(1997) 09 MAD CK 0053

In the Madras High Court

Case No : Tax Cases No''s. 972 and 973 of 1988 (R. No''s. 159 and 160 of 1988)

Sri. Lakshminarasimhaswami Devasthanam — APPELLANT

Vs

State of Tamil Nadu — RESPONDENT

Date of Decision : 02-09-1997

Acts Referred:
Income Tax Act, 1961 — Section 28

Citation : (2000) 241 ITR 615

Hon'ble Judges : R. Jayasimha Babu, J;Akbar, J

Bench : Division Bench

Advocate : K. Mani, for the Appellant; Deokinandan, K.M.L. Majele, S. Sudharsanam, for the Respondent

Judgement

R. Jayasimha Babu, J.—The assessee has filed these petitions u/s 54(1) of the Tamil Nadu Agricultural Income Tax Act, 1955, against the

order made by the Commissioner of Agricultural Income Tax rejecting the petitioner''s revision petitions to revise the orders of assessment made

against the petitioner for the years 1982-83 and 1983-84, after those orders has been rectified by the Assessing Officer, in exercise of his powers

u/s 35 of the Act. The initial orders of assessment were made on August 13, 1984, assessing the petitioner to tax in the sum of Rs. 2,152.60 and

Rs. 3,689.50 for the years 1982-83 and 1983-84, respectively.

2. Almost a year later, but well within the period of limitation prescribed u/s 35 of the Act, which empowers the Assessing Officer to reopen the

assessment in order, inter alia, to include any income escaping the assessment, the Assessing Officer issued a notice to the petitioner on February

15, 1985, which was received by the assessee on February 21, 1985. The assessee undertook to produce certain accounts required for the

Assessing Officer, by March 26, 1985, but he did not do so. A reminder was sent to the assessee on July 24, 1985, which was duly received, but

the assessee did not do anything thereafter. The revised orders of assessment came to be passed on September 13, 1985.

3. The orders so made by the Assessing Officer set out that the mistake made in the earlier order of assessment has been rectified and that revised

order is issued u/s 4(b) read with section 17(3) of the Tamil Nadu Agricultural Income Tax Act. This order is clearly appealable u/s 31 of the Act.

The assessee however did not choose to file such an appeal. The assessee, instead, filed a revision petition after the period of limitation for filing an

appeal had expired. The revision petition was filed on May 13, 1986. Those petitions were filed u/s 34 of the Act which empowers the

Commissioner to act on his own motion or on application by the assessee to revise the orders passed by the subordinate officers. In those revision

petitions, the assessee urged only two grounds, (1) that sufficient opportunity had not been given and (2) that the petitioners are eligible for

exemption u/s 4(b) of the Act. The first point was negatived as the Commissioner found that the petitioner had been given sufficient opportunity but

had failed to utilise the same. On the second point, the Commissioner held that though the assessee had non-agricultural income which was not

unsubstantial, it had not produced any document to show that the income was exempted from assessment under the Indian Income Tax Act, and

that proof of that nature was a prerequisite u/s 4(b) for grant of exemption to an institution with charitable objects having agricultural income

therefore the assessee was not entitled to have its income exempted.

4. Learned counsel for the assessee contended that the Commissioner has erred in recording these findings and, therefore, that order should be set

aside.

5. It is not possible for us to grant any relief to the petitioner even if we assume for a moment that both the grounds urged by the assessee before

the Commissioner have been decided erroneously.

6. The present revision petitions which have been filed u/s 54 of the Act have to be dismissed as not maintainable, as, by the, impugned order of

the Commissioner, the assessee''s prayer for setting aside the order of the rectified assessment order has been rejected, and there is no further order of the Commissioner to cast any burden or causing any pre-judice to the petitioner which had not been caused by the order of the Assessing

Officer. The assessee has failed to avail of the remedy by way of an appeal, and instead, sought to have the assessment set aside by invoking the

revisional powers of the Commissioner u/s 34.

7. The Privy Council in the case of CIT v. Tribune Trust [1948] 16 ITR 214, while considering section 33 of the Indian Income Tax Act, 1922,

which provision enabled the Commissioner to revise the orders of his subordinates, held that the order passed by the Commissioner refusing to set

aside the orders of assessment made against the assessee during the period when the assessee''s appeal against the assessment made for the earlier

year was pending before the Privy Council and in which appeal, the Privy Council after the assessment had been made for subsequent years held

that the assessee''s income was not taxable on the ground that it was applied for a charitable purpose, could not be said to have caused pre-judice

to the assessee, as by the reason of refusal of the Commissioner, the assessee''s position remained as it was at the time, the assessments impugned

before the Commissioner were made. The assessee had not preferred appeal against those assessments and had not availed of the remedy which

was available to it under the Act for having an illegal assessment set aside or corrected in appeal. The Privy Council also considered section 33

along with section 66(2) of the Indian Income Tax Act, 1922, and held that a reference under the latter section could not be made in respect of an

order made by the Commissioner which merely rejected the petition of the assessee to interfere with the order of assessment. The court concluded

by stating that (page 227) "".... a reference does not lie from an order u/s 33 unless that order is prejudicial to the assessee in the sense that he is in

a worse position than before the order was made.

8. In the course of the judgment, the Privy Council observed that the Income Tax Act, exhaustively defined the obligations and remedies of the

taxpayer and that it would be wholly incompatible with the scheme of the Act that he should have a collateral right, necessarily vague and ill-

defined, founded on the principles of equity and good conscience. It was also observed that the remedies open to the taxpayer whether in regard

to appeal against assessment or to claim for refund are to be found within the four corners of the Income Tax Act.

9. That decision of the Privy Council was the basis for the decision of a Full Bench of this court in N.N. Seshadrinathan Vs. State of Madras, ,

wherein it was held that reading of section 34 of the Tamil Nadu Agricultural Income Tax Act with section 54, an order of the Commissioner

declining to interfere with the order of an inferior tribunal cannot be termed an order prejudicial to the assessee so as to fall within the scope of

section 54, and therefore, an application for revision u/s 54 does not lie from such an order. In so-holding, this court departed from the earlier

decision to the contrary rendered by a Bench of five judges in the case of VOORA SREERAMULU CHETTY Vs. COMMISSIONER OF

Income Tax, MADRAS., . In that judgment it had been held that a reference u/s 66(2) of the Indian Income Tax Act, 1922, was maintainable

against the rejecting of a revision petition filed by an assessee u/s 33. The Full Bench which decided the case of N.N. Seshadrinathan Vs. State of

Madras, , held that the earlier decision of this court in VOORA SREERAMULU CHETTY Vs. COMMISSIONER OF Income Tax,

MADRAS., was no longer good law.

10. That decision of the Full Bench in N.N. Seshadrinathan Vs. State of Madras, has been followed by the Division Benches of this court one such

instance being in the case of M.V.S. Kathirvelu Nadar Vs. Commissioner of Agricultural Income Tax Madras, .

11. The basis for the decision of the Full Bench and of the Division Bench which have followed the decision of the Full Bench is the decision of the

Privy Council in the case of Tribune Trust [1948] 16 ITR 214. The statutory provision considered therein is not strictly in pari materia with section

34 of the Tamil Nadu Act. While section 33 of the Indian Income Tax Act, 1922, did not confer in express terms, a right on the assessee to invoke

the revisional powers of the Commissioner, section 34 of the State Act expressly provides that the Commissioner''s power of revision may be

exercised not only on his own motion but also on ""application by the assessee"". The second proviso to section 34(1) reads as under :

Provided further that an order passed declining to interfere shall not be deemed to be an order prejudicial to the assessee.

12. Sub-section (4) of section 34 is couched in wide terms. That provision reads

as under :

34. (4) Any order passed under sub-section (1) shall, subject to revision by the High Court u/s 54, be final.

13. Section 34 of the State Act thus in express terms states that the order passed u/s 34(1) being one passed either at the instance of the assessee

or suo motu by the Commissioner will be final only subject to a revision by the High Court u/s 54. Section 54 provides, inter alia, that in the case of

an order u/s 34, enhancing the assessment or otherwise prejudicial to the assessee, the assessee may prefer an application to the High Court

against that order. Reading the two provisions together, namely, sections 34 and 54, it must be held that the wider language of section 34(4) has

been whittled down by the express words used in section 54(1) which enables the assessee to approach the High Court only against an order u/s

34 which is prejudicial to the assessee. The rejection of a revision petition filed by the assessee is declared by the second proviso to section 34(1)

to be an order which shall not be deemed to be an order prejudicial to the assessee.

14. Having regard to the express language used in these two sections the legislative intent is manifest that a revision u/s 54 at the instance of the

assessee against the order of the Commissioner rejecting the assessee''s revision, is not maintainable and it cannot be entertained. We are in

agreement with the view expressed by the Full Bench of the Kerala High Court in the case of JACOB Vs. ADDITIONAL DEPUTY

COMMISSIONER OF AGRICULTURAL Income Tax AND ANOTHER., , that it is only when the assessee is able to plead and prove that

prejudice has been caused otherwise than by mere rejection of his revision petition by the Commissioner that the assessee can invoke section 54 of

the Act. No such prejudice has been demonstrated before us. The revision petitions, therefore, have to be, and are accordingly dismissed.

