
(1997) 09 MAD CK 0086

In the Madras High Court

Case No : Tax Case No"s. 252, 253, 434 to 444, 447 to 449, 535 to 542, 545 to 554, 568, 585 to 588, 591, 618, 637, 638, 782 to 790, 835, 838, 845 to 849 of 1989, 427 to 431, 433, 435 to 437 and 500 of 1990 and Writ Appeal No. 818 of 1993

R.M. Adaikalavan and Others

APPELLANT

Vs

State of Tamil Nadu and Another

RESPONDENT

Date of Decision : 25-09-1997

Acts Referred:

Income Tax Act, 1961 — Section 28

Citation : (1998) 230 ITR 663

Hon'ble Judges : R. Jayasimha Babu, J;Kanakaraj, J;K.M. Natarajan, J

Bench : Full Bench

Advocate : Deokinandan, for the Appellant; K.M.L. Majele, for the Respondent

Judgement

Jayasimha Babu, J.—The correctness of the decision rendered by a Division Bench of the Court in the case of R. Anandakumar and Others Vs. State of Tamil Nadu, , having doubted by another Division Bench of this Court in the case of N.P.R. Narayanan and others Vs. State of Tamil Nadu, , these cases have been referred to the Full Bench for determining the true scope of s. 65(3) of the TN Agrl. IT Act, (hereinafter referred to as the "Act") as it stood prior to its deletion by the Tamil Nadu Act 36 of 1992 w.e.f. 1st April, 1992.

2. Sec. 65 of the Act deals with composition of Agrl. IT Act. Sub-s. (3) thereof, prior to its deletion, read thus :

"65. Composition of Agrl. Income Tax : (1) Notwithstanding anything contained in this Act, but subject to the provisions of sub-s. (3) :

(2) ...

(3) No registered firm or unregistered firm treated under s. 17(5) (b) as a registered firm shall be entitled to apply for permission to compound under this section but any partner of such firm may apply for permission to compound the

Agri. IT 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."

3. Sec. 17(5) referred to in s. 65(3) read thus prior to 1st April, 1992; "17. Assessment of income.

(1) to (4) ...

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-s. (1), sub-s. (3) or sub-s. (4), as the case may be - (a) in the case of 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, gains of the previous year, shall be assessed, and the sum payable by him on the basis of such assessment shall be determined.

Provided that, if such share of any partner is a loss, it shall be set off against his other income or carried forward and set off in accordance with the provisions of s. 12 :

Provided further that, when any of such partner is a person not resident in the State, his share of the income, profits and gains of the firm shall be assessed on the firm at the rates which would be applicable if it were assessed on him personally, and the sum as determined as payable shall be paid by the firm.

(b) in the case of on unregistered firm, the Agri. ITO may, instead of determining the sum payable by the firm itself, proceed in the manner laid down in cl. (a) as applicable to a registered firm, if in his opinion, the aggregate amount of the 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 on unregistered firm."

4. With effect from 1st April, 1992, this sub-s. (3) was substituted by a new provision providing for determination of tax payable by the firm, and making the firm itself liable for payment of the same.

5. Two other provisions of the statute concerning firms may also be noticed. They are s. 10(2)(c) and s. 27.

"10. Exemption from assessment to Income Tax.

1. ...

2. Agri. IT shall not be payable on that part of the total agricultural income of a person which is :

(a) ...

(b) ...

(c) Any sum which he receives as his share out of the agricultural income of a firm or AOPs, if the tax under this Act has been levied on the agricultural income of such firm or association."

"27. Procedure in registration of firms.

(1) Application may be made to the Agrl. ITO on behalf of any firm constituted under an instrument of partnership specifying the individual shares of the partners, for registration for the purposes of this Act, and of any other enactment for the time being in force relating to agricultural Income Tax.

(2) The application shall be made by such persons and at such times and shall contain such particulars and shall be in such form and be verified in such manner, as may be prescribed, and it shall be dealt with by the Agrl. ITO in such manner as may be prescribed."

With effect from 1st April, 1992, s. 27 has been substituted by a new provision prescribing procedure for allotment of a permanent account number (PAN) and doing away with registration of firms.

6. In the case of Anandkumar, it was held that s. 65 is a concessional substitute for assessment under s. 17 providing commutation of liability, on a graduated scale of payment based on extent of holding without reference to income derived therefrom; that the composition is not a mode of assessment; that fulfilment of certain conditions before permitting composition could be insisted upon; that s. 65(3) provides for composition only with reference to the total agricultural income assessable in the hands of each partner of the firm as provided in s. 17(5) (a); that if the total agricultural income of a partner consisted only of his share income from the lands held by the firm, the prohibition contained in the earlier part of s. 65(3) prohibiting the firm from availing the benefit of composition would be defeated; that the use of the expression "aggregate of the income" in the latter part of s. 65(3) does not connote mere aggregation of income without availability of two distinct and separate sources, but refers to fulfilment of essential conditions for availing the benefit of composition.

7. Before examining the true scope of s. 65(3) and the correctness of the decision rendered in the case of Anandkumar, it is necessary to advert briefly to some of the relevant provisions of the Act.

8. The T.N. Agrl. IT Act, 1955 (Tamil Nadu Act 5 of 1955), was enacted to provide for levy of tax on agricultural income from lands situated in the State of Tamil Nadu. "Agricultural income" is defined in s. 2(a) of the Act to mean, inter alia, any rent or revenue derived from the land, as also any income derived from such land by agriculture. "Assessee" is defined in s. 2(e) to mean a person by whom the tax or any other sum of money payable under the Act and, includes persons against whom proceedings have been taken up under the Act, for assessment or of loss sustained by him or refund due to him.

8A. The terms "firm", "partner" and "partnership" are defined in s. 2(R) as to

have the same meaning as in the Indian Partnership Act, 1932, but the expression "partner" is also to include any person, who being a minor, has been admitted to the benefits of partnership. "Person" is defined in s. 2(q) as meaning any individual, or association of individuals owning or holding property for himself or partly for another, either as owner, trustee, receiver, common manager, administrator or executor or in any capacity recognised by law, including, inter alia, a firm or a company, in association of individuals. Hindu mitakshara family, tarwad and other similar entitles are also included in the definition.

9. Sec. 3 of the Act is the charging section. Sec. 3(1) provides that agricultural Income Tax at the rate or rates specified in Part I of the Schedule to the Act shall be charged for each financial year commencing from the 1st April, 1955, in accordance with and subject to the provisions of the Act, on the total agricultural income of the previous year of every person. Sec. 4 of the Act provides that the total agricultural income of any previous year of any person, comprises all agricultural income derived from land situated within the State, which is received by him, or which accrues to him within or without the State, but does not include the agricultural income derived from the land outside the State.

10. Sec. 16 deals with return of income. Sec. 16(1) as it stood prior to 1st April, 1992, provided that subject to the provisions of s. 65 every person who held land in excess of the exempted extent at any time during the previous year, shall, unless he has been permitted to compound the tax under s. 65, furnish to the Agrl. ITO, so as to reach him before the 1st June, every year, a return in the prescribed form and verified in the prescribed manner setting forth his total agricultural income during the previous year. Sec. 17 deals with assessment of income. Sec. 17(5) deals with assessment of income of firms registered, unregistered and those though unregistered for, treated as registered.

11. Sec. 65 provides for composition of agricultural Income Tax. Any person who holds land of the nature and upto the extent set out in s. 65(1) may apply to the prescribed officer to compound the agricultural Income Tax, payable by him and pay in lieu thereof a lump sum at the rate or rates specified in Part II of the Schedule to the Act. Sec. 65(2) permits compounding of tax only on income from non-plantation crops, by persons holding more than one hundred standard acres grown with plantation crops. Sub-s. (3) has been extracted and set out earlier. Sub-s. (4) provides that application for composition shall be submitted in the form and the manner prescribed. Sub-s. (5) provides that the prescribed officer after satisfying himself, that the particulars furnished in the application are correct, by order in writing, grant the permission. Sub-s. (6) provides that permission so granted shall commence from the financial year for which such permission was granted and shall continue in force until such person exercises an option under sub-s. (8) to submit a return. Sub-s. (7) provides that while permission granted under s. 65(5) is in force, the provisions of the Act regarding the submission of the returns, accounts or other documents pertaining to the

assessment to agricultural Income Tax, or any other matter incidental thereto, shall not apply in relation to the grantee. Sub-s. (8) permits the grantee under s. 65(5) to opt to submit a return of the total agricultural income at any time, and, upon submission of such return, the permission granted under s. 65(5) shall cease to have effect and assessment shall be made under s. 17 of the Act. Sub-ss. (9) and (10) require the grantee of the permission under s. 65(5) to notify any decrease or increase in holding of the land of the assessee who has availed the benefit of composition.

12. The schedule to the Act in Part I sets out the rates of the agricultural Income Tax. Part II sets out the rate at which the composition fee is to be paid. These schedules were substituted by the Amending Act 40 of 1991, revising the rate of tax as also the composition fee. Composition fee is payable with reference to the size of the holding and not on the income derived from the holding.

13. Firms are assessable entities under the Act. Firms which fulfill the conditions laid down in s. 27 may apply for registration under s. 27 and if registered, such firms are to be assessed in accordance with s. 17(5)(a). Firms which are not registered may also be assessed as registered firms under s. 17(5)(b).

14. While unregistered firms which are not treated as registered firms under s. 17(5)(b) are required to pay the tax assessed on their income, firms which are registered or created as registered are not required to pay tax on their income, as the liability for payment is placed squarely upon the partners in whose total agricultural income their share of the income of the firm is to be included. Partners of registered firms, and of unregistered firms treated as registered, are the persons primarily responsible for the payment of tax on the income earned by the firm, to the extent of their share therein.

15. In so far as unregistered firms not treated as registered are concerned, their "assessment" extends to the determination of the amount of tax payable. The tax so determined is made payable by the firm itself. The income of such partner from the firm is taxed in the hands of the firm and his other income taxed in his hands.

16. Partners of registered firm and of firms treated as registered are thus treated differently from partners of firms which are not registered and not treated as registered.

17. The "assessment" of firms, in the scheme of the Act, does not have the same meaning with respect to all firms. As pointed out by the Privy Council in the case of CIT vs. Khemchand Ramdas (1938) 6 ITR 414 : TC 6R.297, the term "assessment" is used in the IT Acts as meaning some times the computation of income, some times the determination of the amount of tax payable and some times the procedure laid down in the Act for imposing liability on the taxpayer. The "assessment" in so far as registered firms and those treated as registered are concerned, in the scheme of this Act, as it stood prior to 1st April, 1992, meant only computation of income. The determination of amount of tax payable

is to be made with respect to each partner on his total income in which his share of the income from the firm is to be included. The "assessment" in relation to partner of such firms include the determination of the amount of tax payable.

18. Sec. 65 permits composition by all persons holding land, subject to the conditions set out in the section. Unregistered firms also being persons may have the benefit of composition of the tax, payable by the firm. Partners of unregistered firms, can also avail of the benefit of composition in respect of their individual holdings. Sec. 65(3) imposes a prohibition on firms registered or treated as registered applying for composition, as such firms are not required to pay tax and the liability for payment of tax on the income of such firms is on the partners whose total income including the share in the firms income is subjected to tax in the hands of the partners.

19. The benefit of composition is, therefore, given only to the partners of such firms. The composition is to be in respect of all their holdings individual as well as their share in the firms holding - even as the tax if it is to be assessed is to be in respect of their total income including their share of the income of the firm.

20. Composition is not an alternate mode of assessment. Tax under the Act is levied on agricultural income from land in the State, computed in accordance with the provisions of the Act. A person permitted to avail the benefit of composition is not required to file a return, or maintain or furnish accounts and the provisions of the Act dealing with assessment are made inapplicable to such a person. Income, real or notional is not the basis for the composition. The rate at which composition may be effected is linked with the extent of land held, the rate being a rate per acre. Composition is a concession given to those eligible under s. 65 to pay a lump sum amount calculated in accordance with Sch. II of the Act having regard to the size of their holding.

21. In the case of COMMISSIONER OF AGRICULTURAL Income Tax, MADRAS Vs. K. SUBBIAH GOUNDER AND ANOTHER., , it was rightly held that in a proceeding under s. 65 of the Act, there is no "assessment". We are in agreement with the view expressed in the case of Anandkumar that s. 65 provides for a concessional commutation of liability for tax based on the extent of holding of the assessee.

22. It was contended for the Revenue that while interpreting s. 65 of the Act, rules of interpretation governing the interpretation of exemption provisions should be applied. Reliance was placed on the decision of the apex Court in the case of Novopan India Ltd. vs. Collector of Central Excise & Customs (1994) 3 SCC 606, wherein the Court approved the principle governing the interpretation of exemption provisions set out by a Two Judges Bench of the Court in the case of Mangalore Chemicals & Fertilisers Ltd. vs. Dy. Commr. of Commr. Taxes 1992 (1) SCC 21. The passage so approved, to the extent relevant there reads as under :

"The choice between a strict and liberal construction arises only in case of doubt in regard to the intention of the legislature manifest on the statutory language.

Indeed, the need to resort to any interpretative process arises only where the meaning is not manifest on the plain words of the statute. If the words are plain and clear and directly convey the meaning, there is no need for any interpretation. It appears to us the true rule of construction of a provision as to exemption is the one stated by this Court in *Union of India and others Vs. M/s. Wood Papers Ltd. and another*, . "

"Truly speaking, liberal and strict construction of an exemption provision are to be invoked at different stages of interpreting it. When the question is whether a subject falls in the notification or in the exemption clause then, it being in the nature of exemption, is to be constructed strictly and against the subject but once ambiguity or doubt about applicability is lifted and the subject falls in the notification then full play should be given to it and it calls for a wider and liberal construction ..."

23. Sec. 65 has to be construed on its own terms in the background of the scheme and purposes of the Act. Sec. 65(3) of the Act is a special provision in so far as the partners of a registered firm or an unregistered firm treated as registered are concerned, within the scheme of composition set out in s. 65. The partners of such firms who seek composition are required to aggregate their income from (a) the land held by them individually and (b) their proportionate share of the land held by the firm. The object of this aggregation of all the lands held by such partners individually as well their share in the lands held by the firm is two fold - one, to ensure that all their holdings are taken into account even as their total income is taken into account, for determining the tax payable under s. 17(5)(a) and two, to levy the composition fee at the appropriate higher rate on their total holdings and thereby prevent loss of revenue. Even as the partner is liable for payment of tax under s. 17(5)(a) on his share of the income of the firm, irrespective of his having, or not having any other income taxable under the Act, the right to seek composition is made available to such partner under s. 65(3) irrespective of holding or not holding land in his individual capacity.

24. The aggregation referred to in s. 65(2) does not amount to and cannot be read as laying down as an essential qualification, that the partner must have a source of taxable income in addition to his share of the income from the firm, or that he must hold land individually. The right conferred on the partner to seek composition is only subject to the condition that such composition is sought on his total holding including the share in the land held by the firm.

25. Sec. 65(3) does not expressly lay down that only a partner who holds land individually may seek composition. Nor does it expressly prohibit partners not holding land individually, from applying for composition. No such precondition or prohibition can be read into that provision. As held by the apex Court in the case of *Commissioner of Income Tax, Gujarat Vs. Vadilal Lallubhai, etc. etc.*, and *Commissioner of Income Tax, Madras Vs. Ajax Products Ltd. through its Liquidator*, , it is not permissible to construe any provision of a statute much less a taxing provision, by reading into it more words than it contains.

26. Composition under s. 65 is of the agricultural Income Tax payable by the assessee. Though not an alternate mode of assessment, composition is an alternative to the regular assessment. The composition provided for in s. 65(5) is an alternative to the assessment of the firm, and determination of tax payable by the partner on his share of the firms income which is to be included in his total income, as provided in s. 17(3)(a). The composition must, therefore, cover the total agricultural Income Tax liability of such partner. Sec. 65(3)(a) and (b) do no more than ensure that all the lands, income from which would have been subjected to tax in the hands of partners under s. 17(3)(a) and 17(3) (b) are computed under s. 65(3) for levy of the composition fee thereon.

27. Mr. K. J. Chandran, learned counsel for the assessee, is right in his submission that the reasoning in the case of Anandkumar that the prohibition against a firm registered or treated as registered seeking composition would be defeated if partners not holding land individually, are allowed to apply for composition, is fallacious.

28. The prohibition contained in s. 65(3) against a registered firm or an unregistered firm treated as registered firm from applying for permission for compounding is not in any way nullified if composition is permitted to a partner in respect of his proportionate share of the income derived from the land held by the firm, in cases where such partner does not held any other land. A registered firm or an unregistered firm treated as registered firm is not required to pay tax under s. 17(3). As the firm itself is not made liable for payment of tax, it is prohibited from applying for composition. The composition provided for in s. 65(3) is for the benefit of the partners and is an alternative to the payment of amount determinable under s. 17(3) (a) or (b) as tax payable by the partner. All lands income which would have been subjected to tax under s. 17, in the hands of partners, are therefore, included in s. 65(3). The prohibition set out in the earlier part of that provision is in no way nullified if partners whose holding of land consist solely of their share in the lands held by the firm, receive the benefit of composition. Such benefit is clearly contemplated and provided for in s. 65(3). The hold that individual holding of land is an essential precondition for invoking s. 65(3) would not only do violence to the language of the provision as also to its purpose.

29. All the words used in the statute are presumed to have been used with a purpose and that purpose as ascertained from a reading of the words used in the section, the scheme of that section, and the scheme of the Act, must be effectuated. The reference to aggregation, and specification of the possible sources of income to be aggregated, cannot be read to mean that two sources of income must co-exist even when there is no such explicit requirement in the section. The purpose of the provision for composition must be given its full scope and effect, and cannot be truncated by reading into the provision, limitations not found in it. Sec. 65 overrides other provisions in the Act, opening as it does with an non obstante clause.

30. We, therefore, hold that the decision rendered by the Division Bench in the case of R. Anandkumar & Ors. vs. State of Tamil Nadu (*supra*) is erroneous and we overrule the same. We hold that the absence of individual holding of land by a partner of a registered firm or of an unregistered firm treated as registered, does not disentitle such a partner from applying for composition of agricultural Income Tax, under s. 65(3) of the Act.

31. Matters referred to the Full Bench shall stand disposed of accordingly.