
(1987) 04 MAD CK 0010
In the Madras High Court
Case No : Writ Petition No. 183 of 1981

Kothari (Madras) Ltd.

APPELLANT

Vs

Agricultural Income Tax Officer

RESPONDENT

Date of Decision : 16-04-1987

Acts Referred:

Tamil Nadu Agricultural Income Tax Act, 1955 — Section 36

Citation : (1988) 74 CTR 73 : (1989) 177 ITR 538 : (1987) 100 LW 605

Hon'ble Judges : S. Nainar Sundaram, J

Bench : Single Bench

Advocate : R. Gangadharan, for the Appellant; K. Bhaktavatsalam Addl. Govt. Pleader, for the Respondent

Judgement

S. Nainar Sundaram, J.—There was a regular order of assessment u/s 17(3) of the Tamil Nadu Agricultural Income Tax Act, 1955 (V of

1955) (hereinafter referred to as the Act), suffered by the petitioner at the hands of the respondent on April 18, 1977. That order of assessment

was rectified pursuant to the powers reserved for the respondent u/s 36(1) of the Act, on February 25, 1980. That was within the time prescribed.

By the impugned order dated December 11, 1980, the respondent exercised the power of rectification over the order passed on February 25,

1980. Section 36(1) of the Act is unambiguous in its terms when it states that the power of rectification is available to the Agricultural Income Tax

Officer over an assessment order and that too within three years from the date of such order. We are not concerned here with a refund order. The

order passed on February 25, 1980. Is certainly not an order of assessment and it would be stretching the explicit language of the statutory

provisions unwarrantedly to say that an order of assessment includes also an

order of rectification. This line of thinking, which weighed with the respondent, when he rejected the objection raised by the petitioner in this behalf, has got to be discountenanced. The scope of a fiscal statute cannot be enlarged by creating a fiction, it is an indisputable proposition that fiscal statute must be interpreted for the benefit of the subject rather than the State. Furthermore, fiscal statutes must be construed strictly. And the court would not be justified in straining the language and reading something into it in order to find and spell out a power not expressly conferred thereunder on the authority, the expression used in section 36(1) is "assessment order"; and it is clear and unequivocal and the court cannot expand it to include within it an order of rectification. Admittedly, on the date of the impugned order. The period prescribed for rectifying the assessment order had lapsed. Even if it is a case of ambiguity, it has got to be resolved only in favour of the subject. If so done, I have to hold that the respondent had acted incompetently and without jurisdiction in invoking the powers u/s 36(1) of the Act to further rectify the order passed on February 25, 1980. In this view, the writ petition is allowed. No costs.

2. Petition allowed.