(1977) 03 MAD CK 0025

In the Madras High Court

Case No : Tax Case No. 170 of 1974 (Revision No. 117 of 1974)

Thannerkunnam Sugarcane Estates Ltd. APPELLANT

Vs

State of Tamil Nadu RESPONDENT

Date of Decision : 31-03-1977

Acts Referred:

Tamil Nadu Agricultural Income Tax (Amendment) Act, 1972 — Section 7
Tamil Nadu Agricultural Income Tax Act, 1955 — Section 16(1), 65(1), 65(6), 65(8)

Citation : (1977) 03 MAD CK 0025

Hon'ble Judges : Sethuraman, J;Ismail, J

Bench : Division Bench

Advocate : P.R. Ranganathan, for the Appellant; Additional Government Pleader, for the Respondent

Judgement

Ismail, J.—This is a revision petition filed against the order of the Commissioner of Agricultural Income Tax, Madras-5, dated February 28,

1974, setting aside the order of the Agricultural Income Tax Officer, Mannargudi, dated February 24, 1973, and restoring the order of the same

officer dated January 30, 1973.

2. The short facts of the case are as follows :

3. The assessment year is 1972-73. On August 12, 1972, the petitioner filed an application for permission for composition as provided for u/s

65(1) of the Tamil Nadu Agricultural Income Tax Act, 195,5. The Agricultural Income Tax Officer, Mannargudi, on January 30, 1973, granted the

permission. On February 18, 1973, the petitioner wrote to the Agricultural Income Tax Officer stating that it had filed the composition application

before the promulgation of Ordinance No. 3 of 1972 and that it was entitled to have the option to file the return in the place of the composition application already filed by it. Accordingly, the petitioner filed a return of income in Form No. 2. On receipt of this petition, the Agricultural Income

Tax Officer, on February 24, 1973, passed an order cancelling the proceedings instituted against the petitioner u/s 65 of the Act and permitting him

to file the return of income in the place of the composition application filed already. u/s 18(1) of the Act, he also directed the petitioner to pay a

provisional assessment of Rs. 1,503. It is this order of the Agricultural Income Tax Officer which was set aside by the Commissioner of

Agricultural Income Tax and the original order of the Agricultural Income Tax Officer dated January 30, 1973, that was restored. In this tax

revision case, the correctness of this order of the Commissioner is questioned.

4. The learned counsel for the petitioner contends that, notwithstanding the order of the Agricultural Income Tax Officer dated January 30, 1973,

the petitioner had a right to exercise option to be assessed on the basis of a return instead of paying tax on the basis of composition. For this

purpose, the learned counsel strongly relied on Sub-section (8) of Section 65 of the Tamil Nadu Agricultural Income Tax Act as amended by the

Tamil Nadu Agricultural Income Tax (Amendment) Act, 1972 (Act 4''of 1973), as well as Section 7 winch contained a transitory provision of the

Tamil Nadu Agricultural Income Tax (Amendment) Act, 1972 (Act 4 of 1973). Sub-section (8) of Section 65 of the Act, as amended, provides:

Notwithstanding anything contained in Sub-section (6), a person to whom permission has been granted under this section to compound the

agricultural Income Tax payable by him on the total agricultural income for any previous year may opt to submit under Sub-section (1) of Section

16, a return of the total agricultural income of the next succeeding previous year or the subsequent previous year and upon the submission of such

return, the permission granted under this section shall cease to have effect and accordingly assessment shall be made under this Act.

5. A reading of this section makes it clear that the option to file a return and have the income assessed on the basis of such return applied only to

the next succeeding previous year or the subsequent previous year and does not apply to the previous year in respect of which the permission was

granted u/s 65(6). This is made abundantly clear by the use of the expression ""on the total agricultural income for any previous year"" and also ""a return of the total agricultural income of the next succeeding previous year or the subsequent previous year"" occurring in Section 65(8).

6. We have already referred to the fact that the application for composition was made only for the assessment year 1972-73. In respect of the

same assessment year alone, the petitioner contends that it had a right to have option to file a return for the income. As we have pointed out

already, Section 65(8) does not confer any such option and the option contemplated by the section is only in respect of the succeeding previous

year or the subsequent previous year and not in respect of the very same previous year in respect of which permission u/s 65(6) was granted.

7. The learned counsel then relied, as we pointed out already, on the transitory provision contained in Section 7 of the Tamil Nadu Agricultural

Income Tax (Amendment) Act 1972 (Act 4 of 1973). That section runs as follows:

Notwithstanding anything contained in Sub-section (6) of Section 65 of the principal Act, where any permission has been granted to any person

under Sub-section (5) of the said Section 65 before the 21st November, 1972, such permission shall be deemed to be of no effect and any such

person may make a fresh application for permission for composition under Subsection (1) of Section 65 of the principal Act as amended by this

Act.

8. For two different reasons, the petitioner will not be entitled to rely on this transitory provision. In the first place, this section will apply only to the

case of a person subsequently making an application for composition u/s 65(1) and not to a person who wants to file a return u/s 16(1) to have the

income assessed on that basis. Secondly, the section itself declares only certain orders granting permission for composition as of no effect, namely,

orders that were passed before the 21st of November, 1972. In this particular case, the order was passed on January 30, 1973, and, therefore,

the order in question does not fall within the scope of the transitory provision. If so, the Agricultural Income Tax Officer had no jurisdiction or

justification to cancel his earlier order dated January 30, 1973, and to pass a fresh order on February 24, 1973. Under these circumstances, the

Commissioner of Agricultural Income Tax rightly set aside the later order of the Agricultural Income Tax Officer, Mannargudi, dated February 24,

1973, and restored his earlier order dated January 30, 1973, The tax revision case, therefore, fails and the same is dismissed with costs. Counsel''s fee Rs. 250.

