
(2010) 01 MAD CK 0018

In the Madras High Court

Case No : Tax Case (Revision) No's. 323 and 330 to 337 of 1997

R.N. Veerappan and Others

APPELLANT

Vs

State of Tamilnadu

RESPONDENT

Date of Decision : 27-01-2010

Acts Referred:

Tamil Nadu Agricultural Income Tax Act, 1955 — Section 17, 34, 34(2), 65, 65(1)

Citation : (2010) 322 ITR 662

Hon'ble Judges : P.P.S. Janarthana Raja, J;D. Murugesan, J

Bench : Division Bench

Advocate : R. Krishnamurthy, for R. Gangadharan, for the Appellant; Haja Naziruddin, for the Respondent

Final Decision : Allowed

Judgement

D. Murugesan, J.—In all these tax case revisions, the petitioners/asses-sees have questioned the order of the Commissioner, Agricultural

Income Tax, dated March 26, 1997 suo motu revising the earlier order of the assessing authority passed u/s 65 of the Act, by invoking the

provision of Section 34 of the Tamil Nadu Agricultural Income Tax Act, 1955 (for short "the Act"). In these tax case revisions, the petitioners have

raised the following substantial questions of law:

1. Whether on the facts and in the circumstances of the case, the Commissioner of Agricultural Income Tax has discharged his initial burden of

establishing the existence of essential ingredients to constitute "association of persons", among the petitioner and two others, before initiating suo

motu proceedings u/s 34 of the Tamil Nadu Agricultural Income Tax Act, 1955?

2. Whether on the facts and in the circumstances of the case, the Commissioner was justified in initiating proceedings u/s 34 by his mere ipse dixit

that the petitioner and two others are holding property with a common object to derive income and further directing the Assistant Income Tax

Officer, to pass an order u/s 17 in the status of a association of persons, by clubbing the holdings of three separate individuals?

3. Whether on the facts and in the circumstances of the case, the Commissioner was justified in law in setting aside separate composition orders

rightly passed by the Agricultural Income Tax Officer u/s 65 of the Act on the basis of valid application filed by the petitioner u/s 65(1) in respect

of his separate and specific extent of land allotted to him under a registered deed of partition, when the Department had all along accepted the

partition and separate enjoyment of the lands allotted to the petitioner?

4. Whether on the facts and in the circumstances of the case, the Commissioner was justified in law in ignoring various facts and materials placed

by the petitioner and thus established his separate holding and enjoyment of his lands and further justified in law in directing the Assistant Income

Tax Officer to club the holdings of the three persons and assess them u/s 17 in the status of association of persons?

2. On June 16, 1997, certain extent of land known as Thangamalai Tea Estate were purchased by one N. Sivagami Achi (petitioner in T.C. Nos.

335 to 337 of 1997), R.N. Veerappan (petitioner in T.C. Nos. 323, 330 and 331 of 1997) and one M.V.M. Venkatachalam and his three

brothers with one-third share each under a deed of partnership. Subsequently, the partner, namely, M.V.M. Venkatachalam and his three brothers

sold their one-third undivided share to one Smt. V. Ulagammai (petitioner in T.C. Nos. 332 to 334 of 1997) by four sale deeds and they retired

from the partnership firm. A fresh deed of partnership was entered into by the said Ulagammai with the other two partners in the year 1975 and the

land in estate was cultivated and income was derived by the respective partners. However, a deed of dissolution of partnership was made on

January 23, 1978, followed by a registered deed of partition dated May 8, 1978. By that partition, the lands were divided by metes and bounds

between the three individuals.

3. The Agricultural Income Tax Officer, who is having jurisdiction over the land, assessed the income in the individual names of the

petitioners/asses -ses for the assessment years 1979-80 to 1992-93. Those

assessment orders were made apparently on the basis of an inspection. Thereafter, in terms of Section 65 of the Act, applications were filed for composition of agricultural Income Tax by the three individuals on the ground that their respective holdings are less than 50 acres. Those applications were filed in the prescribed format as required under Sub-section (4) of Section 65 of the Act. In terms of Sub-Section (5) of Section 65 of the Act, the Agricultural Income Tax Officer should satisfy himself as to whether the particulars specified in the applications are correct and thereafter, on such satisfaction, by order in writing, grant the permission. Such a permission was granted in terms of the said provision for the three assessment years, viz., 1993-94, 1994-95 and 1995-96.

4. It appears that in exercise of the powers u/s 34, the Commissioner had suo motu proceeded to revise the above assessment orders and caused an inspection of the lands to be made. The Agricultural Income Tax Officer made inspection and found that there was no subdivision of the land and the entire estate is managed by one single person and the profits are shared by all the three assesses and therefore, they are to be called as association of persons"" and accordingly, they are not entitled to the benefit of Section 65 of the Act. Based on the said inspection report, the Commissioner revised the assessment orders for three years from 1993-94 to 1995-96, as he could revise such an order only for a period of three years preceding to such revision in terms of Section 34(2)(c) of the Act. The said order of the Commissioner is put in issue in these tax case revisions.

5. Heard Mr. R. Krishnamurthy, learned senior counsel for the petitioners and Mr. Haja Naziruddin, learned Special Government Pleader for the respondent.

6. There is no dispute rather it is an admitted fact that the individual status of all the three assesseees in respect of their holdings was accepted by the Agricultural Income Tax Officer right from the assessment years 1979-80 onwards, till such time the impugned order of the Commissioner was made. Before we go into the justification of the order of the Commissioner, we may refer to the judgments of this Court on the question as to whether such an exercise could be entertained by the Commissioner after a considerable period of years.

7. In Barwood Estate Vs. State of Tamil Nadu, , where the assessee was one of the constituents of the estate which carried on the business of

plantation with a common management with regard to the lands belonging to the assessee, a Division Bench of this Court had observed that the

constituents of the assessee should be assessed as co-sharers instead of association of individuals.

8. Again, a Division Bench of this Court, in its order made in T.C. Nos. 460 to 462 of 1989 (Albolachi Achi v. State of Tamil Nadu, rep. by

Commissioner of Agricultural income tax) dated September 3, 1997, had observed that as the assessee had been held to be a tenant in common

by an order of the Tribunal in respect of earlier assessment years 1974-75 and 1978-79, such a finding cannot be reversed in the year 1980.

9. Be that as it may, the order of assessment u/s 65 is not automatic. A request in this regard should be made by way of an application in the

prescribed format in terms of Sub-section (4) of Section 65, as otherwise a mere request for the composition of the agricultural Income Tax under

the said Section will not be entertained. The details furnished in the format have relevance in terms of Sub-section (5) of Section 65, wherein the

Agricultural Income Tax Officer should satisfy himself as to the particulars specified in the application and only after such satisfaction, he could

grant permission. Apparently, such satisfaction was arrived at by the Agricultural Income Tax Officer even in the year 1992 when he granted

permission for the assessment year 1993-94. He had also taken into consideration the earlier assessment orders from 1978-79 onwards, wherein

all the three individuals were assessed separately and such assessment orders were accepted. The order of the Agricultural Income Tax Officer is

on the basis that the erstwhile partnership firm was dissolved, the properties were partitioned among the three individuals, that they maintained

separate bank accounts, that their individual claims over their respective properties have been accepted by the Labour Department, that they have

also maintained three check rolls for three estates, the scrutiny of records revealed that raw tea leaves were sold in individual names and all the

three individuals are Central Income Tax assesseees and the properties have been divided among themselves by metes and bounds.

10. While the above assessment orders were sought to be revised, the Commissioner, Agricultural Income Tax, has relied upon the report of the

Agricultural Income Tax Officer made subsequently, wherein he had stated that there was no actual sub-division of the properties and the

properties are shared by all the three individuals in common, as they managed the tea estates by a single manager.

11. We have carefully considered the above reasons given by the Commissioner. In our opinion, none of the reasons is supported by any material,

in contra to the materials furnished by the petitioners. Merely because the properties are not divided by metes and bounds, factually could the

records state the individual status cannot be denied. In this regard, we may also refer to the explanation offered by the petitioners, wherein they

have stated that since some dispute was raised by the Forest Settlement Officer relating to certain holdings, the individuals have not obtained

pastas in respect of their lands. This aspect has not been considered by the Commissioner. Further, all the three individuals are closely related and

they can own their respective lands even without there being a legal sub-division, but on a demarcation made by them by mutual understanding. In

matters like this, what is relevant is whether they actually divided the properties and they maintained separate accounts for managing the property

and the income derived from the property is being put in separate accounts and not in common account. From the facts, it is clear that the partition

deed is not in dispute and the properties though managed by a manager in common, the profits are not shared by the individuals, but the respective

profits are credited to their respective accounts. For the entitlement of the provision of Section 65, the mere fact that the property is managed

through a common person cannot be a criteria and the proper consideration would be whether the properties are divided and stand in the

individual names.

12. In this context, we may also refer to the judgment of the Supreme Court reported in G. Murugesan and Brothers Vs. Commissioner of Income

Tax , Madras, , wherein it has been observed as follows (page 437):

For forming an "association of persons", the members of the association must join together for the purpose of producing an income. An

"association of persons" can be formed only when two or more individuals voluntarily combine together for a certain purpose. Hence, volition on

the part of the members of the association is an essential ingredient. It is true

that even a minor can join an "association of persons" if his lawful guardian gives his consent. In the case of receiving dividends from shares, where there is no question of any management, it is difficult to draw an inference that two or more shareholders function as an "association of persons" from the mere fact that they jointly own one or more shares, and jointly receive the dividends declared. Those circumstances do not by themselves go to show that they acted as an "association of persons".

13. A Division Bench of this Court in *State of Madras Vs. Pattammal*, , had observed as follows (page 489):

...The fact that different owners of properties, who were absentee landlords, for their own convenience, secured the help of two residents in the village for looking after their lands and cultivating them, would not ipso facto constitute them as an association of individuals within the special meaning given to that term for the purpose of assessment under the Agricultural Income Tax Act.

14. The Commissioner has exercised the power u/s 34 to revise the earlier orders of assessment only on the ground that the properties are managed through a common manager and all the three individuals shared the profits of income. As far as the first reason is concerned, we do not find any justification for the said reason as the person, who has some estates, could ask a common manager to supervise the land belonging to others as well, for the purpose of convenience. Engaging a common manager does not alter the status of the individual. As far as the second reason, viz., all the three individuals share the profits among themselves, there is absolutely no material to support the said finding. In fact, the said finding is itself contra to the materials placed by the petitioners/assesseees, namely, that they have three separate bank accounts, that the Labour Department has also accepted that there are three separate estates, that the check rolls of the three estates have been produced and that all the three individuals are central Income Tax assesseees by themselves. These factors have not at all been considered by the Commissioner to hold that all the three would essentially constitute ""association of persons"". Such finding is totally unjustifiable and is liable to be set aside.

15. For the above reasons, we are inclined to accept the submissions made by the learned senior counsel for the petitioners. Accordingly, all the

substantial questions of law raised in these tax case revisions are answered in favour of the petitioners/assesseees and against the respondent/Revenue. The tax case revisions are allowed. No costs.