(1997) 10 MAD CK 0076

In the Madras High Court

Case No : T.C.R. No''s. 887 to 890 of 1990 and T.C.M.P. No''s. 520 to 523 of 1990

T. Jayaraman and others APPELLANT

Vs

State of Tamilnadu RESPONDENT

Date of Decision : 01-10-1997

Acts Referred:
Income Tax Act, 1961 — Section 28

Citation : (2000) 241 ITR 476

Hon'ble Judges : N.V. Balasubramanian, J;Janarthanam, J

Bench : Division Bench

Advocate : Deokinandan, K.J. Chandran, K.M.L. Majele, for the Appellant; K. Elango, for the Respondent

Judgement

Janarthanam, J.—Thuttapullam Estate is an assessee in the circle of the Agricultural Income Tax Officer, Coonoor. It is a registered firm. The firm consists of 13 partners.

2. T. Jayaraman (applicant in T.C. (R.) No. 887 of 1990), Jayalakshmi (applicant in T.C. (R.) No. 888 of 1990) and T. Sivapackim (applicant in T.C. (R) No. 889 of 1990) were partners in the said firm, apart from other erstwhile partners. All the partners of the said firm had no lands individually except the proportionate share of the land held by them in the said firm. The partners have no individual income from agriculture. However, the Agricultural Income Tax Officer, Coonoor, permitted the partners of the said firm to have the matter compounded u/s 65(3) of the Tamil Nadu Agricultural Income Tax Act, 1955, and enabled them to pay tax accordingly.

3. The Commissioner of Agricultural Income Tax, Chepauk, Madras-5, in suo motu revision proceedings, cancelled the said order of the Agricultural Income Tax Officer, on the ground that the partners of the firm have no income from the lands owned by them individually and consequently issued direction to the said officer to pass orders u/s 17 of the Act, apportioning the income among the partnership firm and tax them according to the provisions of law.

4. C. Shanmuganathan (applicant in T. C. (R.) No. 890 of 1990), is one of the partners of Havukal Estate, Kotagiri, Nilgiris, which also consists of 13 partners. The partners have no individual income. As in the case of Tuttapullam Estate, the Agricultural Income Tax Officer, Coonoor, also allowed the partners of the firm - Havukal Estate - composition u/s 65(3) of the Act and enabled them to pay tax accordingly.

5. The Commissioner of Agricultural Income Tax, Chepauk, Madras-5, as in the other case here also cancelled the orders of the Agricultural Income Tax Officer, Coonoor, on the ground that the partners of the firm have no income from lands owned by them individually and consequently directed the said officer to pass orders u/s 17 of the Act, apportioning the income among the partners of the firm and tax them according to the provisions of law.

6. Dissatisfied with the orders of the Commissioner of Agricultural Income Tax, Chepauk, Madras, in suo motu revision proceedings, all the present actions - T.C. (R.) Nos. 887 to 890 of 1990 have been resorted to.

7. Arguments of Mr. K. J. Chandran, learned counsel for the respective assessees, and Mr. K. Elango, learned Government Advocate, representing the Revenue, were heard.

8. The one and only common question that arises for consideration in these actions is as to whether the orders of the Commissioner of Agricultural Income Tax, Chepauk Madras, cancelling the orders of the Agricultural Income Tax Officer, Coonoor, allowing composition u/s 65(3) of the Act is sustainable in law.

9. The answer to the question posed above, we rather feel, cannot be any one, except an "emphatic ''no''" on the face of the decision rendered by the Full Bench of this court in an unreported decision in the case of N.P.R. Narayanan v. State of Tamil Nadu, represented by the Commissioner of Agricultural Income Tax, Chennai in T.C. No. 427 of 1990, etc., and batch dated September 25, 1997 - since reported as R.M. Adaikalavan and Others Vs. State of Tamil Nadu and Another, . The Full Bench held that (page 674) "the absence of individual holding of land by a partner of a registered firm or of an unregistered firm treated as registered, does not disentitle such a partner from applying for composition of agricultural income tax u/s 65(3) of the Act."

10. In fine, all the tax cases are allowed and the orders of the Commissioner Agricultural of Income Tax, Chepauk, Madras, are set aside, restoring the order of the Agricultural Income Tax Officer, Coonoor. No costs.

11. In view of the order passed in T.C. Nos. 887 to 890 of 1990, no further orders are necessary in T.C.M.P. Nos. 520 to 523 of 1990.

