

(1997) 09 MAD CK 0090

In the Madras High Court

Case No : Tax Cases (Revision) No"s. 579 and 580 of 1985, Writ Petition No. 7238 of 1985, TCMPs No"s. 359 and 360 of 1985 and WMP No. 10937 of 1985

Sri. Thirukkarai Eswarar Temple Devasthanam

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 11-09-1997

Acts Referred:

Income Tax Act, 1961 — Section 10(1), 11, 12, 12A, 13

Citation : (1998) 234 ITR 120

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

Bench : Division Bench

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

Judgement

Janarthanam, J.—Desirable it is to pen down a common order, inasmuch as the question involved in all these actions, is one and the same in respect of the assessee - Sri Thirukkarai Eswarar Temple Devasthanam, governed by the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (Tamil Nadu Act No. XXII of 1959 - as amended) relatable to the assessment years 1981-82, 1983-84 and 1984-85 as respects the income derived from agriculture on the land held by the said Devasthanam.

2. In respect of the assessment years 1981-82 and 1983-84, the Agricultural Income Tax Officer, Chengalpattu, in his proceedings GIR. 11/T-CGT/81-82 and 83-84, dated January 30, 1984, assessed the agricultural Income Tax of the assessee-Devasthanam in sums of Rs. 4,420.40 and Rs. 2,775.40, respectively. It appears that the assessee-Devasthanam, pursuant to a notice u/s 16(2) of the Tamil Nadu Agricultural Income Tax Act, 1955 (Tamil Nadu Act. No. V of 1955 - for short "the Act"), simply submitted a return without making any objection as to the exigibility of the income derived by the assessee-Devasthanam.

3. The assessee-Devasthanam agitated the matter further before the Assistant Commissioner of Agricultural Income Tax, Villupuram, by preferring Appeal

Petitions Nos. 8 and 9 of 1984. The said Assistant Commissioner of Agricultural Income Tax also dismissed these two appeal petitions on April 28, 1984, on twifold grounds, namely,

(1) The assessee did not raise any objection as to the amount of income assessed by the Agricultural Income Tax Officer, Chengalpattu;

(2) In the absence of exemption under the Income Tax Act, 1961 (Act No. 43 of 1961 - for short "1. T. Act") - a Central Act the order of the Agricultural Income Tax Officer is quite correct and within the bounds of law.

4. The assessee-Devasthanam agitated the matter further by filing appeals before the Tamil Nadu Agricultural Income Tax Appellate Tribunal, Madras-104 (for short "the Tribunal"), which in turn, took them on file as Appellate Tribunal Appeals Nos. 82 and 86 of 1984. The Tribunal also dismissed the appeals on the ground that unless and until the trust is registered u/s 12A of the Income Tax Act, it is not entitled to exemption from tax.

5. In respect of the assessment year 1984-85, the Agricultural Income Tax Officer, Chengalpattu, as usual, sought to levy tax in respect of the income derived from the land held by the assessee-Devasthanam, by the issuance of a notice u/s 16(2) of the Act and the assessee-Devasthanam, after receipt of the notice, prayed for time, so as to enable them to get the relevant records, which had been filed in court and file their reply. Without giving adequacy of time, it appears, the Agricultural Income Tax Officer, Chengalpattu, had chosen to pass the impugned order in GIR. 11/T/Cgl. 84-85, dated May 31, 1985, determining the net agricultural income at Rs. 42,916.50 and assessed the assessee-Devasthanam to a tax of Rs. 12,812 for the year 1984-85. The aggrieved assessee-Devasthanam resorted to writ proceedings in filing W.P. No. 7238 of 1985 on the file of this court to quash the said impugned order.

6. The assessee-Devasthanam filed TCMP Nos. 359 and 360 of 1985 praying for stay of all further proceedings before the authorities below and this court, by order dated July 2, 1985, passed an order as below :

"Interim stay and notice".

7. Likewise, the assessee-Devasthanam also filed W.M.P. No. 10937 of 1985 praying for interim stay of all further proceedings and this court on July 11, 1985, passed an order as below :

"Interim stay and notice".

8. The arguments of Mr. Arvind P. Datar, learned counsel representing Mr. S. N. Loganathan, learned counsel appearing for the petitioner (in all cases), that is to say, the assessee-Devasthanam, and Mr. K. Elango, learned Government Advocate (Taxes) representing the Revenue were heard.

9. All the authorities below, we rather feel, did not approach the issue involved in these actions from the correct legal perspective and that is getting reflected by

the orders passed by them. Originally, the income derived from the land held under trust for charitable or religious purposes was exempt from tax by the Act. Such an exemption ensured to the benefit of the said trust till the Amendment Act No. 4 of 1973. The said amendment Act came into force with effect from April 1, 1972, which introduced clause (b) of section 4 of the Act. The said clause runs as under :

"4. Total agricultural, income. - Subject to the provisions of this Act, the total agricultural income of any previous year of any person comprises all agricultural income derived from land situated within the State, which is received by him or which accrues to him within or without the State, but does not include -

(b) any agricultural income derived from property held under trust, wholly or partly for charitable or religious purposes, to the same extent to which the income derived from property held under trust wholly or partly for charitable or religious purposes, is not included in the total income for the purposes of the Income Tax Act, 1961 (Central Act XLIII of 1961)."

10. Therefore, after the introduction of the said clause, by Act No. 4 of 1973, the exemption granted in respect of the agricultural income derived from the property held under trust is taken away and even the said income is made exigible or assessable to tax and the measure of exigibility or assessability to tax had, however, been indicated by the insertion of a phraseology, while enacting clause (b) of section 4 of the Act. The phraseology - "to the same extent to which the income derived from property held under trust wholly or partly for charitable or religious purposes, is not included in the total income for the purposes of the Income Tax Act, 1961 (Central Act No. XLIII of 1961)" - assumes signal importance. Unless and until the said phraseology is correctly understood, by interpretative process, it is not feasible or possible to come to any conclusion as to whether and in what manner any agricultural income derived from the property held under trust, wholly or partly for charitable or religious purposes, is exigible to tax or not and to what extent.

11. For a proper understanding of the phraseology, as extracted above, it is but necessary to refer to certain provisions of the Constitution and the Indian Income Tax Act, 1922 -

(a) "Agricultural income" is defined under clause (1) of article 366 of the Constitution of India, which reads as under :

"366. In this Constitution, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say -

(1) "agricultural income" means "agricultural income" as defined for the purposes of the enactments relating to Indian Income Tax . . ."

(b) u/s 2(1A) of the Income Tax Act, "agricultural income" is defined. The said definition, it appears, underwent amendments on many an occasion. There is no

need or necessity, we rather feel, to extract the definition of "agricultural income" as contained in the Income Tax Act. Suffice it for us to say that as per the salient provisions adumbrated under clause (1) of article 366 of the Constitution, the "agricultural income" can mean only income as defined under the definition clause of the Income Tax Act. In tune with the definition of "agricultural income" as defined in the Income Tax Act, the Act also defines "agricultural income" u/s 2, clause (a), and there is no need at all, therefore, to extract the said definition, on the facts and in the circumstances of these cases.

12. The fields of legislative activity of the Union and the State in relation to taxation had been earmarked by Lists I and II of the Seventh Schedule to the Constitution.

(a) Entry 82 of List I of the Seventh Schedule to the Constitution reads as under :

"82. Taxes on income other than agricultural income."

(b) Entry 46 of List II of the Seventh Schedule to the Constitution reads as under :

"46. Taxes on agricultural income."

13. Article 265 of the Constitution deals with power of taxation and the said article reads as under :

"265. Taxes not to be imposed save by authority of law. - No tax shall be levied or collected except by authority of law."

14. Thus, the said article provides that the State shall not levy or collect tax, except by authority of law. A tax cannot be levied or collected by a mere executive fiat. It is to be done by authority of law, which must mean valid law only. In order for a law to be valid, the tax proposed to be levied must be within the legislative competence of the Legislature imposing the tax and authorising collection thereof and, secondly, the tax must be subject to the conditions laid down in article 13 of the Constitution.

Article 13 of the Constitution reads as under :

"13. Laws inconsistent with or in derogation of the fundamental rights. - (1) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this part, shall, to the extent of such inconsistency, be void.

(2) The State shall not make any law which takes away or abridges the rights conferred by this part and any law made in contravention of this clause shall, to the extent of the contravention, be void.

(3) In this article unless the context otherwise requires, -

(a) "law" includes any ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law;

(b) "laws in force" includes laws passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas.

(4) Nothing in this article shall apply to any amendment of this Constitution made under article 368."

15. Article 246 dealing with the subject-matter of laws made by Parliament and by the Legislatures of States reads as under :

"246. (1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the "Union List").

(2) Notwithstanding anything in clause (3), Parliament, and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the "Concurrent List").

(3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution, referred to as the "State List").

(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State, notwithstanding that such matter is a matter enumerated in the State List."

16. From the salient provisions adumbrated under article 246, it is thus crystal clear that the Union can legislate on taxes under entry 82 of List I of the Seventh Schedule to the Constitution, that is to say, it can legislate only on income, other than "agricultural income". Likewise, the State can legislate on tax under entry 46 of List II of the Seventh Schedule, that is to say, on tax on "agricultural income".

17. The Indian Income Tax Act, 1922, must be considered to be an enactment made by the Union under entry 82 of List I of the Seventh Schedule to the Constitution. Likewise, the State of Tamil Nadu enacted the Act (Tamil Nadu Agricultural Income Tax Act, 1955), under entry 46 of List II of the Seventh Schedule.

18. From this, it is crystal clear that the purpose for which the Income Tax Act was enacted was to tax income, other than "agricultural income" and the purpose of the enactment of the Tamil Nadu was to tax "agricultural income" and nothing further. It is in this view of the matter that in section 10(1) of the Income Tax Act, "agricultural income" is not included in the computation of income of the assessee relatable to the previous accounting year in respect of the assessment

year and not that the power inheres in an authority to tax "agricultural income" and consequently to grant exemption therefor.

19. Section 11 of the Income Tax Act deals with income from property held for charitable or religious purposes. The income from the property held for a charitable or religious purpose under this section cannot be any one other than "non-agricultural income". The parameters for grant of exemption of such income had been prescribed by the said section.

20. Section 12 of the Income Tax Act deals with the income of trusts or institutions from contributions.

21. Section 12A prescribes the requisite and necessary conditions as to the registration of trusts, etc.

22. Section 13 deals with the situation in respect of which section 11 shall not apply. Further section 11 is subject to the provisions of sections 60 to 63, as had been indicated in the opening part of the section itself.

23. Thus, the Income Tax Act contains relevant salient provisions prescribing the parameters for grant of exemption in respect of income from property held for charitable or religious purposes.

24. As already adverted to, the subject-matter of taxation cannot be any one other than agricultural income under the Act. For the sake of emphasis, we may again reiterate that the income from the property held under trust for religious or charitable purposes, which were originally exempt from tax was sought to be taxed by Act No. 4 of 1973 with effect from April 1, 1972, by the introduction of clause (b) of section 4 and in such process, income from property held under trust for religious or charitable purposes is sought to be exempted in the manner and methodology contemplated therein.

25. In the context in which the phraseology, "to the same extent to which the income derived from property held under trust wholly or partly for charitable or religious purposes is not included in the total income for the purpose of the Income Tax Act, 1961", occurs in the said clause, no meaning can be ascribed, except as to how under the Income Tax Act, the income derived from non-agricultural property held by a charitable and religious trust is taxable and to the same extent, the agricultural income would be taxable under the said clause of the Act. If any other meaning is given to the said phraseology, it would lead to absurd results. In the process of interpretation of the phraseology, as extracted above, we have to accredit wisdom and knowledge to the Legislature in enacting such a clause to the relevant provisions of the Income Tax Act and the provisions of the Constitution, we have earlier referred to and that perhaps was the reason they have introduced clause (b) of section 4 to tax "agricultural income" from property held under trust for religious or charitable purposes in the same manner, as had been enacted in the Income Tax Act, as relatable to non-agricultural income from property held under trust for religious and charitable

purposes for the purpose of Income Tax.

26. Certain consequences are to flow from what has been stated above. There is no need for a religious or charitable trust receiving income from agriculture from the lands held by them to get the trust registered under the relevant provisions of the Income Tax Act for claiming a little bit of exemption of tax, as had been granted in clause (b) of section 4 of the Act. It is only such sort of religious or charitable trust holding property and deriving non-agricultural income alone which have to get themselves registered under the relevant provisions of the Income Tax Act for getting exemption from taxation.

27. The authorities below, as already indicated, approached the issue involved in this case from a legal perspective, altogether untenable and that perhaps was the reason they have misdirected themselves to the issue involved and consequently held that the assessee-Devasthanam was liable to tax in respect of the income derived from land held under trust for religious or charitable purposes.

28. The view, we have taken, as above, is in accord with the view taken by this court in the case of His Holiness Silasri Kasivasi Muthukumaraswami Thambiran and Another Vs. Agricultural Income Tax Officer, Kumbakonam and Others, .

29. The writ proceedings in W.P. No. 7238 of 1985 are relatable to the agricultural income of the assessee-Devasthanam in respect of the assessment year 1984-85. The assessment order passed in respect of the said year does not at all reflect proper application of mind as relatable to the interpretation of the newly introduced clause by Act No. 4 of 1973, as in respect of the other assessment years 1981-82 and 1983-84. Of course, the assessment relatable to the year 1984-85 is not directly challenged in the said writ petition. But, what is challenged is that adequacy of opportunity had not been granted to the assessee-Devasthanam to place their point of view by obtaining necessary and requisite records, which were filed in court. On the facts and in the circumstances of these cases, we feel that the assessment order relatable to the year 1984-85 had been passed in gross violation of the audi alteram partem rule to the assessee-Devasthanam; and, therefore, the assessment made in the year 1984-85 cannot at all be allowed to stand and, consequently, the order so passed deserves to be set aside and the assessee-Devasthanam has to be given adequacy of opportunity to espouse their case and, thereafter, the Agricultural Income Tax Officer, Chengalpattu, has to make necessary and requisite orders, in the light of what we have stated above, as respects the purport and content of the phraseology used in clause (b) of section 4 of the Act, as extracted above.

30. Since the authorities below had not at all applied their mind in the proper perspective in understanding the significance and meaning of clause (b) of section 4 of the Act and misdirected themselves in levying tax in respect of the agricultural income of the assessee-Devasthanam, the impugned orders of the authorities below deserve to be set aside and a fresh look has to be taken of the matter at the level of the Assessing Officer, that is to say, the Agricultural Income

Tax Officer, Chengalpattu.

31. In fine, T.C. Nos. 579 and 580 of 1985 are allowed. The impugned orders of the authorities below are set aside and the matters are remitted back to the Assessing Officer - the Agricultural Income Tax Officer, Chengalpattu, for consideration afresh in the light of what we have observed in this common order.

32. W.P. No. 7238 of 1985 is also allowed and the order of the Assessing Officer in question is quashed and the matter is also remitted back to the Assessing Officer - the Agricultural Income Tax Officer, Chengalpattu, for consideration afresh, in the light of what we have observed in this common order.

33. Consequently, both TCMPs and WMP are also dismissed. No costs.