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(1963) 03 MAD CK 0001

In the Madras High Court

Case No : Tax Case No. 3 of 1963 (Revision No. 3 of 1963)

State of madras — APPELLANT

Vs

VR. M. SM. Karuppan Chettiar and Others — RESPONDENT

Date of Decision : 04-03-1963

Acts Referred:
Income Tax Act, 1922 — Section 3, 3(3), 9, 9(3)

Citation : (1966) 61 ITR 488

Hon'ble Judges : Jagadisan, J

Bench : Single Bench

Judgement

Jagadisan, J.—The petitioner is the State of Madras. The respondents were assessed under the Madras Agricultural Income Tax Act, 1955,

in the status of ""association of individuals"". Their net agricultural income was computed as Rs. 26,817.30 and a tax of Rs. 5,387.83 was levied.

This was for the assessment year 1958-59. From the said assessment the respondents appealed to the Assistant Commissioner of Agricultural

Income Tax, Thanjavur, and contended that they should not to be treated as an ""association of the individuals"" and that each one of them should be

assessed individually in regard to his share of the agricultural income. This contention was not accepted by the appellate authority and the appeal

failed. The respondents preferred a further appeal to the Agricultural Income Tax Appellate Tribunal, Madras, and reiterated their contention that

they did not constitute an ""association of individuals"". The Tribunal upheld their contention and remanded the proceedings to the Income Tax

Officer for a fresh determination of their respective tax liability. It is this decision which is now called in question by the State. It is urged on their

behalf that the Tribunal erred in law in holding that the respondents should not

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be treated as an ""association of individuals"" having regard to the

facts and circumstances of the case. The following genealogical tree shows the relationship between the respondents :

A.M.K. Family

ï¿½

ï¿½ ï¿½ ï¿½

Chidambaram Chettiar Karuppan Chettiar Alagappa Chettiar

ï¿½ ï¿½ ï¿½

A.M.K.M.CT. A.M.K.M.K.Karuppan A.M.K.M.AL. Muthu

Muthukaruppan Chettiar (Executor) Karuppan Chettiar

ï¿½ ï¿½

M. Chidambaram(Adopted) V.RM.S.M Karuppan

son Chettiar & others

2. These respondents admittedly became divided by partitioning their common estate. The partition deed is dated December 20, 1954. They held

lands in Palankudi and Tholuthur villages in Thiruthuraipoondi Taluk as detailed below, during the year 1957-58.

Wet & dry lands.

1. AM. K. MK. Karuppan Chettiar AC. 102-14

2. M. Chidambaram Chettiar 52-83

3. AM. K. M. CT. Muthukaruppan Chettiar 62-31

4. AM. K. M. AL. Muthukaruppan Chettiar 53-12

3. An extent of about Ac. 53 - 63 of wet lands were held by them under personal or pannai cultivation and the balance of about Ac. 183 - 11

were leased out in favour of forty-seven tenants. The pannai cultivation was done under a common management and a common account was

maintained showing the income from the lands and the expenses incurred for deriving the income. In respect of the lands leased out to tenants,

seeds and cultivation expenses were advanced from a common account and they were recouped at the time of the harvest. At the end of each year

the net agricultural income was apportioned among the four respondents in the ration of their holdings.

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4. For the assessment year 1958-59 they submitted separate returns in respect of their respective share income. The Agricultural Income Tax

Officer, however, treated them as one entity, an ""association of individuals"", and taxed them on the total net income of the entire estate.

5. Now the question is whatever the respondents are chargeable to agricultural Income Tax collectively as constituting an ""association of

individuals"". The Madras Agricultural Income Tax Act defines ""person"" u/s 2(q) as including an association of individuals owing or holding

property. An ""association of individuals"" is a taxable entity under the Act. These words have not been defined. There is a special provision relating

to income derived by tenants-in-common and that is sub-section (3) of section 3 :

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.

6. The provisions of this Act are modeled upon the provisions of the Indian Income Tax Act. Under that Act also an ""association of individuals"",

whether corporate or not, can be taxed as a unit of assessment. Sub-section (3) of section 9 of the Indian Income Tax Act corresponds to sub-

section (3) of section 3. It reads :

Where property is owned by two or more persons and their respective shares are definite and ascertainable, such persons shall not in respect of

such property be assessed as an association of persons, but the share of each such person in the income from the property as computed in

accordance with this section shall be included in his total income.

7. An ""association of individuals"" is no doubt a taxable entity both under the Madras Agricultural Income Tax Act as well as under the Indian

Income Tax Act. Neither of these Acts has defined this expression. What is chargeable to tax is the income of the collective body. It is only a

comprehensive expression denoting composing or forming the group or body. The mere collectiveness in insufficient to constitute an association

within the meaning of the said Acts. That term indicates, quite clearly, a common purpose and a joint action. Without the cementing force of unity

of unity of purpose resulting in income there can be no chargeable association. A common object to earn income, a joint endeavour towards that

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end, and a resultant income, being the fruit of the joint enterprise, are the essentials which should be present before individuals can be clubbed

together as an association to be taxed.

8. In construing the term ""association"" under the Indian Income Tax Act, Rajagopalan J. observed thus in Estate of Khan Sahib Mohd. Oomer

Sahib v. Commissioner of Income Tax :

In the absence of any statutory definition, the word association has to given its normal dictionary meaning. To associate is to join in a common

purpose of action.... To render an association of persons a taxable unit, for which section 3 provides, the object of the association must be to

produce income, profits or gains.

9. When tenants-in-common of a property divide the income in the ratio of their definite shares without a division of the corpus by metes and

bounds, they cannot be said to have earned their respective income by joint endeavour, effort or enterprise. A joint management of the undivided

property held in shares, either by one of the shares or by a duly appointed attorney would not knit them together as an ""association of individuals"".

Each tenant-in-common is interested in getting his share of the income and the method employed is only to achieve that purpose. There is no

common purpose of earning income from the whole property. A common management is adopted because it is a convenient mode of enjoyment

facilitating receipt of rents and profits without difficulty.

10. The decision of the Lahore High Court in Nizam-ud-din Amir-ud-din of Lahore, In re considered the question whether a common management

of the property of certain Muslim co-heirs would clothe them with the character and status of ""association of individuals"" under the Indian Income

Tax Act. The view taken was that verse such a management would not make them an association. The assessees in that were the co-heirs of a

Muhammadan who inherited the property of the deceased in specific shares under the Muslim law. They did not partition the property and the rent

deeds stood in their joint names. They had employed a munshi to manage the property and to collect the rents and the income. After deduction the

cost of collection and other expenses the net income was distributed in accordance with their respective shares. The Income Tax authorities

assessed them as an ""association of individuals"". On a reference under the Act

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the High Court held that they did not form as association of

individuals and that they should be separately assessed on their individual share. At page 447, the learned judges observed as follows :

11.

... although a munshi was employed to collect rents, it has been specifically found that the net income is distributed in accordance with the

respective shares of the assessees, and it would seem, therefore, that there was no joint venture such as was found in Bombay and Rangoon cases.

The mere fact that assessees after inheriting their shares of Karim Bakshs property, did not choose to partition does not indicate, in my view, that

the co-heirs have formed any such combination for the promotion of a joint enterprise or so mutual profit such as is implied in the expression

association of individuals as used in section 3 of the Income Tax Act as it stood at the material time.

12.

13. We may also refer to the decision of the Bombay High Court in Indira Balakrishna v. Commissioner of Income Tax. Three co-widows of a

deceased Hindu received income from the assets which they jointly inherited from their husband. The income fell under the following heads, viz.,

(1) income from property, (2) dividends, (3) shares in a registered firm, (4) interest on deposit, and (5) ground rent. The Income Tax Appellate

Tribunal held that they should be assessed as an association of persons in respect of the entire income. The High Court held that as their shares in

the property were definite and ascertainable, the special provision of sub-section (3) of section 9 of the Indian Income Tax Act would apply and

that they could not be assessed as an association of person in respect of the income from such property, but the one-third share of each widow

had to be included in her total income as an individual. The view of the Bombay High Court was that section 9(3) of the Income Tax Act was a

special provision and cases falling within that provision would not attract the provisions of the general charging section, viz., section 3. At page

329, Chagla C.J. stated the position thus :

This is a case where property is owned by these three widows, their shares are definite and ascertainable, and therefore the income earned by

these three widows, assuming that they are an association of persons for the

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purpose of the Income Tax Act, cannot be assessed as an association

of persons but the share of each of them must be included in her own individual assessment.

14. We have already pointed out that the facts of the case would not make the respondents an ""association of individuals"" as there was no

common endeavour or enterprise in the matter of realisation of the agricultural income and that the mere fact of a single establishment or a common

management for carrying on personal cultivation or for leasing out the property cannot band them together as an association. We are also of the

view that section 3(3) of the Act, which is quite specific and clear in its terms, governs the relationship between the parties, and there is no reason

why the respondents should not obtain the benefit of that provision. In our opinion, the decision of the Tribunal holding that the respondents should

not be treated for purposes of tax as as ""association of individuals"" is correct and well-founded on the facts circumstances of the case. The revision

petition fails and is dismissed.

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