The Commissioner of Agricultural, Income Tax, Kerala Vs Parameswara Bhat

Court: High Court Of Kerala

Date of Decision: Aug. 8, 1973

Acts Referred: Income Tax Act, 1922 â€" Section 34

Citation: (1974) 97 ITR 190

Hon'ble Judges: P. Govindan Nair, J; George Vadakkel, J

Bench: Division Bench

Judgement

P. Govindan Nair,C.J.

1. Two questions have been referred to this court for decision by the Kerala Agricultural income tax Appellate Tribunal. The questions read as

follows:

1. Whether on the facts and circumstances of the case the Tribunal was correct in holding that the proceedings initiated under S. 35 are ab initio

void?

2. Whether on the facts and circumstances of the case the Agricultural Income Tax Officer was legally bound to communicate the original order of

assessment recording the case?

One Sri. K.H. Parameswara Bhatt, as the head of a Hindu undivided family, furnished returns of his Agricultural Income for the year 1963-64,

under the Agricultural income tax Act, 1950, declaring a net income of Rs. 278/-. In response to a notice under S. 18 (2) of the Act, he appeared

before the Agricultural Income Tax Officer. He, however, did not produce any accounts or other evidence in support of the income returned. The

income tax Officer estimated the income of the undivided family at Rs. 5226/-. Since this income was below Rs. 6000/- and on the belief that the

joint family consisted of five members entitled to claim partition, at the end of the previous year, applied the 2nd paragraph of the first proviso to

Part I of the Schedule to the Act and made the following order Dated 10.12.67 in the assessment proceedings:

As the income falls below Rs. 6000/- the case is recorded as nil assessment.

This order was not communicated to the assessee. Later the Officer came to know that the number of members in the joint family entitled to claim

a share on partition was below 5 and, therefore, income had escaped assessment. Proceedings were thereafter initiated under S. 35 of the Act.

The assessee contended, in answer to the notice under S. 35, that the Officer had no jurisdiction to start proceedings under that section. This

contention was negatived by him. An appeal by the assessee before the Appellate Assistant Commissioner also failed. In further appeal before the

Tribunal, the Tribunal took the view that since the order of nil assessment had not been communicated to the assessee, the notice under S. 35 was

ab initio void. The assessment made was accordingly set aside. The ground for the decision was that as far as the assessee was concerned the

assessment proceedings originally commenced were still pending because the order of nil assessment had not been communicated to the assessee.

2. The view taken by the Tribunal is erroneous. The scheme of the Act indicates that the making of an assessment naturally by an order is different

from the communication of the assessment order to the assessee. There is no specific provision in the Act enjoining that an assessment order must

be communicated to the assessee. Nor is there any provision in the relevant rules that assessment orders must be communicated. All that S. 30 of

the Act requires is that a notice of demand in the prescribed form specifying the sum payable shall be served on the assessee when a tax or penalty

is due in consequence of an order passed under the Act. But it is of course not only desirable but necessary that an order of assessment should be

communicated to the assessee. The Act itself envisages service of the assessment order. Sub-section (3) of S. 31 for instance provides that an

appeal from the order of assessment shall be presented within a period of thirty days from the date of service of the order. Apart from this, the

assessee is entitled to know the reasoning for imposing tax or penalty on him and he would be able to exercise his right of appeal, if any, only if the

order is communicated to him. But the question is not whether it is either desirable or necessary that an order of assessment should be

communicated, but whether the lack of communication of the order would make the order void or would have the result of keeping the assessment

proceedings pending. We conceive that once an order had been passed by the Officer, it is not open to him to modify or alter that order even if the

order had not been communicated to the assessee, without adopting the procedure prescribed by S. 35 or S. 36. That a nil assessment is also an

assessment order has been ruled by the Supreme Court in Esthuri Aswathiah Vs. The Income Tax Officer, Mysore State, . The specific question

whether proceedings can be taken under S. 34 of the Indian income tax Act, 1922 in the absence of communication of the assessment order arose

before the Madras High Court in M. CT. Muthuraman Vs. Commissioner of Income Tax, Madras, . The learned judges had no hesitation in

holding that the fact that the order terminating the assessment proceedings was not communicated to the assessee did not affect the legality of the

order or its finality. It apparently appeared to the learned judges that the matter was so very evident. There was, for that reason, we think no

discussion. The question had again to be considered by the Madras High Court in its decision in V.S. Sivalingam Chettiar Vs. Commissioner of

Income Tax, Madrasras, . In the later ruling, there is a fuller discussion and the view expressed by the Madras High Court in the earlier decision

was confirmed.

3. The order passed in the present case, on 1012 67, is an assessment order. Notwithstanding the fact that the order had not been communicated,

it is a valid order. Such an order cannot be amended or altered without following one or the other of the methods provided by the Act for altering

those orders. We see, therefore, no lack of jurisdiction or any other impediment in taking proceedings under S. 35 of the Act. The notice issued

under the section is not void. Proceedings which followed that notice are valid. The reassessment must stand.

4. We accordingly answer the first question in the negative, that is, in favour of the revenue and against the assessee.

5. We answer the second question also in the negative. Since the assessee had not been prejudiced in any manner by the nil proceedings recorded

by the Agricultural income tax Officer on 1012 67, we do not think there was any obligation on the part of the Agricultural income tax Officer to

have communicated that order to the assessee though even in such cases it is desirable to do so.

6. We direct the parties to bear their respective costs. A copy of this judgment under the seal of the High Court and the signature of the Registrar

will be forwarded to the Appellate Tribunal as required by sub-section (1) of S. 60 of the Agricultural income tax Act, 1950.