
(1980) 08 KAR CK 0003
In the Karnataka High Court
Case No : WP 1610/76

Madwa Ramachandra Mutalik

APPELLANT

Vs

Agri. Ito., Bijapur

RESPONDENT

Date of Decision : 08-08-1980

Acts Referred:

Citation : (1980) 100 KarLJ 62

Hon'ble Judges : M. K. Srinivasa Iyengar, J

Judgement

1. The petitioner who was a kartha of an undivided Hindu Family consisting of himself and his five sons has challenged a proposition notice issued S. 19(3) of the Karnataka Agricultural Income-Tax Act, 1957 (hereinafter referred to as the Act) dated 9-2-1976 issued by the Agricultural Income-tax Officer, Bijapur, in relation to the assessment for the assessment year 1973-74. The said notice has been produced as Ex-"E" with the writ petition.

2. There was a partition between the members of the undivided Hindu Family on 12-6-1972. An order had been made under S. 30 of the Act on 22-4-1974 accepting and recording that such a partition had taken place. The parties to the partition had been individually assessed by the Agricultural Income-tax Officer under the provisions of the Act, but, for the period upto the date of partition, no order of assessment had been passed. In those circumstances, the Agricultural Income-tax Officer issued a notice to the petitioner calling upon him to produce account books of the family in order to take action under S. 37 of the Act, i.e., to take proceedings for rectification of a mistake apparent from the record. There were two such notices one dated 6-8-1974 (Ex-"A") and another dated 11-2-1975. The petitioner challenged the notice dated 11-2-1975 before this Court in WP No. 1035 of 1975. In the statement of objections filed on behalf of the Agricultural Income-Tax Officer, it had been admitted that in so far as the undivided Family was concerned, no order of assessment had been made in respect of the income derived by it until the date of partition in relation to the assessment year 1973-74. This Court quashed that notice observing that S. 37 of

the Act would only apply for purposes of rectifying errors apparent on record and not purposes of bringing to tax the income that had escaped assessment and accordingly, the action proposed to be taken by the Agricultural Income-tax Officer under S. 37 of the Act was untenable. The judgment of this Court was made on 22-8-1975. Subsequent thereto, it transpires that the Agricultural Income-Tax Officer issued a notice under S. 36 of the Act and directed the petitioner to file a return and the petitioner filed a nil return. This was on the basis that no income had been received by the undivided Hindu Family between 1-4-1972 and 12-6-1972, the date of partition among the members of the family. It appears that the Agricultural Income-tax Officer discussed the matter with the petitioner as well as his representative more than once and then caused the issue of the notice impugned in this writ petition. In the notice itself the substance of the discussion that had taken place and the contentions put forth on behalf of the petitioner were mentioned. It has been admitted that there was a partition among the members of the family on 12-6-1972 and the harvesting from the agricultural lands had been made from October 1972 to February 1973 after the partition was effected. The agricultural Income-tax Officer expressed himself that he was not prepared to accept the contentions put forth on behalf of the petitioner and the final portion of the notice is as follows:

"Therefore, though the partition has taken place on 12-6-1972 and though the harvest has been made from October 1972 to February 1973 after partition is effected, it is proposed to hold the income of you and your five sons at Rs. 2,55,237. You also stated at the time of hearing that you have no accounts for expenditure. Therefore to the best of my judgment it is proposed to allow 3rd of the gross i.e., Rupees 85,237 towards cultivation expenses and determine the income of the H.U.F. as if not divided at Rs. 1,70,000. You and your five sons have harvested 36 acres of sugarcane and the expenses proposed to be allowed will be more than Rs. 2,000 per acre which is not unreasonable.

You are required to show cause on 23-2-1976 at my office at Bijapur as to why I should not proceed to assess on the income of Rs. 1,70,000."

3. The view taken by the Agricultural Income-tax Officer that notwithstanding the partition having taken place on 12-6-1972 and no income as such having been derived by the undivided Hindu family, it was nevertheless liable to pay agricultural income-tax in respect of the income for the entire previous year i.e., even for the period subsequent to the date of partition, was wholly untenable and is opposed to the provisions of S. 30(2) of the Act. S. 30 of the Act is similar to S. 25A of the Indian Income-tax Act, 1922. That provision was introduced by way of an amendment in order to remove a lacuna in the enactment. An undivided Hindu Family is treated as a unit for assessment and if at the time of making an assessment, the family has become divided, there would not be an undivided family as a unit on which an assessment could be made. Therefore, a specific provision was introduced in order to enable the Income-tax Officer to make an assessment on an undivided family notwithstanding that the members

had become divided before an assessment was made. The income to be assessed would be income of the undivided Hindu Family. After a division among the members of the family, the receipts cannot be termed as the income of the undivided family as such. The assessment that could be made on the undivided family, even though it was divided at the time of making the assessment, is in respect of the income derived or accrued to the undivided Hindu Family as such, i.e., the income derived upto the date of division and that is to be assessed in the hands of the undivided Hindu Family. S. 30 of the Act being in similar terms, its purpose is also the same. After stating how the assessment of the total agricultural income received by or on behalf of the family is to be made, the proviso mentioned as follows:

"Provided that all the members and groups of members whose family, branch, tarwad or tavazi property has been partitioned or divided for maintenance shall be liable jointly and severally for the tax on the total agricultural income received by or on behalf of the family, branch, tarwad or tavazhi as such up to the date of the partition.

The closing words of this proviso make it abundantly clear that the assessment that could be made is only in respect of the income derived upto the date of partition. It is also pertinent to point out that at the time when the earlier writ petition was disposed of the matter had been clarified. It had been admitted that no assessment as such in respect of any income derived by the family upto "the date of partition had been made and the purpose of the notice issued under S. 37 of the Act was only in order to remedy the lapse. In an earlier portion of the proposition notice while referring to the writ petition, it was mentioned-"The High Court in WP. 1035/75 have quashed the rectification notice dated 11-2-75 by their order dated 22-8-75 leaving the liberty to the undersigned to assess you with the status of H.U.F. till the date of partition, i.e., 12-6-72".

4. In the face of these undisputed facts, the proposition put forth finally to bring to tax the income of the whole of the previous year as if the family was undivided was wholly untenable. The interpretation put by the Agricultural Income-tax Officer on the provision of S. 30 of the Act is clearly wrong and the stand sought to be taken is contrary to the one taken at the time of the earlier writ petition.

5. In view of the admitted facts that the harvesting was only several months subsequent to the partition, and there being no other material on record to show that the undivided Hindu Family was in receipt of any income from the agricultural lands upto the date of partition, the proposition notice (Ext. "E") is manifestly illegal. Accordingly, it is liable to be quashed and is hereby quashed. The petitioner will have his costs in this petition. Advocate's fee is Rs. 250.