

(1991) 03 MAD CK 0041
In the Madras High Court
Case No : T.C. (R.) No. 1248 of 1981

State of Tamil Nadu

APPELLANT

Vs

P.L. Palaniappan

RESPONDENT

Date of Decision : 22-03-1991

Acts Referred:

Tamil Nadu Agricultural Income Tax Act, 1955 — Section 9(2)

Citation : (1992) 196 ITR 836

Hon'ble Judges : A.S. Anand, C.J.; Doraiswamy Raju, J

Bench : Division Bench

Advocate : R. Lokapriya, for the Appellant; Mrs. Chitra Venkataraman, for the Respondent

Judgement

Dr. A.S. Anand, C.J.—The assessing authority clubbed the income of the assessee along with that of his wife by invoking the provisions of

section 9(2)(a)(i) of the Tamil Nadu Agricultural Income Tax Act, 1955 (Tamil Nadu Act 5 of 1955) (hereinafter referred to as "the Act"). The

assessing authority, however, did not indicate, let alone consider and discuss, as to whether the wife was having a membership in the firm, except a

bald statement to the effect "add one-fourth share of Smt. P. Umayal u/s 9(2)(a)(i) - Rs. 16,055.16". The appellate authority, when approached by

the assessee in appeal, negatived the plea of the assessee that the income of the wife could not be included in his income. It was argued that the

assessee was the kartas of a Hind undivided family and, therefore, the income of the wife could not be included u/s 9(2)(a)(i) of the Act. The

appellate authority, however, did not agree. When the matter went to the Tamil Nadu Agricultural Income Tax Appellate Tribunal in further appeal,

before the Tribunal it was maintained that since the assessee was being assessed

on the basis of the status as the karta of a Hindu undivided family, the clubbing of the income u/s 9(2)(a)(i) of the Act is so far as the wife's income is concerned was not permissible. The Tribunal referred to an earlier order made by the Tribunal in A. T. A. No. 29 of 1980, dated June 10, 1980, but without any discussion, held that the share income belonging to the wife could not be included in determining the taxable income of the assessee. The Revenue is in revision before us.

2. Section 9(2)(a)(i) of the Act provides that, in computing the total agricultural income of any individual for the purpose of assessment, there shall be included so much of the agricultural income of a wife or minor child of such individual as arises directly or indirectly for the membership of the wife in a firm of which her husband is a partner. Neither the assessing authority nor the appeal authority nor even the Tribunal went into the question whether any agricultural income of the wife was derived from the membership of the wife in a firm in which her husband was a partner.

No finding was recorded in that behalf of at all. With a view to club the income of the wife, the case had to strictly fall u/s 9(2)(a)(i) of the Act.

Since the assessing authority and the appellate authority did not return any finding on facts to the effect that some agricultural income of the wife

was derived from the membership of the wife in a firm of which her husband is a partner, it was not permissible to invoke section 9(2)(a)(i) of the

Act with a view to compute the total agricultural income of the assessee. In the absence of any factual data to invoke the provisions of section 9(2)

(a)(i) of the Act, the view taken by the Tribunal in favour of the assessee cannot be said to be so unreasonable as to require any interference at our

hands. It is axiomatic that, when two views are possible on a given state of affairs, the one in favour of the assessee has to be preferred. The

Tribunal, therefore, was right in setting aside the orders of the appellate authority as well as the assessing authority and, for the reasons that we

have noticed above, we sustain the order of the Tribunal. Consequently, the tax revision case fails and is dismissed. No costs.