

(1941) 02 MAD CK 0025
In the Madras High Court

Venkadari Somappa

APPELLANT

Vs

Naresepally Venkataswamy Chetty

RESPONDENT

Date of Decision : 19-02-1941

Acts Referred:

Citation : AIR 1941 Mad 672 : (1941) 53 LW 685 : (1941) 1 MLJ 782

Hon'ble Judges : King, J

Bench : Division Bench

Judgement

King, J.—The only question involved in this appeal is whether the appellant is an agriculturist entitled to claim the benefit of Act IV of 1938.

The learned District Judge of Bellary has held that he is not an Agriculturist firstly because he has been assessed to Income Tax under proviso (A)

to Section 3 and secondly because he has paid house-tax under proviso (c). We may say at once that the second reason cannot be substantiated.

The language of proviso (c) is that he should be assessed to house-tax. The only evidence is an admission by the appellant that he had gifted

certain houses to his wife and that his wife pays taxes on those houses. There is nothing in the case to show, whether this statement could be

believed or not, that the houses have been assessed as the property of the appellant.

2. On the first ground however the order of the learned District Judge must, we think, be upheld. The facts are that the appellant was a partner in a

ginning factory and was entitled to one-fourth share of the profits and that the factory was assessed to Income Tax for its profits in the year 1937-

38. It is argued by Mr. Raghava Rao on behalf of the appellant that because no specific notice was addressed to him by the Income Tax

authorities as an individual and because it is only the partnership which has been taxed he himself has not been assessed to Income Tax within the meaning of the proviso (A). It seems to us impossible to read the expression "assessed to income tax" in the present case in so narrow a sense. It cannot be denied that when the income of a partnership is assessed to tax under the Act what is really assessed is nothing else than the income of the individual partners; and we think that to say that a person has been assessed to Income Tax may properly be paraphrased by saying that he has paid Income Tax, or that his income has been subjected to Income Tax or has been reduced by the amount of the Income Tax. In this sense it is quite clear that the appellant has been assessed to Income Tax. He was entitled to one-fourth share of the profits of the factory and he must have received those profits less the amount of tax paid by the partnership upon them. Of course it is possible that, in spite of his share of the profits being thus subjected to tax, his total income for the year 1937-38 may have been below the taxable minimum. In that case provision exists in the Act u/s 48 for an application to be made by the appellant for the refund of the tax upon his share of the income of the factory. There is no evidence in the case that the appellant made any such application for refund. The result is that whether his income in fact fell below the taxable minimum or not it has undoubtedly been subjected to Income Tax and in our opinion there can be no doubt that he comes within proviso (A) of Section 3. He cannot therefore be deemed to be an agriculturist or entitled to the privileges of the Act.

3. The appeal must fail and is dismissed with costs.