

The Inspecting Assistant Commissioner of Agricultural Income-Tax and Sales Tax, Kozhikode

Vs

Poomulli Manakkal Parameswaran Namboodripad

Civil Appeals Nos. 62 and 63 of 1969

(K.S. Hegde, A.N. Grover JJ)

18.08.1971

JUDGMENT

HEGDE, J. -

1. In these appeals by certificates brought by the Department, we have to decide as to what is the true scope of Section 29 of the Kerala Agricultural Income-tax Act, 1950, as amended in 1964 (to be hereinafter referred to as the Act) ?
2. This case has a long history which by no means is complimentary to the Department. The common respondent in both these appeals moved the High Court of Kerala under Article 226 of the Constitution praying that the Appellant herein may be prohibited from taking further proceedings for assessing him as the karta of Poomulli Mana to agricultural income-tax for the assessment year 1961-62.
3. The respondent was the karta of a Namboodri family known as Poomulli Mana till March 30, 1958. The Namboodris in the Malabar District of the Kerala State were previously governed by the Madras Nambudri Act, 1932. Now they are governed by the Kerala Nambudri Act, 1958. The respondent's family owned large tracts of lands both in Malabar District which was a part of the Madras State till November 1, 1956, as well as in the erstwhile Travancore-Cochin State. Under the States Reorganization Act, 1954, the new State of Kerala was formed consisting of the former Malabar District of the State of Madras as well as the former Travancore-Cochin State. The new State of Kerala came into being on November 1, 1956. Thereafter the Travancore-Cochin Agricultural Income-tax Act, 1950, was extended to the former Malabar District with effect from April 1, 1957, by Kerala Act 8 of 1957. In the assessment year 1957-58, the assessing authorities assessed Poomulli Mana as an undivided family. That order was quashed by the High Court. On March 30, 1958, the members of the family entered into a registered partition deed under which the family became invalid. Thereafter the respondent ceased to be the karta of the family. Nevertheless the authorities under the Act issued notices to the respondent under Section 17(2) and Section 39 of the Act proposing to assess him as the manager of his H.U.F. for the assessment years 1957-58 and 1958-59. The respondent challenged the validity of those notices before the High Court of Kerala. When the case came up for hearing before a Division Bench of that High Court, the learned Counsel appearing for the Department informed the Court that the Department informed the Court that the Department was going to assess the respondent only as an "individual" and not as the karta of his family. On the basis of that representation, the Court passed the following order :

"The learned Government pleader submits, quite categorically, that the assessment proposed is of the petitioner as an 'individual', and not in any other capacity.

In view of the submission we do not consider it necessary to proceed further with the petition. We record the fact that the Department does not propose to assess the petitioner except as an individual and leave him to seek his remedies under the Act or the Constitution in case he feels himself aggrieved by any subsequent action of the Department."

4. Despite this assurance, the Department issued a notice under Section 35 of the Act on February 9, 1960, proposing to assess the respondent as the karta of his H.U.F. for the assessment year 1959-60. The respondent again moved the High Court to quash that notice. The said notice was quashed by a learned single Judge of the High Court on January 3, 1961, on the ground that it is against the undertaking given by the Government in the earlier proceedings. That decision was affirmed in appeal. Yet another notice, dated November 8, 1961, was issued by the Department under Section 35 to the respondent to show cause why he should not be taxed as the karta of his H.U.F. for the assessment year 1958-59. This notice was again quashed by the High Court by its judgment, dated December 17, 1963.

5. Section 29 of the Agricultural Income-tax Act, 1950, was amended by the Kerala Legislature by Act 12 of 1964. We shall now set out Section 29 as it stood before its amendment in 1964, as well as the amended section.

6. Section 29 of the Act (before the amendment by Act 12 of 1964), read thus :

"29. (1) Where at the time of making an assessment under Section 18, it is claimed by or on behalf of any member of a Hindu Undivided Family, (Aliyasanthana family or branch or Marumakkathayam tarwad) hitherto assessed as undivided that a partition has taken place among the members of groups of members of such family or tarwad the Agricultural Income-tax Officer shall make such inquiry thereinto as he may think fit, and if he is satisfied that the joint family property has been partitioned among the various members or groups of members in definite portions he shall record an order to that effect :

Provided that no such order shall be recorded until notice of the inquiry has been served on all the adult members of the family or tarwad entitled to the property as far as may be practicable or in such other manner as may be prescribed.

(2) Where such an order has been passed, the Agricultural Income-tax Officer shall make an assessment of the total agricultural income received by or behalf of the family or tarwad as such, as if no partition had taken place, and each member or groups of members shall, in addition to any agricultural income-tax for which he or it may be separately liable, and notwithstanding anything contained in clause (a) of Section 10, be liable for a share of the tax on the incomes so assessed according to the portion of the family or tarwad property allotted to him or it and the Agricultural Income-tax Officer shall make assessments accordingly on the various members and groups of members in accordance with the provisions of Section 18 :

Provided that all members and groups of members whose family or tarwad property has been partitioned shall be liable jointly and severally for the tax on the total agricultural income received by or on behalf of the family or tarwad as such up to the date of the partition.

(3) Where such an order has not been passed in respect of a Hindu family, (Aliyasanthana family or branch or Marumakkathayam tarwad) hitherto assessed as undivided, such family or tarwad shall be deemed for the purposes of this Act to continue to be an undivided family or tarwad."

7. Section 29 after its amendment by Act 12 of 1964, reads :

" (1) Assessment after partition of a Hindu undivided family. - Where at the time of making an assessment under Section 18, it is claimed by or on behalf of any member of a family hitherto assessed as a Hindu undivided family or which is being assessed for the first time as a Hindu undivided family that a partition has taken place among the members or groups of members of such family, the Agricultural Income-tax Officer shall make such inquiry thereinto as he may think fit, and if he is satisfied that the joint family property has been partitioned among the various members or groups of members in definite portions he shall record an order to that effect :

Provided that no such order shall be recorded until notice of the inquiry has been served on all the adult members of the family entitled to the property as far as may be practicable or in such other manner as may be prescribed.

(2) Where such order has been passed, the Agricultural Income-tax Officer shall make an assessment of the total agricultural income received by or on behalf of the family as such, as if no partition had taken place, and each member or group of members shall, in addition to any agricultural income-tax for which he or it may be separately liable, and notwithstanding anything contained in clause (a) of sub-section (1) of Section 10, be liable for a share of the tax on the incomes so assessed according to the portion of the family property allotted to him or it and the Agricultural Income-tax Officer shall make assessments accordingly on the various members and groups of members in accordance with the provisions of Section 18 :

Provided that all the members and groups of members whose family property has been partitioned shall be liable jointly and severally for the tax on the total agricultural income received by or on behalf of the family as such up to the date of the partition.

(3) Where such an order has not been passed in respect of a family hitherto assessed as a Hindu undivided family or which is being assessed for the first time as a Hindu undivided family, such family shall be deemed, for the purpose of this Act, to continue to be a Hindu undivided family."

8. The amended provision was given retrospective effect with effect from April 1, 1958. Taking advantage of the amendment of Section 29, the Department again issued a notice to the respondent on June 1, 1964, under Section 35 of the Act calling upon him to show cause why he should not be assessed as the karta of his H.U.F. for the period from November 1, 1956, to March 31, 1958. It may be noted that until that date the respondent and other members of his former family were being assessed as "individuals" and the tax so levied had been paid. In other words for the earlier assessment years, the Department had proceeded on the basis that the family was a divided family.

9. On receipt of the notice, dated June 1, 1964, the respondent again moved the High Court of

Kerala to quash the same on various grounds. One of the grounds taken was that the family of the respondent having been treated as divided family in the earlier assessment proceedings, it was not open to the Department to proceed to assess him as the karta of his family. A Division Bench of the Kerala High Court quashed the impugned notice as well as the assessment made.

10. During the pendency of the last mentioned proceeding, the Department issued two more notices to the assessee (marked Ex. P-1 and P-3 before the High Court). The relevant notice for our present purpose is Ex. P-1 and it is, dated March 10, 1965. In that notice the assessing authority, in the purported exercise of its powers under Section 35 of the Act required the respondent to file a return of the agricultural income of his family in the previous years beginning from April 1, 1961, and ending on March 31, 1961, chargeable to tax for the assessment year 1961-62, within 35 days of the receipt of that notice. The notice further mentioned that the section proposed therein was permissible in view of the amendment of the Act, by Act 12 of 1964. The respondent replied that in view of the partition in his family, he could not be assessed as the karta of his family and further the partition in question had been accepted by the Department and that the assessments were made on the members of the family as "individuals" from 1959-60 to 1964-65. Thereafter the respondent again moved the High Court to quash those notices on various grounds. The Department contended that in view of the amendment of Section 29 of the Act by Act 12 of 1964, it was permissible for it to reassess the respondent as the karta of the family as no decision that the respondent's family is a divided family had been rendered by the Agricultural Income-tax Officer and therefore the family must be deemed to be an undivided family.

11. The Writ Petition was heard by a bench of three judges consisting of Mathew, Krishnamoorthy Iyer and Balakrishna Eradi, JJ. By a majority (Krishnamoorthy Iyer and Eradi, JJ), the Writ Petition was allowed and the impugned notices were quashed. Mathew, J., was of the opinion that the action taken by the Department was permissible under Section 29 of the Act as amended.

12. Now turning to Section 29 of the Act before its amendment, it corresponded with Section 25-A of the Indian-tax Act, 1922. The scope of Section 25-A of the India Income-tax Act, 1922, came up for consideration both before the Judicial Committee as well as before this Court in various cases. It is sufficient if we refer to the decision of this Court in Additional Income-tax Officer, Cuddapah v. A. Thimmayya and Another. ((1965) 2 SCR 91 : 55 ITR 666 : AIR 1965 SC 1238 : (1965) 1 ITJ 518.) Therein this Court considered the object with which that provision was enacted as well as its scope. Delivering judgment of the Court Shah, J., (as he then was), observed :

"Under the Indian Income-tax Act, 1922, as it originally stood, a Hindu undivided family was regarded by Section 3 as a unit of assessment, but no machinery was set up for levying tax or for enforcing liability to tax on the members of the family, if before the order of assessment the family was divided. Absence of this machinery was more acutely felt because of Section 14(1) which provided that tax shall not be payable by an assessee in respect of any sum which he received as a member of a Hindu undivided family. Income received by a Hindu undivided family could not therefore be assessed and collected from the members of the family if at the time of making the assessment the family was divided. To rectify what was obviously a lacuna, the Legislature incorporated Section 25-A for assessment and enforcement of liability to tax income received by a Hindu undivided family, which was no longer in existence at the date of assessment. But the new section went very much beyond rectifying the defect in the statute which necessitated the amendment.....

The section makes two substantive provisions : (i) that a Hindu undivided family which has been assessed to tax shall be deemed, for the purposes of the Act, to continue to be treated as undivided and therefore liable to be taxed in that status unless an order is passed in respect of that family recording partition of its property as contemplated by sub-section (1); and (ii) if at the time of making an assessment it is claimed by or on behalf of the members of the family that the property of the joint family has been partitioned among the members or members in definite portions, i.e., a complete partition of the entire estate is made resulting in such physical division of the estate as it is capable of being made, the Income-tax Officer shall hold an enquiry and if he is satisfied that the partition had taken place, he shall record an order to that effect."

13. Before proceeding to examine the scope of Section 29, let us recapitulate the events that had taken place : (i) As long back as March 30, 1958, there was a partition in the family of the respondent; that partition is evidenced by a registered deed. The genuineness as well as the validity of the deed is not in dispute; (ii) On January 18, 1960, on behalf of the Agricultural Income-tax Officer, it was conceded before the High Court that the respondent was liable to be taxed only as an "individual". The implication of this concession was that the respondent's family was a divided family; (iii) Various attempts made by the Department to assess the respondent as karta of his family even after the decision of the High Court on January 18, 1960, were frustrated by the orders of the High Court referred to earlier; and (iv) The respondent and the other members of his quantum family were assessed as "individuals" from 1958-1964. Those assessments had become final and tax levied on them had been paid.

14. Section 3(1) is the charging section in the Act. That section reads :

"Agricultural Income-tax at the rate or rates specified in the Schedule to this Act shall be charged for each financial year in accordance with and subject to the provisions of this Act, on the total agricultural income of the previous year of every person."

"Person" is defined in Section 2(m) as follows :

"person" means any individual or association of individuals, owning or holding property for himself or for any other, or partly for his own benefit and partly for another, either as owner trustee, receiver, common manager administrator, or executor or in any capacity recognised by law and includes, a firm, or a company, an association of individuals, whether incorporated or not, and any institution capable of holding property."

15. Hindu undivided family as defined in Section 2(kk) includes a family governed by Madras Nambudiri Act, 1932.

16. Under the Act what is brought to tax in an assessment year is the income of the assessee in the previous year. The scheme of taxation under the Act is similar to that under the Indian Income-tax Act, 1922. The liability to pay tax under the Act in respect of any income is incurred as and when the income is earned and the total income on which the tax is payable in any particular previous year gets settled at the end of the previous year. Section 29 is only a machinery section. This Court has held that Section 25-A of the Indian Income-tax Act, 1922, is only a machinery section. The same

must be the position in regard to Section 29 of the Act.

17. Section 29 is attracted to an assessment proceeding only if one of two conditions prescribed in Section 29(1) is established. Either the family in question was being assessed as an undivided family in the previous assessment year or that family is being assessed for the first time. If neither of these conditions exist, Section 29 has no application whatsoever. The deeming provision contained in Section 29(3) can have application only in cases where one or the other condition prescribed in Section 29(1) is satisfied and not otherwise. As seen earlier, every attempt made by the assessing authority to assess the quantum family of the respondent was set aside by the High Court. The High Court has repeatedly held that family is a divided family. Again the assessing authority itself in the previous years had proceeded on the basis that the family in question is a divided family. It had not only assessed that family as an undivided family but had assessed the individual members of that family as divided members of that family. Hence the question whether that family was divided or undivided had been gone into in the earlier years and decided. That being so, it cannot be said that the family was "hitherto assessed as a Hindu undivided family". Now can it be said that the family was "being assessed for the first time as a Hindu undivided family". As seen earlier that family was sought to be assessed as Hindu undivided family earlier but ultimately the assessing authority had to assess the members of that family as members of a divided family. In other words it had held the family to be divided one. Such a family cannot be considered as being "assessed for the first time as a Hindu undivided family". The expression "which (meaning family) is being assessed for the first time as a Hindu undivided family" presupposes the existence of the family. That is a condition precedent. Section 29(1) does not permit the assessing authority to create a family by rejoining the divided parts or otherwise. If that is not so, families which had been divided years back can be again resurrected by the assessing authorities for the purpose of the Act. The family referred to in Section 29(1) is a family known to law and not a deemed family. The amendment of Section 29 has introduced considerable confusion into that section. At the time of the assessment either there is a family or there is no family. If there is a family its liability has to be judged on the basis of the Act. If the family has ceased to exist even before the assessment proceedings started then there can be no family which is being assessed to tax for the first time. Possibly the intention of the Legislature was to bring in the cases of undivided families not taxed in the previous years which were in existence during the whole or part of the previous year but were divided before the assessment proceedings commenced. It is not necessary for us in this case to decide whether that intention has been expressed with sufficient clarity so as to make it enforceable. Suffice it to say that in this case, the family sought to be taxed was non-existing in the concerned previous years and hence cannot be considered as a Hindu undivided family "being assessed for the first time". That being so there is no room for application of the "deeming" provision in Section 29(3).

18. Looking at the course of events, one cannot fail to notice with regret the persistence with which the Department was harassing the respondent. To say the least the conduct of the concerned officers in this case cannot inspire confidence in the functioning of the Department.

19. For the reasons mentioned above we see no merit in these appeals. They are accordingly dismissed with costs.

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