
(1992) 07 MAD CK 0038

In the Madras High Court

Case No : Tax Case (Revision) No. 29 of 1984

K.S. Mothilal

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 29-07-1992

Acts Referred:

Tamil Nadu Agricultural Income Tax Act, 1955 — Section 34

Citation : (1992) 07 MAD CK 0038

Hon'ble Judges : Raju, J;Bakthavatsalam, J

Bench : Division Bench

Advocate : S.P. Subramanian, for the Appellant; Chitra Venkataraman, Additional Government Pleader, for the Respondent

Judgement

Raju, J.

The above revision has been filed against the order of the Commissioner of Agricultural Income Tax dated 15.11.1983, in exercise of the suo motu powers of revision under S.34 of the Tamil Nadu Agricultural Income Tax Act, 1955, (hereinafter referred to as "the Act") Thereunder the Commissioner has set aside the assessment order passed by the Agricultural income Tax Officer, Coonoor dated 20.6.1980 under S.17(3) of the Act. One K. Simrathmull, a resident of Uthagamandalam, was an assessee on the file of Agricultural Income Tax Officer, Coonoor. There was a partition in the family among the deceased and his two sons when he was alive and it is claimed that the partition has also been accepted by the Agricultural Income Tax Officer in his proceedings dated 9.2.1962 resulting in the deceased father and his sons becoming separate. The father viz. K. Simrathmull died on 28.12.1979. The elder son by name Mothilal appears to have filed this return in respect of the holdings of the deceased for the assessment year 1980-81 and separate assessments have been made in the names of the deceased father and two sons in respect of their respective holdings treating them as three different units for assessment separately in their own names. Of course the sons have been assessed all along in their capacity as

Hindu Undivided Family (hereinafter referred to as "H.U.F.") since the properties were joint family properties in so far as their shares obtained in the earlier partition are concerned, vis-a-vis their heirs. The Agricultural Income Tax Officer has chosen to pass three orders on 20.6.1980 one assessing the deceased K. Simrathmull in his capacity as H.U.F. and two sons separately in respect of their holdings in their capacity as H.U.F. by different orders.

2. While matters stood thus, the Commissioner of Agricultural Income Tax issued notices under the Act proposing to set aside the three orders passed by the Agricultural Income Tax Officer mainly on the grounds (a) that no order could have been validly passed in the name of the deceased K. Simrathmull, the father, for the assessment year 1980-81 in respect of his holdings and that (b) the holdings of the father should be assessed clubbing the same with the sons as H.U.F. The eldest son K.S. Mothilal appears to have filed objections objecting to the proposed move and contending that after the death of the father, the income from the estate of the father could not be clubbed and assessed in the capacity of H.U.F. in the hands of the sons, particularly when during the lifetime of the father, the sons got separated and were themselves different entities in respect of their holdings. The Commissioner over-ruled the objections and confirmed the proposals and thereby ordered the clubbing of the properties of the deceased father with those of Mothilal and the said Mothilal should be brought to assessment in his capacity as the Kartha of the deceased family." On that view, the orders of the Agricultural Income Tax Officer were set aside and the matter was remitted for fresh disposal. Of course one of the grounds on which the Commissioner interfered with the order is that no order of assessment could have been passed in the name of a dead person in so far as it relates to the assessment in favour of Simrathmull, the father.

3. Mr. S.P. Subramaniam, the Learned Counsel appearing for the petitioner invited our attention to the decisions reported in *The Additional Commissioner of Income tax, Madras-I Vs. P.L. Karuppan Chettiar*, and in *Commissioner of Wealth Tax, Kanpur and Others Vs. Chander Sen and Others*, and contended that the properties inherited by a person from his divided father constituted his separate and individual properties and not the properties of the joint family constituting of himself, his wife, sons and daughters and that such income was not assessable in the hands of the assessee son in his capacity as H.U.F. The learned Additional Government Pleader (Taxes) in our view, cannot effectively meet this challenge raised on the basis of a well accepted principle of law and there can be no two opinions on the same. We have been taken through the order of the Commissioner of Agricultural Income Tax. It is not only cryptic in its reasoning but also unintelligible as the principles which the Commissioner purports to follow or apply to the case. Factually, there (sic) dispute before us that even in the year 1962 there had been a partition in the said family among the father and his two sons and the three members, the father and his two sons, have become distinct and separate entities in respect of their holdings as H.U.F. families. While that be the position, in the light of the well accepted principle of law that the assets or

income if any, derived by any such persons by way of succession on account of the death of the father who was already divided could not become the joint family property in the hands of the sons. The property inherited from the deceased father would be the separate property of the son as an individual and cannot be attributed with the character of a joint family holding in the hands of the son taken together with his respective wife, sons and daughter. This principle, as rightly contended by the Learned Counsel for the petitioner has been recognised by several judgments of this Court as well as by the apex court, including the two decisions referred to supra. Though we are of the view that the order passed in favour of the deceased K. Simrathmull, the father, could have been properly set aside on the ground that it has been passed on a dead person, the directions of the commissioner to assess the property of the deceased father in the hands of sons treating them as joint family and treating also the eldest son also as karta cannot be sustained on any principle whatsoever, known to Hindu Law, or the principle of taxation. Consequently, the order of the Commissioner is hereby set aside. So far as the orders already passed in favour of the sons separately on 20.6.1980 in respect of their holdings in respect of their capacities as H.U.F. they will stand. So far as the order passed on 20.6.1980 in the name of the deceased father K. Simrathmull is concerned it cannot be allowed to stand for the reason that it has been passed on a dead person and the income in respect of the holding of the deceased father have to be separately assessed afresh in accordance with law, after giving notice to all the heirs of the deceased father. To the extent indicated above, the Tax Case (Revision) stands partly allowed. However, there will be no order as to costs.