referred to as the Act) provides as follows :

Charge of agricultural Income Tax. - (1) Agricultural Income Tax at the rate or rates specified in Part I of the Schedule to this Act shall be

charged for each financial year commencing from the 1st April, 1955, in accordance with and subject to the provisions of this Act, on the total

agricultural income of the previous year of every person;"".

Sec. 3(3) reads thus :

In the case of persons holding property as tenants-in-common and deriving agricultural income, the tax shall be assessed at the rate applicable to the agricultural income of each tenant-in-common.

6. ""Person"" has been defined in s. 2(q) of the Act to mean :

any individual or association of individuals, owning or holding property for himself or for any other, or partly for his own benefit and partly for

another, either as owner, trustee, receiver, common manager, administrator or executor or in any capacity recognized by law, and includes an

undivided Hindu Mitakshara family, an Aliyasanthana family or branch, a Marumakkattayam tarwad or a tavazhi possessing separate properties,

or a Nambudiri or other family to which the rule of impartibility applies, a firm or a company, an association of individuals, whether incorporated or

not, and any institution capable of holding property;

7. The expression ""to hold"" has been defined in s. 2(nn) to mean :

.... to possess and enjoy either as owner or tenant or mortgagee in possession or as a maintenance holder or in one or more of those capacities;

8. According to Mr. Chandran, learned counsel for the assessee, the assessees were only tenants-in-common and could be assessed only under s.

3(3) of the Act and they could not be clothed with the status of an ""association of individuals"". In the facts and circumstances of this case, we are

unable to agree with the submission of the learned counsel. Sec. 3 is the charging section and it brings to tax the total agricultural income of the

previous year of every person. The essential criterion that attracts the label of ""association of individuals"" is the unity of income making purpose.

Co-ownership does not necessarily involve a community of profit or loss. Tax may be levied against a group of persons under s. 3 of the Act as an

association of individuals where the income accrues to the association of individuals jointly owning or holding the property. Indeed, the mere unity

of title in the income yielding asset may not by itself attract the label of association of individuals and co-ownership does not necessarily involve a

community of profit or loss. The assessing authority rejected the plea of the assessees that their status was ""tenants-in-common"" and not

association of individuals"". The authority opined :

.... The entire extent of 200.70 Acres have been jointly purchased by the assesseees and stands registered in the joint patta No. 279 of

Karadiputhur village, Gummidipoondi Taluk. According to the assesseees, the lands are jointly cultivated and the profit or loss is equally shared by

all the ten joint pattadars in accordance with a common agreement executed among themselves. As the lands are jointly held and cultivated jointly,

I am inclined to determine the appropriate status of the assesseees, as provided for in the Tamil Nadu Agricultural Income Tax Act, 1955, as an

Association of persons"" and proceed to assess then accordingly.

The first appellate authority examined the manuscript copy of the sale deeds under which the land in question had been purchased jointly by the ten

persons. It referred to the recitals in the deeds and found that the consideration of Rs. 22,000 had been paid and there was no indication at all in

the deeds about the proportion in which the money had been contributed by each owner. The sale deeds were obtained jointly in the name of all

the ten persons, Mohamed Iqbal. Was there any unity of income making purpose amongst the owners ? The sale deeds are silent. However, the

statement of Mohamed Iqbal, one of the joint owners of the property, in the file of the assessment for the year 1976-77, which was extracted by

the appellate authority, provides the answer. Mohamed Iqbal had, in unambiguous terms, stated in the ultimate portion of the statement that ""we

are sharing the income of lands as per agreement"". He went on to disclose that one Kayoom, one out of the ten persons, had been appointed to

cultivate the land. From the statement of Mohamed Iqbal, it thus follows that among the joint owners, inter se, there was an agreement to exploit the

land as a joint venture, agreeing to share the profits and losses jointly. This statement by one of the co-owners, in the absence of any other contra

evidence or material on the record, leads to an irresistible conclusion that the assesseees are an association of individuals. In the face of the

statement of Mohamed Iqbal it is futile for the learned counsel to contend that there was no proof on the record to show that there was community

of profit or loss. The common agreement for joint endeavour and exploitation to share the profits and loss, thus, stands amply established and the

statutory authorities also found the same as established on appraisal of

evidence, as a fact.

9. The tests for determining the true meaning of the expression ""association of persons"" were laid down by the Supreme Court in *G. Murugesan*

and *Brothers Vs. Commissioner of Income Tax , Madras*, after taking note of a number of earlier judgments. According to the apex Court, an

AOP"" is 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 of those persons must be the one, the object whereof is to produce income, profits or gains and share the same.

These tests were laid down by the apex Court for determining the meaning of an ""AOP"" within the meaning of s. 3 of the Income Tax Act but these

tests would be equally applicable to determine the meaning of the expression ""association of individuals"" under the Act. Whether an AOP has

engaged itself in an activity with a common object to produce income, profits and gains and share the same would depend upon the facts and

circumstances of each case. However, the jointness of the enterprise aimed at production and sharing of income, profit or gains are the essential

ingredients to call a body of persons an ""association of individuals"". These tests stand amply satisfied in the instant case from the material on the

record, particularly the statement of Mohamed Iqbal.

10. Learned counsel for the petitioners, however, relied upon the judgments in *Commissioner of Agricultural Income Tax, Hyderabad Vs. Raja*

Ratan Gopal, ; State of Madras Vs. S. Subramania Iyer and Other, ; and State of madras Vs. VR. M. SM. Karuppan Chettiar and Others, and

urged that in those cases the AOP were not held to be ""association of individuals"". All these decisions are, however, distinguishable on facts and it

is not necessary to refer to them in detail. In the decisions cited by the learned counsel for the petitioners, the facts indicate that the plea of the

Revenue was based mainly on the common management of the property. There was no incidence of a common design to share the profits and the

income in those cases, unlike in the present case. In *Commissioner of Agricultural Income Tax, Hyderabad Vs. Raja Ratan Gopal, , the apex*

Court, however, opined that the test to constitute an ""association of individuals"" was that two or more individuals should have joined in the

promotion of a joint enterprise with the object of producing income, profits or

gains. Since that test was not found satisfied in that case, the plea of the Revenue failed. That judgments, therefore, cannot advance the case of the appellant and, as a matter of fact, supports the plea of the Revenue in the present case.

11. The judgment reported in State of Madras Vs. VR. M. SM. Karuppan Chettiar and Others, also is clearly distinguishable on facts. Though, even in that judgment, while adverting to the expression "'association of individuals'", the Court held that the common object of such an association must be to earn income, a joint endeavour towards that end and a resultant income being the fruit of the joint enterprise and, in the absence of these factors, the body of persons cannot be clothed with the status of "'association of individuals'". It was on facts, as established in that case, that the plea of the Revenue failed. Those factors, as already noticed, are present in the instant case.

12. In State of Madras vs. S. Subramania Iyer (supra), which was decided under the Madras Agricultural IT Act, 1955, what came to be directly interpreted was the meaning of the expression "'association of individuals'" as occurring in that Act and the circumstances under which persons owning lands jointly may be assessed to tax as an "'association of individuals'". The Division Bench, in a very detailed judgment, drew the distinction between "'tenancy-in-common'" and "'association of individuals'". As is reflected in the Head Note, the Bench opined :

In order that persons owning lands may be assessed to tax as an "association of individuals" the essential requirement is that, as between themselves, they should have associated together and decided upon the common exploitation of the lands for their common benefit. The mere fact that all of them had appointed the same person as manager or given the lands on lease to the same person and the manager or lessee was jointly cultivating all the lands would not make the owners liable to be assessed as an "association of individuals".

13. In the instant case, as already noticed, it was not merely all the joint owners had appointed a common cultivator but from the evidence on record, it has been established that as between the co-owners, they had associated together and decided and agreed upon the common exploitation of the land with a view to share the income, profits and gains. These

individuals, therefore, aptly answer the description of ""association of individuals"" and the authorities below were justified in clothing the petitioners with the status of ""association of individuals"" and rejecting the plea of being ""tenants-in-common"". The findings were arrived at by the statutory authorities on a proper appreciation of evidence and material on the record and correct application of principles of law

14. In view of the aforesaid discussion, we find that no cause is made out for interference with the order of the Tamil Nadu Agri. ITAT. The tax

revision, therefore, fails and is dismissed. There shall, however, be no order as to costs.