
(1997) 09 MAD CK 0074

In the Madras High Court

Case No : Tax Case No. 260 of 1990 (Revision No. 109 of 1990)

M.S.P. Rajes

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 26-09-1997

Acts Referred:

Income Tax Act, 1961 — Section 28

Citation : (1999) 240 ITR 214

Hon'ble Judges : N.V. Balasubramanian, J;Janarthanam, J

Bench : Division Bench

Advocate : Deokinandan, for the Appellant; K.M.L. Majele, for the Respondent

Judgement

Janarthanam, J.—Stanmore Estate, Yercaud, it is said, is held by two persons, Thiru M. S. P. Rajes and Thirumathi R. Bhanumathi Rajah,

the former owning 9/10th share and the latter owning the remaining 1/10th share in the said estate.

2. The agricultural income of the said estate had been assessed to tax for the assessment year 1981-82 by the Agricultural Income Tax Officer,

Yercaud, in proportion to the shares they held, that is to say, 9/10ths share of income from the estate had been treated as income of Thiru M. S. P.

Rajes and the remaining 1/10th share of income has been treated as income of the said Bhanumathi Rajah for the assessment year, treating them as

tenants-in-common.

3. It appears, one of the co-owners, feeling aggrieved by the order so passed preferred an appeal before the Assistant Commissioner of

Agricultural Income Tax, Salem, who in his proceedings A.I.T.A. No. 15 of 1982, dated July 23, 1982, set aside the assessment on the sole

ground that the assessment made in the status of tenants-in-common is bad in law and remanded the matter for fresh disposal.

4. Subsequent to the remand, the Agricultural Income Tax Officer, Yercaud, in his proceedings in GIR No. 48/81-82/Yed, dated November 11,

1982, held them to be an association of persons and directed the tax to be collected holding them as such.

5. Aggrieved by the order so passed, one of the co-owners, namely, Bhanumathi Rajah, filed an appeal before the Assistant Commissioner of

Agricultural Income Tax, Salem, who, in his proceedings A.I.T.A. No. 7 of 1983, dated July 50, 1983, allowed the appeal and set aside the

orders of the Agricultural Income Tax Officer, Yercaud, dated November 11, 1982, and remitted the case for fresh disposal treating the appellant

as tenants-in-common according to law.

6. The Commissioner of Agricultural Income Tax, Chepauk, Madras-5, in his suo motu proceedings u/s 34 of the Tamil Nadu Agricultural Income

Tax Act, 1955 (Tamil Nadu Act No. V of 1955-for short ""the Act""), in S.M.R.P. No. A1/7 of 1986, dated June 1, 1988, set aside the order of

the Assistant Commissioner of Agricultural Income Tax Officer, Salem, dated July 30, 1983, and passed orders to treat the co-owners as an

association of persons and levied tax accordingly, giving rise to the present action.

7. Arguments of Mr. T. Srinivasamoorthy, learned counsel appearing for the assessee, and Mr. K. Elango, learned Government Advocate (Taxes)

representing the Revenue, were heard.

8. Sub-section (1) of section 3 of the Act is, relatable to charge of agricultural Income Tax on a ""person"". The said sub-section prescribes :

Agricultural Income Tax at the rate or rates specified in Part I of the Schedule to this Act shall be charged for each financial year commencing

from April 1, 1955, in accordance with and subject to the provisions of this Act, on the total agricultural income of the previous year of every

person.

9. Sub-section (3) of section 3 of the Act deals with the charge of agricultural Income Tax in the case of persons holding property as tenants-in-

common. The said sub-section prescribes :

In the case of persons holding property as tenants-in-common and deriving

agricultural income, the tax shall be assessed at the rate applicable to the agricultural income of each tenant-in-common.

10. On the face of the express and explicit provisions as contained in the Act, we are rather puzzled by the statement of the Commissioner of

Agricultural Income Tax in his suo motu revision proceedings that there is no provision at all in the Act for, charging agricultural income of persons

holding property as tenants-in-common. We are sorry to state that a Commissioner of Agricultural Income Tax is rather oblivious of such a

provision available in black and white in the said Act. According to sub-section (3) of section 3 of the Act, as had already been indicated, in the

case of persons holding property as tenants-in-common and deriving agricultural income, the tax shall be assessed at the rate applicable to the

agricultural income of each tenant-in-common.

11. On the face of such a provision, no authority is needed for treating the income of Thiru M. S. P. Rajes and Thirumathi Bhanumathi Rajah to be

assessed at the rate applicable to the agricultural income of each of them in Stanmore Estate. If any authority is needed for the purpose, we may

refer to the case of State of madras Vs. VR. M. SM. Karuppan Chettiar and Others, , wherein, a Division Bench of this court said (headnote) :

When tenants-in-common of a property divide the income in the ratio of their definite shares without a division of the corpus by metes and

bounds, they cannot be said to have earned their respective income by a joint endeavour. A joint management of the undivided property held in

shares either by one of the sharers or by a duly appointed attorney would not constitute them as "association of individuals".

12. In view of what has been stated above, we have no doubt in our mind that as per the salient provisions adumbrated in sub-section (3) of

section 3 of the Act, Thiru M. S. P. Rajes owning 9/10ths share and Thirumathi Bhanumathi Rajah owning the remaining 1/10th share in Stanmore

Estate, Yercaud, have to be assessed as tenants-in-common and, therefore, the orders passed by the Commissioner of Agricultural Income Tax in

suo motu revision proceedings are not sustainable and they deserve to be set aside.

13. In fine, this tax case (revision) is allowed by setting aside the orders passed in suo moto revision proceedings by the Commissioner of

Agricultural Income Tax, Madras. The authorities below are directed to treat Thiru M. S. P. Rajes and Thirumathi Bhanumathi Rajah as tenants-in-

common and levy tax in respect of the relevant assessment year in question, according to the salient provisions adumbrated in sub-section (3) of

section 3 of the Act. No costs.