

(1997) 08 MAD CK 0099
In the Madras High Court
Case No : Tax Case (R) No. 1154 of 1987

State of Tamil Nadu

APPELLANT

Vs

Elixir Plantations (P) Ltd.

RESPONDENT

Date of Decision : 28-08-1997

Acts Referred:

Tamil Nadu Agricultural Income Tax Act, 1955 — Section 35

Citation : (1998) 231 ITR 601

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

Bench : Division Bench

Advocate : T. Mathi, for the Appellant; S. Devanathan, for the Respondent

Judgement

Jayasimha Babu, J.—The State has come in revision against the order of the Tribunal, which has held that the period of limitation prescribed in s. 35 of the Tamil Nadu Agrl. IT Act (hereinafter referred to as "the Act") should be computed from the end of the year in which the income had been earned.

2. For the asst. yr. 1977-78 in respect of which the previous year was 1976-77, the Agrl. ITO initiated proceedings to reopen the assessment, under s. 35 of the Act, on the ground that a sum of Rs. 23,991 had escaped assessment as that amount had been received from the Coffee Board in the previous year, but had not been included in the computation of the total income. Notice under s. 35 of the Act was issued to the assessee on 19th October, 1982, and it was received by the assessee on 25th October, 1982. The receipt of the notice was within a period of five years from the end of the year 1977-78.

3. The Tribunal has held that the proceedings so initiated and the order culminating in those proceedings were illegal on the ground that the initiation of the proceedings was barred by limitation. To reach that conclusion, the Tribunal has assumed that the financial year referred to in s. 35 of the Act is the year in which the income was earned and not the year of assessment. The Tribunal, in so holding, has misread the provisions of the Act.

"Financial year" is defined in the Act in s. 2(k) as meaning the year beginning on 1st April, and ending on 31st March, next following. "previous year" is defined in s. 2(t) as it stood during the relevant period as meaning the twelve months ending on 31st March, next preceding the year for which the assessment is to be made.

4. Sec. 3 of the Act, which is the charging section provides that agricultural Income Tax at the rates specified in Part I of the Schedule to the Act shall be charged for each financial year commencing from 1st April, 1955, in accordance with and subject to the provisions of the Act, on the total agricultural income of the previous year of every person. Sec. 4 of the Act deals with the computation of total agricultural income and profits subject to the provisions of the 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.

5. It is clear from a reading of these provisions that the year in which the income is earned or received is defined in the Act as "the previous year" while the year of assessment is referred to as the "financial year". The charge created by s. 3 of the Act is on the income of the previous year. The tax is to be assessed in the financial year. The previous year is one which immediately precedes the financial year. The financial year, in other words, is the assessment year.

6. The period of limitation prescribed under s. 35 of the Act is with reference to the financial year. That section reads as under :

"If for any reason agricultural income chargeable to tax under this Act has escaped assessment in any financial year, or has been assessed at too low a rate or has been under-assessed, the Agri. ITO may, at any time, within five years of the end of that year, serve on the person liable to pay the tax, or in the case of a company, on the principal officer thereof, a notice containing all or any of the requirements which may be included in a notice under sub-s. (2) of s. 16, and may proceed to assess or re-assess such income, and the provisions of this Act shall, so far as may be, apply accordingly, as if the notice were a notice issued under that sub-section :

Provided that the tax shall be charged at the rate at which it would have been charged if such income had not escaped assessment or full assessment, as the case may be."

7. The computation for the purpose of determining the period of limitation for the purpose of s. 35 must therefore commence from the end of the financial year or the assessment year, and not from the end of the previous year or the year when the income was received. So computed, the notice issued by the AO on 9th October, 1982, to revise the assessment made for the asst. yr. 1977-78 for which the previous year was 1976-77, is well within the period of five years from 31st March, 1978.

8. The Tribunal was clearly in error in holding otherwise. The revision is, therefore, allowed.