

(1990) 08 MAD CK 0050

In the Madras High Court

Case No : Tax Case (Revision) No's. 427 to 437, 500, 266, 267, 611 and 612 of 1990

N.P.R. Narayanan and others

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 17-08-1990

Acts Referred:

Tamil Nadu Agricultural Income Tax Act, 1955 — Section 65

Citation : (1993) 199 ITR 155

Hon'ble Judges : Venkataswami, J;Kanakaraj, J

Bench : Division Bench

Advocate : K.J. Chandran and P.R. Ranganathan for T. Gopalkrishnan, for the Appellant; R. Karuppan, (AGP), for the Respondent

Judgement

Kanakaraj, J.—All the above tax cases raise a common question of law under the Tamil Nadu Agricultural Income Tax Act, 1955

(hereinafter called the "Act"), and, therefore, we proceed to pass a common order.

2. The agricultural Income Tax Officer passed separate orders against each of the petitioners herein u/s 65 of the Act permitting them to compound

the agricultural Income Tax on the extent of lands held by them for the assessment year 1983-84 in some cases and 1984-85 in some other cases.

The Commissioner of Agricultural Income Tax issued a show-cause notice u/s 34 of the Act proposing to cancel the said order of the Agricultural

Income Tax Officer granting permission to compound the agricultural Income Tax u/s 65 of the Act. In the show-cause notice, it is stated that M/s.

Kamadhenu Estate consisting of 13 partners, a registered firm, is an assessee in the books of the Agricultural Income Tax Officer, Nagercoil-1,

and that the said Officer has determined the net agricultural income as Rs. 10,73,379 for the assessment year 1983-84 and as Rs. 10,46,733 for

the assessment year 1984-85. All the 13 partners had been individually permitted to compound the tax for both the assessment years 1983-84 and

1984-85. The two reasons given by the Commissioner for issuing the show-cause notice are as follows : (1) The 13 partners have no

proportionate share of the land in the firm. The exact share had been arrived at by taking into account the profit-sharing ratio which is not valid in

law. (2) The partner of a registered/unregistered firm can apply for compounding only if he has two sources of income, (a) the land-held by him

individually, (b) his proportionate share of the land held by the firm. All the partners sent a common reply through their advocate on December 29,

1986. It was contended in the reply that the law requires only specification of the individual shares of the partners in the registered firm. It can only

mean the share of profit or loss in the firm. On the second point, it was stated that section 65(3) of the Act in unmistakable term enables every

partner of a registered or an unregistered firm treated as a registered firm u/s 17(5) (b) of the Act to apply for permission to compound. By an

order dated June 17, 1988, the Commissioner rejected the objections of the petitioners and confirmed the proposal in the show-cause notice and

accordingly canceled the 26 assessment orders made against the 13 partners of M/s. Kamadhenu Estate in respect of the years 1983-84 and

1984-85 and directed the Agricultural Income Tax Officer to assessee the petitioners afresh for the two assessment years in question u/s 17 of the

Act. The revision petitions have been filed against the said order of the Commissioner dated June 17, 1988.

3. We will first take up the point whether the Commissioner was right in holding that the exact share of each partner had not been specified but the

share was arrived at taking into account the profit-sharing ratio and, on that ground, the order u/s 65(3) deserved to be cancelled. Mr. K. J.

Chandran, learned counsel appearing for the petitioners, argues before us that, in any partnership firm where only the profit-sharing ratio as

mentioned in the partnership document is given, it only means that, in the event of a dissolution of partnership, the assets have to be shared in the

said ratio. For this purpose, learned counsel for the petitioners relies on the judgment in *Gopala Chetty v. Vijayaraghavachariar* ILR [1922] 45

Mad ; AIR 1922 PC 115. The following passage in the said judgment is relied on in support of the case of the petitioners :

At any rate, in all cases where for any reason it did occur that after the dissolution and complete winding up of a partnership an asset which had not been taken into account fell in, it ought to be divided between the ex-partners or their representatives according to their shares in the former partnership.

4. Similarly, learned counsel relies on the following passage in M.M. Valliammai Achi and Others Vs. KN. PL. V. Ramanathan Chettiar and

Others, :

If after taking accounts and discharging the mutual rights and obligations of the partners or their representatives an asset which has been forgotten

or treated as valueless afterwards falls in, that asset no doubt will be divided between the partners or their representatives in proportion to their shares in the partnership.

5. Learned counsel for the petitioners relies upon section 46 of the Partnership Act and argues that the word ""right"" means the share of the partner

in the firm. We have given our anxious consideration to the arguments of learned counsel for the petitioners and the reasoning of the Commissioner

in holding that because partners' share in terms of lands have not been distinctly and specifically mentioned in the documents, they are ineligible for

the benefit of composition is not a correct statement of law. So long as it is possible to find out the proportionate share of the partner in the land

held by the firm, we are of the opinion that the partner is entitled to the benefit of composition. Therefore, the first reasoning of the Commissioner

does not appeal to us and we accept the argument of learned counsel for the petitioners on this aspect.

6. Mr. K. J. Chandran, learned counsel appearing for the partners of the said M/s. Kamadhenu Estates Places before us the Division Bench

Judgment in Tax Case (Revision) No. 1298, etc., of 1989, dated March 21, 1989, R. Anandakumar and Others Vs. State of Tamil Nadu, . In

that case, however, the Commissioner had cancelled an order permitting an application u/s 65(3) only on the ground that the assessee had not held

any land individually, but held only a proportionate share of the land held by the firm. Consequently, the said judgment concerns only the question

of applicability of section 65(3) to a partner of a firm who has only a proportionate share of the land held by the firm and does not hold land in his individual capacity. The Division Bench in unmistakable terms held as follows (as page 225) :

However, in the case of a firm, the partners of which, or at least some of them, hold lands individually, apart from the proportionate share of land

held by the firm, then, u/s 17(5) (a) of the Act, the assessment on the partners has to be made in respect of the entirety or totality of the income

comprising the share income of the partner from the land held by the firm and the income from the land held by the partner individually and only in

such a case, the benefit of composition is made available to the partner under the latter part of section 65(3) of the Act. The use of the expression

"aggregate of the income" in the latter part of section 65(3) of the Act does not connote mere aggregation or addition of income without the

availability of two distinct and separate sources, viz., individual holding as well as the shareholding of the land held by the firm, but refers to the

fulfilment of the essential condition for availing of the benefit of composition and the requirement is that a partner of a firm, in order to secure the

benefit of composition, should have income derived from two source, viz., (1) lands held by him individually, and (2) proportionate share income of

the land held by the firm as, otherwise, the first part of section 65(3) of the Act is liable to be defeated. Thus, construing the scope of the provision

for composition as commutation, it stands to reason that the benefit is made available only in respect of the partners whose total income is

assessable u/s 17(5) (a) and though it may be that, in a particular year, no income had been derived by the partner either from the land held by him

individually or from his proportionate share of the land held by the firm, nevertheless, the benefit of composition could be had only with reference

to the totality of the income from both these sources and looked at from that point of view, the absence of individual holding of the partner would

preclude him from claiming composition of the agricultural Income Tax liability. Otherwise, a partner who does not own any land individually,

would nevertheless be entitled to claim the benefit of composition and that would amount to dispensing with the requirement regarding the holding

of lands individually by a partner which is one of the essential requirements to be fulfilled and that would also run counter to the latter part of

section 65(3) (a) of the Act.

7. Therefore, the Division Bench held that, in cases where a partner had both lands held by him in his individual capacity and also the proportionate

share of the land held by a firm, such a partner will be eligible for compounding the tax u/s 65(3) of the Act. In the following tax cases, it is seen

that the petitioners satisfy both the above conditions and, therefore, they are entitled to have the benefit of composition and the Commissioner had

erred in canceling the orders u/s 65(3) passed by the Agricultural Income Tax Officer. Tax Cases (Revision) Nos. 432 and 434 of 1990 are,

therefore, allowed. The learned Additional Government Pleader also does not dispute the applicability of the Division Bench judgment to these

cases.

8. In Tax Cases (Revision) Nos. 427 to 431, 433, 435 to 437 and 500 of 1990, the petitioners have only a proportionate share in the land held by

the partnership firm and they do not hold any land in their individual capacity and they will not be entitled to apply for composition u/s 65(3) of the

Act. Mr. K. J. Chandran, learned counsel for the petitioners in respect of M/s. Kamadhenu Estate, submits that the Division Bench judgment will

apply even if any one partner has individual holdings. In other words, according to learned counsel for the petitioner, even if one of the 13 partners

is holding lands in his individual capacity, not only the said partner will be entitled to the benefit of section 65(3) but all the other partners who had

no such individual holdings are also entitled to the benefit u/s 65(3) of the Act. In spite of our careful scrutiny of the judgment of the Division

Bench, we are unable to find any support for the said proposition. The only sentence that is relied on by learned counsel for the petitioners is the

first part of the portion extracted by us earlier. We are unable to read the judgment of the Division Bench as holding that even if one partner has

individual holdings, all the other partners can take advantage of the same. On the other hand, the Division Bench has categorically held as follows

(at page 227) :

We hold that the Commissioner of Agricultural Income Tax was right in the view he took that as the petitioners did not hold lands individually, but

had held only proportionate shares in the lands held by the firms, they are not entitled to the benefit of composition.

9. Alternatively, Mr. K. J. Chandran, learned counsel for the petitioners argues that the judgment of the Division Bench requires reconsideration. In

other words, it is argued that there is no condition in section 65(3) that, only if a partner holds lands in his individual capacity apart from his share in

the land held by the firm, he will be eligible for compounding u/s 65(3). Inasmuch as the Division Bench has considered the various provisions of

the Act before taking the above view, we would normally be slow to entertain such an argument. On a closer scrutiny of section 65(3), it appears

to us that any partner may apply for permission to compound the agricultural Income Tax payable by him on the aggregate of the income derived

by him from (a) the land held by him individually; and (b) his proportionate share of the land held by the firm. The section does not say that if and

only if a partner has got two sources of income as aforesaid, he will be eligible to apply for permission to compound. On the other hand, the right

to apply is clearly specified in the first part of the section. The second part of the section relating to aggregation of the two sources of income for

the purpose of the applicability of the correct rate of composition fee is only the procedure for assessing the composition fee. We are of the

opinion that the second part of the section cannot be put in the forefront to mean that unless the two sources are available to a partner, he cannot

apply for composition.

10. We must, therefore, have a second look at the judgment of the Division Bench to find out the reason which compelled them to take such a

decision. The following observation of Division Bench is the basis on which the entire edifice is built (at page 224) :

While enabling the assessee to take advantage of section 65 of the Act which, as pointed out earlier, is only a concessional commutation related to

the extent of the holding without reference to the actual income derived, it is undoubtedly open to insist upon the fulfilment of certain conditions

before the benefit of compounding could be availed of by an assessee.

11. It seems to us that the said observation may not directly flow from a reading of section 65(3). Again, the following observation of the Division

Bench has gone into the interpretation of section 65(3) of the Act (at page 225) :

It is thus seen that only with reference to the total agricultural income assessable in the hands of each partner of the firm, as provided u/s 17(5) (a)

of the Act, the benefit of composition with reference to a partner of a firm is made available under the latter part of section 65(3) of the Act and not in any other case.

12. The third observation which impelled the learned judges to interpret section 65(3) in the particular manner is the following sentence (at page 225) :

To interpret the latter part of section 65(3) in the manner contended for by learned counsel for the petitioners would lead to a situation where the earlier part of section 65(3) would be defeated. We can conceive of a case where all the partners of the firm do not have separate holdings individually apart from the share held by them in the land held by the firm and if they are permitted to compound the tax liability, it would tantamount to the firm itself securing the benefit of composition.

13. As we have already indicated, the first observation does not flow from a reading of section 65(3). The second observation relating to section

17(5) (a) of the Act again does not seem to be relevant for interpreting section 65(3) of the Act. In our view, section 17(5) (a) of the Act says that

in a regular assessment, the total agricultural income assessable in the hands of each partner of the firm is taken for the purpose of ascertaining the

tax. Similarly, the aggregation of the two sources of income are taken for the purposes of finding out the composition fee. Just as in the case of

section 17(5) (a), a partner of a firm is liable to pay agricultural Income Tax whether he has an individual holding or not, so also a partner of a firm

should be eligible for compounding the tax whether he has an individual holding or not. With regard to the third observation, the learned judges

seem to think that, if all the partners of a firm do not have individual holdings and all the partner are permitted to compound the tax, it would

tantamount to the firm itself being permitted to compound the agricultural Income Tax which is not permitted u/s 65(3). Here again, we are unable

to see how, if all the partners of a firm having only a share in the lands held by the firm are permitted to compound tax, it would tantamount to the

firm itself being allowed to compound the tax. Secondly, we do not see anything wrong if all such partners are given the benefit of compounding

because the law permits the same.

14. Therefore, with due respect, we are unable to agree with the reasoning of

the Division Bench judgment when they held that a partner having only a proportionate share in the land held by the firm and not having any individual holdings is not entitled to the benefit of section 65(3) of the Act. There is also one other reason why we feel a partner having only a proportionate share of the land held by the firm, without individual holdings, should be permitted to compound the tax u/s 65(3). Section 65 of the Income Tax to pay in lieu thereof a lump sum at the rates specified in Part II of the Schedule. The only bar is against a registered firm u/s 17(5) (b) of the Act. The reason for preventing a registered firm from compounding tax has some basis as will be seen from a reading of section 17(5) (a) of the Act that, in the case of a registered firm, the sum payable by the firm itself shall not be determined but the total income of each partner of the firm, including therein his share of its income profits and gains of the previous year shall be assessed, and the sum payable by him on the basis of such assessment shall be determined. In other words, there is a peculiar method of assessing a registered firm where the sum payable by the firm itself shall not be determined. It is only for this reason that a registered firm is not allowed to compound the agricultural Income Tax u/s 65(3) of the Act. In all other cases, a person who is bound to pay agricultural Income Tax can pay in lieu thereof, the compounding rates of taxes. This question arises in T. C. Nos. (Revision) 427 to 431, 433, 435 to 437 and 500 of 1990 and we are inclined to refer these tax cases to a Full Bench, after the matter is placed before the honourable Chief Justice.

15. Mr. Ranganathan, learned counsel appearing for the petitioners in Tax Case (Revision) Nos. 266, 267, 611 and 612 of 1990 represents the partners of the Maruthi Estate. There were 20 partners in this firm and the orders permitting composition of tax was set aside by the Commissioner for the same two reasons mentioned in respect of M/s. Kamadhenu Estate. However, in these cases, all the petitioners had not only a proportionate share in the land held by the firm but all of them also had individual holdings. Therefore, the case of the petitioners will be directly governed by the Division Bench judgment referred to above. So far as the other point is concerned, namely, that the petitioners do not have a specific or determined share in the lands held by the firm, our decision rendered

in respect of M/s. Kamadhenu Estate will apply to these cases

also. In other words, these tax cases are directly governed by the Division Bench judgment and they are, therefore, allowed and the orders of the

Commissioner are set aside. No costs.