
(1963) 09 MAD CK 0003

In the Madras High Court

Case No : Writ Petitions No"s. 1347 and 1348 of 1961

Ravith Bibi

APPELLANT

Vs

Agricultural Income Tax Officer, Dindigul

RESPONDENT

Date of Decision : 30-09-1963

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1964) 52 ITR 471

Judgement

1. In these petitions under article 226 of the Constitution writs of certiorari are prayed for to quash the orders of assessment made by the

Agricultural Income Tax Officer for the assessment years 1959-60 and 1960-61. The petitioner is a minor. The affidavit filed by the guardian of

the minor petitioner states that the deponent was appointed guardian of the petitioner, her person and property, under the Guardian and Wards

Act in O.P. No. 26 of 1943 by the Sub-Court, Dindigul. The minor has been under the protection of this guardian. It is not in dispute that the

properties with respect to the income of which the assessments have been made belong to the minor. For the two years no return was submitted,

presumably on the ground that there is no assessable income from the property. It appears that the Agricultural Income Tax Officer issued a notice

to one Mohammad Ibrahim Rowther as the guardian of the minor u/s 16(2) of the Agricultural Income Tax Act. This notice was served by affixture

and as no return was filed, the officer made u/s 17(4) of the Act best of judgment assessments, and the taxes held to be due from the petitioner for

the two years were fixed at Rs. 197.65 and Rs. 662.35. The contention of the guardian of the minor is that no assessment could have been made

u/s 17(4) of the Act, unless a valid notice had been served as required by section

16(2) of the Act. It is claimed that as the deponent is the properly appointed guardian, notice should have been sent to her and that the absence of notice invalidates the assessments in question.

2. The counter-affidavit filed on behalf of the Agricultural Income Tax Officer denies the allegation that proper notice was not served. It is stated

that a notice was sent to the petitioner, meaning thereby the minor in question, and as this notice was refused it was served by affixture. It is also

urged that Mohammad Ibrahim Rowther, care of whom the notice was issued, is the son of the deponent of the affidavit accompanying the petition.

It is also stated that it was this Mohammad Ibrahim Rowther who paid the tax for the assessment year 1958-59. For those reasons, the adequacy

of the notice served in the instant cases is sought to be supported. It is further urged that the petitioner has an effective remedy of filing a revision to

the Commissioner u/s 34 of the Act and that these writ petitions should for that reason be dismissed.

3. I am of opinion that the assessments in the two cases cannot be supported. Section 16 of the Madras Agricultural Income Tax Act provides for

making returns of income. Every person who held land in excess of the exempted extent is required under sub-section (1) to furnish a return before

the 1st of June every year. In the absence of a return stipulated by sub-section (1), or if, in the opinion of the Income Tax Officer, the holding of a

person is of such an extent as to render that person liable to payment of agricultural Income Tax the officer may issue a notice u/s 16(2) required

the submission of the return within a prescribed period. Section 17 provides for the making of the assessment and sub-section (4) thereof

empowers the Income Tax Officer to make the assessment to the best of his judgment if any person fails to make a return under sub-section (2) of

section 16. In the case of persons of certain classes, their liability is dealt with u/s 8 of the Act. This section provides that in the case of agricultural

income, which a guardian appointed by an order of court is entitled to receive on behalf of any person, "that tax shall be levied upon and

recoverable from such guardian in like manner and to the same amount as it will be leviable upon and recoverable from such guardian in like

manner and to the same amount as it will be leviable upon and recoverable from the person on whose behalf such agricultural income is

receivable". Section 8(1)(c) enables simultaneous assessments being made both upon the guardian and the person on whose behalf the income is receivable. It is obvious, however, where the person on whose behalf the income is received is a minor, no such direct assessment is possible. A notice is thus necessary to issue to the guardian appointed by court and assessment has to be made upon that guardian, but as if the assessability was that of the person receiving the income. The short question now is whether the notice in this case issued to a person who was not the lawfully appointed guardian is a valid a notice u/s 16(2) and, whether after the service of such a notice, the Income Tax Officer is competent to make an assessment u/s 17(4) of the Act. The liability of persons under disability is specified in section 8 of the Act and that section requires that the tax shall be levied only from the guardian of such person. It is axiomatic that when no notice can properly issue to a minor direct, it is his lawful guardian either under the personal law of the parties or such guardian appointed by court who is liable to be assessed in respect of the income receivable by the minor. The claim of the department that in the previous year a notice was issued to the maternal uncle of the minor, Mohammad Rowther, or that he paid the tax for that assessment year is wholly irrelevant for the purpose of adjudicating upon the validity of the notice in the instant cases. When the law requires that a particular course should be followed before the Income Tax Officer can derive the right to make best of judgment assessment u/s 17(4), the failure to adopt the prescribed course necessarily invalidates the subsequent action. The learned Additional Government Pleader is not able to support the contentions found in the counter-affidavit. It follows, therefore, that there was a lack of jurisdiction on the part of the Income Tax Officer to make the best of judgment assessments in these cases.

4. I am not impressed by the further contention that as the petitioner has a right of revision to the Commissioner, she ought to be denied the writs prayed for. The grant of a writ is within the discretion of this court and whether the alternative remedy is an effective one may no doubt be matter for consideration; but where a lack of jurisdiction on the part of the assessing authority is established, I do not think that this court would be justified in declining to issue the writs.

5. The petitions are accordingly allowed. The rules are made absolute. There will, however, be no order as to costs.

6. It hardly requires to be stated that the department is not without a remedy for the period of limitation for making a proper assessment has not run out.

7. Petitions allowed.