

(1975) 10 MAD CK 0014

In the Madras High Court

Case No : Writ Petition No. 2895 of 1975

Warwick Estates Syndicate

APPELLANT

Vs

Additional Agricultural Income Tax Officer

RESPONDENT

Date of Decision : 21-10-1975

Acts Referred:

Tamil Nadu Agricultural Income Tax Act, 1955 — Section 16, 18
Tamil Nadu Agricultural Income Tax Rules, 1955 — Rule 7

Citation : (1976) 104 ITR 414

Hon'ble Judges : Veeraswami, C.J;Natarajan, J

Bench : Division Bench

Advocate : S. Padmanabhan, for the Appellant; K. Venkataswami, Additional Government Pleader No. 1, for the Respondent

Judgement

Veeraswami, J.—This is a petition by the assessee, a firm of partner ship. Its return for 1974-75 was due by June 30, but time was granted

until August 15. On August 26, a provisional return, as it is called, was made and an order followed on that basis u/s 18 of the Agricultural Income

Tax Act on September 6, 1974. Another return containing, as we are told, correct particulars was filed on October 29, 1974, accompanied by a

request for a revised order of assessment, also of a provisional character. The two returns involved a difference of a few thousands of rupees,

which, if taken into account for purposes of a provisional order, would result in lesser provisional tax. The Income Tax Officer concerned,

however, declined to make such an order and this was on November 28, 1974. He said, after referring to his order u/s 18(1) and (6), that a

provisional tax had been assessed on the basis of the return made in the first instance and that it could not be altered or adjusted except at the time

of finalising the assessment. He added that the revised return would be considered at the time of finalising the assessment for the year soon after the receipt of the central Income Tax assessment order. On that ground he called upon the petitioner to comply with the demand for payment of the provisional tax, so to speak. The petition under Article 226 of the Constitution with which we are concerned is to quash this order on the ground that the Income Tax Officer declined to exercise the jurisdiction vested in him, inasmuch as he declined to pass a fresh provisional order based on the revised return.

2. We are of opinion that the prayer of the assessee cannot be granted. The contention on its behalf is that the second return having been made u/s 16(3), it would be perfectly in order for the assessee to ask for a revised order of a provisional character u/s 18 making necessary alteration or adjustment in the earlier provisional order on the basis of the revised particulars found in the second return. In other words, the argument implies that u/s 18, as and when necessary, more than one provisional assessment could be made in the light of subsequent returns permitted to be filed by the assessee and received by the department. We do not think that this construction of the related provisions can be accepted. Section 16 devotes itself to filing of returns. Sub-section (1) of the section obliges every person holding land in excess of the exempted limit at any time during the previous year to furnish to the Agricultural Income Tax Officer before the prescribed date a return in the prescribed form. It should be verified also in the prescribed manner setting forth his total agricultural income during that year. The next sub-section clothes the Agricultural Income Tax Officer with power to serve notice and call upon any person to submit a return where under the law he is obliged to do so. Then we have Sub-section (3) which is :

If any person has not furnished a return within the time allowed by or under Sub-section (1) or Sub-section (2) or, having furnished a return under any of those sub-sections, discovers any omission or wrong statement therein, he may furnish a return or a revised return, as the case may be, at any time before the assessment is made.

3. This provision gives one more chance to the assessee, who has failed to file a return, to make it, the time limit therefore being, before the

assessment is made. We are not at this stage concerned with the penalty for not furnishing a return within the time prescribed by Sub-section (1) of

the section. But, if the assessee files a return in time as required by Sub-section (1) and that was not correct in all particulars, or it needed

alteration, he may then file a revised return, which will be considered in making the assessment. When such return is made, Section 18 authorises

the Income Tax Officer to make a provisional assessment, which is an advance of a regular assessment, the object of this provision being to enable

the revenue to collect the provisional tax even before a final assessment is made in order to serve the exigencies of the revenue. The provisional

assessment is naturally a summary one and, as was held in *Jaipur Udyog Ltd. and Another Vs. Commissioner of Income Tax, Delhi, Rajasthan and*

Another, it involves no final decision in respect of disputed matters. Section 17 provides power for regular final assessment, in which, of course,

the jurisdiction being quasi-judicial, every disputed matter will be decided and finally, subject only to further remedies as provided by the Act. In

the case of tea income, which is the case before us, Rule 7 of the Madras Agricultural Income Tax Rules prescribes a special procedure. In

respect of such income from tea grown and manufactured by the seller in the State, the portion of the income worked out under the Indian Income

Tax Act and left unassessed as being agricultural shall be assessed under the Act after allowing such deductions under the Act and the rules made

thereunder. The second proviso to this rule says that, if the income for the purpose of the Indian Income Tax Act has not been determined before

the filing of return u/s 16, the assessee shall submit along with the returns a statement of profit and loss in respect of his entire income derived partly

from agriculture and partly from business and thereupon he shall be assessed treating his agricultural income to be 60 per centum of the income

derived from tea grown and manufactured in the State of Madras after allowing the deductions allowed by the Act. The proviso then says:

...this assessment being subject to revision after the income for the year has been determined for the purposes of the Indian Income Tax Act,

1922.

4. Obviously, this proviso, because the main rule contemplates final assessment, provides for a provisional assessment. That is clear from the

concluding part of the second proviso. This proviso is apparently intended to obviate delay in assessment and collection of tax on a provisional

basis, delay which may occur as a result of time taken by the revenue under the Income Tax Act. Notionally, 60 per cent. of the total income shall

be taken to be agricultural income. No doubt, the proviso says that the assessment under it can be made after allowing the deductions allowed by

the Act. We do not think that this means that the proviso contemplates a final assessment rather than a provisional one. At best it can only mean

that in the light of *Jaipur Udyog Ltd. v. Commissioner of Income Tax*, no deduction which is a matter of dispute would possibly be allowed under

the second proviso. But it does not follow from it that, if deductions claimed by the assessee in his return are permissible and allowable and the

Income Tax Officer has no objection, they cannot be allowed. The expression "allowing the deductions" in the second proviso to Rule 7 is not to

be interpreted as involving a power under the second proviso to only assess finally. If final assessment, was contemplated by the second proviso,

then the concluding words would not be consistent with such a construction. Also, the proviso would have read differently, if it contemplated only a

final assessment, because such an assessment is provided for by the first part of the rule and all that need be said under the second proviso in that

case would be that, when the actual figures are available from the order under the Income Tax Act, the assessment order will be open, to revision

or adjustment. But that would not have served the purpose for which the second proviso has been enacted, namely, that to obviate delays in

assessing and collecting tax on a provisional basis, a sort of summary assessment is allowed,

5. Mr. Padmanabhan for the assessee says that even on that construction, it is open to the Agricultural Income Tax Officer to make more than one

provisional assessment order on the basis of a revised return. We do not accept this contention as correct. There is no warrant for the construction

either from the language or the text, of the statutory rules which we have referred to. The scheme of Sections 16 to 18 is that return will be filed,

within the prescribed time in the prescribed form and, if there is failure, still, it would be open to the person concerned to file a return before the

final assessment is made, or, if a return has been made within the time in the prescribed form and a person finds that it is defective, it would be

open to him before the final assessment to file a revised return giving out revised particulars. Whether it is a return under Sub-section (1) of Section 16, or a return under Sub-section (3), a provisional assessment will first be made as required by Section 18 and that is what is contemplated by the second proviso to Rule 7 in the case of tea income. The main objective of the proviso is to statutorily provide for the 60 per cent. basis for a provisional assessment, which would not be the case if the second proviso had not been made. Once a provisional assessment has been made u/s 18 read with the second proviso to Rule 7, there is no room to contend that, again, when a revised return is filed u/s 16(3), there should be a further provisional assessment. It is contended that, when a revised return is filed, the first return should be deemed to have been withdrawn. In our opinion, this is entirely fallacious. There could be only one return and what is contemplated by Sub-section (3) of Section 16 is a revised return, which cannot be understood without the original return. In that sense, once a provisional assessment has been made on the basis of a return, or a revised return, before such an assessment was made, Section 18 does not contemplate, nor does the second proviso to Rule 7, that there should be yet another provisional assessment in the light of the fresh particulars given. We are of opinion, therefore, that the Agricultural Income Tax Officer is right in his view that the revised return will be taken into account at the final assessment proceedings.

6. The petition is, therefore, dismissed with costs. Counsel's fee Rs. 250.