
(1979) 02 KL CK 0020
In the High Court Of Kerala
Case No : O.P. No. 4302 of 1977

Krishna Bhat

APPELLANT

Vs

Agricultural Income Tax Officer

RESPONDENT

Date of Decision : 15-02-1979

Acts Referred:

Constitution of India, 1950 — Article 227
Kerala Agricultural Income Tax Act, 1950 — Section 60(2)

Citation : (1981) 130 ITR 894

Hon'ble Judges : Bhaskaran, J

Bench : Single Bench

Advocate : V.P. Kunikullaya, for the Appellant; Government Pleader, for the Respondent

Judgement

Bhaskaran, J.—The petitioner is an assessee to agricultural Income Tax on the file of the first respondent, the Agrl. ITO, Circle I, Kasaragod. Respondents Nos. 2 and 3, respectively, are the AAC, Agricultural Income- tax and Sales tax, Cannanore, and the Deputy Commissioner (Appeals), Agricultural Income Tax and Sales tax, Kozhikode. The prayer in the writ petition is for quashing Exs. P-5, P-6, P-7, P-8 and P-10 orders. Exhibits P-5, P-6 and P-7, respectively, are the three assessment orders passed by the first respondent against the petitioner for the assessment years 1971-72, 1972-73 and 1974-75. Exhibit P-8 is the common order dated March 29, 1975, passed by the second respondent, disposing of the appeals filed against Exs. P-5, P-6 and P-7 orders. Exhibit P-10 is the order passed by the 3rd respondent on August" 11, 1977, disposing of the revisions filed against Ex. P-8 order.

2. The facts relevant for the purpose of this writ petition could be briefly stated as follows : The petitioner and his six sons purchased certain properties as per document No. 1517/61, dated August 28, 1961, for a sum of Rs. 63,000. In the assessment orders for the years 1966-67, 1967-68 and 1968-69, the petitioner was assessed as an individual. Against the assessment orders the petitioner

preferred appeals which were disposed of by a common order dated May 30, 1973, a copy of which has been produced and marked in the writ petition as Ex. P-1. By Ex. P-1 order the second respondent set aside the assessment orders and remanded the matter to the first respondent directing him to conduct a detailed enquiry regarding the source of funds for the purchase of the property as per the document and to assign to the petitioner the correct status as per the Agrl. I.T. Act. The first respondent thereafter conducted a detailed enquiry and passed Exs. P-2 to P-4 revised assessment orders for the assessment years 1966-67, 1967-68 and 1968-69, whereunder the petitioner and his children were held to be tenants-in-common, each entitled to a 1/7th share in the properties acquired under the deed of 1961. Assessment orders for the assessment years 1969-70 and 1970-71, however, were passed by the first respondent treating the petitioner as an individual. These assessment orders were taken up in appeal, and from the averments made in para. 4 of the counter-affidavit, it is seen that the second respondent has remanded the matter to the first respondent by his order dated September 5, 1977, It was when the appeals against the assessment orders for the assessment years 1969-70 and 1970-71 were pending, that assessment orders for the assessment years 1971-72, 1972-73 and 1974-75 were passed by the first respondent as per Exs. P-5 to P-7 treating the petitioner and his children as an association of individuals. Against these orders appeals were preferred by the petitioner, and they were disposed of by the second respondent by Ex. P-8 order dated March 29, 1976, holding that the petitioner was to be treated as an individual and the income derived by his minor children should be added to his income and assessed as in his hands. Against this order, the petitioner preferred revisions before the third respondent who disposed of them by Ex. P-10 order dated August 11, 1977, confirming Ex. P-8 order passed by the second respondent. In this writ petition, as has already been stated, the challenge is directed against Exs. P-5, P-6, P-7, P-8 and P-10 orders.

3. Sri U. P. Kunikullaya, counsel for the petitioner, submitted that the impugned orders have been passed by the respondents without any legal basis whatsoever and in violation of settled principles regarding the manner in which the status of the assessee has to be assigned. His contention is that in pursuance of the remand order, Ex. P-1, passed by the second respondent, the first respondent, while passing Exs. P-2 to P-4 orders and assigning the status of tenants-in-common to the parties, had considered all aspects of the matter in depth and had also conducted proper investigation including enquiry in the locality. His argument, therefore, is that though the principles of *res judicata* may not strictly apply to tax proceedings, the Agrl. ITO is not entitled to capriciously decide the status of the assessee departing from the position accepted during the previous years unless there is additional material warranting such a departure. Reliance was placed on the Full Bench decision of the Madras High Court in *T. M. M. Sankaralinga Nadar and Brothers v. CIT* AIR 1930 Mad 209 , wherein at page 214 (of AIR), it has been stated as follows :

"It seems to us that where Income Tax officials have after enquiry proceeded to

assess the assessee on a certain basis, though they may be entitled to reopen the enquiry they cannot arbitrarily change the assessment simply on the ground that the succeeding officer does not agree with the preceding officer's finding. The position is just like the position of any two parties who have proceeded on a certain basis in their relations. It may be open to one party to reopen the matter. But if he wants to do so, there should be facts which would entitle him to do it. If fresh facts come to light which on an investigation would entitle the Income Tax Officer to come to a different conclusion from that of his predecessor, we think he is entitled to reopen the question. But if there are no fresh facts, it is difficult to see how he can arbitrarily go behind the finding of his predecessor. The same principles of natural justice or judicial dealing which courts impose upon Income Tax Officers would prevent them capriciously setting aside the orders of their predecessors based on enquiry."

4. This decision of the Full Bench of the Madras High Court has been followed in a recent Division Bench ruling of the Madras High Court in Commissioner of Income Tax, Central Vs. L.G. Ramamurthi and Others, . The counsel has also cited the decision given by the Division Bench of the Bombay High Court in H.A. Shah and Co. Vs. Commissioner of Income Tax and Excess Profits Tax, Bombay City, , wherein it has been observed as follows (p. 625);

" Nor are we satisfied that in order to enable the second Tribunal to depart from the finding of the first Tribunal it is essential that there must be some fresh facts which must be placed before the second Tribunal which were not placed before the first Tribunal. If the first Tribunal failed to take into consideration material facts, facts which had a considerable bearing upon the ultimate decision, and if the second Tribunal was satisfied that the decision was arrived at because of the failure to take into consideration those material facts and that if these material facts had been taken into consideration the decision would have been different, then the second Tribunal would be in the same position to revise the earlier decision as if fresh facts had been placed before it. On principle there is not much difference between fresh facts being placed before the second and the second Tribunal taking into consideration certain material facts which the first Tribunal failed to take into consideration."

5. The rulings given by the Full Bench of the Madras High Court and the Division Bench of the Bombay High Court appear to have got the approval of the Supreme Court though not expressly, as could be gathered from the following passage occurring in The New Jahangir Vakil Mills Co., Ltd. Bhavnagar Vs. The Commissioner of Income Tax, Bombay North, Kutch and Saurashtra, Ahmedabad, :

" The extent to which a decision given by an Income Tax Officer for one assessment year affects or binds a decision for another year has been considered by courts several times and speaking generally it may be stated that the doctrine of res judicata or estoppel by record does not apply to such decisions; in some cases it has been held that though the Income Tax Officer is not bound by the

rule of res judicata or estoppel by record, he can reopen a question previously decided only if fresh facts come to light or if the earlier decision was rendered without taking into consideration material evidence, etc."

6. Sri Kunikullaya also relied on the decisions of the Nagpur High Court in (1952) 22 ITR 208 and of the Punjab and Haryana High Court in Commissioner of Income Tax Vs. Dalmia Dadri Cement Ltd.,

7. The principle that emerges on a consideration of the decisions which have a bearing on the question is that, while the doctrine of res judicata or estoppel by record does not apply to assessment proceedings under the I.T. Act, or for that matter to the Agrl. I.T. Act or the Sales Tax Act, the taxing authority would be entitled to reopen the matter or to deviate from the basis on which the assessment was concluded during the previous years, if there are fresh materials on record warranting the deviation, or the materials or record were not considered by the officer while making assessments for the previous years, and if those materials also were considered, the assessing officer would have come to a different conclusion. In this case, Exs. P-2 to P-4 revised assessment orders for the years 1966-67, 1967-68 and 1968-69 were passed assigning the status of tenants-in-common to the petitioner and his sons after due enquiry including local investigation and giving cogent reasons. Exhibits P-2 to P-4 assessment orders were allowed to become final. Thereafter, in the absence of any additional material on record, or the assessing authority having a case that the entire materials or certain materials available on record which have a bearing on the conclusion that has to be reached have not been considered during the previous years, the assessing authority is not entitled to assign a new status to the assessee contrary to what has been assigned after due contest and enquiry in the previous years under Exs. P-2 to P-4 orders for the assessment years 1966-67, 1967-68 and 1968-69. I, therefore, hold that the decision taken by respondents Nos. 1 to 3 in Exs. P-5, P-6, P-7, P-8 and P-10 orders, assigning a status different from what was assigned to the assessee in Exs. P-3 and P-4 orders, is not warranted and, therefore, those orders are liable to be quashed.

8. The Government Pleader has raised a contention that the petitioner, if aggrieved by Ex. P-10 order of the 3rd respondent, should have sought a reference of the question to this court u/s 60 of the Agrl. I.T. Act, 1950. Sri Kunikullaya hastened to point out that the second proviso to Section 34(1) of the Act expressly provides that an order passed by the Commissioner declining to interfere shall not be deemed to be an order prejudicial to the assessee. Section 60(2) of the Act provides ;

" Within sixty days of the date on which he is served with a notice of an order u/s 34 enhancing an assessment or otherwise prejudicial to him, the assessee in respect of whom the order was passed may, by application,.....require the Commissioner to refer to the High Court any question of law arising out of such order....."

9. True it is that the third respondent did not allow the revision or grant any relief ; all the same, as Sri Kunikullaya would put it, it has to be noticed that Ex. P-10 order cannot be characterised as one prejudicial to the assessee, as no enhancement of the tax was ordered by it. Exhibit P-10 being an order passed by the third respondent, declining to interfere with Exs. P-5 to P-8 orders passed by the first and second respondents, cannot in terms of the second proviso to Section 34 of the Act be called an order prejudicial to the assessee to entitle him to invoke the provisions of Section 60(2) of the Act to require the third respondent to refer the question of law to this court. I find there is force in the contention raised by the counsel for the petitioner, and also find support in the Division Bench ruling of this court in Mrs. Parvathy Sankaran and Others Vs. Commissioner of Income Tax, , wherein construing the provisions of Section 109(2) and the proviso to Section 43 of the Cochin I.T. Act, it has been held that as a result of the proviso to s, 43, when the Commissioner has dismissed the application for revision, the assessee has no right to obtain a reference u/s 109(2) of the Cochin Act. On a parity of reasoning, this ruling squarely applies to the provisions contained in Section 60(2) of the Kerala Agrl. I.T. Act also. I, therefore, reject the contention of the Government Pleader that the petitioner has an effective alternate remedy and, therefore, this court should not interfere in exercise of the jurisdiction under art. 226 of the Constitution.

10. For the foregoing reasons, the writ petition is allowed. Exhibits P-5, P-6 and P-7 orders passed by the first respondent, Ex. P-8 order passed by the second respondent, and Ex. P-10 order passed by the third respondent are quashed, and the first respondent is directed to complete the assessments for the relevant years, assigning to the petitioner the same status as was assigned to him in Exs. P-2 to P-4 orders.

11. The writ petition is allowed as above. There will be no order as to costs.