

**C. Vs. Sadasiva Rao, Official Receiver V. Government of Madras.**

**LegalCrystal Citation :** [legalcrystal.com/819415](http://legalcrystal.com/819415)

**Court :** Chennai

**Decided On :** Sep-18-1968

**Reported in :** [1969]71ITR747(Mad)

**Appeal No. :** Tax Case No. 238 of 1967 (Revision No. 139)

**Appellant :** C.

**Respondent :** Sadasiva Rao, Official Receiver V. Government of Madras.

**Judgement :**

VEERASWAMI J. - This petition is to revise the order of the Agricultural Income-tax Appellate Tribunal. The matter relates to the assessment year 1964-65. On a return filed by the receiver in O.S. NO. 1 of 1957 on the file of the court of the subordinate judge at Vellore, which was for partition of family properties between three brothers A. E. Kuppuswamy Gounder, A. E. Nachiappa Gounder and A. E. Thangavelu Gounder, the total income of the estate was determined at Rs. 7,798 and a tax of Rs. 489.70 was imposed. The assessee's appeal having failed, this revision comes up before us.

Two points appear to have been urged on behalf of the assessee, neither of which found acceptance below. One of them related to the competence of the receiver to file a return and represent the three brothers and the other related to the applicability of section 29(1) of the Madras Agricultural Income-tax Act, 1955. On the first ground the Tribunal took the view, agreeing with the revenue, that the language of section 8(1)(a) was satisfied and, therefore, there was no substance in the ground. On the second ground, the Tribunal's view was that, since the division in status claimed by reason of the institution of the suit for partition having not been recognised under section 29(1), the assessee is the family and should be charged in the status of a joint Hindu family.

We think that at least on the second ground, the Tribunal was in error. For section 29(1) to apply, the family should have been assessed earlier as a Hindu undivided family. If that element were not there, the revenue, notwithstanding the stand taken on behalf of the assessee, could not proceed on the basis that the family still remained undivided for the assessment year in question. This view is entirely supported by the decision of a Division Bench of this court in Tax Revision Case. No. 111 of 1957, and the learned judges there observed :

'Section 29(1) could be invoked by persons of a family who had been assessed as a Hindu undivided family to agricultural income-tax.'

In that case the proceedings related to the first of the assessment years 1955-56 and there had been no assessment to agricultural income-tax prior to that year. It was

held that section 29(1) had no application. That is precisely the position in the instant case. If section 29(1) is out of the way, it is obvious that the Tribunal's order on the second point cannot hold good.

On that view of the matter, the tax case is allowed. The matter will go back to the Tribunal for fresh disposal. No costs.

Appendix

**LegalCrystal - Indian Law Search Engine - [www.legalcrystal.com](http://www.legalcrystal.com)**