

(1998) 01 MAD CK 0101

In the Madras High Court

Case No : Tax Case No. 140 of 1994 (Revision No. 37 of 1994)

State of Tamil Nadu

APPELLANT

Vs

Ezhumeswaramudayar Temple

RESPONDENT

Date of Decision : 09-01-1998

Acts Referred:

Constitution of India, 1950 — Article 13, 246, 366, 366(1), 368
Income Tax Act, 1961 — Section 10(1), 11, 12, 12A, 13
Tamil Nadu Agricultural Income Tax Act, 1955 — Section 4

Citation : (2001) 247 ITR 521

Hon'ble Judges : P. Thangavel, J; Janarthanam, J

Bench : Division Bench

Advocate : K. Ravi Raja Pandian, for the Appellant; None, for the Respondent

Judgement

Janarthanam, J.—This tax case (revision) is directed against the order dated October 28, 1993, of the Tamil Nadu Agricultural Income Tax Appellate Tribunal, Madras-104 (for short "the Tribunal"), and made in A.T.A. No. 84 of 1991, relatable to the assessment year 1990-91 under the Tamil Nadu Agricultural Income Tax Act, 1955 (for short "the Act").

2. The assessee is none else than A/M. Ezhumeswaramudayar Temple, Ayakkaranbulam, Vedaranyam Taluk, Mannargudi Circle. The assessee, it appears, had been subjected to payment of tax under the Act on a net income of Rs. 26,496 for the assessment year 1990-91.

3. The aggrieved assessee-temple filed an appeal A.P. No. 13 of 1991, before the Assistant Commissioner of Agricultural Income Tax, Thanjavur, who in turn, of course, after taking into consideration the relevant materials available on record, confirmed the order of assessment and dismissed the appeal by his order dated April 16, 1991.

4. The aggrieved assessee-temple agitated the matter further by filing an appeal before the Tribunal, as stated above.

5. Before the Tribunal, the assessee-temple, it appears, produced the exemption certificate obtained from the Income Tax Department u/s 11 of the Income Tax Act as relatable to non-agriculturists for the year ending June 30, 1990. Placing reliance on the exemption certificate obtained by the assessee-temple u/s 11 of the Income Tax Act, the Tribunal also granted exemption u/s 4(b) of the Act. In that view of the matter, the Tribunal allowed the appeal, giving rise to the present action-T. C. (R.) No. 140 of 1994, by the Revenue.

6. Notice, of course, had been issued to the assessee-temple in this action and the assessee-temple also entered appearance through its counsel K. Srinivasan, R. Venkataraman, G. Prabhurajadurai and P. Jeevarathinam. None of the counsel appearing for the assessee-temple was present in the court at the time, when the matter was called and no representation was made on their behalf. In such a situation, there is no other go for us, except to dispose of the matter on the merits by hearing the arguments of Mr. K. Ravi Raja Pandian, learned special Government Pleader, representing the Revenue.

7. From the pith and substance of the submissions of the said learned counsel, representing the Revenue and the rationale or reasoning, as projected by the Tribunal in allowing the appeal, the one and only question that arises for consideration is as to whether the order of the Tribunal in granting exemption u/s 4(b) of the Act as respects the income derived by the assessee-temple relatable to the assessment year 1990-91, on the facts and in the circumstances of the case, is sustainable in law.

The point :

8. The Tribunal, we rather feel, did not approach the issue involved in this action from the correct legal perspective and that is getting reflected by the order passed by it.

9. Originally, the income derived from land held under trust for charitable or religious purposes was exempt from tax by the Act. Such an exemption enured to the benefit of the said trust till the Amendment Act 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 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 properly 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.

12. "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 . . ." u/s 2(1A) of the Income Tax Act, "agricultural income" is defined. The said definition, it appears, underwent amendments on many occasions. 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 this case.

13. 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.

14. Entry No. 82 of List I of the Seventh Schedule to the Constitution reads as under :

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

15. Entry No. 46 of List II of the Seventh Schedule to the Constitution reads as under :

"46. Taxes on agricultural income."

16. 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."

17. 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 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.

18. 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."

19. 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."

20. 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".

21. The Indian Income Tax Act, 1922, must be construed 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.

22. 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 Agricultural Income Tax Act 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.

23. 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.

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

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

26. Section 13 deals with the situations 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.

27. 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.

28. 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 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. 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 purposes of the Income Tax Act, 1961," occurring 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. Certain consequences are to flow from what has been stated above. There is no need for a religious or charitable trust, receiving income on 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 have to get themselves registered under the relevant provisions of the Income Tax Act for getting exemption from taxation.

29. The Tribunal, as already indicated, approached the issue involved in this case from the legal perspective, altogether untenable and that perhaps was the reason it got itself misdirected to the issue involved and consequently held that the assessee-temple had exemption from tax in respect of the income derived from the land held under trust for religious or charitable purposes for the assessment year 1990-91.

30. Since the Tribunal, as already indicated, had not at all applied its mind in the proper perspective in understanding the significance and meaning of Clause (b)

of Section 4 of the Act and misdirected itself in exempting the assessee-temple from tax in respect of the agricultural income for the assessment year 1990-91, the impugned order of the Tribunal deserves to be set aside.

31. Even the other authorities, viz., the Agricultural Income Tax Officer, Mannargudi, and the Assistant Commissioner of Agricultural Income Tax, Thanjavur, did not approach the issue involved in this case from the correct legal perspective and, therefore, it is, the orders of those authorities also deserve to be set aside.

32. In fine, the tax case (revision) is allowed. The orders of all the tax authorities, inclusive of the Tribunal are set aside and the matter is remitted back to the Agricultural Income Tax Officer, Mannargudi, for a fresh look into the matter, as we have indicated above. No costs.