

(1977) 03 MAD CK 0029

In the Madras High Court

Case No : Tax Case No"s. 91 to 93, 156 and 157 of 1974 (Revision No"s. 86, 87, 88, 103 and 104 of 1974)

State of Tamil Nadu

APPELLANT

Vs

N. Muthalagirisami

RESPONDENT

Date of Decision : 24-03-1977

Acts Referred:

Tamil Nadu Agricultural Income Tax Act, 1955 — Section 16(1), 16(2), 16(3), 35, 35(1)

Citation : (1977) 110 ITR 751

Hon'ble Judges : Sethuraman, J;Ismail, J

Bench : Division Bench

Advocate : Additional Government Pleader, for the Appellant; K.C. Rajappa, for T.R. Rajagopalan and T.R. Rajaraman in T.C. Nos. 92 and 93 of 1974, for the Respondent

Judgement

Ismail, J.—All these tax revision petitions preferred by the State against the orders of the Agricultural Income Tax Appellate Tribunal relate

to five assessment years 1963-64 to 1967-68. In all these cases, the assessee filed voluntarily the returns of income on January 19, 1969. The

Agricultural Income Tax Officer estimated the income and assessed the same to tax. The assessee put forward the contention that since the returns

were filed by him after the expiry of the assessment years relevant to the previous years, no assessment could have been made without reference to

Section 35 of the Tamil Nadu Agricultural Income Tax Act, 1955 (hereinafter referred to as "the Act"). The Tribunal accepted this contention and

allowed the appeals preferred by the respondent herein. Hence, the present tax revision petitions by the State.

2. It is necessary to refer to the relevant provisions of the Act. It is Section 16 which deals with filing of return of income. Sub-section (1) of that

section states:

Every person who held land in excess of the exempted extent at any time during the previous year shall, unless he has been permitted to

compound the tax u/s 65, furnish to the Agricultural Income Tax Officer so as to reach him before the 1st June every year a return in the

prescribed form and verified in the prescribed manner setting forth his total agricultural income during the previous year.

3. Sub-section (2) deals with the case where the Agricultural Income Tax Officer may serve a notice on the assessee to file a return. Sub-section

(3) states :

If any person has not furnished a return within the time allowed by or under Sub-section (1) or Sub-section (2) or, having furnished a return under

any of those sub-sections discovers any omission or wrong statement therein, he may furnish a return or a revised return, as the case may be, at

any time before the assessment is made.

4. Section 17 of the Act deals with the procedure for making the assessment after a return has been filed. Section 35 deals with assessment of

escaped income. That section states :

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 Agricultural Income Tax Officer 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-section (2) of Section 16 and may proceed to assess or reassess 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.

5. Thus, it will be seen that Section 16(1) contemplates filing of a voluntary return within the time prescribed in that sub-section, Section 16(2)

contemplates the Agricultural Income Tax Officer serving a notice on the assessee calling upon him to file a return within the time mentioned

therein. Section 35 deals with a case where income has escaped assessment and the officer wants to assess that income and, therefore, he issues a notice as contemplated by Section 16(2) and, thereafter, proceeds to make an assessment u/s 35. Therefore, the very basis of Section 35 is that there has been no return filed by the assessee or a return has been filed which did not disclose the real income of the assessee, and that is the reason why the section enables the Agricultural Income Tax Officer to issue a notice u/s 16(2) calling upon the assessee to file a return. If the assessee has voluntarily filed a return, there is no question of the Agricultural Income Tax Officer acting u/s 35 and serving a notice u/s 16(2) calling upon the assessee to submit the return. As we pointed out already, in the present case, in respect of the five years with which we are concerned, the assessee voluntarily filed returns on January 19, 1969. Even though those returns were not filed within the time prescribed by Section 16(1), still they are returns filed in accordance with the provisions of the Act, because Section 16(3) enables an assessee to file a return at any time before the assessment is completed even though the time prescribed u/s 16(1) and (2) had already elapsed. Therefore, the present one is a case to which Section 16(3) is attracted, and if so, there is no question of the Agricultural Income Tax Officer proceeding u/s 35(1) and issuing again a notice u/s 16(2) calling upon the assessee to file a return when the returns were already filed and were before the Agricultural Income Tax Officer without being disposed of. Therefore, we have no hesitation whatever in coming to the conclusion that the Tribunal erred in holding that in view of the fact that the returns were filed after the time prescribed by Section 16(1) had elapsed, the Agricultural Income Tax Officer could not make the assessment without having recourse to Section 35(1) and issuing the notice prescribed therein. It would appear that the attention of the Tribunal was not drawn to Section 16(3) at all and that may be the reason why the Tribunal took this view.

6. In coming to the conclusion which it did, the Tribunal has purported to follow two decisions, one of the Kerala High Court and the other of the

Assam High Court. The decision of the Kerala High Court is *V. SRINIVASA NAICKEN Vs. AGRICULTURAL Income Tax OFFICER,*

PALAI,, which also arose under the Act. In that case, there was an assessment and, subsequently, proceedings for reassessment u/s 35, and

before proceeding to reassess, a notice was actually issued. The question that came to be considered by the Kerala High Court was whether that

notice satisfied the requirements of Section 35 or not. In that context only, the Kerala High Court has held that the particular notice issued by the

Agricultural Income Tax Officer before reassessing did not satisfy the requirements of Section 35. We are unable to see how that decision would

have any bearing on the question before us.

7. The next decision is that of the Assam High Court in *D.C. Chaudhuri and Another Vs. Agricultural Income Tax Officer, Shillong, and Another*,

We are of the opinion that that decision, which has been subsequently affirmed by the Supreme Court, far from supporting the case of the assessee

is against the assessee. Since that decision of the Assam High Court has been affirmed by the Supreme Court in *State of Assam and Another Vs.*

D.C. Choudhuri and Another, , it is enough to refer to the observations and conclusions of the Supreme Court in this behalf. The Supreme Court,

after referring to its decision in *The Commissioner of Income Tax, Bombay Vs. Ranchhoddas Karsondas, Bombay*, , proceeded to state--See

State of Assam and Another Vs. D.C. Choudhuri and Another,

If this view is accepted to be correct it follows that a notice u/s 30 of the Act (corresponding to Section 35 of the Act now before us) in the

present case, would be necessary if at the end of the assessment year no return has been made by the assessee and the authorities wish to proceed

u/s 19(2). The case would be entirely different where he himself chooses voluntarily to make a return. This he can do after the publication of a

general notice u/s 19(1) of the Act. If the return is filed no question arises of any income having escaped assessment. The return under the

provisions of Section 19(3) (corresponding to Section 16(3) of the Act with which we are concerned) can be furnished at any time before the

assessment is made. This is what this court held in *b*.

8. In *State of Assam and Another Vs. Deva Prasad Barua and Another*, , referred to above, the Supreme Court held :

On the admitted fact that a general notice u/s 19(1) was published and that a return was filed by the respondents in respect of each of the two

assessment years in question it is not possible to see how Section 30 would become applicable at all. Sub-section (3) of Section 19 says in

categorical terms that if any person has not furnished a return within the time allowed by or under Sub-section (1) or Sub-section (2) he may

furnish a return at any time before the assessment is made and any return so made shall be deemed to be made in due time under the section.

9. After referring to its decision in *The Commissioner of Income Tax, Bombay Vs. Ranchhoddas Karsondas, Bombay*, , the Supreme Court

proceeded to state--See *State of Assam and Another Vs. Deva Prasad Barua and Another*, :

The principle which has been settled by this decision is that where a voluntary return has been filed pursuant to a general notice even after the

expiry of the period mentioned in that notice, the Income Tax Officer must proceed to assess the income by taking up that return. He cannot ignore

that return and serve on the assessee a notice under the provisions relating to escaped income which was Section 34 in the Income Tax Act. This

view also finds support from the decision of this court in *Commissioner of Income Tax, Madras Vs. S. Raman Chettiar*, , in which it was laid

down, inter alia, that Section 22(3) of the Indian Income Tax Act, 1922, permitted an assessee to furnish a return at any time before the

assessment was made, namely, before the time mentioned in Section 34(3) of that Act, In the present case it is not disputed, and cannot indeed be

disputed, that if the words "'at any time'" in Sub-section (3) of Section 19 of the Act has not to be limited to the year of assessment as has been

contended by the learned counsel for the respondents, the present case would be governed by the principles laid down by this court in the above

decisions.

10. We may mention that Section 19 of the Assam Agricultural Income Tax Act corresponds to Section 16 of the Tamil Nadu Agricultural Income

Tax Act and Section 30 of the Assam Act corresponds to Section 35 of the Tamil Nadu Act.

11. In view of these decisions, we are clearly of the opinion that the conclusion of the Tribunal is erroneous and the assessments to tax made by the

authorities in respect of the five years referred to above on the basis of the voluntary returns filed by the respondent on January 19, 1969, were

legal and were fully in accordance with law.

12. In the result, the tax revision petitions are allowed. The orders of the

Tribunal are set aside and those of the assessing authorities are restored.
There will be no order as to costs.