
(1998) 01 MAD CK 0037

In the Madras High Court

Case No : T.C. No. 221 of 1994 (Revision No. 75 of 1994)

Siva Coffee Plantations

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 07-01-1998

Acts Referred:

Tamil Nadu Agricultural Income Tax (Amendment) Act, 1958 — Section 1(2)
Tamil Nadu Agricultural Income Tax Act, 1955 — Section 17, 65

Citation : (2000) 241 ITR 256

Hon'ble Judges : P. Thangavel, J; Janarthanam, J

Bench : Division Bench

Advocate : T. Srinivasamoorthi, for the Appellant; K. Ravi Raja Pandian, for the Respondent

Judgement

Janarthanam, J.—This tax case (revision) is directed against the order passed by the Commissioner of Agricultural Income Tax, Madras-5

(CAIT), in exercise of his powers u/s 34 of the Tamil Nadu Agricultural Income Tax Act, 1955 (Tamil Nadu Act No. V of 1955-for short

principal Act""), in his proceedings S. M. R. P. No. 14 of 1993, dated May 6, 1993, setting aside the order of the Agricultural Income Tax

Officer, Pollachi (AITO), in his proceedings GIR No. 21-S of 1992-93 permitting the partners of the firm, namely, Siva Coffee Plantations, to

compound the holdings, according to the profit sharing ratio, as agreed to between them.

2. The one and only ground on which the Commissioner of Agricultural Income Tax revised the orders of the Agricultural Income Tax Officer was

that the said Assessing Officer was oblivious to the implications of the Tamil Nadu Agricultural Income Tax (Amendment) Act, 1992 (Act No. 36

of 1992--for short ""Amendment Act""), and that perhaps was the reason, he would say that the said Assessing Officer permitted the compounding applications filed by the partners of the said firm relatable to the assessment year 1992-93.

3. The said order of the Commissioner of Agricultural Income Tax is now challenged before us in this action--Tax Case (Revision) No. 221 of 1994. Prior to the amendment Act, Sub-section (5) of Section 17 of the principal Act, stood as below :

17. Assessment of income.--. . . .

(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-section (1), Sub-section (3) or Sub-section (4) as the case may be in the case of a 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 and 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 Section 12 :

Provided further that, when any 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 so determined as payable shall be

paid by the firm ; and

(b) in the case of an unregistered firm, the Agricultural Income Tax Officer may, instead of determining the sum payable by the firm itself, proceed

in the manner laid down in Clause (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 an unregistered firm.

4. From what has been extracted above it is rather crystal clear that in the case of a 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 and gains of the previous year, shall be assessed, and the sum payable by him on the basis of such assessment shall be determined. Even in the case of an unregistered firm, the Agricultural Income Tax Officer has power to treat such an unregistered firm, as if it is a registered firm and the assessment of the partners to be completed accordingly in case he derives the solidified satisfaction that the aggregate amount of tax payable by the partners under such procedure would be greater than the amount payable by the firm and the partners individually if the firm were assessed as an unregistered firm.

5. Prior to the amendment Act, Sub-section (3) of Section 65 of the principal Act, stood as below :

65. Composition of agricultural income tax-- . . .

(3) No registered firm or unregistered firm treated u/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 agricultural Income Tax 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.

6. It is thus crystal clear from what has been extracted above that though the firm--whether registered or unregistered--is not entitled to apply for permission to compound, yet any partner of such firm may apply for permission to compound the agricultural Income Tax payable by him on the aggregate amount of the income derived by him from the land held by him individually and his proportionate share of the land held by the firm.

7. Sub-section (5) of Section 17 had been substituted and Sub-section (3) of Section 65 had been omitted by the amendment Act.

8. The substituted Sub-section (5) of Section 17 reads as under :

(5) Notwithstanding anything contained in the foregoing sub-sections, when the assessee is a firm, whether owning property of its own or holding the property on behalf of any one of, or all, the partners of the firm or any other person and the total income of the firm has been assessed under Sub-section (1), Sub-section (3) or Sub-section (4) as the case may be, the agricultural Income Tax shall be payable by the firm itself at the rate or

rates specified in Part I of the Schedule to this Act.

9. It is thus fluidly crystal clear that subsequent to the amendment Act, it is not permissible for any partner of the firm-registered or unregistered--to

file an application for composition of income relatable to the assessment year, subsequent to 1992-93, inasmuch as Sub-section (2) of Section 1 of

the amendment Act had incorporated the retrospective operation of the amendment Act on and from April 1, 1992.

10. No doubt true it is, that in the instant case, the income of the previous year, that is to say, between April 1, 1991, and March 31, 1992, is to

be assessed in the assessment year 1992-93, commencing from April 1, 1992, and ending with March 31, 1993. Inasmuch as the amendment Act

had come into force on April 1, 1992, although the said amendment Act has received the assent of the Governor on the June 12, 1992, and

publication of the same had been effected on June 16, 1992, it goes without saying that the agricultural income of the assessee-firm for the period

between April 1, 1991 and March 31, 1992, has to be necessarily assessed, according to the new provisions brought into being by the

amendment Act. This is what exactly the Commissioner of Agricultural Income Tax has held in his suo motu revision proceedings u/s 34 of the

principal Act. This sort of a view, as held by the Commissioner of Agricultural Income Tax, cannot at all be held to be not reflecting the real

position of law. In this view of the matter, the order of the Commissioner of Agricultural Income Tax deserves to be upheld.

11. In fine, the tax case (revision) is dismissed. No costs.