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**(1941) 10 MAD CK 0040**  
**In the Madras High Court**

P V A L RAMASWAMI NAICKER

APPELLANT

Vs

PUDI N SOKKAYYA NAICKER.

RESPONDENT

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**Date of Decision :** 02-10-1941

**Acts Referred:**

Income Tax Act, 1961 — Section 3

**Citation :** AIR 1942 Mad 428 : (1942) 10 ITR 226

**Hon'ble Judges :** Patanjali Sastri, J

**Bench :** Division Bench

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**Judgement**

PATANJALI SASTRI, J.-This appeal arised out of a suit brought by the respondent to enforce a mortgage, dated 3rd September, 1925. Only two questions have been argued before us. The first contention relates to the claim of the defendant-appellant to the benefits of the Madras Agriculturist Relief Act. In order to understand this contention it is necessary to state a few facts. The defendant brought a previous suit for partition against his father and other members of his family and during the pendency of the suit applied for the appointment of a receiver. The defendant himself was appointed as receiver, and while carrying on the family business, he was assessed as receiver in respect of the profits derived during the pendency of the suit. The assessment was made during the years referred to in proviso (A) to Section 3 (ii) of the Agriculturists Relief Act. The assessment was made on the basis that the appellant and the members of his family after the institution of the partition suit constituted an association of persons within the meaning of Section 3 of the Indian Income Tax Act. It is argued for the appellant that, inasmuch as he was assessed as representing an association of persons, the assessment could not be deemed to have been imposed upon him in his individual capacity and that, consequently, he is not excluded from the benefits of the Act. The decision in *Saminath Odayar v. Srinivas Aiyar* and *Sarveswara Rao v. Umamaheswar Ras* have been cited in support of this contention. We do not think that these decisions have much bearing on the point. The first of theses cases lays down that, unless an assessment is made actually in the name of a person, he cannot be deemed to

have been assessed for purposes of the proviso (C) to Section 3 (ii) of the Act. It was a case where an assessment to property tax made in the name of a benamidar was relied upon in order to exclude the real owner of the property from the benefits of the Act, and it was held that the actual assessment was the test and not merely the ownership of the property which was the subject of assessment. In the other case referred to the question was whether the annual rental value of property belonging to a person but assessed in the name of his wife could be added to the annual rental value of properties assessed in his own name so as to disqualify him under proviso (C) and it was held that in order to come within its scope the person should have been actually assessed. These cases have no application here, as the income of the association of persons assessed in the hands of the appellant cannot be said to belong to another "person", as that expression is defined in Act IV of 1938. On the other hand we are of opinion that the principle of the decision in *Somappa v. Venkataswami Chetti* governs this case. There it was held that an assessment to Income Tax made on a firm must, having regard to the scheme of the Income Tax Act, be regarded as an assessment of the individual partners, although the assessment was made in the name of the firm. Just as in the case of the firm, when an association of persons is assessed to Income Tax, an individual member's share of that income is not liable to tax u/s 14 (2) of the Act, and if an individual member's share of the income is not liable to assessment or is liable to be assessed at a lower rate than the income of the association the member is entitled, under the provisions of Section 48, to get a refund. Having regard to these provisions it is clear that when an association of persons is assessed to Income Tax, what is really assessed is the income of the individual members. Nor is the position different under the Agriculturists Relief Act. Both a firm and an association of persons are alike excluded from the definition of "person".

The case is therefore governed by the decision in *Somappa v. Venkataswami Chetti*, and the appellant must be deemed to have been assessed to Income Tax within the relevant years. It follows that he is not entitled to claim the benefits of the Act.

The second point relates to the rate of interest to which the plaintiff is entitled. The bond carried nine per cent. per annum compound interest with annual rests. The lower Court, applying the provisions of the Usurious Loans Act, reduced the rate of interest to seven per cent. compound interest with biennial rests. It is argued that even this rate is unduly high and should be reduced still further. The fact that the interest alone now amounts to more than twice the amount of the principal originally advanced is put forward as a ground for such reduction. We do not think that the mere fact that a debtor has failed to pay the interest due from time to time and has allowed it to accumulate for a long time is a ground on which he can invite the Court to extend any indulgence to him. The rate of interest carried by the bond which has been reduced by the Court below is not unduly high and we do not consider that in the circumstances any further reduction is called for in the interests of justice.

The appeal fails and it is dismissed with costs.

Appeal dismissed.