

(1996) 09 MAD CK 0036

In the Madras High Court

Case No : Tax Case (Revision) No"s. 111 and 112 of 1990

P.C. Bhansali

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 02-09-1996

Acts Referred:

Income Tax Act, 1961 — Section 171, 171, 263, 4
Tamil Nadu Agricultural Income Tax Act, 1955 — Section 29

Citation : (1998) 229 ITR 259

Hon'ble Judges : N.V. Balasubramanian, J;K.A. Thanikkachalam, J

Bench : Division Bench

Advocate : P.P.S. Janardhana Raja, for the Appellant; K. Raviraja Pandian, for the Respondent

Judgement

K.A. Thanikkachalam, J.—These two tax case revisions relate to the assessment years 1977-78 and 1978-79. The assessee, P. C.

Bhansali, is the karta and the manager of the Hindu undivided family, consisting of himself, his wife, Kusumben P. Bhansali, and his sons, (1)

Prashant P. Bhansali, and (2) Parag P. Bhansali, and his daughter, Manisha P. Bhansali. The joint family properties consist of interests in the

following partnership firms in which the karta is a partner, holding a share therein as set out below :

1. Warwick Estates Syndicate, Kotagiri 8/128

2. Kairbetta Estates Syndicate, Kotagiri 5/64

3. Kesaria Nilgiri Hills Tea and Plantations, Kotagiri 6/64.

2. The manager of the Hindu undivided family, viz., the father, and his major and minor sons, who are other coparceners, decided to effect a partial

partition, dated April 1, 1977, of the interests of the joint family in two of the

partnership firms, viz., Warwick Estates Syndicate and Kairbetta

Estates Syndicate, as a first step towards a progressive and final partition of the family properties. In pursuance of the said decision, the karta has

effected partition in the books of the family, 8/128 share in the partnership firm of Warwick Estates Syndicate and 5/64 share in the partnership

firm of Kairbetta Estates Syndicate as between him and his sons by way of partial partition allocating 1/3rd share out of 8/128 to his major son and

retaining 2/3rd share out of 8/128 for himself and his minor son in the firm of Warwick Estates Syndicate and allocating 1/3rd share of 5/64 share

to his major son and retaining 2/3rd share out of 5/64 share for himself and his minor son in the firm of Kairbetta Estates Syndicate.

3. Having regard to the structure of the partnership, it is not possible to divide in the books of the firm and have the junior members of the family

viz., Prashant P. Bhansali and Parag P. Bhansali, as partners in the said firms. The karta and the junior members have mutually agreed that the

karta will hold the 8/128 share in the Warwick Estate Syndicate and 5/64 share in the Kairbetta Estates Syndicate as a partner to and for the

benefit of himself and the said junior members of the said family for each and duly account to the said junior members for 1/3rd share of each of

the junior members in the profits or loss arising out of the said firms. Thus, the partial partition was effected as on April 1, 1977. Another deed,

dated May 10, 1978, was also executed since the minors have become majors, affirming the partial partition entered into between the parties as

per the earlier deed, dated April 1, 1977.

4. The share income from all the above three firms was assessed in the hands of the assessee, Thiru P. C. Bhansali, under the status of a Hindu

undivided family up to the assessment year 1977-78. The assessee, by a deed of declaration, dated April 1, 1977, has partitioned his share

interest in respect of Warwick Estates Syndicate, Kotagiri, and Kairbetta Estates Syndicate as stated above and claimed before the Agricultural

Income Tax Officer that from the assessment year 1977-78 onwards the assessment should be made with regard to the income earned from the

said partnership firms in the hands of each of the members of the coparcenary. According to the assessee, the entire assessment with regard to the

income earned from the abovesaid firms should not be assessed in his hands as

the karta of the joint family. The Assessing Officer, after hearing the learned chartered accountant appearing for the assessee, and after going through the partition deed, came to the conclusion that the partition deed is a genuine document. He held that he was satisfied regarding the genuineness of the partition and accepting the claim made by the assessee, the Assessing Officer made separate assessments in the hands of each of the coparceners in the assessment years 1977-78 and 1978-79 with regard to the income earned from the abovesaid partnership firm, in accordance with the partition deed dated April 1, 1977.

5. The Commissioner of Agricultural Income Tax, on perusing the assessment orders made by the Assessing Officer, came to the conclusion that the assessments made in the abovesaid two assessment years are erroneous and prejudicial to the interests of the Revenue, because, according to the Commissioner of Agricultural Income Tax, the Assessing Officer has not made an enquiry as contemplated u/s 29 of the Agricultural Income Tax Act. The Commissioner of Agricultural Income Tax was also of the view that the lands owned by the members of the coparcenary were not divided by metes and bounds under the said partial partition deed. Further, the Commissioner was also of the view that the partition deed was not registered. According to the Commissioner of Agricultural Income Tax, it is not sufficient to record the income of the partnership firm in the books of account alone to show that a definite partition took place between the members of the coparcenary. For all these reasons, he held that partial partition of interests of joint family is merely a deed of declaration and is not a valid partition of agricultural lands and it does not attract the provisions of section 29 of the Act. Accordingly, the Commissioner of Agricultural Income Tax set aside the order passed by the Agricultural Income Tax Officer in the assessment years 1977-78 and 1978-79 by exercising his jurisdiction u/s 34 of the Act.

6. Learned counsel appearing for the assessee submitted that till the assessment year 1976-77, P. C. Bhansali was assessed in the status of a karta of the Hindu undivided family, consisting of his wife, sons and daughters. The karta of the joint family is a partner in the abovesaid partnership firms and entitled to a share in the profits of the firm as per the ratio mentioned above. The partition deed was executed on April 1, 1977, evidencing the

partition between himself and his sons with regard to the share held in the abovesaid two partnership firms. In pursuance of the partition deed, entries in the books of account were also made with regard to the share income from the firms, which were divided between the members of the coparcenary. A claim was made by the assessee before the Assessing Officer in the assessment years under consideration that inasmuch as a partial partition took place between the members of the family as per the partition deed, dated April 1, 1977, separate assessments should be made in the hands of the members of the coparcenary as per the partition deed and one consolidated assessment should not be made in his hands as the karta of the joint family. According to learned counsel, when the properties of the Hindu undivided family was held as an asset in the partnership firm, division of the agricultural lands by metes and bounds is not possible. What is possible is the division of share income from the partnership firms pertaining to their respective interest in the firms. The Assessing Officer, after an elaborate enquiry and after hearing the representative of the assessee, accepted the partial partition and assessed the share income from the firms in the hands of each of the coparceners according to the partition deed, dated April 1, 1977. Even in the Income Tax assessment, the Income Tax Officer accepted the partial partition dated April 1, 1977, entered into between the coparceners, while passing an order, dated February 8, 1982, for the assessment year 1978-79 u/s 171 of the Income Tax Act, 1961. According to learned counsel, the partial partition deed relating to a movable property need not be registered u/s 17 of the Registration Act, since the share income from the partnership firm is movable property. Therefore, according to learned counsel for the assessee, the Agricultural Income Tax Officer was correct in making separate assessments in the hands of the coparceners, in accordance with the partition deed, dated April 1, 1977. Learned counsel submitted that the orders passed by the Assessing Officer in the assessment years under consideration are neither erroneous nor prejudicial to the interests of the Revenue. Hence, it was submitted that the order passed by the Commissioner of Agricultural Income Tax, by exercising his power u/s 34 of the Act, is unsustainable.

7. On the other hand, learned Additional Government Pleader (Taxes) appearing on behalf of the Department, submitted that the partition deed,

dated April 1, 1977, is not a registered deed. Without dividing the agricultural lands by metes and bounds and by dividing the income from the

agricultural lands alone, the assessee cannot ask for recognising the partition. According to the learned Additional Government Pleader, the

Assessing Officer has not conducted any enquiry as contemplated u/s 29 of the Act. Since the Assessing Officer failed to conduct the enquiry as

contemplated u/s 29 of the Act, the assessment orders passed by the Assessing Officer for the assessment years under consideration are vitiated.

According to the learned Additional Government Pleader, dividing the coparcenary property by an unregistered partition deed and the entry of the

income derived from the firm in the books of account alone are not sufficient to make separate assessments in the hands of each of the coparceners

as requested by the assessee. Therefore, according to the learned Additional Government Pleader, inasmuch as the lands are still the property of

the joint family and inasmuch as the Assessing Officer failed to follow the procedure prescribed u/s 29 of the Act, the Commissioner of Agricultural

Income Tax was perfectly justified in invoking his jurisdiction u/s 34 of the Act and setting aside the assessments.

8. We have heard both learned counsel appearing for the assessee as well as learned Additional Government Pleader (Taxes) appearing for the

Department. The fact remains that the assessee one, P. C. Bhansali, is the karta and manager of the joint family, consisting of his wife, his sons and

daughter. The karta of the joint family is a partner in the abovesaid two firms. The joint family decided to partition the assets of the partnership firm

among the members. In pursuance of that, a partial partition deed was executed on April 1, 1977. According to the said partition, inasmuch as the

assets in the partnership firms cannot be divided, they have divided the income derived from the agricultural lands, which are the assets of the

partnership firm. In pursuance of the said partition, necessary entries were made in the books of account stating the income allotted to each one of

the coparceners. The assessee claimed on the basis of the abovesaid partition that separate assessments should be made in the hands of each of

the coparceners with regard to their share income as per the abovesaid partition deed. The Assessing Officer stated in his order that he conducted

the enquiry as contemplated u/s 29 of the Act and he was also satisfied with regard to the genuineness of the partition deed. He also heard the

assessee's representative. Thereafter, he came to the conclusion that a partial partition took place in the joint family and accordingly he made

separate assessments in the hands of each of the coparceners in accordance with the shares mentioned in the partition deed, dated April 1, 1977.

9. The Commissioner of Agricultural Income Tax exercised his suo motu power u/s 34 of the Act, since according to him, the separate

assessments made in the hands of each of the coparceners is erroneous and prejudicial to the interests of the Revenue. According to the

Commissioner of Agricultural Income Tax, the Assessing Officer has not conducted any enquiry as contemplated u/s 29 of the Agricultural Income

Tax Act. Section 29(1) of the Tamilnadu Agricultural Income Tax Act, 1955, states as under :

Where at the time of making an assessment u/s 17 it is claimed by or on behalf of any member of a Hindu undivided family, an Aliyasantana family

or branch or a Murumakattayam tarwad or tavazhi hitherto assessed as undivided that a partition has taken place among the members or groups of

members of such family, branch, tarwad or tavazhi, the Agricultural Income Tax Officer shall make such inquiry thereunto as he may think fit, and if

he is satisfied that joint family property has been partitioned among the various members or groups of members in definite portions, he shall record

an order to that effect.

10. In his order, the Assessing Officer has clearly stated that he made an enquiry, examined the partition deed and heard the assessee's

representative and only after his satisfaction he held that separate assessments should be made in the case of each of the coparceners, as per the

partition deed, dated April 1, 1977.

11. The share income from a partnership firm is movable property. Therefore, the partial partition deed, dated April 1, 1977, partitioning the share

income from the firm need not be registered u/s 17 of the Registration Act. In Addanki Narayanappa and Another Vs. Bhaskara Krishtappa and

Others, , while considering the provisions of section 17(1) of the Registration Act, 1908, the Supreme Court held that the interest of the partners of

the family in the partnership assets was movable property and the document evidencing the relinquishment of that interest was not compulsorily

registrable u/s 17(1) of the Registration Act. Therefore, the Commissioner of

Agricultural Income Tax was not correct in stating that the partial partition deed was not registered and therefore separate assessments cannot be made on the basis of such deed.

12. According to the Commissioner of Agricultural Income Tax the agricultural lands of the family were not divided by metes and bounds and the division of share income from the firm alone would not be sufficient for claiming separate assessments in the names of the coparceners.

13. In Charandas Haridas and Another Vs. The Commissioner of Income Tax, Bombay North, Kutch, Saurashtra and Ahmedabad and Another, ,

while considering a question of similar nature, the Supreme Court held as under (headnote) :

..... that the fact of a partition in Hindu law might have no effect upon the position of the partner, in so far as the law of partnership was concerned,

but it had full effect upon the family in so far as the Hindu law was concerned. Just as the fact of a karta becoming a partner did not introduce the

members of the undivided family into the partnership, the division of the family did not change the position of the partner vis-a-vis the other partner

or partners. The Income Tax law before the partition took note, factually, of the position of the karta, and assessed him not as partner but as

representing the Hindu undivided family. In doing so, the Income Tax law looked not to the provisions of the Partnership Act, but to the provisions

of Hindu law. When once the family had disrupted, the position under the partnership continued as before, but the position under the Hindu law

changed. There was then no Hindu undivided family as a unit of assessment in point of fact, and the income which accrued could not be said to be

that of a Hindu undivided family. There was nothing in the Indian Income Tax law or the law of partnership which prevented the members of a

Hindu joint family from dividing any asset. Such division must, of course, be effective so as to bind the members; but Hindu law did not further

require that the property must in every case be partitioned by metes and bounds, if separate enjoyment could otherwise be secured according to

the shares of the members. For an asset of the kind in this case there was no other mode of partition open to the parties if they wished to retain the

property and yet hold it not jointly but in severalty, and the law did not contemplate that a person should do the impossible.

14. Similarly, while considering the provisions of section 26A of the Indian Income Tax Act, 1922, the Supreme Court in Commissioner of Income

Tax, Madras Vs. Bagyalakshmi and Co., Udamalpet, , held as under (page 664) :

A partnership is a creature of contract. Under Hindu law a joint family is one of status and right to partition is one of its incidents. The Income Tax

law gives the Income Tax Officer a power to assess the income of a person in the manner provided by the Act. Except where there is a specific

provision of the Income Tax Act which derogates from any other statutory law or personal law, the provision will have to be considered in the light

of the relevant branches of law. A contract of partnership has no concern with the obligation of the partner to others in respect of their shares of

profit in the partnership. It only regulates the rights and liabilities of the partners. A partner may be the karta of a joint Hindu family; he may be a

trustee; he may enter into a sub-partnership with others; he may, under an agreement, express or implied, be the representative of a group of

persons; he may be a benamidar for another. In all such cases he occupies a dual position. Qua the partnership, he functions in his personal

capacity; qua the third parties, in his representative capacity. The third parties, whom one of the partners represents, cannot enforce their rights

against the other partners nor the other partners can do so against the said third parties. Their right is only to a share in the profits of their partner

representative in accordance with law or in accordance with the terms of the agreement, as the case may be.

15. Therefore, qua the firm, the karta of the joint family is a partner in the partnership firm. Qua the joint family, the karta of the joint family is a

member of the joint family. Therefore, there is no impediment for the members of the joint family to enter into a contract to partition the income

derived from the firm, since the joint family, which is not a legal entity, cannot become a partner in the firm. Since the agricultural land belonging to

the joint family is an asset in the partnership firms, the joint family cannot divide the assets belonging to it, they can divide only the income derived

from the partnership firm in accordance with the partnership agreement entered into between them. Therefore, the Commissioner of Agricultural

Income Tax was also not correct in stating that the agricultural lands were not divided in order to make separate assessments in the hands of the

coparcener.

16. The learned Additional Government Pleader relied upon the decision of the Supreme Court in A.R. Antulay Vs. Ramdas Srinivas Nayak and

Another, , wherein the Supreme Court held that where a statute requires to do a certain thing in a certain way, the thing must be done in that way

or not at all. Other methods of performance are necessarily forbidden. But according to the facts arising in the present case, it cannot be said that

the Assessing Officer has not conducted an enquiry before arriving at his conclusion as contemplated u/s 29 of the Act. A plain reading of the

order passed by the Assessing Officer will go to show that he is satisfied with the provisions contained in section 29 of the Act. Therefore, on the

facts, it cannot be said that the order passed by the Assessing Officer is hit by section 29 of the Act. For the foregoing reasons, we hold that the

Commissioner of Agricultural Income Tax was not correct in coming to the conclusion that the orders passed by the Assessing Officer for the

assessment years under consideration, making separate assessments, in the case of each of the coparceners are erroneous and prejudicial to the

interests of the Revenue. Accordingly, we set aside the order passed by the Commissioner of Agricultural Income Tax in the assessment years

under consideration, and allow these tax case revisions filed by the assessee. No costs.