(1997) 10 MAD CK 0060

In the Madras High Court

Case No : Tax Cases No''s. 16 to 18 of 1990 (Revisions No''s. 15 to 17 of 1990)

Sumithra and others APPELLANT

Vs

State of Tamil Nadu RESPONDENT

Date of Decision : 13-10-1997

Acts Referred:
Income Tax Act, 1961 — Section 28

Citation : (1997) 10 MAD CK 0060

Hon'ble Judges : K.P. Sivasubramaniam, J;Janarthanam, J

Bench : Division Bench

Advocate : Deokinandan, T. Srinivasamurthy, for the Appellant; K. Elango, Government Advocate (Taxes), K.M.L. Majele, for the Respondent

Judgement

Janarthanam, J.—One K. Muthusamy and one Thilagavathi are spouses. One Sumithra and one Gayathri are their daughters.

2. It appears that in the names of the members of the family respectively, extents of agricultural lands had been purchased on different dates in the year 1986.

3. The said K. Muthusamy took a sale deed in his favour on March 27, 1986, in respect of certain lands for a consideration of Rs. 4,65,000.

4. Likewise, his wife, Thilagavathi, took a sale deed in her favour in respect of certain extents of lands on March 27, 1986, for a sale consideration of Rs. 4,62,000.

5. Similarly, in respect of their daughters, Sumithra and Gayathri, who were then minors, two sale deeds were taken in their favour in respect of certain extents of lands on one and the same day, namely, on March 13, 1986, by their father and guardian, the said K. Muthusamy, for a sale consideration of Rs. 2,75,000 and Rs. 2,80,000, respectively.

6. In respect of the agricultural, holdings of all the members of the family, the

Agricultural Income Tax Officer, Yercaud, permitted composition u/s 65(5) of the Tamil Nadu Agricultural Income Tax Act, 1955, Tamil Nadu Act No, V of 1955, for short "the Act", and assessed them accordingly in respect of the assessment years 1986-87; 1987-88 and 1988-89.

7. The Commissioner of Agricultural Income Tax, Madras-5, resorted to suo motu revision proceedings u/s 34 of the Act requiring the members of the said family to show cause why tax should not be levied in the hands of the said K. Muthusamy, by clubbing the land-holdings of his wife, Thilagavathi, and his minor daughters, Sumithra and Gayathri, within fifteen (15) days from the date of receipt of the said notice.

8. Of course, to the notice so issued, all of them, it is said, filed their objections.

9. After taking into consideration the objections so filed, the said Commissioner of Agricultural Income Tax came to the conclusion that no evidence was produced to prove that the lands in the name of Tmt. Thilagavathi were purchased by her out of her own funds. Similarly, he expressed an opinion that no evidence was produced to prove that the lands in the names of Gayathri and Sumithra were purchased from out of the loan borrowed from their grandfather and letters confirming advancement of such loans given would not be taken as proper evidence and, therefore, the lands purchased by the said minors out of the funds borrowed from the father can be taxed in the hands of their father, K. Muthusamy only.

10. After providing the rationale as above, he penned down the operative portion of the order as below :

"5. The revision petition is confirmed and I direct the Agricultural Income Tax Officer to verify the source of purchase of the estate and modify the assessments accordingly."

11. The said Commissioner of Agricultural Income Tax, of course, did not pen down the order in English, as set out above and as a matter of fact, he penned down the order only in Tamil.

12. The findings are given in paragraph 4 of the order he had penned down in Tamil, which is reflected as below :

* * * The operative portion of the order in Tamil is getting reflected in paragraph 5, which reads as under :

* * *

13. The English translation of paragraphs 4 and 5, as stated above, in pith and substance, reflects the Tamil version.

14. Aggrieved by the order so passed, the present actions-Tax Case (Revision) Nos. 16 to 18 of 1990 had been resorted to.

Mr. T. Srinivasamoorthy, learned counsel appearing for the assessee-revision petitioners, would submit that he was unable to comprehend the operative portion of the order of the Commissioner of Agricultural Income Tax. He would further elucidate and elaborate such a submission by stating that even if the language used in the said operative portion of the order, that is to say, "the revision petition is confirmed" would tantamount to the confirmation of the revision notice issued u/s 34 of the Act, even, in such an eventuality, the other portion of the said operative order, namely, "I direct the Agricultural Income Tax Officer to verify the source of the purchase of the estate and modify the assessments accordingly" can have no meaning at all, even if the assessees-revision petitioners were in a position to prove the source of purchase of the estate, in the sense of no modification of assessments need be made.

15. Mr. K. Elango, learned Government Advocate (Taxes) representing the Revenue, would repel such a submission of learned counsel appearing for the assessees-revision petitioners and submit that the order of the Commissioner of Agricultural Income Tax must be read as a whole and in such a process, one can discern that the said Commissioner of Agricultural Income Tax, after setting aside the orders of the Agricultural Income Tax Officer, Yercaud, directed the said officer to revise the assessments for the relevant assessment years, in the manner as indicated in the order passed in the suo motu revision proceedings by him.

16. We have weighed the rival submissions, as noticed above, in the light of the order passed by the Commissioner of Agricultural Income Tax and in such process, we are unable to affix our seal of approval, to the arguments, as projected by the learned Government Advocate (Taxes) representing the Revenue. The reasons are rather obvious. We are unable to find anything in the order of the said Commissioner of Agricultural Income Tax as to the setting aside of the orders passed by the Agricultural Income Tax Officer, Yercaud, relatable to the relevant assessment years. Though he has recorded findings in paragraph 4 of his order, he did not at all issue any direction to the Agricultural Income Tax Officer, Yercaud, to make revised assessment proceedings in accordance with the findings he had so recorded. Unfortunately, what the said Commissioner of Agricultural Income Tax stated was that the Agricultural Income Tax Officer, Yercaud, has to verify the source of purchase of the estate and after deriving the subjective satisfaction therefor, to modify the assessments accordingly. We are unable to understand as to how it was permissible for the said Assessing Officer to modify the assessments, as stated above, when especially, the Commissioner of Agricultural Income Tax himself confirmed the proposals in the revision notice, while passing the order in the suo motu revision proceedings. Therefore, we are of the view that the Commissioner of Agricultural Income Tax was unable to comprehend as to the sort of order he was passing, so that the order so passed can be translated into action by the Assessing Officer.

17. One thing we are unable to discern from the order of the Commissioner of Agricultural Income Tax is that no evidence had been adduced as to how and

from what source, the lands were purchased and, therefore, it is, he wanted to provide an opportunity to the assessees-revision petitioners to place the relevant and requisite materials before the Assessing Officer. While doing so, he ought to have specifically stated that the orders of the Assessing Officer for the relevant assessment years allowing composition u/s 65 of the Act had been set aside and the matter had been remitted back to him for fresh consideration in the light of the materials placed by the assessees-revision petitioners before him.

18. We also feel that these matters require to be remanded back to the Assessing Officer for a fresh look, in the light of the materials to be placed by the assessees. We, therefore, set aside the orders of the Commissioner of Agricultural Income Tax, Madras-5, and of the Agricultural Income Tax Officer, Yercaud, as well and remit these matters back to the Agricultural Income Tax Officer, Yercaud, for fresh consideration, in the light of the materials to be placed by the assessees. We may also make it clear that if the assessees, namely, Trot. Thilagavathi, Sumithra and Gayathri were unable to place sufficient and adequate materials explaining the source of funds for the purchase of certain holdings of the lands in their favour, it will be open to the Assessing Officer to draw an adverse inference u/s 114(g) of the Indian Evidence Act and assess the income from their holdings as the income of Mr. K. Muthusamy and make the assessment accordingly for the relevant assessment years. If the Assessing Officer gets the required solidified satisfaction that the aforesaid three assessees were able to explain their source of income for purchase of the agricultural holdings in their favour, he may make individual assessments or composition u/s 65 of the Act, as the case may be.

19. All these revisions are thus disposed of. No costs.

