

(1990) 06 MAD CK 0026

In the Madras High Court

Case No : Tax Case (Revision) No's. 217 and 218 of 1979

N.B. Mohan Narayanaswami

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 14-06-1990

Acts Referred:

Tamil Nadu Agricultural Income Tax Act, 1955 — Section 65

Citation : (1990) 06 MAD CK 0026

Hon'ble Judges : Venkataswami, J;K.M. Natarajan, J

Bench : Division Bench

Advocate : K.J. Chandran, for the Appellant; R. Karuppan, for the Respondent

Judgement

Venkataswami, J.—All these matters arise out of a common order of the Commissioner of Agricultural Income Tax, dated January 31,

1974. The petitioner, an assessee under the Tamil Nadu Agricultural Income Tax Act, 1955 (hereinafter called "the Act"), filed two applications

u/s 65(1) of the Act on June 10, 1972, for the assessment year 1972-73. Two applications were filed by the petitioner on the ground that certain

lands were held by him in his individual capacity and certain other lands were held by him in his capacity as manager of the Hindu undivided family.

According to the petitioner, he got certain lands by way of settlement directly from his grandfather and another set of lands he got in a partition

between his father, himself and his brothers. The latter category, according to the petitioner, must be treated to be held by him as karta of the

Hindu undivided family while the former category must be treated as his individual holding. The Agricultural Income Tax Officer clubbed both the

categories of lands and passed a singled assessment order u/s 65 of the Act. Aggrieved by that order of the Agricultural Income Tax Officer, the

petitioner preferred a revision to the Commissioner of Agricultural Income Tax. u/s 34 of the Act. The Commissioner who is the respondent herein,

by his order dated January 31, 1974, after hearing counsel for the petitioner, held as follows :

From the partition deed, it is seen that the lands which fell to his share are got by him not as "Karta" of another Hindu undivided family, but in his

capacity as an "individual", the Schedule to the partition deed specifically mentions that the fourth Schedule of properties mentioned in the partition

deed is to go to the share of No. 4 individual, Mohan Narayanaswami. There is no indication in the partition deed that this set of lands is to fall to

the Hindu undivided family of the revision petitioner. As such, the lands got by him by way of partition from out of the ancestral properties are to

be treated initially only as properties held by him as an "individual". So there is nothing wrong in treating all the lands enjoyed by the revision

petitioner as one holding. It is, however, not correct for the Agricultural Income Tax Officer to club these two composition applications without the

specific consent of the revision petitioner. When consent is wanting, he should have rejected the applications and proceeded u/s 17 of the Act. The

order of the Agricultural Income Tax Officer assessing the revision petitioner u/s 65 of the Act is not correct and is set aside. He is directed to pass

fresh orders according to law.

2. Aggrieved by the above conclusion of the respondent, the petitioner initially filed Writ Petitions Nos. 694 and 695 of 1974. When the writ

petitions came up for final hearing, it appears, Mohan J. (as he then was), was of the view that the petitioners should have filed Tax Revision Cases

against the order of the respondent, and without resorting to the alternative statutory remedy. The petitioner will not be permitted to proceed with

the writ petitions. Immediately, the petitioner filed W.M.P. Nos. 4736 and 4737 of 1978 for converting the writ petitions into tax cases.

Accordingly, the above two tax cases (revision) came to be filed.

3. Before going into the real question, we have to find out whether the proper remedy available to the petitioners is by way of filing tax cases or by

filing writ petitions challenging the order of the respondent. No doubt, section 54 of the Act states that a revision against the order of the

Commissioner lies, if the Commissioner enhances the assessment or passes

orders otherwise prejudicial to the assessee. In this case, though the Commissioner set aside the order of the Agricultural Income Tax Officer and remanded the matter, and thereby caused no prejudice to the assessee, the latter part of the order holding that the assessee is not entitled to an order u/s 65 of the Act and the assessment should be made u/s 17 of the Act, is otherwise prejudicial to the petitioner (assessee). Therefore, the tax cases are maintainable.

4. On that view, we proceed to dispose of the tax cases on merits.

5. It is contended counsel for the petitioner/assessee that the view taken by the Commissioner that in the absence of a consent, clubbing cannot be ordered, is not correct. According to learned counsel, consent will not clothe the Assessing Officer to club the holding of otherwise it is not

permitted by the statute. In support of that, he relied on a decision of this court in Mariam Aysha Vs. Commissioner of Agricultural Income Tax, .

In that case, Ramaprasad Rao J. (as he then was), observed as follows (headnote) :

That consent cannot give jurisdiction is an essential principle of law. The taxing authority can act only if there is power under the statute to do so.

6. In the view we propose to take, we do not think we need go into this question at this stage.

7. It is seen from the order of the Agricultural Income Tax Officer that he has not applied his mind regarding the contentions of the assessee that

the two holdings held by him are distinct and different. The view taken by the Commissioner that the lands obtained by the petitioner/assessee

under a partition must be treated as his individual holding is not correct. Admittedly, the lands obtained by the petitioner/assessee under the

partition are ancestral in character and, as such, the petitioner's sons are entitled to have as share by birth. That being the position, the observation

of the Commissioner extracted above is not correct and, therefore, while sustaining the order of remand, we set aside that portion, the observation

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observation of the Commissioner including the observation that the Agricultural Income Tax Officer must proceed to assess the petitioner u/s 17 of

the Act.

8. In the result, we direct the Agricultural Income Tax Officer to give reasonable opportunity to the petitioner/assessee to substantiate his stand that the two holdings are distinct and different and he is entitled to have separate assessments on the two holdings u/s 65 of the Act and dispose of the matter in accordance with law. While disposing of the matter afresh, the Agricultural Income Tax Officer may also bear in mind the ratio laid down by this court, in Mariam Aysha Vs. Commissioner of Agricultural Income Tax, . The tax revision cases are disposed of accordingly; no costs.