

(1998) 01 MAD CK 0079

In the Madras High Court

Case No : Tax Case (Revision) No. 1043 of 1993 (Revision No. 623 of 1993)

State of Tamil Nadu

APPELLANT

Vs

TVL. Goodwill Estate

RESPONDENT

Date of Decision : 07-01-1998

Acts Referred:

Citation : (1999) 237 ITR 558

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

Bench : Division Bench

Advocate : K. Ravi Raja Pandian, Special Government Pleader, for the Appellant;
R. Ravindran, for the Respondent

Judgement

Janarthanam, J.—This revision is directed against the order, dated September 21, 1993, of the Tamil Nadu Agricultural Income Tax Appellate Tribunal, Madras-104 (for short "the Tribunal"), and made in A. T. A. No. 36 of 1993 relating to the assessment year 1992-93 under the Tamil Nadu Agricultural Income Tax Act, 1955 (for short "the Act").

2. TVL Goodwill Estate, Kotagiri, is an assessee coming within the jurisdiction of the Agricultural Income Tax Officer, Coonoor (in charge). The assessee had been assessed to agricultural Income Tax for the assessment year 1992-93. It appears that while making the assessment, the provisions of the Amendment Act 40 of 1991 had been applied. The assessee, it is said, aggrieved by the assessment so made, filed an appeal before the Assistant Commissioner of Agricultural Income Tax, Coimbatore-18. The assessee faced dismal failure with regard to the challenge made as respects the applicability of the amendment Act 40 of 1991.

3. The assessee did not stop there. He agitated the matter further by filing an appeal before the Tribunal, as stated above.

4. The only question urged before the Tribunal was that the amendment Act 40 of 1991 was not at all applicable to the assessee, inasmuch as the Amendment Act 40 of 1991 had come into force on April 1, 1992.

5. The Tribunal accepted the contention of the assessee and allowed the appeal, giving rise to the present action--T.C. (R.) No. 1043 of 1993.

6. From the pith and substance of the arguments of Mr. K. Ravi Raja Pandian, learned Special Government Pleader, representing the Revenue and Mr. R. Ravindran, learned counsel appearing for the assessee, the one and only question that arises for consideration is as to whether the order of the Tribunal that the Amendment Act 40 of 1991 is not at all applicable to the facts and circumstances of the case is sustainable in law ?

7. There is no pale of controversy that the accounting period of the assessment is from April 1, 1991, to March 31, 1992, and the income of the said period is exigible to tax for the assessment year 1992-93. The Amendment Act 40 of 1991 had admittedly come into force on April 1, 1992. The contention taken up by the assessee before the Tribunal was that since the income of the previous year is determined on the date of the commencement of the assessment year, the law in force on the date of the commencement of the assessment year alone has to be taken into consideration for making the assessment of the income for the relevant previous year and since the Amendment Act had come into force on April 1, 1992, the said Act is inapplicable to the assessee for finalising its assessment relatable to the year 1992-93.

8. In support of such a submission, it appears implicit reliance had been placed on the case of KAUSALYA SANTHANAM Vs. AGRICULTURAL INCOME TAX OFFICER, COIMBATORE, AND ANOTHER., . The Tribunal placing reliance on the said decision held that the Amendment Act 40 of 1991 is not at all applicable to the facts and circumstances of the case and so holding, allowed the appeal. The tragedy here is that the decision in KAUSALYA SANTHANAM Vs. AGRICULTURAL INCOME TAX OFFICER, COIMBATORE, AND ANOTHER., , instead of advancing the case of the assessee, is actually in favour of the Revenue and the Tribunal had grievously erred in not taking into account this aspect of the matter and we will make it fluidly crystal clear by extracting the very same passage occurring in KAUSALYA SANTHANAM Vs. AGRICULTURAL INCOME TAX OFFICER, COIMBATORE, AND ANOTHER., , and the said passage reads as under (headnote) : "Any change in the law made in the course of an assessment year cannot apply in making the assessment for that assessment year unless the statutory provision has been made retrospective and in the absence of such a retrospective operation normally the law as on the date of the commencement of the assessment year should govern the assessment for that year. This is because the subject of charge both under the Income Tax Act and the Agricultural Income Tax Act is not the income of the year of assessment but the income of the previous year. When an assessment is made, the income of the previous year is determined as on the date of the commencement of the assessment year. Therefore, whenever an assessment is to be made, it should be taken to have been made with reference to the law in force at the commencement of the assessment year. Accordingly, the assessment for 1966-67 will have to be made

without reference to the Tamil Nadu Agricultural Income Tax (Amendment) Act 7 of 1966, which came into force on May 13, 1966."

9. From a cursory perusal of the passage extracted above, it is rather crystal clear that the subject of charge is not the income of the year of assessment, but only the income of the previous year. As and when an assessment is made, the income of the previous year is determined on the date of the commencement of the assessment year and in so doing, the law in force at the time of the commencement of the assessment year alone is made applicable. Reverting to the facts of the case on hand, it is beyond the pale of controversy that the income of the previous year of the assessee, i.e., to say 1991-92, is sought to be assessed for the assessment year 1992-93. The previous year commences from April 1, 1991 and ends with March 31, 1992. The assessment year commences on April 1, 1992. The Amendment Act 40 of 1991 had admittedly come into force on April 1, 1992, the date on which the assessment year commenced. In such a situation, it goes without saying that the Amendment Act 40 of 1991 has to be made applicable to the assessee in determining its income for the assessment year 1992-93. The Tribunal somehow or other, made a grievous error in applying the ratio laid down in the case of KAUSALYA SANTHANAM Vs. AGRICULTURAL INCOME TAX OFFICER, COIMBATORE, AND ANOTHER., . The order of the Tribunal, therefore, deserves to be set aside. This point is answered accordingly.

10. In fine, the revision is allowed. The order of the Tribunal is set aside, restoring the order of the Assistant Commissioner of Agricultural Income Tax, Coimbatore-18.