
(1998) 07 KAR CK 0125
In the Karnataka High Court
Case No : C.R.P. No's. 1292 and 1293 of 1994

K.A. Chidambara Rao

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 02-07-1998

Acts Referred:

Mysore Agricultural Income Tax Act, 1957 — Section 35, 36, 55

Citation : (2000) 241 ITR 366

Hon'ble Judges : S.R. Venkatesha Murthy, J; Ashok Bhan, J

Bench : Division Bench

Advocate : Ramabhadran, for the Appellant; R.I. D'Sa, for the Respondent

Judgement

Ashok Bhan, J.—These petitions are filed u/s 55 of the Karnataka Agricultural Income Tax Act, 1957 (for short "the Act"), against the order dated July 19, 1985, passed by the Joint Commissioner of Agricultural Income Tax, Bangalore (annexure E), purporting to revise the assessment orders passed by the Additional Agricultural Income Tax Officer, Hassan, annexures B and C, relating to the assessment years 1978-79 and 1979-80.

2. A Hindu undivided family of Sri K.A. Chidambara Rao, owned agricultural lands on which coffee was grown. For the years 1975-76 and 1976-77, the coffee grown on these lands was owned with the Coffee Board. Part payment towards the sale price was made to Chidambara Rao as the karta of the Hindu undivided family. Supplementary payments to the coffee pool for these years were to be made on the declaration of dividends by the Coffee Board. The Hindu undivided family consisted of K.A., Chidambara Rao and his wife. He had no children. He admitted his paternal relation to a partnership firm under a deed of agreement. The partnership concern was named as "Cheekanahally Estate". This partnership shall be referred to as "the firm" hereinafter.

3. Dividends were declared by the Coffee Board for the assessment years 1978-79 and 1979-80 relating to the seasons of 1975-76 and 1976-77. Certain

payments were made too. The Agricultural Income Tax Officer, Hassan, assessed the income received from the Coffee Board in the hands of K.A. Chidambara Rao. The firm filed an appeal before the Deputy Commissioner of Commercial Taxes (Appeals), against these assessments for the years 1978-79 and 1979-80 raising the contention that as per the agreement between the Hindu undivided family and the partnership firm, all assets and liabilities were taken over by the firm and the income received from the coffee pool by way of dividends for the seasons 1975-76 and 1976-77 by Chidambara Rao was to be assessed in the hands of the firm. This contention of the firm was accepted and the Deputy Commissioner by order annexure A set aside the orders passed by the Assessing Officer for the years 1978-79 and 1979-80 and remanded them back to the Assessing Officer for fresh disposal in accordance with law as per the direction issued in the order.

4. In pursuance of the directions issued in the orders, annexures B and C were passed, the income received by way of dividends from the coffee pool by Chidambara Rao was assessed in the hands of the firm.

5. Notice annexure D was issued by the Joint Commissioner of Agricultural Income Tax exercising its jurisdiction u/s 35 of the Act seeking to revise the assessment orders annexures B and C for the years 1978-79 and 1979-80. But instead of issuing the notice to the firm, the notice was issued to K.A. Chidambara Rao, being the karta of the Hindu undivided family. Chidambara Rao filed his objections. The objections filed were overruled and it was held that the income which related to the year 1975-76 and 1976-77 could be assessed in the hands of the Hindu undivided family of K.A. Chidambara Rao as the Hindu undivided family had contributed the coffee to the pool of the Coffee Board for these years and not in the hands of the firm. The orders annexures B and C were set aside. The Agricultural Income Tax Officer was directed to assess the erstwhile Hindu undivided family with regard to the coffee pool prior to April 1, 1977, but realised after April 1, 1977, as the taxable income of the erstwhile Hindu undivided family for the assessment years 1978-79 and 1979-80 and issue revised demand notice.

6. K.A. Chidambara Rao has filed this petition contending that the assessments framed in the hands of the registered firm annexures B and C could not be set aside without issuing notices to the said firm. By revising the orders passed in the hands of the firm, no direction could be issued to assess the income in the hands of the Hindu undivided family.

7. Section 35 of the Act reads as under :

"Revision by Commissioner or the Additional Commissioner of orders prejudicial to Revenue.--(1) The Commissioner or Additional Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by any authority subordinate to him is erroneous in so far as it is prejudicial to the interests of the Revenue, he may, after giving the

assesses an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment.

(2) No power shall be exercisable under Sub-section (1) after the expiry of four years from the date of the order sought to be revised.

(3) Any order passed by the Commissioner or the Additional Commissioner under this section shall, subject to revision by the High Court u/s 55, be final.

Explanation.--For the removal of doubts, it is hereby declared that subject to the provisions of Sub-section (2), the revisional power conferred on the Additional Commissioner by Sub-section (1) shall be exercisable in respect of an order passed under this Act, by any authority subordinate to him before or after the conferment of revisional power on him."

8. Its perusal shows that the Commissioner or the Additional Commissioner if he considers that any order passed by any authorities subordinate to him is erroneous in so far as it is prejudicial to the interests of the Revenue, he may after giving the assesses an opportunity of being heard and after making such enquiry deemed fit pass such order as in the circumstances of the case is justified including the order enhancing or modifying the assessment. The word "assesses" occurring in the section refers to the persons on whom assessment had been made. An opportunity of being heard has to be provided to the person on whom the assessment had been framed but not to any other person. In the present case, the assesses was the firm, whereas the notice had been served on Chidambara Rao being the karta of the Hindu undivided family. In our view, the Joint Commissioner committed a jurisdictional error by seeking to revise the assessment framed on the firm by issuing a notice to the karta of the Hindu undivided family. Assessment on the firm could be set aside by issuing notice to the firm through its partners. Further, a direction could not be given in the order for framing the assessment on the erstwhile Hindu undivided family by deleting the income from the hands of the firm. After setting aside the order of the Assessing Officer, a direction could be given to the Assessing Officer to delete the income of the Hindu undivided family from the income of the firm and further it could leave it open to the assessing authority to proceed in accordance with law to include the deleted income in the hands of the assessable assesses whosoever it was.

9. Another fact which needs to be mentioned and which is the admitted case of the parties is that the Hindu undivided family had not been assessed for the years 1978-79 and 1979-80. It could at best be a case of escaped assessment in the hands of the Hindu undivided family for which different provisions could be invoked. For escaped assessment resort could be made to Section 36 of the Act, but not to Section 35 for revising the assessment of the firm in whose hands the income had been assessed. For this limited purpose, we derive support from the

judgment of this court reported in H. KENCHE GOWDA Vs. STATE OF KARNATAKA. (JOINT COMMISSIONER OF AGRL. Income Tax)., . In the said case the Hindu undivided family of "K" was assessed in that status up to the year 1977-78. The Hindu undivided family became divided and the properties were partitioned by metes and bounds in March, 1977. The Assessing Officer accepted the partition and for the years 1978-79 and 1980-81, the divided coparceners filed separate returns which included their share in "coffee back pool payments", relating to coffee crop supplied by the erstwhile Hindu undivided family to the Coffee Board prior to the date of partition between them. The Assessing Officer assessed them separately on the basis of the returns filed by them. The Joint Commissioner of Commercial Taxes invoked the provisions of Section 35 of the Act on the ground that the Assessing Officer had wrongly assessed the coffee back pool payments as they were separate individual income and in the wrong hands which he ought to have been assessed in the hands of the erstwhile Hindu undivided family. According to him, the order passed by the Assessing Officer was prejudicial to the interests of the Revenue. This court on these facts set aside the order of the revisional authority and it was held (headnote) :

"Held, that there was no assessment at all in respect of the erstwhile Hindu undivided family and hence there was no proceeding or order amenable to revision u/s 35 of the Act. If an order passed by the Assessing Officer was found to be erroneous and prejudicial to the interests of the Revenue as the assessment had been done in the hands of the wrong person, the result was that the income had escaped assessment in respect of the right person in whose hands it should have been made and the power to be exercised was one u/s 36 of the Act and not u/s 35 of the Act. The revisional power u/s 35 could not be exercised in respect of a matter which fell within the power to reasons escaped income u/s 36."

10. For the reasons stated above, the revision petitions are accepted and the order of the Joint Commissioner is set aside. No costs.