
(1964) 02 KL CK 0005
In the High Court Of Kerala
Case No : Writ Appeal No. 99 of 1963

State of Kerala and Another	Vs	APPELLANT
Balakrishna Menon		RESPONDENT

Date of Decision : 24-02-1964

Acts Referred:

Kerala Agricultural Income Tax Act, 1950 — Section 29(1)

Citation : (1965) 58 ITR 775 : (1964) KLJ 440

Hon'ble Judges : M.S. Menon, C.J

Bench : Single Bench

Judgement

M.S. Menon, C.J.—The only question for determination in this appeal is whether the assessment made on the assumption that the assessee is an undivided Marumakkathayam tarwad is justified or no ? The assessment is under the Agricultural Income Tax Act, 1950, and the assessment year concerned is the financial year which ended on the 31st March, 1962. The contention of the appellants - the State of Kerala and the Agricultural Income Tax Officer, Kozhikode - is that the assessment is justified, and that the conclusion to the contrary in the judgment under appeal cannot be sustained.

2. It is common ground that even though there has been a preliminary decree for partition, the properties of the tarward have not yet been divided by metes and bounds. It is also clear that the tarward has hitherto been assessed as undivided, and that those assessments have become final.

3. Sub-section (1) of section 29 of the Agricultural Income Tax Act, 1950 (omitting the proviso thereto), reads as follow :

Where at the time of making an assessment u/s 18, it is claimed by or on behalf of any member of a Hindu undivided family, or Aliyasanthana family or branch or Marumakkathayam tarwad hitherto assessed as undivided that a partition has taken place among the members or groups of members of such family or tarward, the Agricultural Income Tax Officer shall make such inquiry thereinto as

he may think fit, and if he is satisfied that the joint family property has been partitioned among the various members or groups of members in definite portions he shall record an order to that effect.

4. This provision corresponds to sub-section (1) of section 25A of the Indian Income Tax Act, 1922. The case law on that sub-section makes it quite clear that once a family has been assessed as a joint family it should continue to be so assessed until an order has been made under that sub-section, and that no order can be made under that sub-section until there has been a physical division of the family property.

5. This is evident from sub-section (3) of section 29 of the Agricultural Income Tax Act, 1950. That sub-section says that "where such an order" - an order under sub-section (1) of section 29 - "has not been passed in respect of a Hindu family, or Aliyasanthana family or branch or Marumakkathayam tarward hitherto assessed as undivided, such family or tarward shall be deemed for the purposes of this Act to continue to be an undivided family or tarwad."

6. Counsel for the respondent drew our attention to sub-section (5) of section 3 of the Agricultural Income Tax Act, 1950, which say :

In the case of persons holding property as tenants-in-common and deriving agricultural income, the tax shall be assessed at the rate applicable to the agricultural income of each tenant-in-common.

and contended that after the preliminary decree what is in existence is a tenancy-in-common and that the assessment should be on that basis. The fallacy in the submission lies in ignoring the mandate of the legislature embodied in sub-section (3) of section 29. That mandate is to the effect that no Hindu family or Aliyasanthana family or branch or Marumakkathayam tarward which had previously been assessed as undivided should be considered as disrupted for the purposes of the Agricultural Income Tax Act, 1950, unless and until there has been a physical division of the properties by metes and bounds.

7. We are fortified in this view by the decisions in *Sunder Singh Majithia v. Commissioner of Income Tax*, *Srilalan v. Inspecting Assistant Commissioner of Agricultural Income Tax and Sales-tax* and *Joint Receivers of the Estate of Dewan Bahadur C. Arunachala Mudaliar v. Commissioner of Income Tax*, and it is unnecessary to go over the ground afresh. It was suggested that the words "hitherto assessed as undivided" meant "hitherto validly assessed as undivided" and that the prior assessments were incorrect. The assessee did not challenge the correctness of those assessments in appropriate proceedings and we cannot put proceed on the basis that they have become final and conclusive.

8. Counsel for the respondent also submitted that no appeal has been filed against the decision in O.P. No. 485 of 1961 and that the said decision will operate as *res judicata*. That O.P. had nothing to do with the agricultural income of the tarward before us and we are unable to see any merit in this contention.

9. It follows that the writ appeal should be allowed and we do so with costs; advocates fee Rs. 100.

Appeal allowed.