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(1998) 03 MAD CK 0122

In the Madras High Court

Case No : T.C. No''s. 481 to 484 of 1986 (Revision No''s. 145 to 148 of 1986)

Rowena Coelho and Others APPELLANT

Vs

State of Tamil Nadu RESPONDENT

Date of Decision : 19-03-1998

Acts Referred:
Income Tax Rules, 1955 — Rule 31
Tamil Nadu Agricultural Income Tax Act, 1955 — Section 65, 65(1), 65(4)

Citation : (1999) 240 ITR 83

Hon'ble Judges : Janarthanam, J;A. Subbulakshmy, J

Bench : Division Bench

Advocate : P.H. Aravindpandian, for Subbaraya Aiyar, Padmanabhan, Ramamani, K.J. Chandran and R.L. Ramani, for the Appellant; K. Ravi Raja Pandian, Special Government Pleader, for the Respondent

Judgement

Janarthanam, J.—Silver Cloud Estates, Gudalur, it is said, is a registered firm, consisting of several partners. Being a registered firm, it appears, the agricultural income had been taxed at the hands of the partners of the firm. It appears the return of income for levying tax on income basis u/s 17 of the Tamil Nadu Agricultural Income Tax Act, 1955 (for short "the Act"), had been filed for the assessment year 1982-83.

2. The firm was stated to have been dissolved on August 28, 1981. After dissolution of the said firm, the erstwhile partners were stated to have partitioned their lands and the respective partners filed applications to compound the tax u/s 65 of the Act on June 14, 1982, in respect of the holdings held by them in the middle of the accounting year.

3. The Agricultural Income Tax Officer, Gudalur, had permitted the partners of the firm for composition of tax u/s 65 of the Act for the assessment year 1982-83 for the period after the dissolution of the firm.

4. The Commissioner of Agricultural Income Tax, Chepauk, Madras 5, in suo

motu revision proceedings u/s 34 of the Act required the partners to show cause why action should not be taken to cancel the assessment orders passed by the Agricultural Income Tax Officer, Gudalur, u/s 65 of the Act. After considering the objections filed, the Commissioner of Agricultural Income Tax set aside the assessment orders of the Agricultural Income Tax Officer and directed him to pass revised orders according to law.

5. The rational reasonings for passing such an order are two fold. They are :

1. Option to file a composition application for compounding the tax u/s 65 of the Act cannot be exercised, when already return of income for levying tax on the income basis u/s 17 of the Act had been filed for the assessment year in question ; and

2. A part of the income cannot be assessed on return basis and another on composition.

Four of the partners of the firm, viz.,

1. Miss Rowena Coelho (petitioner in T. C. (R.) No. 481 of 1986).

2. E. J. Coelho (petitioner in T. C. (R.) No. 482 of 1986).

3. M. B. T. Coelho (petitioner in T. C. (R.) No. 483 of 1986) and

4. Mrs. M. A. Coelho Memorial Trust (petitioner in T. C. (R.) No. 484 of 1986), aggrieved by the orders of the Commissioner, resorted to the present actions--T. C. (R.) Nos. 481 to 484 of 1986.

6. From the pith and submission of Mr. P. H. Arvind Pandian, learned counsel representing Mr. Subbaraya Aiyar, learned counsel appearing for the revision petitioners-assessees, and Mr. K. Ravi Raja Pandian, learned Special Government Pleader (Taxes) representing the Revenue, the one and only question that arises for consideration in all these actions is as to whether the order of the Commissioner cancelling the individual assessment order and directing the Assessing Officer to pass fresh orders in accordance with law, on the facts and in the circumstances of the case, is sustainable in law ?

7. The order of the Commissioner cannot at all be stated to be suffering from any serious infirmity of law or perverse appreciation of facts, calling for interference.

(a) Sub-section (4) of Section 65 of the Act prescribes that every application under Sub-section (1) thereof shall be submitted in such forms in such manner and within such time as may be prescribed,

(b) Sub-section (1) of Section 65 provides for composition of agricultural Income Tax.

(c) Rule 31 of the Tamil Nadu Agricultural Income Tax Rules, 1955, provides for form of application for composition of agricultural Income Tax and the manner of its presentation and disposal. The said rule prescribes that the application

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referred to in Sub-section (4) of Section 65 shall be in Form No. VIII and shall be verified in the manner indicated therein. It shall be sent to the Agricultural Income Tax Officer by registered post or presented in person or through a duly authorised representative so as to reach him on or before June 15 of the year for which permission to compound the agricultural Income Tax is required. The Agricultural Income Tax Officer may admit an application presented within 90 days after the said date, if he is satisfied that the applicant had sufficient cause for not presenting it on or before the said date.

8. Certain special provisions had also been made in the said rule in relation to the filing of the composition application for the assessment years 1968-69 and 1979-80 with which we are not concerned, and so we have not relied upon those provisions here.

9. It is crystal clear from Rule 31 of the Rules, that the application for composition must reach the Assessing Officer on or before June 15 of every year for which permission to compound the agricultural Income Tax is required, and if there is any delay caused in filing such an application, the delay so caused cannot enure beyond the period of 90 days from the targeted date, viz., June 15, of the year, for which permission to compound the agricultural Income Tax is required and the filing of such application during the extended period is permissible only if and when there is sufficiency of cause for the delayed presentation.

10. Admittedly, the accounting year in these actions commences from April 1, 1981, and ends with March 31, 1982. Therefore, the year, in the instant cases for which permission to compound the agricultural Income Tax is required to be made is the year commencing from April 1, 1981, and ending with March 31, 1982, and if that be the case, the compounding application ought to have been filed on or before June 15, 1981, and if not filed within the said date, the same could be filed within a further period of 90 days from the said date, provided there is sufficiency of cause for the delay so caused.

11. In all the instant cases, there is no denial of the fact that the compounding applications had not been filed on or before the June 15, 1981, nor the same were filed within a period of 90 days from the said date on sufficient cause being shown for not presenting it on or before the said date. The sordid fact is that the individual compounding applications had been filed by individual revision petitioners-assessees on one and the same date, i.e., to say June 14, 1982, far beyond the permissible time, as contemplated by Rule 31 of the Rules. That being the real position, the order of the Commissioner setting aside the individual orders passed by the Assessing Officer permitting the revision petitioners-assessees to file compounding applications and assess to tax accordingly cannot at all be stated to be not sustainable in law.

12. The Commissioner, without referring to Rule 31 simply stated in his order, as already noticed, that opting to file compounding application is not permissible

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when especially the return had been filed for levying tax on income basis under the Act and a part of the income cannot be assessed on return basis and another on composition for the relevant year in question. This sort of a rationale, according to us, is pregnant with meaning, if we take into account the charging provision, viz., Section 3 and the compounding provision, viz., Section 65. Sub-section (1) of Section 3 prescribes that agricultural Income Tax at the rate or rates specified in Part I of the Schedule to this 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.

13. As such, it is crystal clear that the charge to agricultural Income Tax is in respect of one year. If we turn to Section 65, it is discernible that in lieu of the agricultural Income Tax payable by the assessee, he is permitted to pay a lump sum at the rate or rates specified in Part II of the Schedule to the Act. That means in lieu of payment of agricultural Income Tax by the assessee for one year, he is permitted to pay a lump sum at the rate or rates specified in Part II of the Schedule to the Act. In other words, it could be said that the provisions of the Act do not contemplate compounding for broken periods. The order of the Commissioner thus looked at from any angle, cannot at all be stated to be not in accordance with law. We answer the point accordingly.

14. In fine all the tax case revisions fail and are accordingly dismissed. No costs.

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