

(1960) 11 MAD CK 0018

In the Madras High Court

Case No : Tax Revision Case No. 111 of 1957

N. K. Raju

APPELLANT

Vs

State of Madras

RESPONDENT

Date of Decision : 01-11-1960

Acts Referred:

Income Tax Act, 1961 — Section 65(1)

Citation : (1969) 71 ITR 748

Hon'ble Judges : Rajagopalan, J

Bench : Single Bench

Judgement

Rajagopalan, J.—The petitioner N. K. Raju, had five sons, of whom only one Lingaraj was an adult in 1955. Deveammal is the wife of N.

K. Raju. The family owned tea and coffee plantations. The agricultural income from plantations was made liable to tax under Madras Act V of

1955 in the assessment year 1955-56, which commenced on April 1, 1955. In the course of these assessment proceedings Raju claimed that the

tea and coffee plantations had been divided between himself and his sons, a portion also being set aside for his wife, and that each of them should

be assessed separately on the income that had been derived from the lands allotted to his or her share. On August 8, 1956, the Agricultural

Income tax Officer passed an order u/s 29(1) of the Act, an order which apparently the assessee sought. The Agricultural Income Tax Officer

recorded that he was satisfied that the joint family properties had been partitioned among the assessee in definite shares, that is, between Raju and

his five sons. This was followed up by individual orders of assessment with reference to each of the members of the family. Those orders

themselves were u/s 65(1) of the Act. In the proceedings before the Agricultural

Income Tax Officer, the claim that the properties had been divided between Raju and his sons was based upon a document, which was styled a settlement deed, executed by Raju on March 9, 1955, the scope of which we shall presently examine.

2. In exercise of the revisional powers vested in the Commissioner, he examined the correctness of the orders of the Agricultural Income Tax

Officer and he passed the order dated July 22, 1957. The Commissioner set aside the order u/s 29(1) of the Act as well as the orders of

assessment and directed a reassessment, virtually on the footing that all the properties and the income therefore belonged to the joint family, of

which Raju was the Karta. The Commissioner held that the deed of settlement dated March 9, 1955, in which a power of revocation was

expressly reserved in favour of the settlor, Raju, came within the scope of section 9 of the Act, and that, despite that document, the entire income

from the properties should be taxed in the hands of the settlor, Raju. The Commissioner also recorded a finding that the partition claimed to have

been effected even in 1951, that is, even antecedent to the execution of the document dated March 9, 1955, was sham and fictitious and that it

was meant to evade paying agricultural Income Tax.

3. It is the correctness of the order of the Commissioner dated July 22, 1957, that had been challenged in this petition to revise that order.

4. Though the assesseees themselves apparently sought the order u/s 29(1) of the Act in the assessment proceedings before the Agricultural Income

Tax Officer, it should be clear that section 29(1) could have no application at all. Section 29(1) could be invoked by persons of a family who had

been assessed as a Hindu undivided family to agricultural Income Tax. The proceedings related to the first of the assessment years 1955-56. There

had been no assessment to Income Tax prior to 1955-56. We shall illustrate our point by an example. If there had been a division in status whether

or not there had been an actual division of the properties between the divided coparceners, long antecedent to the previous year corresponding to

the assessment year 1955-56, the income would have lawfully vested in each of the divided coparceners when the Act came into force in the

assessment year 1955-56. Each of the quondam coparceners would be entitled to have his income assessed separately, and there would be no

need at all for an order u/s 29(1). In fact, section 29(1) would not apply. In the present case, the claim ultimately was that there had been a partition between Raju and his sons in 1951, which partition was subsequently evidenced by the document of 1955, a document styled a deed of settlement. The Commissioner, as we have already pointed out, was of the view that the partition of 1951 pleaded by Raju was a sham transaction. If the partition itself was sham, a document to evidence that sham transaction could have no higher value; and if there was no partition, obviously there can be no question of anybody invoking section 29(1). Therefore, even independent of the fact that the partition was long before the Act came into force, this could not be a case where section 29(1) could have been invoked or applied. The Commissioner was no doubt right in setting aside the order of the Agricultural Income Tax Officer passed u/s 29(1), but for reasons different from those recorded by him.

5. The real question at issue is, whether Raju and his sons were entitled to have their agricultural income separately assessed, or whether the income of all was liable to be assessed in the hands of Raju as the Karta of a Hindu undivided family.

6. The Commissioner took the view that the document dated March 9, 1955, came within the scope of section 9 of the Act. If the claim of the petitioner was that there had been a real partition in 1951, followed even then by an actual division long round of the tea and coffee plantations, which partition was evidenced subsequently by the deed dated March 9, 1955, it would be a case of disposition of property by a settlement

within the scope of section 9 of the Act. It is not the nomenclature given to the document that really concluded the real nature of the transaction. In

the document dated March 9, 1955, there was no express reference to any division in status or to any partition between the members of the family

having been already effected. Still, it was open to the petitioner to prove that, despite the apparent tenor of the document dated March 9, 1955,

there had been a partition even in 1951, and that the deed of settlement really gave effect to a transaction, completed in 1951, completely by actual

division of the properties. In the document dated March 9, 1955, the claim was that the properties dealt with had been partly inherited by Raju and

partly acquired by him. In the proceedings before the Agricultural Income Tax Officer, the claim was that part of the properties had been acquired

from out of the income from the ancestral properties. In effect the claim was that all the properties were ancestral properties, either inherited from his father or acquired by him and constituted an accretion to the ancestral property.

7. In the statement that Raju filed before the Commissioner the claim was that all the properties in question were ancestral properties because they had been acquired even during the time of the grandfather of Raju. Several documents to substantiate this last claim were put forward. Whether all the properties dealt with under the document dated March 9, 1955, were ancestral properties or not, was a point for investigation. If all of them were ancestral properties, it would certainly be consistent with the claim put forward by Raju that there had been a partition between himself and his sons, with a provision for Raju's wife for her lifetime. That would be consistent with a division in status or it would possibly be that without a division in status there was a partial partition of joint family properties. In either case, if there had been such a partition before the commencement of the previous year in relation to the assessment year 1955-56, the income from the properties so partitioned and allotted to the several members of the family could not be clubbed together for purposes of taxation and treated as income of the joint family. The question will have to be investigated afresh and in accordance with all the materials placed before the Commissioner.

8. We have referred to the finding of the Commissioner that the partition of 1951 was a sham transaction. How the transaction could have been brought about in 1951 with a view to evade a tax not imposed then, it is a little difficult to understand. Apart from that, really relevant evidence does not appear to have been taken into consideration by the Commissioner in coming to the conclusion that the partition of 1951 was a sham transaction. It must be remembered that it was an oral transaction.

9. According to the petitioner, the document to evidence that was brought about on March 9, 1955, though it was styled a deed of settlement. The deed of settlement was accepted by the Agricultural Income Tax Officer as a deed of partition. The Commissioner referred to the statement of the karnam that Raju continued to pay the assessment on all the lands and that there had been no sub-division or separate registry up to 1956. But the

Commissioner appears to have overlooked what the Agricultural Income Tax Officer recorded that he made enquiries in the village and was

satisfied that Raju and his sons were in separate possession and enjoyment of the properties allotted to them in the partition of 1951. Further, in the

statement Raju filed before the commissioner, Raju referred to the proceedings to assess him and his sons to sales tax. An order of the

Commercial Tax Officer was produced before us; apparently it was produced before the Commissioner also which showed that the Commercial

Tax Officer accepted the partition of 1951 and held that the members of the family were individually liable to be assessed on the sale of tea grown

on the lands that had been allowed to their shares. There was thus evidence that the partition of 1951 had been acted upon and recognised by the

commercial tax department. What conclusion the Commissioner should come to on the factum of partition of 1951 will be for him to decide in the

first instance. Only it will have to be based on the entire material placed before him. He certainly did not consider the entire material when he

records his conclusion that it was a sham transaction brought about to evade liability to pay agricultural Income Tax.

10. The order of the Commissioner dated July 22, 1957, is set aside and the proceedings are remanded to the Commissioner for disposal afresh.

All the questions at issue will have to be gone into. If necessary, the Commissioner will give an opportunity both to the assessee and to the

department to place further material on record, to decide the question at issue. Once again, we have to emphasis that it is not the name that

decides the real nature of the transaction, which the document dated March 9, 1955, purported to evidence. Whether there was a partition in

1951 followed up by an actual division of the lands allotted to each of the members of the family, will be the main point for consideration. Whether

that was accompanied by or was preceded by actual division in status will also have to be examined. As we have pointed out earlier, even if there

had been no division in status and if there was only a partial partition in 1951, the legal effect of that will have to be considered by the

Commissioner in determining whether it was the family or the individual members thereof that were liable to be taxed on the income from the

prorates so divided. The petitioner will be entitled to the costs of this petition. Counsels fee Rs. 100.