
(1993) 11 MAD CK 0076

In the Madras High Court

Case No : Tax Cases No's. 681 to 683 of 1993 (Revisions No's. 455 to 457 of 1993)

State of Tamil Nadu

APPELLANT

Vs

Thiruvalargal Singara Estate

RESPONDENT

Date of Decision : 04-11-1993

Acts Referred:

Income Tax Act, 1961 — Section 143, 2(31), 3

Citation : (1996) 217 ITR 199

Hon'ble Judges : T. Somasundaram, J;K.A. Swami, J

Bench : Division Bench

Advocate : Mrs. Chitra Venkataraman and Mrs. Chitra Venkataraman, Additional Government Pleader, for the Appellant;

Judgement

K.A. Swami C. J.

1. These tax revision case are filed u/s 54(1) of the Tamil Nadu Agricultural Income Tax Act, 1955 (hereinafter referred to as "the Act"), against the order dated September 27, 1988, passed by the Tamil Nadu Agricultural Income Tax Tribunal in A. T. A. Nos. 48 to 50 of 1986. The Tribunal has held that the respondent cannot be considered to be an association of individuals and it can only be considered as tenants-in-common; therefore, each one of them has to be assessed only as an individual.

2. The facts of the case are : The respondent estate belongs to the beneficiaries, namely, the son and grandsons of the testator, and each of them is entitled to an undivided 1/5th share who under the will bequeathed in the estate in question. No doubt, they have been managing the estate together.

3. The question for consideration is as to whether they can be considered to be an association of individuals. An association of individuals can be formed by a voluntary act of individuals. This court in K. MD. Iqbal v. State of Tamil Nadu [1992] 1 MTCR 608, has considered the question as to when two or more

persons can be considered to be an association of persons or individuals, and has held as follows (at page 612) :

"The test for determining the true meaning of the expression "association of persons" were laid down by the Supreme Court in G. Murugesan and Brothers Vs. Commissioner of Income Tax , Madras, after taking note of a number of earlier judgments. According to the apex court, an "association of persons" is one in which two or more persons join in a common purpose or common action, and as the words occur in a section which imposes a tax on income the association of those persons must be one, the object whereof is to produce income, profits or gains and share the same. These test were laid down by the apex court for determining the meaning of an "association of persons" within the meaning of section 3 of the Income Tax Act but these test would be equally applicable to determine the meaning of the expression "association of individuals" under the Act. Weather an association of persons has engaged itself in an activity with a common object to produce income, profits and gains and share the same would depend upon the facts and circumstances of each one. However, the jointness of the enterprise aimed at production and sharing of income, profits or gains are the essential ingredients to call a body of persons an "association of individuals". These test stand amply satisfied in the instant case from the material on the record, particularly the statement of Mohamed Iqbal."

4. As the son and grandsons of the testator succeeded to certain shares under the will, they cannot be considered to have formed an association for the purpose of managing an estate, in which they have acquired certain shares by reason of the will left by their father/grandfather. Therefore, the case does not satisfy the test laid down by the Supreme Court in G. Murugesan and Brothers Vs. Commissioner of Income Tax , Madras, referred to in K. MD. Iqbal v. State of Tamil Nadu [1992] 1 MTCR 608. Therefore, we are of the testator who have got an undivided share in the estate under the will, cannot be held to have voluntarily come forward to form an association with the object of producing income and make profits of gains and share the same. But for the will they could not have acquired a one-fifth share each. Therefore, they can only be considered as tenants-in-common, each having a definite share as per the terms of the will. Hence, we are of the view that the order of the Tribunal does not call for interference. Accordingly, the tax case are rejected.