

(1999) 02 KAR CK 0001
In the Karnataka High Court
Case No : C.R.P. No's. 1511 and 1543 of 1996

K.A. Chinnappa and Shanthasadashiva and Others	APPELLANT
Vs	
State of Karnataka	RESPONDENT

Date of Decision : 18-02-1999

Acts Referred:

Mysore Agricultural Income Tax Act, 1957 — Section 18 (2), 3 (3), 32

Citation : (1999) ILR (Kar) 1585 : (1999) 240 ITR 837

Hon'ble Judges : K.R. Prasad Rao, J; Ashok Bhan, J

Bench : Division Bench

Advocate : K.A. Hemraj, in C.R.P. No. 1511 of 1996 and K.S. Ramabadran, in C.R.P. No. 1543 of 1996, for the Appellant; Kishore Mallya, Government Advocate, for the Respondent

Judgement

Ashok Bhan, J.—This order shall dispose of C.R.P. Nos. 1511 of 1996 and 1543 of 1996 as the facts are similar and the question of law involved is the same. The facts are taken from C, R. P. No. 1511 of 1996.

2. Aggrieved against the orders passed by the authorities below framing the assessment in the status of an association of persons instead of tenants-in-common in which status the petitioner had filed the return, the present revision petitions have been filed challenging the orders passed by the authorities below. The petitioner had been assessed under the Karnataka Agricultural Income Tax Act, 1957 (hereinafter called "the Act"), in the status of tenants-in-common u/s 3(3) of the Act which provision reads as under :

"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."

3. For the assessment year 1982-83 ending with March 31, 1983, the petitioner filed his return in the status of tenants-in-common in the month of July, 1983, as was being done for the earlier assessment years. Tenants-in-common status

consisted of four persons including the petitioner having definite, divisible and ascertainable shares as co-owners. Subsequent to the filing of the return in the status of tenants-in-common, Section 3(3) which provided for assessment as individuals was deleted by Act No. 14 of 1983 on December 1, 1983, giving effect to the deletion of Section 3(3) to the assessment year ending on or after March 31, 1982.

4. The assessing authority without directing the petitioner to file a fresh return issued a proposition notice as contemplated u/s 18(2) of the Act, proposing to assess the petitioner in the status of an association of persons on November 19, 1990, In the same proposition notice the assessing authority also proposed to add a sum of Rs. 91,977.19 received from the Coffee Board in respect of coffee pool by the petitioner when the status was tenants-in-common prior to the deletion of Section 3(3) of the Act.

5. The petitioner filed detailed objections in which among other things it was contended that the status could not be changed unilaterally by converting the tenants-in-common to that of an association of persons. It was also contended that the sum of Rs. 91,977.19 derived as income when the status was tenants-in-common prior to the deletion of Section 3(3) could not be added to the status of an association of persons.

6. Both the contentions raised by the petitioners were rejected by the assessing authority. Assessment of the petitioner was framed in the status of an association of persons by changing the status from tenants-in-common. The sum of Rs. 91,977.19 was included and assessed in the status of an association of persons.

7. Aggrieved by the order of assessment, the petitioner filed an appeal before the first appellate authority u/s 32 of the Act which was dismissed on July 14, 1994.

8. The petitioner filed a further appeal before the Karnataka Appellate Tribunal, Mangalore (for short, "the Tribunal"), which was also dismissed on September 28, 1995. The Tribunal confirmed the orders passed by the authorities below. It was held that the status of tenants-in-common available u/s 3(3) having been deleted, the petitioner could not be treated as tenants-in-common. The petitioner had associated himself with three others in coming to a common purpose for cultivation and deriving income from coffee. Their common venture was an object for which they had associated to produce income. There being no bifurcation of plantation by metes and bounds representing individual ownership and deriving of income, there has been a continuation of the operations as in the previous years and hence there was no change in the status as such and the four persons who were tenants-in-common continued as an association of persons for common purposes. There was no distinction or change from the status in which they were assessed. Arguments regarding necessity for calling for fresh return raised by counsel for the petitioner was turned down by observing that the assessing authority had in its proposition notice made its intentions clear of

allocating a different status from the one declared in the return which was sufficient to meet the requirement of law. The finding regarding additional back pool payment to the current year's income was also upheld.

9. Counsel for the parties have been heard.

10. The word "person" has been given an inclusive definition u/s 2(1)(p) of the Act which reads as under :

" "person" means 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 recognised 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 Nambudri 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."

11. As the association of individuals was treated to be a person in view of the inclusive definition of the word "person", the association of individuals was treated to be one unit for the purposes of taxation, whereas under the status of tenants-in-common as is evident from a reading of Section 3(3) the assessment was on the income of each tenant-in-common treating each tenant to be a separate unit for the purpose of taxation. The incidence of tax on association of persons and tenants-in-common was thus different. The petitioner had filed its return before July 31, 1982. Section 3(3) was deleted by Act No. 14 of 1983 on December 1, 1983, retrospectively making it applicable to the previous year ending March 31, 1982. At the time when the petitioner filed its returns in the status of tenants-in-common, the same was perfectly in order and he could not have imagined that the law would be changed retrospectively. Once the law was changed retrospectively an opportunity in all fairness should have been granted to the petitioner to file a fresh return declaring the status in which he wanted himself to be subjected to. Thereafter, it was for the assessing authority to arrive at its own conclusion in the given facts and circumstances of the case. The earlier return filed by the petitioner because of the retrospective amendment of the law by Act No. 14 of 1983 could not be treated as a return filed as tenants-in-common. Without a declaration by the petitioner of its status by filing a fresh return, the authorities under the Act could not proceed to determine the status of the return as association of persons, specially so, because the incidence of tax on association of persons would be more as it is treated as a single unit, whereas in tenants-in-common the incidence of tax was on the individual assessee.

12. We do not agree with the involved reasoning adopted by the Tribunal to come to the conclusion that as the four persons who were tenants-in-common continued their operations as in the previous year and, therefore, there was no change in their status and as they could be treated and continued as an

association of persons for cultivation and deriving income from the same on the basis of their earlier returns. Further we do not agree with the Tribunal that there was no necessity for calling for a fresh return because the assessing authority had intimated the petitioner his intention of allocating different status from the one declared in the return and the same is sufficient to meet the requirement of law. In the given circumstances if this was taken to be an option for the petitioner to file a fresh return, then there was no difficulty in permitting the petitioner to file a fresh return when he had asked for the permission to do. In spite of request made by the assessee he was not permitted to file the fresh return, which amounts to denial of opportunity to file the fresh return in the changed circumstances because of the retrospective amendment of law by the Legislature at a later date. The status of the petitioner could not be changed unilaterally by converting the status of tenants-in-common to that of an association of persons.

13. For the reasons stated above, we set aside the order of the assessing authority, first appellate authority as well as that of the Tribunal. The assessee is permitted to file a fresh return within six weeks from today before the assessing authority which shall then decide the same in accordance with law. It was faintly contended before us by the respondent that limitation for filing the return having expired, the petitioner could not be allowed to file a fresh return. There is no fault of the petitioner. His case from the beginning is that he be given an option to file a fresh return and the proceedings were pending during all this time at various levels. While remanding the case, this court can issue directions permitting the petitioners to file a fresh return and it shall be taken to be a part of the proceedings which were set in motion by the petitioner by filing the tax return. Revision allowed. No costs.