

Athithope Estate Vs. State of Karnataka (Through Commr. of Agrl. I.T.)

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Court : Karnataka

Decided On : Mar-16-1984

Reported in : (1984)43CTR(Kar)80; ILR1984KAR180; [1984]150ITR490(KAR); [1984]150ITR490(Karn)

Judge : K. Jagannatha Shetty and ;S.R. Rajasekhara Murthy, JJ.

Acts : Karnataka Agricultural Income Tax Act, 1957 - Sections 5 and 29; Karnataka Agricultural Income Tax Rules, 1957 - Rules 13 to 17

Appeal No. : Civil Revision Petition No. 1328 of 1980

Appellant : Athithope Estate

Respondent : State of Karnataka (Through Commr. of Agrl. I.T.)

Advocate for Def. : S. Rajendra Babu, Adv.

Advocate for Pet/Ap. : G. Sarangan, Adv.

Judgement :

Jagannatha Shetty, J.

1. This revision arises out of the order of the Commr. of Agrl. I.T., Bangalore, dated January 17, 1980, made under Section 35 of, the Karnataka Agricultural Income-tax Act, 1957 (called shortly 'the Act').

2. The assessee is a firm consisting of 12 partners. It was constituted under a deed of partnership dated February 21, 1973. The firm purchased an estate known as 'Athithope Estate', Siddapur, under a sale deed dated March 29, 1973. The deed provided that, as and from the 1st day of April, 1972, the expenses for the cultivation of the coffee plantations and other products shall be borne by the purchasers. Regarding the crops, the deed further provided that all payments due from the Coffee Board in respect of the coffee delivered to the pool during 1971-72 season and prior seasons are the properties of the vendors and the purchasers are entitled to all payments relating to the crop for the year 1972-73 and subsequent years. As per these terms, the assessee paid to the vendors by way of reimbursement a sum of Rs. 1,45,823.38 representing the expenditure incurred by the latter in raising the coffee crop from April 1, 1972, till the estate was sold.

3. For the assessment year 1973-74, the assessee-firm filed a return declaring an income of Rs. 1,21,588.22 and also applied for registration of the firm. The assessee claimed deduction, among other items, of the sum of Rs. 1,45,823.38 reimbursed to the vendors towards the expenditure incurred by them. The assessing officer granted registration to the firm, allowed the deduction and completed the assessment with allocation of the income among the twelve partners in the ratio of their respective shares and determined the tax payable by each of them.

4. The Commissioner was of the opinion that the assessment was prejudicial to the interests of the Revenue. He, in the exercise of his revisional power under Section 35 of the 'Act', initiated proceedings calling upon the assessee to show cause why the registration granted to the firm should not be cancelled, since the application for registration was not in accordance with Rule 13 of the Karnataka Agrl. I.T. Rules, 1957 (the 'Rules'). He also called upon the assessee to show cause why the claim for deduction of the sum paid to the vendors towards the expenditure incurred by them should not be disallowed. The assessee vainly resisted the proposed action. The Commissioner, after considering the objections of the assessee, made an order dated January 17, 1980, setting aside the assessment. He held that the assessee-firm was not entitled to registration since its application for registration was defective. He also disallowed a sum of Rs.

1,38,341 from the claim of the assessee towards the expenditure incurred. He directed the assessing officer to re-compute the tax payable on the basis that the firm was not registered for the year 1973-74.

5. Before us, Mr. Sarangan, learned counsel for the petitioner, urged two contentions. The first contention relates to the expenditure reimbursed to the previous owners of the estate. The second contention is concerned with the validity of the registration of the assessee-firm.

6. For the consideration of the first contention of Mr. Sarangan, it will be necessary to examine the reasons given by the Commissioner for disallowing the expenditure reimbursed to the previous owners of the estate. The Commissioner has given two reasons to reject that claim of the assessee : (i) that the assessee-firm was constituted with effect from February 21, 1973, by an instrument of partnership and that the firm did not at all exist during the period from April 1, 1972, to February 20, 1973. And (ii) that the amount so paid by the assessee cannot be said to have been laid out or incurred wholly and exclusively by the assessee for the purpose of deriving the agricultural income of the relevant year and, therefore, cannot be allowed under Section 5(k) of the Act.

7. It seems to us that the Commissioner appears to have misunderstood the said payment made by the assessee. The assessee did not claim the deduction on the ground that it has spent the amount for earning the agricultural income. It has claimed that deduction since it was spent by the vendors of the estate during the year 1972-73 for raising the agricultural crop or deriving the agricultural income which was sought to be taxed. Under the terms of the sale deed, that amount was required to be paid by the assessee to the vendors, since the assessee was entitled to the crop of the year 1972-73. Accordingly, the assessee did pay that amount towards the expenditure.

8. The question is whether it could be disallowed while computing the income from the agricultural crop of that year. Under Section 3, the income of the previous year relevant to the assessment year is required to be brought to tax. Under Section 5, the computation of that agricultural income is required to be made by allowing the expenditure laid out or expended wholly and exclusively for the purpose of deriving

the agricultural income. It follows from these provisions, that the expenditure incurred for deriving the agricultural income must be deducted while computing the income for taxing purpose. This court in *Ummer Plantations v. State of Karnataka*, C.R.P. No. 2948/80 disposed of on March 1, 1984 [since reported in : [1984]148ITR564(KAR) , observed that if the income derived from an estate is taxed in the hands of the purchasers, then the expenditure incurred for deriving that income should be allowed irrespective of the fact whether it was incurred before the estate was sold or subsequent to the sale. In other words, what is relevant to consider in such a case is as to how much was really spent for deriving that agricultural income and not who spent that amount.

9. In the instant case, since the income of the year 1972-73 is brought to tax in the hands of the purchasers, the amount paid to the vendors of the estate towards the expenditure incurred or laid out for earning that income falls for deduction under Section 5(k) of the Act. The Commissioner was, therefore, wholly in error in disallowing this part of the claim of the assessee.

10. The Commissioner has committed another error also. He proceeded on the basis that on the date of sale, the assessee-firm was not constituted. This is factually incorrect. The sale deed refers to the purchasers as the partners of the assessee-firm.

11. This takes us to the second contention which is more important than the first one.

12. The Commissioner has set aside the registration of the firm on the sole ground that two of the partners did not personally sign the application for registration. The record reveals the following facts :

The application for registration of the firm in Form No. 7 (typed) was filed before the assessing officer evidently along with the return. That form was signed personally by ten partners and on behalf of the remaining two partners, namely, Arumugam and Meenakhisundram, their authorised agents have signed it. The assessing officer, however, accepted the form and granted registration and assessed the firm as a registered firm.

13. It appears, during the departmental audit, it was noticed that the registration granted on the basis of the form on which all the partners did not personally sign was not correct and the assessing officer was asked to explain his action. What transpired thereafter is not borne out from the records except the fact that there was another Form No. 7 (printed) filed on September 15, 1976. It was signed by all the partners personally. That was filed evidently to make good the deficiency noticed during departmental audit, but it was after the assessment order. The assessment was completed on July 30, 1975.

14. The Commissioner, after noticing the application form in which two of the partners did not personally sign, held that the registration granted on the basis of such an application was illegal. The Commissioner was of the opinion that all the partners must have personally signed the application for registration and since two of them had not signed, it would invalidate the registration.

15. Mr. Sarangan urged that substantial compliance of the Rules would be sufficient to grant registration and since ten of the partners have signed personally and on behalf of the remaining two partners, their power of attorney-holders have signed, it should be taken that the application for registration was in order and the registration granted to the firm at any rate ought not to have been cancelled by the Commissioner.

16. The validity of the contention turns upon the provisions prescribed for registration of firms. Section 29 provides :

'29. Procedure for registration of firms.--Application may be made to the Agricultural Income-tax Officer on behalf of any firm, constituted under an instrument of partnership specifying the individual shares of the partners for registration for the purposes of this Act.

(2) The application shall be made by such person or persons, and at such times and shall contain such particulars and shall be in such form, and be verified in such manner, as may be prescribed, and it shall be dealt with by the Agricultural Income-tax Officer in such manner as may be prescribed. '

17. Rule 13 prescribes:

' 13. Procedure for registration of firms under Section 29.--An application under Section 29 shall be signed by all the partners (not being minors) personally, and shall be made :--

(a) before the agricultural income of the firm is assessed for any year under Section 19, or

(b) if no part of such income of the firm has been assessed for any year under Section 19, before such income of the firm is assessed under Section 36, or

(c) with the permission of the Deputy Commissioner hearing an appeal under Section 32, before the assessment is confirmed, reduced, enhanced or annulled, or

(d) if the Deputy Commissioner sets aside the assessment and directs the Agricultural Income-tax Officer to make a fresh assessment before such fresh assessment is made, or

(e) before or after the dissolution of the firm, in respect of the assessment or assessments to be made on its agricultural income up to the date of dissolution: Provided that, where an application is made under Clause (e) after the dissolution of the firm, it shall be signed by all the persons who were partners in the firm immediately before the dissolution and by the legal representative of any such person who is deceased. '

18. Rule 14 prescribes the form in which the application shall be made. It shall be in Form No. 7.

19. Rule 15 provides for grant of certificate of registration to firms.

20. Rule 15, so far as it is material, provides :

'(1) On receipt of an application under Rule 13, the Agricultural Income-tax Officer shall, if he is satisfied that the application is in order and that there is or was a firm in existence constituted as shown in the instrument of partnership, grant a

certificate signed and dated by him in the following form at the foot of the instrument or certified copy :--

This instrument of partnership

Certified copy of an instrument of partnership

has this day been registered with me, the Agricultural Income-tax Officer... under Section 29 of the Mysore Agricultural Income-tax Act, 1957, and this certificate of registration shall have effect for the assessment for the year ending on the 31st day of March 19..... '

(2) If the Agricultural Income-tax Officer is not so satisfied, he shall pass an order in writing refusing to recognise the instrument of partnership or the certified copy thereof and communicate the order of such refusal to the party in Form No. 28. A certified copy of the order passed shall be furnished to the party on application duly made. '

21. Rule 17 prescribes the procedure for renewal of certificate. It states that the application for renewal also must be signed by all the partners personally (not being minors).

22. It will be seen from these rules that the legal requirement for granting a certificate of registration to a firm or renewal of such a certificate is that the application must be signed by the partners personally (if not minors). The law lays down this condition to enable the assessee to claim the benefit of Section 29. The question is whether a substantial compliance with the rules is sufficient or the requirement prescribed thereunder is mandatory.

23. This question need not be examined in detail since on the analogous provisions under the Indian I.T. Act, 1922, we have got a decision of the Supreme Court.

24. Section 29 of the Karnataka Agrl. I.T. Act, 1957, is similar to Section 26A of the Indian I.T. Act, 1922. The application for registration prescribed under Section 26A of the Indian I.T. Act, 1922, also required that it should be signed by the partners

personally. That provision is similar to Rule 13. In *Rao Bahadur Ravulu Subba Rao v. CIT* : [1956]30ITR163(SC) , the Supreme Court, while repelling the contention that such an application could be signed by his agent, observed (p. 172) :

' Thus, if a firm is registered, it ceases to be a unit for purposes of taxation and the profits earned by it are taken, in accordance with the general law of partnership, to have been earned by the individual partners according to their shares, and they are taxed on their individual income including their share of profits. The advantages of this provision are obvious. The rate of tax chargeable will not be on the higher scale provided for incomes on the higher levels but on the lower one at which the income of the individual partner is chargeable. Thus, registration confers on the partners a benefit to which they would not have been entitled but for Section 26A, and such a right being a creature of the statute, can be claimed only in accordance with the statute which confers it, and a person who seeks relief under Section 26A must bring himself strictly within its terms before he can claim the benefit of it. In other words, the right is regulated solely by the terms of the statute, and it would be repugnant to the character of such a right to add to those terms by reference to other laws. The statute must be construed as exhaustive in regard to the conditions under which it can be claimed.'

25. These principles have been reiterated by the Supreme Court in *Sri Ramamohan Motor Service v. CIT* : [1973]89ITR274(SC) .

26. Since the provisions of the Act and the Rules are similar to those considered by the Supreme Court in the above stated decisions, the law relating to the right of an attorney to represent his principal cannot be read into the provisions of Rule 13. When Rule 13, provides that the application for registration shall be signed by the partners personally, the court cannot import the rules of common law or any other law authorising the attorney to represent his principal.

27. Section 29 read with Rules 13 to 17 is a self-contained code exhaustive of the matters dealt with therein and the party who wants to take the benefit of Section 29 must strictly follow those requirements. The Commissioner was, therefore, right in stating that the form which was not signed by all the partners personally was not

valid and the registration granted on the basis of such an invalid application was illegal.

28. That, however, is not the end of the matter. The question which still remains to be considered is whether the assessing officer could give an opportunity to the assessee to rectify the mistake in the application form if such an opportunity is asked for. This contention was urged before the Commissioner, but he has rejected it on the ground that there is no provision in the Act or the Rules providing for an opportunity to the assessee to remove the objections in the application for registration.

29. Mr. Sarangan urged that if the assessee had come to know that all the partners ought to have signed personally and if it had been pointed out by the assessing officer, then those defects would have been removed by securing the signatures of those two persons. Since the assessing officer accepted the application and granted registration, there was no occasion for the assessee to rectify the defects. The counsel also urged that a statutory authority which is authorised to entertain an application is also charged with the duty to afford an opportunity to the applicant to rectify the error or remove the objections, if any, in the application. Such a power, according to the counsel, is incidental to the power to receive and dispose of the application and to effectuate the intent of the Legislature in granting registration to the firm. The counsel also referred to Rule 13 which, according to him, contains liberal provisions unlike the provisions under the Indian I.T. Act, 1922.

30. It is true that Rule 13 is very liberal in terms. It provides four stages at which an application under Section 29 could be filed. It may be filed either before the agricultural income of the firm is assessed for any year under Section 19, or before such income is assessed under Section 36. It could also be filed in the appeal before the Deputy Commissioner before the assessment is confirmed, reduced, enhanced or annulled, or if the Deputy Commissioner sets aside the assessment and directs the Agri. ITO to make a fresh assessment before such fresh assessment is made.

31. The assessee thus has more opportunities to make an application for registration of the firm. Even if no application is filed at the time of the assessment, it could be filed either in the appeal or when the assessment is being re-done at the direction' of the appellate authority. These provisions may lend credence to the contention of Sri Sarangan, but we, at this, stage, refrain from expressing any opinion. If the assessee-firm seeks an opportunity to remove the objections in the application for registration, it shall be considered by the assessing officer in accordance with law, regard being had to the object of Section 29 read with Rules 13 to 15.

32. Since it is now necessary for the assessing officer to consider the request of the assessee to rectify the mistakes in the application, it is needless to state that that part of the direction of the Commissioner that the assessee shall be treated as an unregistered firm for the purpose of assessment for the year 1973-74 has to be set aside and is hereby set aside.

33. We are told that in pursuance of the order of the Commissioner, the assessing officer has already recomputed the income on the basis that the firm is unregistered. Since we have modified the order of the Commissioner that assessment must be set aside and is hereby set aside.

34. In the result, the revision petition is allowed in part. The order of the Commissioner is modified to the extent indicated above with a direction to the assessing officer to redo the assessment in accordance with law and in the light of the observations made.

35. The parties shall appear before the assessing officer on Monday, April 16, 1984, to receive further notice.

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