
(1995) 08 MAD CK 0062

In the Madras High Court

Case No : Tax Case (Revision) Petition No. 92 of 1989

Silver Cloud Estates Pvt. Ltd.

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 08-08-1995

Acts Referred:

Income Tax Act, 1961 — Section 28

Citation : (1996) 219 ITR 244

Hon'ble Judges : Venkatachaliah, J;Abdul Hadi, J

Bench : Division Bench

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

Judgement

Abdul Hadi, J.—This tax case revision No. 92 of 1989 by the assessee is under s. 54 of the TN Agrl. IT Act, 1955, and relates to the asst. yr. 1984-85. It is against the order of the Commr. of Agrl. IT (Commissioner) dt. 19th Feb., 1988, passed under s. 34 of the said Act. In other words, the impugned order is passed under the said Commissioner's power of suo motu revision. By the said order dt. 19th Feb., 1988, of the Commissioner, he set aside the order of the Asstt. Commr. of Agrl. IT, the first appellate authority, dt. 29th April, 1985, and by the same order he also made some modifications to the original assessment order dt. 31st Dec., 1984. Originally, the assessing authority, in computing the total agricultural income, disallowed a sum of Rs. 66,304.08 representing the expenditure incurred for upkeep and maintenance of the residential building of the manager and administrative officer of the assessee's estate. Further, out of a sum of Rs. 5,19,153.18 claimed by the assessee as plucking charges in the estate, in the said assessment order, he disallowed the said charges to the extent of Rs. 36,627.78 and only allowed the balance. Further, in so far as the lines and latrines upkeep to the extent of Rs. 34,005.60 claimed by the assessee, the Assessing Officer (AO) fully allowed the said deduction. Likewise in the case of motor vehicles maintenance to the extent of Rs. 19,874.24 he fully allowed the deduction claimed. When the assessee took up the matter before the first

appellate authority, while disagreeing with the assessing authority, he allowed the above said sum of Rs. 66,304.08 as well as Rs. 36,627.78. Now the Commissioner has set aside the abovesaid order of the Asstt. Commr., in allowing the abovesaid sum of Rs. 66,304.08 as well as the abovesaid sum of Rs. 36,627.78. That apart, by his order, he has also held that with reference to the abovesaid motor vehicles maintenance, only 50 per cent of what has been allowed by the assessing authority should be allowed. Further, regarding the expenditure relating to the lines and latrines, the Commissioner observed in his order as follow :

"I think there is a case to believe that the expenditure is likely to be genuine. The Agrl. ITO may verify the genuineness of the replacement of the water supply lines and allow the expenditure in full if he is satisfied after inspection and investigation."

Aggrieved by the said order of the Commissioner, this revision has been filed by the assessee.

2. Learned counsel for the assessee submits that since the genuineness of the vouchers and accounts produced is not doubted there is no scope for making any revision as has been done by the Commissioner. He also points out that in the show-cause notice dt. 23rd March, 1987, that was given under s. 34 of the Agrl. IT Act, 1955, nothing was stated as to any proposal to revise the order of the original assessing authority. If that is so, the Commissioner has no jurisdiction to make any alteration with reference to the assessing authority's order in relation to the abovesaid sum of Rs. 34,005.60 and Rs. 19,874.24. Further, learned counsel submits that all that the Commissioner says in the show-cause notice even with reference to his proposal to revise the Asstt. Commr.'s order is that the abovesaid expenditure are "in excess". In other words, without any material whatsoever, the Commissioner in his show-cause notice simply says that the above said expenditures are excessively allowed.

3. There is force in the argument of learned counsel for the assessee. In fact learned counsel for the Revenue could not seriously rebut the abovesaid argument of learned counsel for the assessee. It is also clear to us that the Commissioner has exceeded his jurisdiction in invoking s. 34 of the TN Agrl. IT Act, without any material, warranting such exercise of the power under s. 34 of the Act. As already indicated, with reference to the order of the first appellate authority, he only says that the said authority has "allowed the following expenditure in excess without any basis and therefore they have to be cancelled under s. 34 of the TN Agrl. IT Act, 1955, on suo motu revision". He says that the allowance was in excess. But, in reality, we find that there is no basis at all for the Commissioner holding that the first appellate authority allowed the said expenditures in excess. If the revisional authority proposed to revise any order of the subordinate authority, he should come forward with relevant materials warranting such revision and such material should be placed before the assessee giving him an opportunity to rebut. But simply saying that the expenditures

allowed are in excess, will not give the revisional authority to invoke power under s. 34 of the TN Agrl. IT Act, 1955.

That apart, from the show-cause notice it is seen that the Commissioner is seeking to revise only the order of the first appellate authority and the consequential revisional assessment passed by the assessing authority pursuant to the order of the first appellate authority. Nowhere in the show-cause notice is it stated that the Commissioner is going to revise the original assessment order itself. While so, in the order which is passed by the Commissioner, he has no jurisdiction at all to revise in any way the original assessment order. So it is clear to us, the show-cause notice itself is ill-conceived and on that short ground itself the order subsequently passed by him has to be set aside.

4. That apart, we find even in the impugned order nowhere is it stated that the vouchers or accounts or other records produced by the assessee before the assessing authority were not genuine. If that is so, it cannot be said that the expenditure incurred is in excess.

No doubt, learned counsel for the Revenue pointed out one passage in the order of the Commissioner which reads as follows :

"As regards the plucking charges, the Agrl. ITO, taking into account the wage levels obtaining in the area restricted the expenditure to 60 paise per kg. The assessee in his appeal did not produce any document relating to the wage pact with the unions. So in the absence of any authentic evidence to show that the wage level in that area were more than 60 paise per kilogram the Asstt. Commr. should not have allowed the entire expenditure in revision of the orders of the Agrl. ITO."

Learned counsel for the Revenue no doubt pointed out that the assessee should have produced the abovesaid document relating to the wage pact with the unions. But when the assessee has produced all the other vouchers and accounts showing the disbursement of wages to the labourers and the Department has not chosen to question the genuineness of those vouchers and account books, etc., the mere non-production of the alleged wage pact will not have any impact affecting the assessee.

Further, regarding the expenditure on the maintenance and upkeep of the residence of the manager and administrative officer, no doubt what the Commissioner says is that the said manager and administrative officer were also serving other concerns and the expenditure on their salary was shared on a sharing basis at the rate of 30 per cent from each of the concerns, including the assessee. But this is an absolutely irrelevant consideration. So long as the said manager and administrative officer are residing in the building in question that building has to be maintained and any expenditure incurred regarding the maintenance of the said building, has to be allowed fully when the genuineness of the vouchers and account books is not challenged, and the fact they are regularly maintained in the course of the management of the estate, is not

doubted in any way.

5. Accordingly, looking at from any angle, the impugned order cannot at all be sustained. Accordingly, the impugned order of the Commissioner is set aside and the appeal is allowed with cost of Rs. 1,000.