
(1997) 03 MAD CK 0131

In the Madras High Court

Case No : Tax Case No's. 212, 213, 285, 368 and 374 of 1985

S. P. BHANSAM and Another

APPELLANT

Vs

STATE OF TAMIL NADU

RESPONDENT

Date of Decision : 27-03-1997

Acts Referred:

Citation : (1998) 148 CTR 220

Hon'ble Judges : N.V. Balasubramanian, J; Abdul Hadi, J

Bench : Full Bench

Judgement

ABDUL HADI, J.:

These tax revisions have been preferred under s. 54 of the TN Agrl. IT Act against the order passed by the Commr. under s. 34 of the Act, which provides for suo motu revision by the Commr. TC Nos. 212, 213, 285, 368 and 374 of 1985 relate to the same assessee by name S.P. Bhansali while TC Nos. 426 to 428 of 1985 relate to another assessee, M.K. Bhansali.

2. TC No. 212 of 1985 relates to the asst. yr. 1978~79-, TC No. 213 of 1985 relates to the asst. yr. 1974-75, TC No. 285 of 1985 relates to the asst. yr. 197778.1 TC No. 368 of 1985 relates to the asst. yr. 1975-76; and TC No. 374 of 1985 relates to the asst. yr. 1976-77. TC No. 426 of 1985 relates to the asst. yr. 1978791. TC No. 427 of 1985 relates to the asst. yr. 1977-78 and TC No. 428 of 1985 relates to the asst. yr. 1976-77.

3. Since the common question is involved in all these tax case revisions, they are all disposed of together. The following facts are necessary to understand the point involved. The abovesaid S.P. Bhansali was a partner having a particular share in three different firms which were having agricultural income. They were (1) M/s Warwick Estate Syndicate; (2) M/s Kairbetta Estate Syndicate. and (3) M/s Kesaria Nilgiris Hills Tea Plantations. Further, he was also the karta of Hindu undivided family, hereinafter referred to as "HUF". According to learned counsel for the applicant, the said S.P. Bhansali threw his said interest in two of the

abovereferred to three firms, viz., Warwick Estate Syndicate and Kairbetta Estate Syndicate into the common hotch-pot of the abovesaid family in 1969 and thereafter, after such blending, the abovesaid HUF alone was assessed to tax in respect of the income flowing from those interests in the two firms while he was assessed separately as an individual in respect of his share of income from the other firm Kesaria Nilgiris Hills Tea Plantations and such separate assessments continued upto 1978-79. Learned counsel further submits that the CIT purporting to exercise his jurisdiction under s. 34 of the Act issued a show cause notice dt. 29th March, 1982 calling upon the said assessee to show cause why orders should not be passed to cancel the assessment orders passed by the Agrl. ITO earlier in respect of the abovereferred to five asst. yrs. 1974-75 to 1978-79. Further he submits that despite his reply to the show cause notice dt. 5th April, 1982 the Commr. passed the impugned order dt. 22nd Oct., 1982 in respect of those five assessment years setting aside those assessment orders and directing the Agrl. ITO to pass fresh assessment orders in the hands of the said assessee as an individual, pursuant to the show cause notice by clubbing the alleged income of the said assessee from all the abovesaid three firms.

4. It is against the said order of the Commr. these five revisions have been preferred by the abovesaid S.P. Bhansali.

5. The other three tax cases also viz., TC Nos. 426 to 428 of 1985 are against similar orders passed by the Commr. under s. 34 of the Act dt. 22nd Oct., 1982. There also learned counsel for the petitioner submitted that there was blending in the year 1969 by the assessee M.K. Bhansali in favour of his HUF, in relation to his interest in one of the abovereferred to three firms viz., Kairbetta Estate Syndicate. Learned counsel also submitted that in the case of M.K. Bhansali also in 1969 after blending, the abovesaid HUF alone was assessed to tax in respect of the income flowing from the abovesaid interest that was blended into the family right upto the asst. yr. 1978-79 and the abovesaid change was sought to be made by the Commr. in the impugned order dt. 22nd Oct., 1982, in respect of M.K. Bhansali.

6. Even at the outset we must state that regarding abovesaid blending by S.P. Bhansali there is no specific reference to such blending in 1960, in any of the papers placed before us in the abovereferred to five cases relating to S.P. Bhansali, though learned counsel for the applicant referred to such blending by S.P. Bhansali in 1969. No doubt, in the case of M.K. Bhansali this blending is spoken to in the reply, which M.K. Bhansali sent on 18th Sept., 1992 to the show cause notice issued by the Corrimr. dt. 29th March, 1982. However, it is clear that prior to the show cause notice in each of the two sets of cases, one relating to S.P. Bhansali and another relating to M.K. Bhansali, in the years prior to the relevant impugned orders, there was no clubbing spoken to earlier but there were only separate assessments.

7. After going through the impugned orders in both sets of cases, we are unable to conclude that there is any justification for the abovesaid clubbing, despite the

rival arguments advanced by learned counsel for the Revenue. The material portions in the impugned order in the case of S.P. Bliansali are as follows :

"This is a case where the assessment was made in the status of HUF and individual for one and the same person for the asst. yrs. 1975-76 to 1978-79 and the income derived from the three firms was not clubbed together and assessment was not also made as per s. 2(x) of the Act.

The provisions of s. 2(x) r/w s. 9 and s. 10(2) of the Act are clear that the total agricultural income includes incomes specified under s. 9 and all receipts described in s. 10(2) of the Act.

This is a case for taking all the agricultural income together under s. 2(x) of the Act. So the authorities quoted cannot be taken as relevant for the issue in the case where he derived income as an HUF taking himself his share from a company and individual for the same assessment year. The status of the individual should not have been differentiated and it is wrong to give more than one status to one and the same assessee who derive income in his individual capacity and as a partner of another firm. The assessment made in the status of the HUF in respect of share income from one estate and individual in respect of his share income from another estate should not have been separated. The one is an income derived by the individual and the other could be taken as receipt under s. 10(2) of the Act being the share income derived by him as a partnership of the firm".

8. A similar passage appears in the other impugned order also in relation to M.K. Bliansali.

9. By reading the above passage it appears that the Conimr. mainly relies on s. 2(x) r/w s. 9 of the Act. Sec. 2(x) defines the term "total" agricultural income" thus.

"total agricultural income" means the aggregate income mentioned in s. 4 computed in accordance with the provisions of s. 5 and includes all income of the description specified in s. 9 and all the receipts of the description as specified in sub-s. (2) of s. 10".

Now it is clear from the abovesaid definition that income spoken to under s. 9 would also come within this definition under s. 2(x). Sec. 9(1) runs as follows:

1n computing the total agricultural income of an assessee, all agricultural income arising to any person by virtue of a settlement or disposition, whether revocable or not, and whether effected before or after the commencement of this Act from assets remaining the property of the settlor or disponent shall be deemed to be the agricultural income of the settlor or disponent, and all agricultural income arising to any person by virtue of a revocable transfer of assets shall be deemed to be the agricultural income of the transferee.

(The provisions therein are not extracted since it is not quite relevant). The

material portions of s. 9(2) runs as follows:

In computing the total agricultural income of any individual for the purpose of assessment, there shall be included-

(a) so much of the agricultural income of a wife or minor child of such individual as arises directly, or indirectly-

(iii) from assets transferred directly or indirectly to the wife by the husband otherwise than for adequate consideration or in connection with an agreement to live apart; or

(iv) from assets transferred directly or indirectly to the minor child not being a married daughter by such individual otherwise than for adequate consideration, and

(b) so much of the agricultural income of any person or AOP as arises from such assets transferred otherwise than for adequate consideration to the person or association by such individual for the benefit of his wife or minor child or both".

(Emphasis, italicised in print, supplied)

10. We must first point out that in the impugned orders though s. 9 is referred to, it is not specifically mentioned whether s. 9(1) is invoked or s. 9(2) is invoked in the present case. Even in the show cause notice issued by the Corrimr. originally in both the assessee's cases, there is no specific reference to s. 9(1) or 9(2) of the Act. In our view neither s. 9(1) nor s. 9(2) could be invoked in the case of either of the two abovesaid assessees. Sec. 9(2) will not at all apply since the abovesaid blending will not be transfer spoken to in s. 9(2) as held in STATE OF TAMIL NADU Vs. A. SADHANANDAM AND OTHERS., , following the decision in Goli Eswariah vs . MT (1970) 76 ITR 675 (SQ) which related to a case under the GT Act, 1958. In Goli Eswariah Vs. Commissioner of Gift Tax, Andhra Pradesh, the Supreme Court has held that such blending resorted to by one coparcener of the family cannot be termed "transfer" as defined under the GT Act, since such blending takes place pursuant to an unilateral declaration only and it is not a bilateral transaction.

11. Learned counsel for the respondent also did not support the impugned orders, invoking s. 9(2) of the Act.

12. Then, coming to s. 9(1) of the Act, it consists of two parts. The second part obviously will have no application since there is no revocable transfer spoken to therein, in the present case.

Coming to the first part of s. 9(1) of the Act also we have necessarily to conclude that the first part also would not apply to the present case. The said first part contemplates only with a case where the income from an asset alone is settled or disposed of while the asset remains with the settlor or disponent. But, in the present case pursuant to the abovesaid blending, the property in question in each case actually went over to the HUF in question in each case and did not

remain with the relevant assessee. Therefore, the first part of s. (1) also will not apply. In the impugned orders, as already indicated, s. 10(2) of the Act is also referred to.

But that provision only says:

"Agricultural Income Tax shall not be payable on that part of the total agricultural income of a person which is-

(a) any sum which he receives out of the agricultural income of an HUF... he receives such sum as a member of the family or towards or tavazhi and tax under this Act has been levied on the agricultural income".

Actually the existence of this provision also shows that there could be separate assessment, one on the individual, who is a coparcener in an HUF and another on the HUF itself, and when a particular income is assessed in the hands of HUF any coparcener of the family cannot be once again charged to tax in respect of his share of income from the said family. That apart, in s. 2(g) of the Act, even while defining the term "person" among the assessable entities, individual as well as Hindu mithakshara family are mentioned.

13. Therefore, there is no justification at all for the Commr. invoking s. 34 and seeking to resort to the abovesaid clubbing.

14. Further we must also point out that there is a confused thinking on the part of the Commr. This is evident from the passage extracted above from the impugned order. He proceeds in the said passage as if the assessee in each of these two sets of cases is having two different status, one as an individual and another as HUF. Actually speaking, apart from having a status of an individual he is also a coparcener of the HUF in question and the said family alone is given the status of HUF under the Act. So, it cannot be said that the assessee in each of the two sets of cases is having two different status.

15. The net result is, all these revision petitions are allowed. The impugned orders in both the two sets of cases are set aside. No costs.

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