
(1967) 03 MAD CK 0011

In the Madras High Court

Case No : Tax Cases No's. 94 to 97 of 1964 (Revisions Noa. 53 to 56)

K.R. Kader Batcha

APPELLANT

Vs

State of Madras

RESPONDENT

Date of Decision : 30-03-1967

Acts Referred:

Citation : (1968) 68 ITR 738 : (1968) 81 LW 70

Judgement

1. These tax cases involve interpretation of section 9(1) of the Madras Agricultural Income Tax Act, 1955. The petitioner, who is the father of two minor sons, was charged to tax on a total agricultural income for the years 1958 to 1962, from lands of the total extent of 81 acres 87 cents., wet and dry. Of this, 22 acres 10 cents were settled by him on his wife and children on May 23, 1955. An extent of 33 acres 30 cents was purchased by four sale deeds, all dated April 13, 1953, in the names of his minor children represented by their mother and guardian. An extent of 13 acres 32 cents was purchased by the wife on April 13, 1953. There is no controversy that the consideration for the purchases proceeded from the father or the husband as the case may be. The revenue, as well as the Tribunal, overruled an argument of the father that the purchases, as also the settlement, involved no transfer by him of assets from which it could be said agricultural income was derived. The same point is reiterated before us.

2. In our opinion, the Tribunals conclusion is unassailable. As to the settlement in favour of the wife and children, it was of lands belonging to the assessee and would, therefore, fall within the ambit of section 9(1). In fact, earned counsel for the assessee did not, and quite properly, demur to

this. But his contention is that, so far as the purchases were concerned, inasmuch as the consideration therefore was provided by the assessee, it could not be said that the lands purchased were the assets remaining as the property of the settlor disponent within the meaning of section 9(1). The argument is also put in a slightly different manner. It is stated that agricultural income for purposes of the sub-section was not derived from the consideration provided for purchase of the lands and that unless such income could be said to have been derived from the assets remaining the property of the settlor or disponent, the income cannot be deemed to be the agricultural income of such settlor or disponent. In other words, what is urged is that lands as such were not transferred by the assessee to his wife or children which were purchased by them, though out of consideration provided by the assessee. The point really would turn on what is meant by "assets" in section 9(1). The intention of the sub-section, as we are inclined to think, is that, where there is a transfer of property by way of gift or otherwise, which, notwithstanding the transfer, can be regarded as remaining the property of the settlor or disponent or transferor, it will be counted for purposes of the sub-section as the property of the transferor and the income therefrom will be charged to tax at his hands. No doubt, the agricultural income should arise from the land transferred. But when the lands are purchased by the assessee, but in the names of his wife or children, with consideration proceeding from him, we fail to see how the lands are any the less assets remaining as his property. The consideration in that case takes the form of land which is still the asset of the transferor. Supposing he purchased the lands in his name first, with consideration belonging to him, and later he transferred the lands, there can be no question that income derived from such lands will be within the ambit of section 9(1). Equally, if instead of doing that, he achieves the purposes by straightaway purchasing the lands in the names of his wife and children by himself providing the consideration, we fail to see what difference would it make in substance. In our view, the Tribunal rightly took the view that the income derived from the lands purchased as well as the lands covered by the settlement properly went into the total agricultural income of the assessee.

3. The petitions are dismissed with cost, one set. Counsel fee Rs. 100.

4. Petitions dismissed.