
(1965) 09 MAD CK 0024

In the Madras High Court

Case No : Tax Case No. 193 of 1963 (Revision No. 124 of 1963)

N.N. Seshadrinathan

APPELLANT

Vs

State of Madras

RESPONDENT

Date of Decision : 27-09-1965

Acts Referred:

Tamil Nadu Agricultural Income Tax Act, 1955 — Section 32(5), 33, 34, 34(1), 5(4)

Citation : AIR 1966 Mad 258 : (1966) ILR (Mad) 566 : (1966) 60 ITR 482

Hon'ble Judges : P. Chandra Reddy, C.J.; Veeraswami, J.; Natesan, J

Bench : Full Bench

Judgement

P. Chandra Reddy, C.J.—This matter was referred to Full Bench as, in the opinion of the Division Bench, an important question of law

relating to the interpretation of Section 9(2)(a)(iii) of the Madras Agricultural Income Tax Act was involved.

(2) The facts giving rise to this reference lie within a short compass and may be stated as follows. The assessee and his minor son constituted a

joint Hindu family in the year 1959. On 29-11-1959 the assessee settled on his wife an extent of 26 acres and 62 cents of land belonging to

himself and his minor son out of a total extent of 281 acres and 51 cents. Four months later there was a partition of the property between the

assessee and his son. For the assessment year 1961-62 the assessee submitted a composition application to the concerned Income Tax Officer in

which he sought to exclude the property that was settled on his wife in November 1959. At the same time his wife filed another composition

application in regard to the property that was given to her under the settlement deed. The Income Tax Officer thought that the property gifted to

the wife should be excluded (sic-included) in the composition application of the

assessee as it was liable to be taxed u/s 9(2)(a)(iii) of the Act.

Aggrieved by this order the assessee carried a revision to the Income Tax Commissioner u/s 34 of the Act, contenting that the property which was

the subject-matter of a gift in November 1959, was outside the scope of Section 9(2)(a)(iii) of the Act in that it was not a gift by an individual to

his wife but a gift by a joint Hindu Family to a female member thereof. This contention did not appeal to the Income Tax Commissioner with the

result that he declined to interfere with the order under revision. The present revision petition was filed by the assessee u/s 54 of the Act.

(3) A preliminary objection is raised by the learned Government Pleader that this revision is incompetent in that it is not attracted by Section 54 of

the Act. It is urged by the learned Government Pleader that it is only an order that is otherwise prejudicial to the assessee that is contemplated by

Sec. 54, and, this order not answering that description, is outside the ambit of that section. Since the answer to the preliminary objection raised by

the Government Pleader turns upon Section 54 of the Act, we will do well to read it here:

Within sixty days of the date on which he is served with a notice of the order, the assessee or the Commissioner, in the case of an order under

sub-section (5) of S. 32, and the assessee, in the case of an order under Sec. 34, enhancing the assessment or otherwise prejudicial to him, may

prefer an application to the High Court against the order on the ground that the Appellate Tribunal or as the case may be, the Commissioner has

either decided erroneously or failed to decide any question of law.

The other provisions of the Section are not quite relevant in the context of this enquiry and therefore we may safely omit them. Since it is only an

order u/s 34 enhancing the assessment or otherwise prejudicial to him that is the subject to revision under this Section, we have now to turn to the

provisions of Section 34 to understand the import of this expression "or otherwise prejudicial to him."

(4) Section 34, omitting the unnecessary portion, runs as follows:-

34 (1) The Commissioner may, of his own motion or on application by an assessee, call for the record of any proceeding under this Act which has

been taken by any authority subordinate to him & may make such enquiry or cause such enquiry to be made & subject to the provisions of this

Act, may pass such orders thereon as he thinks fit;

Provided that he shall not pass any order prejudicial to an assessee without hearing him or giving him a reasonable opportunity of being heard;

Provided further that an order passed declining to interfere shall not be deemed to be an order prejudicial to the assessee.

(5) It is seen that the second proviso explains the meaning of what is otherwise prejudicial to the assessee. If it says that any order of the

Commissioner affirming that of the Income Tax Officer or the inferior Tribunal cannot be deemed to be an order prejudicial to the assessee.

Obviously the legislature did not want a further remedy to be given to the assessee in cases in which the order of the Commissioner has not made

the position of the assessee worse than what it was under the order sought to be revised or different from it to his prejudice. In other words, it is

only in cases where the order of the Commissioner had the effect of worsening the position of the assessee that the legislature thought of conferring

the right of revision to the High Court u/s 54 of the Act. It is true that Section 54 has not defined the expression "otherwise prejudicial" to the

assessee. But that does not make any difference to the interpretation of this section, since it is only an order otherwise prejudicial to him within the

connotation of Section 34 that is revisable. Section 34 has to be read with Section 54, because it is orders passed u/s 34 that are revisable u/s 54.

Having regard to the language of the second proviso to Section 34, there can be little doubt that an order of the Commissioner declining to

interfere with that of the inferior Tribunal cannot be termed to be one otherwise prejudicial to the assessee so as to fall within the sweep and range

of Section 54 of the Act. The second proviso has put the matter beyond controversy.

(6) Even without the existence of that proviso the result would have been the same since the first proviso also gives an indication that orders which

do not make the position of the assessee worse are not liable to be revised u/s 54.

(7) Interpreting an analogous provision contained in Section 33 of Act XI of 1922, their Lordships of the Privy Council laid down in AIR 1948

102 (Privy Council) that if the Commissioner did nothing to worsen the position of the assessee, the latter could acquire no rights and there was no

justification for giving him a new right. Section 33 of Act XI of 1922 recited:-

(1) The Commissioner may of his own motion call for the record of any proceeding under this Act which has been taken by any authority

subordinate to him or by himself when exercising the power of an Assistant Commissioner under Sub-section (4) of S. 5.

(2) On receipt of the record the Commissioner may make such enquiry or cause such enquiry to be made and, subject to the provisions of this

Act, may pass such orders thereon as he thinks fit; Provided that he shall not pass any order prejudicial to an assessee without hearing him or

giving him a reasonable opportunity of being heard.

We are unconcerned with the other provisions of that Section as it is only the construction of the proviso to that Section that has a bearing in this

revision case.

(8) Dealing with this proviso, this is what their Lordships remarked:-

It appears to them that an order made by the Commissioner u/s 33 can only be said to be prejudicial to the assessee when he is, as a result of it,

in a different and worse position than that in which he was placed by the order under review. If the assessee has a complaint against any

assessment or order made by a subordinate officer, he has the appropriate and specific remedy which the Act provides. The Commissioner may

act under S. 33 with or without the invitation of the assessee; if he does so without invitation, it is clear that, if he does nothing to worsen the

position of the assessee, the latter can acquire no right; the review may be a purely departmental matter of which the assessee knows nothing. If,

on the other hand, the Commissioner acts at the invitation of the assessee and again does nothing to worsen his position, there is no justification for

giving him a new right of appeal. He has a specific right of appeal against the assessment or order of the subordinate officer, which is subject to its

own time-limit. That he cannot enlarge by taking a course which is on his part purely voluntary. This view of the S. is conferred by the exception.

(9) The passage extracted above sums up the position clearly and succinctly, if we may say so with respect. That indicates that the order of the

Commissioner cannot be said to be otherwise prejudicial to the party when it does nothing more than merely affirm the order sought to be revised.

(10) It is true that a Full Bench of this court, consisting of five Judges,

interpreted this proviso in a different way, in VOORA SREERAMULU

CHETTY Vs. COMMISSIONER OF Income Tax, MADRAS., . But that is no longer good law having regard to the authoritative

pronouncement of their Lordships of the Judicial Committee in AIR 1948 102 (Privy Council) . The decision in VOORA SREERAMULU

CHETTY Vs. COMMISSIONER OF Income Tax, MADRAS., overruled an earlier Full Bench decision of this court in N. A. S. Vs.

VENKATACHALAM CHETTIAR v. COMMISSIONER OF INCOME TAX MADRAS., which ruled that an order was otherwise prejudicial

to an assessee only when the latter's position was altered by the order of the Commissioner to one of prejudice to him. We are conscious of the

fact that there is no express reference to VOORA SREERAMULU CHETTY Vs. COMMISSIONER OF Income Tax, MADRAS., , but, there

can be little doubt that it is this case their Lordships had in mind when they said that though it was not necessary for them to decide that point they

still thought, having regard to the conflict that existed in India, on this question, that it was desirable to express themselves on that question. It is

worthy of note that these two decisions are referred to in the judgment of the Lahore High Court which was taken in appeal to the Judicial

Committee in AIR 1948 102 (Privy Council) .

(11) Whatever might have the position without the existence of the second proviso the position is incontestable after the addition of the second

proviso in Section 34. This is also the view taken by a Division Bench of this court in Kantan v. Agricultural Income Tax Officer, ILR 1965 Mad

161. In the light of the second proviso it is not necessary for us to dilate upon this point any further, having regard to the clear, and unambiguous

language of the second proviso, which, in our opinion, applies to all kinds and classes of orders falling under Sub-section (1) of Section 34,

whether passed suo motu or on invitation. It follows that the preliminary objection is substantial and effect must be given to it.

(12) In this view of the matter, it is not necessary for us to express any opinion on the merits of the controversy raging round Section 9(2)(a)(iii).

(13) In the result, the revision is dismissed with costs. Advocate's fee Rs. 100.

CJ/D.H.Z.

(14). Revision Dismissed.