N.S. Balasubramaniam and ors. Vs. State of Madras

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Court : Chennai

Decided On : Apr-14-1972

Reported in : [1973]90ITR377(Mad)

Judge : G. Ramanujam and ;V. Ramaswami, JJ.

Acts : Madras Agricultural Income Tax - Sections 17(2)

Appeal No. : Tax Case Nos. 183 to 185 of 1966

Appellant : N.S. Balasubramaniam and ors.

Respondent : State of Madras

Advocate for Def. : K. Venkataswami, First Asst. Govt. Pleader

Advocate for Pet/Ap. : R. Kunchithapadam, Adv.

Judgement :

Ramanujam, J.

1. As all the three tax cases are connected and arise out of a common order of the Agricultural Income-tax Tribunal, they are dealt with together. As the facts and the points involved in all the cases are the same it is sufficient to refer to the facts in the first case, T.C. No. 183 of 1966. The petitioner in this case returned a net income of Rs. 6,474.34 under the Madras Agricultural Income-tax Act, for the assessment year 1962-63 in respect of lands leased out to a sugar factory. In response to a notice under Section 17(2) of the Act it was however urged on behalf of the assessee that even the said sum did not represent the income of that year. The assessing authority, however, rejected he assessee's contention and computed the total income of the assessee at Rs. 37,814calculating the rents at the rate of Rs. 175 per acre for 216.08 acres held by the assessee during the accounting year, and leased out to the sugar factory. The assessment order was challenged before the Assistant Commissioner of Agricultural Income-tax and later before the Agricultural Income-tax Appellate Tribunal but without success.

2. Before the Tribunal the principal contention urged by the assessee was that the Agricultural Income-tax Officer assessed him to tax taking the rent due for the lease year 1961-62, i.e., the year ending 30th June, 1962, as having accrued within the accounting year ending March 31, 1962, though according to the terms of the lease deed the rent is payable only at the end of the lease year, that is on, June 30, 1962, that the assessment made on the basis that the entire amount of Rs. 37,814 had accrued before March 31, 1962, was illegal and that, therefore, the assessment had

to be set aside. The Tribunal took the view that as per the terms of the lease deed the rent is payable on or before June 30, 1962, that this clause would not necessarily mean that the rent is payable only on 30th June, 1962, that the words 'on or before 30th day of June of each year ' would mean any one of the several days falling within the whole year ending with 30th June of that year, and that the assessing officer was, therefore, justified in proceeding on the basis that the rent had accrued on a day prior to first April of each lease year. The Tribunal also gave an alternative reason for rejecting the assessee's contention. It held that even assuming that the rent accrued only on the specified date, i.e., 30th June, of each year, the assessee cannot succeed in cancellation of the assessment as there would be at least one accrual on 30th June falling within each financial year ending 31st March, and that every financial year ending with 31st March includes within it one date of 30th June when admittedly there would be an accrual of rent. It also rejected the assessee's contention that though there was an accrual of rent on June 30, 1961, which fell within the accounting year 1961-62 relevant for the assessment year 1962-63, it had already been brought to tax in the previous year and that, therefore, there could not have been any assessment for the year in question, on the ground that there is no evidence to establish that contention.

3. Before us the learned counsel reiterates practically the same contentions. For appreciating those contentions it is necessary to scan through the lease agreement dated November 13, 1954, entered into between the assessee and the sugar factory. The period of the lease has been fixed as 6 years with rights of renewal and the rent agreed is Rs. 175 per acre of land. The extent of the land leased is 260.94 acres in various villages. Clause 4 of the agreement dealing with the date of payment of rent is as follows :

' The rent referred to above shall be payable in arrears on or before the 30th day of June of each year and the first of such payments shall be made on or before the 30th June, one thousand nine hundred and fifty five.'

4. It is not in dispute that the lease deed was operative during the accounting year in question. Even on the accrual basis which is the one adopted by the assessing authority, the rent due for the lease year ending 30th June, 1961, would accrue only on that date and not before, and the Tribunal's reasoning that the words 'on or before 30th June of every year ' are capable of being construed as any one day within that year is not possible of acceptance. In Dagger v. Shepherd, [1946) 1 K.B. 215 it is stated:

' The use of the phrase ' on or before ' some fixed date is today by no means uncommon, particularly in covenants or demands for payment of money, and in such a context it cannot, in our judgment, be open to serious doubt that it means, and would be understood 'to mean, that the covenanter or debtor is under obligation to pay the debt on (but not earlier than) the date fixed but has the option of discharging it at any earlier time selected by him: see per Parker J. in In re Tewkesbury Gas Company, [1911] 2 Ch. 279.'.

5. The use of the phrase 'on or before 30th June' in Clause 4 indicates that the lessee has the option of paying the rent before 30th June. But, the lessor can demand and enforce the payment only on 30th June but not before. We are, therefore, of the view that the rent for the lease year ending 30th June, 1962, will accrue only on that date and not earlier, and that the assessing officer is not right in taking the rent accrued

due as on 30th June, 1962, as having been accrued earlier in the accounting year ending 31st March, 1962. But, we are, however, not inclined to accept the assessee's contention that the assessment order as such has to be set aside in view of the wrong assumption of the assessing authority that the accrual of rent for the lease year ending on 30th June, 1962, had taken place before 31st March, 1962. Even on the basis of the contention of the assessee which we have accepted that the rents for the lease year ending 30th June, 1962, will accrue only on or after 30th June, 1962, the rent for the lease year 1960-61 would accrue on 30th June, 1961, which falls within the accounting year 1961-62, corresponding to the assessment year 1962-63. The learned counsel for the assessee states that the said rent which should be deemed to have accrued on 30th June, 1961, had been taken into account and assessed in the assessment year 1961-62 and, therefore, it cannot be brought to tax over again for the assessment year 1962-63. Even accepting the assessee's statement that there has been an assessment of the rents accrued on 30th June, 1961, in the assessment year 1961-62, that can only be taken to be erroneous and that cannot justify the cancellation of the assessment order as such for the assessment year 1962-63, for such cancellation will mean that the rents did not accrue at all during the assessment year 1962-63, which is not the case. According to the terms of the lease deed, there will be an accrual of rent on 30th June of each year and on the accrual basis the assessee is liable to pay for the assessment year 1962-63, on the rents accrued to him on 30th June, 1961, for the lands held by him in that year. It is true that the assessee has sold some lands in the accounting year and, therefore, the extent of his holding in the assessment years 1961-62 and 1962-63 was slightly less than the extent held by him during the assessment year 1960-61. But, the assessee has been assessed only on the basis of the lesser extent held by him in the year 1962-63, though he is liable to be assessed on a slightly larger extent held by him in the previous year. Therefore, even accepting the contention of the assessee that the date of accrual of the rents has been wrongly taken by the assessing authority, we cannot set aside the assessment as such.

6. We may, however, make it clear that it is open to the assessee to seek whatever remedies that are available to him to have the earlier assessments modified, if possible, taking 30th Jane of each year as the date of accrual of the rents.

7. Subject to the above observations, the tax revision cases are dismissed , but, in the circumstances, no costs.