

(1989) 03 MAD CK 0049

In the Madras High Court

Case No : Tax Case No"s. 1298 to 1301, 1307 to 1309 of 1988 and 1 to 4 and 75 of 1989

R. Anandakumar and Others

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 21-03-1989

Acts Referred:

Gift Tax Act, 1958 — Section 6A

Income Tax Act, 1961 — Section 109, 37(4), 66, 80J

Tamil Nadu Agricultural Income Tax Act, 1955 — Section 17, 17(5), 65, 65(3)

Wealth Tax Act, 1957 — Section 5(1)

Citation : (1992) 196 ITR 219

Hon'ble Judges : V. Ratnam, J; Bhakthavatsalam, J

Bench : Division Bench

Advocate : S. Swaminathan, for the Appellant;

Judgement

Ratnam, J.—These tax (revision) cases have been preferred by some of the partners of the firm, Tuttapullam Estate, respectively, u/s 54(1)

of the Tamil Nadu Agricultural Income Tax Act, 1955 (hereinafter referred to as ""the Act""), against the common order of the Commissioner of

Agricultural Income Tax, Madras-5, dated June 17, 1988. For the assessment year 1984-85, on applications filed by the petitioners praying for

permission to compound the tax payable, the Agricultural Income Tax Officer granted such permission to the petitioners by his orders dated

December 31, 1984, January 17, 1985, January 21, 1985, January 25, 1985, March 26, 1985, etc. Subsequently, the Commissioner of

Agricultural Income Tax issued a notice dated December 15, 1987 to the petitioners u/s 34 of the Act requiring the petitioners to state as to why

the order passed by the Agricultural Income Tax Officer u/s 65(5) of the Act

should not be cancelled and the Agricultural Income Tax Officer directed to pass orders u/s 17 of the Act apportioning the income among the partners of the firm and subject it to tax accordingly. In that notice, it was pointed out that u/s 65(3) of the Act, no registered firm, shall be entitled to apply for permission to compound under that section, but that any partner of such firm may apply for permission for such composition of 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, and as the petitioners did not hold any land individually, except the proportionate share of the land held by the firm, permission for compounding the agricultural Income Tax payable by the partners had been granted contrary to the provisions of the Act and, therefore, it was proposed to cancel the order passed by the Agricultural Income Tax Officer and to direct him to pass orders u/s 17 of the Act. Objections were invited from the petitioners and the petitioners set out their objections in a communication addressed to the Commissioner of Agricultural Income Tax contending that section 65(3) of the Act cannot be read in such a manner as to mean that only in a case where a partner holds land in his individual capacity and he has also a share in the holding of the partnership, the tax payable could be compounded and not otherwise. By order dated June 17, 1988, the Commissioner of Agricultural Income Tax, after considering the objections so raised by the petitioners found that the petitioners did not own lands outside the firm in their individual capacity and that the concession to compound the tax liability would be available on certain conditions, one of which was that they should hold the lands in their individual capacity also and as the petitioners did not own lands individually, the orders passed by the Agricultural Income Tax Officer permitting compounding of the tax liability by the petitioners were unsustainable and, in that view, directed the Agricultural Income Tax Officer to deal with the assessment of the two firms u/s 17 of the Act taking into account the status of the firms at the commencement of and during the previous year relevant to the assessment year in question. It is the correctness of this common order so passed against the petitioners herein by the Commissioner of Agricultural Income Tax that is questioned in these tax (revision) cases.

2. Mr. S. Swaminathan, learned counsel for the petitioners, referring to section 65(3) of the Act, contended that the permission to compound is not dependent upon the ownership of lands by a partner individually and that that section merely enacts a rule of aggregation and, therefore, even if the petitioners do not hold lands individually, apart from their proportionate share of land held by the firm, they would be entitled to the benefit of compounding the tax liability. Reliance in this connection was also placed by learned counsel upon sections 37(4), 66, 80J and 109 of the Income Tax Act, section 6A of the Gift-tax, section 5(1)(a) of the Wealth-tax Act, section 34 of the Estate Duty Act and the provisions in Schedules I and II to the Companies (Profits) Surtax Act, 1964. A reference was also made to the dictionary meaning of the expression ""aggregate"" and some decisions purporting to support the contention set out above.

3. Before embarking upon a consideration of the correctness of this contention, it would be necessary to notice the relevant provisions in the Act in the backdrop of the fact found that the petitioners do not own any land individually apart from their proportionate share of the land held by the firm. We may add that neither before the Commissioner of Agricultural Income Tax nor even before this court was any attempt made to establish that the petitioners held lands in their individual capacity, apart from the proportionate share of the land held by the firm. We have, therefore, to proceed on the footing that, apart from the proportionate share of the land held by the petitioners as partners in the firm, they did not hold any other land individually. We may now refer to section 17(5) of the Act, which is as follows :

17. (5) Notwithstanding anything contained in the foregoing sub-sections, when the assessee is a firm and the total income of the firm has been assessed under sub-section (1), sub-section (3) or sub-section (4) as the case may be -

(a) 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.

4. The two provisos to section 17(5) (a) of the Act are not relevant for a decision

on the question raised. Section 17(5) (a) makes a provision in the case of an unregistered firm in respect of which the Agricultural Income Tax Officer may, instead of determining the sum payable by the firm itself, proceed in the manner laid down in section 17(5) (a), as applicable to a registered firm if, in his opinion, the aggregate amount of tax payable by the partners under such procedure would be greater than the aggregate amount which would be payable by the firm and the partners individually, if the firm were assessed as an unregistered firm. Section 65 of the Act provides for composition of agricultural Income Tax liability and sub-section (3) thereof would be relevant. Thereunder, no registered firm, shall be entitled to apply for permission to compound under that section, but any partner of such firm 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. It is unnecessary to notice the rest of the provisions in section 65 of the Act.

5. We may briefly notice the nature of the provision relating to composition of agricultural Income Tax liability u/s 65 of the Act. While section 17

is the assessing section by which the total agricultural income of an assessee is computed and assessed to tax, the provision or composition

prescribed u/s 65 of the Act is in the nature of a concessional substitute for the assessment u/s 17. It is something in the nature of a commutation by

the Department with reference to the liability of an assessee to agricultural Income Tax on a graduated scale of payment based on the extent of the

holding of the assessee without reference to the actual income derived therefrom. From the scheme of the Act, it is clear that there is a well marked

distinction between an assessment proceeding u/s 17 and a proceeding for composition u/s 65 of the Act. It is difficult to conceive of a

composition arrangement as a mode of assessment to tax. Indeed, in COMMISSIONER OF AGRICULTURAL Income Tax, MADRAS Vs. K.

SUBBIAH GOUNDER AND ANOTHER., , the question arose whether an order of composition u/s 65 was appealable u/s 31 of the Act and it

was held that in a proceeding u/s 65 of the Act, there is no assessment of the income of the assessee or assessment to tax as such within the

meaning of section 31 and, therefore, the order was not appealable. It is thus

obvious that the provision u/s 65 of the Act for composition of agricultural Income Tax liability is not in the nature of proceedings for assessment, but only a concession in the nature of a commutation based on a graduated scale of payment dependent upon the extent of the holding and without reference to the actual income derived therefrom. While enabling the assesseees 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 fulfillment of certain conditions before the benefit of compounding could be availed of by an assessee. u/s 65(3) of the Act, a registered firm or an unregistered firm, treated u/s 17(5) (b) as a registered firm, shall not be entitled to apply for permission to compound. The benefit of securing a composition with reference to the agricultural Income Tax liability, which, as pointed out earlier, is in the nature of a commutation by the Revenue of the tax liability of the assessee, is not available to a registered firm or unregistered firm treated as registered firm, and the opening part of section 65(3) clearly lays down this. However, by the latter part of the section 65(3), a partner of a registered firm or an unregistered firm is permitted to compound the agricultural Income Tax payable by him on the aggregate of the income derived by him from his individual holding and his proportionate share of the land held by the firm. u/s 17(5) (a) of the Act, in the case of a registered firm though the total income of the firm could be the subject of assessment under sub-section (1) or sub-section (3) or sub-section (4) of section 17, the sum payable by the firm itself shall not be determined, but the total income of each partner of the firm, including in that his share of income, profits and gains of the previous year, shall be assessed and on the basis of such assessment, the sum payable by him shall be determined : ""Total agricultural income"" is defined in section 2(x) of the Act as meaning the aggregate of all agricultural income mentioned in section 4 computed in accordance with the provisions of section 5 and as inclusive of all income of the description specified in section 9 and all receipts of description specified in sub-section (2) of section 10. From the aforesaid provisions, it is clear that not only the share income of each partner of the firm is taken into account but also his other income, for the purposes of assessment, as could

be gathered from the use of the expression ""total income of each partner including his share income, profits and gains of the previous year"", etc.,

occurring in section 17(5)(a) of the Act. Earlier, it has been noticed that u/s 65(3), a registered firm or an unregistered firm cannot avail itself of the

benefit of composition, but that under the latter part of section 65(3), the benefit of such composition is made available to a partner with reference

to the totality of the income derived by him from the lands held by him individually and also his proportionate share income from the land held by

the firm. 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. 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, which is prohibited under the first part of section 65(3) of the Act.

6. Therefore, in the case of a firm consisting of partners, who do not hold lands individually, there is no question of the firm or the partners availing

of the benefit of composition. 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 mean 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 sources, 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. The concept of aggregation u/s 65(3) contemplates a plurality of sources, and if according to the petitioners, one such source need not exist, there is no scope whatever for applying the idea of aggregation of income. The use of the expression "and" occurring after section 65(3)(a) is also significant. That word normally has a cumulative sense requiring the fulfilment of all the conditions that it joins together. On the facts found in this case that the partners do not hold lands individually, it follows that they have not fulfilled the requirement of the latter part of section 65(3) of the Act and they were, therefore, rightly deprived of the benefit of composition earlier granted by the Agricultural Income Tax Officer. Though learned counsel for the petitioners made a reference to the provisions in other enactments and some decisions on those provisions, as stated earlier, the question has to be decided on the basis of the language employed in the relevant provisions of the Act considering the nature and purpose of the conferment of the benefit of composition and we, therefore, consider it unnecessary to make any reference to the provisions in the other enactments or the cases thereon. We hold that the Commissioner of Agricultural Income Tax was right in

the view he took that as the petitioner 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. We are of the view that the Commissioner of Agricultural Income Tax had neither rendered an erroneous decision on a question of law nor even failed to decide such a question. We, therefore, dismiss these tax (revision) cases.

7. After we pronounced the order, learned counsel for the petitioners, Mr. S. A. Balasubramaniam, made an oral application for leave to appeal to

the Supreme Court. We are of the view that there is no substantial question of law of general importance which needs to be decided by the

Supreme Court. We, therefore, reject the oral application for leave.