(1961) 08 MAD CK 0001

In the Madras High Court

N.V.S. Kadirvel Nadar APPELLANT

Vs

The State of Madras RESPONDENT

Date of Decision : 17-08-1961

Acts Referred:

Madras Plantations Agricultural Income Tax Act, 1955 — Section 34

Citation : (1962) ILR (Mad) 327 : (1961) 74 LW 812 : (1962) 1 MLJ 325

Hon'ble Judges : Jagadisan, J

Bench : Single Bench

Judgement

Jagadisan, J.—The petitioner is a firm owning a cardamom estate in Papansam reserve forest in Tirunelveli district. It was assessed to tax

under Madras Act (V of 1955) by the Agricultural Income Tax Officer, Madurai, on 30th March, 1957. Aggrieved, by the decision of the Officer,

the petitioner filed an appeal before the Assistant Commissioner of Agricultural Income Tax, Madurai, who allowed the appeal in part and

remanded the matter to the Agricultural Income Tax Officer for re-fixing the tax. The order of the Appellate Authority is dated 15th July, 1957.

The petitioner thereupon moved the Commissioner of Agricultural Income Tax (Board of Revenue) by way of revision u/s 34 of the Act by

preferring the Revision Petition on 14th July, 1958. The application was dismissed by the Commissioner on 21st July, 1958. The following extract

of the order discloses the reason for the dismissal:

The Commissioner is empowered to revise the orders of his subordinates u/s 34 only within a period of one year from the date of the order of his

subordinates but the petitioner has presented the petition just about the close of one year from the date of the order of the Assistant Commissioner.

Further, the petition is defective. The petition has been affixed with a Court-fee label to the value of Rs. 1 instead of Rs. 2. The petitioner has not

enclosed either the original order of the Assistant Commissioner or a certified copy of it. There is hardly any time to get the defects rectified, then

call for the records, examine the case and pass orders within the time of one year allowed u/s 34 of the Madras Plantations Agricultural Income

Tax Act for interference by the Commissioner.

2. This Revision Petition raises the question whether the view of the Commissioner is warranted by the provisions of Section 34 of the Agricultural

Income Tax Act.

3. Section 34 of the Act provides that the Commissioner may exercise the revisional power either on his own motion or on application by the

assessee. Sub-section (2) of Section 34, as it stood in the year of assessment, 1956-57, provides that the Commissioner shall not revise any order

of the subordinate authority if the order had been made more than one year previously. This provision has now been amended and instead of one

year, a period of three years has been fixed. Section 34(2)(c) enacts a period of limitation and it applies both to the Commissioner initiating

proceedings on his own motion and to the assessee applying for revision. It cannot be said that after the lapse of the period of one year, as it was

in the year 1956-57, or three years, as it now stands, the Commissioner''s revisional powers become extinct. If proceedings are initiated by the

Commissioner or commenced at the instance of the assessee within the period prescribed under the Act, the power of revision subsists till the

proceedings are properly terminated. It would be anomalous to hold that the revisional power of the Commissioner becomes extinct after the

period fixed, as it may happen that the Commissioner may not deal with the matter for various reasons, either because he had other work to do or

because the assessee wanted time to place further materials before the Commissioner or for other causes. The criterion is not the point of time

when the application is disposed of, or the proceedings are terminated, but the point of time when the proceedings are initiated or the

Commissioner''s jurisdiction is invoked.

4. The learned Government Pleader referred us to the analogous provisions under the Income Tax Act, Section 33-A. That section comprises of

two parts : Sub-section (1) dealing with the Commissioner''s power to revise the proceedings of his own motion; and Sub-section (2) providing for

the exercise of such power at the instance of the assessee. The language of the Proviso to Sub-section (1) of Section 33-A of the Income Tax Act

is just the same as the language in Section 34 of the Agricultural Income Tax Act. The words are

provided that the Commissioner shall not revise any order under this sub-section if the order has been made more than one year previously.

Sub-section (2) of Section 33-A is as follows:

The Commissioner may on application by an assessee for revision of an order under this Act passed by any authority subordinate to the

Commissioner, made within one year from the date of the order (or within such further period as the Commissioner may think fit to allow on being

satisfied that the assessee was prevented by sufficient cause from making the application within that period) call for the record of the proceeding....

The difference in language between Section 33-A(1) and Section 33-A(2) of the Indian Income Tax Act clearly indicates that while the

Commissioner''s powers exercised on his motion terminate if the power is not exercised within the period fixed, his powers of revision on an

application by an assessee are not so limited, the period fixed being clearly in the nature of a period of limitation.

5. When the assessee applies within the period prescribed the expiry of the period does not render the Commissioner functus officio.

6. But the provisions of the Agricultural Income Tax Act do not make a distinction between cases where the Commissioner exercises his powers

suo moto and cases where he exercises such powers on the application of the assessee. We are of opinion that Section 34 of the Agricultural

Income Tax Act has fixed the period of one year, only as a period of limitation which applies both to the Commissioner as well as to the assessee.

So long as the proceedings have commenced within the period fixed, the power of the Commissioner can be exercised at any time thereafter, and

it is not necessary that the power should be exercised within the period fixed. The right of the assessee to obtain relief by applying for revision

should not depend on the hazard of the Revising Authority disposing of the matter within a particular period and cannot be defeated by the failure of the authority to discharge the statutory functions.

7. In the result, this Revision Petition is allowed. The Revision Petition before the Commissioner is directed to be restored to his file; he will dispose

it of afresh on the merits and in accordance with law. There will be no order as to costs.