(1997) 10 MAD CK 0069

In the Madras High Court

Case No : Tax Case No. 1501 of 1992 (Rev. No. 647 of 1992)

N. Srinivasan APPELLANT

Vs

State of Tamil Nadu RESPONDENT

Date of Decision : 01-10-1997

Acts Referred:

Income Tax Act, 1961 — Section 28

Citation : (1999) 240 ITR 148

Hon'ble Judges : R. Jayasimha Babu, J;Akbar, J

Bench : Division Bench

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

Judgement

R. Jayasimha Babu, J.—The assessee''s grievance is against the order made by the Commissioner of Agricultural Income Tax in a suo motu revision initiated by him u/s 34 of the Tamil Nadu Agricultural Income Tax Act, 1955, in respect of the petitioner''s assessment under that Act for the year 1985-86.

2. The petitioner had been assessed to tax for that year by the Agricultural Income Tax Officer on October 20, 1985. The petitioner had applied u/s 19 of the Act as it then stood within one month of the dale of the service of the notice of demand for cancelling the assessment. Section 19, as it stood at the relevant point of time, read as under :

"19. Cancellation of assessment in certain cases. - Where an assessee, within one month from the service of a notice of demand issued as hereinafter provided, satisfies the Agricultural Income Tax Officer that he was prevented by sufficient cause from making the return required by section 16 or that he did not receive the notice issued under sub-section (2) or sub-section (4) of that section or sub-section (2) of section 17 or that he had not a reasonable opportunity to comply, or was prevented by sufficient cause from complying with the terms of any such notice, the Agricultural Income Tax Officer shall cancel the assessment and proceed to make a fresh assessment in accordance with the provisions of section 17."

3. The Assessing Officer by his order made on November 18, 1985, accepted the plea of the assessee and cancelled the order of assessment made on October 30, 1985. Thereafter a fresh assessment order was made after hearing the assessee on November 27, 1985.

4. In the impugned order, the Commissioner of Income Tax (Agriculture) has stated that the assessment order of November 27, 1985, was set aside on the ground that the Agricultural Income Tax Officer has no power to revise his own order as per section 19 of the Act.

5. It is indeed a matter of great surprise and concern to us that the Commissioner, who is the authority under whose supervision and guidance the other officers under the Act are to function, should have shown such ignorance of the statutory provision and misled himself regarding the nature of the order made by the Assessing Officer. Section 19 in plain and unambiguous language permitted the assessee to seek cancellation of the assessment if such an application was made in time and the conditions mentioned in that section were satisfied. Such an application had been made in time, was found to be acceptable and the order of assessment was cancelled. Such a cancellation was not a revision of the order but cancellation provided for in section 19 of the Act. Thereafter a fresh assessment was made after considering the materials placed by the assessee. Such an order is perfectly in accordance with the provisions of the Act.

6. The Commissioner of Agricultural Income Tax, instead of ensuring proper and effective administration of law, has himself made an order which is violative of the provisions of the Act. It is most unfortunate that such an order has come to be made by a person who should not have made such a blunder, as is revealed in the order. The impugned order is, therefore, set aside. The assessee is entitled to costs in the sum of Rs. 1,500 (rupees one thousand and five hundred only).