

State of Madras Vs. S. Subramania Iyer (and Other Connected Cases).

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Court : Chennai

Decided On : Mar-29-1964

Reported in : [1966]61ITR613(Mad)

Appeal No. : Tax Cases Nos. 49, 52 and 59 of 1963

Appellant : State of Madras

Respondent : S. Subramania Iyer (and Other Connected Cases).

Advocate for Def. : Sri. Parasaran

Judgement :

RAMAKRISHNAN J. - In these three revision cases a common question arises as to how the term 'association in individuals' used in the definition of 'person' in section 2(q) of the Madras Agricultural Income-tax Act, 1955, has to be interpreted for the purpose of assessment under the said Act, and they were heard together. For the sake of convenience each case will be considered separately.

Tax Case No. 49 of 1963.

The facts as found by the authorities below are succinctly the following. The assessee, S. Subramania Iyer, filed for the accounting year April 14, 1957, to April 13, 1958, a return in Form II showing a net income of Rs. 1,798.87 nP. He owned 20 shares of lands in Inam Kottur Thottam Village and certain other lands, but with these latter items we are not now concerned. Out of the 20 shares of lands, 5 1/2

shares belonged to the Thanjavur Palace Devasthanam, which Subramania Iyer took on lease. 5 1/2 shares came to be owned by one Muthusubramaniam and his brothers, the daughters sons of S. Subramania Iyer under a settlement deed in their favour executed on August 4, 1948, by Subramania Iyer himself. Out of the balance of 9 shares of lands, 8 shares had devolved on Swaminathan and Balasubramaniam in moieties, they being the son and grandson of Subramania Iyer while the remaining. 1 share was held by Subramania Iyer himself in pursuance of a partition arrangement following a division in status several years ago. This partition arrangement was confirmed in a partition deed dated April 3, 1960. All the lands however were managed by Subramania Iyer himself. For the purpose, Subramania Iyer maintained a single pannai or farm establishment and it is said that he met the expenses, realised the proceeds from the entire lands together and then divided the net income in the ratio in the shares of the different individuals mentioned above to whom the lands belonged. There is however one significant feature in regard to these properties. The Assistant Commissioner of Agricultural Income-tax, Thanjavur, in the course of his order, observed :

The sixth contention is that this is a case where there was a settlement in favour of the daughtersons of the appellant even in 1948 and that there has been division in status shortly afterwards and the appellant, his son and sons son having been allotted definite and particular items of properties corresponding to specific shares, that the appellant has executed a registered will even in 1958 in August 28, 1958, even before the Agricultural Income-tax Act had come into force, stating that there has been a division in status and by metes and bounds and describing the items of properties in terms of share as belonging to his son and sons son and his daughters sons and as belonging to the appellant himself and that later there has been a regular registered partition deed as between the appellant, his sons and grandson giving effect to the previous division in status and separate holding and that the Agricultural Income-tax Officer has not at all referred to the registered will of 1958 in spite of the fact the same has been shown to him. The Agricultural Income-tax Officer, does not dispute these facts.

This statements of fact would show, (i) that the properties allotted to the grandson by the daughter of Subramania Iyer, (ii) the properties belonging to Subramania

Iyer, and (iii) those belonging to his son and sons son were all specific items defined and localised by metes and bounds. Before the Agricultural Income-tax Officer (as the order of the Agricultural Income-tax Officer shows), Subramania Iyer furnished a list of lands owned by the different sets of persons defined by metes and bounds. The grandson by the daughter of Subramania Iyer also filed a return for the lands settled on them, which according to one of them, Muthusubramaniam, was enjoyed by him along with his brothers as tenants-in-common, but which, for facility of cultivation, was looked after by Subramania Iyer. However, Subramania Iyer's son Swaminathan, did not file a return in respect of the shares alleged to be owned by him and his son. Subramania Iyer furnished a return only for the lands which fell to his share on the partition. The Agricultural Income-tax Officer, the assessing authority, observed that Subramania Iyer and Muthusubramaniam had thus agreed that there should be joint venture for realising the agricultural income and that the status of the assessee in so far as it related to the lands in Kottur Thottam Village would be that of an association of individuals managed by Subramania Iyer, the principal officer. The return of Subramania Iyer was clubbed with that of Muthusubramaniam and there was an assessment on Subramania Iyer as principal officer of an association of individuals. Against this decision, Subramania Iyer appealed to the Assistant Commissioner on the allegations of fact held that the above-mentioned several members of Subramania Iyer's family got well-defined shares of lands with absolute right of ownership and enjoyment and held them separately, but that they had preferred that their shares of the lands should be continued to be managed and cultivated by Subramania Iyer in the same manner as it existed prior to the execution of the will and the partition. The Appellate Assistant Commissioner observed :

'.... the common management by the appellant is admitted. If it was for the mere purpose of convenience, then there need not have been a common cultivation on common account.'

He therefore affirmed the finding of the Agricultural Income-tax Officer that this was a case of an association of individuals within the meaning of section 2 (q) of the Act. The assessee again appealed to the Appellate Tribunal. The Tribunal decided the case on the short ground that the assessee, his son and sons son

held the properties as tenants-in-common, that section 3(3) of the Agricultural Income-tax Act would apply and that they should not be assessed as 'association of individuals' on the whole of the income. The appeal was allowed and the assessment on the assessee as an 'association of individuals' was set aside. Against the said decision of the Tribunal the State of Madras has filed the present revision case.

In the first place, it will be necessary to observe that the view of the Tribunal that these was a tenancy-in-common is not an accurate statement of the facts of the case and the law applicable to them. Section 3(3) of the Agricultural Income-tax Act, which is the charging section, states :

'In the case of persons holding property as tenants-in-common and deriving agricultural income, the tax shall be assessed at the rate applicable to the agricultural income of each tenant-in-common.'

The words 'tenancy-in-common' are derived from the English law of real property. In Halsburys Laws of England, third edition, volume 32, page 338, it is observed :

'Before 1926 a tenancy-in-common in hand might exist either at law or in equity. Under such a tenancy the land was said to be held in undivided shares and the tenancy differed from a joint tenancy in that it required neither unity of title, interest, nor time, but only unity of possession. Under the Law of Property Act, 1925, a legal estate is not capable of subsisting or being created in an undivided share in land, and it can only be created so as to take effect behind a trust for sale.'

We are not now concerned with the limitations imposed by the English Law of Property as to how a legal tenancy-in-common can be created by the 1926 English Law of Property. Section 45 of the Transfer of Property Act show how a legal tenancy-in-common can be created in certain circumstances. Apart from that, parties can deal with their properties in such a manner that a tenancy will be that all the co-sharers have a right to joint possession over the entire property and no one co-sharer can claim for himself any specific part in the common property, save by obtaining partition. A tenant-in-common who receives more than his share of

the rents and profits will be liable to account to others [vide Kamalamma v. Pitchamma). Possession by one co-tenant of the common property in the absence of proof to the contrary will ensure to the benefit of all; such possession by itself will not amount to adverse possession against the other co-sharers, unless there is clear proof of ouster. In the present case, from the proved fact that Subramania Iyer's daughters' sons on the first part, Subramania Iyer's son and sons on the second part, and Subramania Iyer on the third part, held definite and localisable items in the properties, there is no unity of possession, and, therefore, no question of a tenancy-in-common arises in this case.

The next and equally important question is whether the group of persons thus mentioned, viz., Subramania Iyer, his grandson by the daughter and his son and sons' son, had in fact formed an association of individuals within the meaning of section 2(q) of the Act, which is in the following terms :

'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 an undivided Hindu Mitakshara family, an Aliyasanthana family or branch, a Murumakkattayam tarwad or a tavazhi possessing separate properties, or a Nambudiri or other family to which the rule of impartibility applies, a firm or a company, an association of individuals, whether incorporated or not, and any institution capable of holding property.'

Section 2(u) of the Act defines a 'principal officer' for such an association of individuals as a person connected with the association upon whom the Agricultural Income-tax Officer has served a notice of this intention of treating him as principal officer. The Indian Income-tax Act, 1922, has a provision analogous to section 3(3) of the Agricultural Income-tax Act for dealing with tenancy-in-common in section 9(3) (of the Act prior to its amendment in 1961). It came into force by an amendment in 1939 (Act 7 of 1939). It reads :

'Where property is owned by two or more persons and their respective shares are definite and ascertainable, such persons shall not in respect of such property be

assessed as an association of persons, but the share of each such person in the income from the property ads computed in accordance with this section shall be included in his total income.'

But this section in the Indian Income-tax Act applied only to properties which consisted of buildings or lands appurtenant to the buildings. Section 3, the charging section in the Indian Income-tax Act (before its amendment in 1961), provided that the tax shall be levied in respect of the total income of the previous year of every individual, Hindu undivided family, company and local authority, and of every firm and other association of persons or the partners of the firm or members of them association individually. It has been long recognised that the Indian Income-tax Act did not specifically define the term 'association of individuals' and that the question had to be decided on the facts of each case. The various decisions under the Income-tax Act are of help in so far as they lay down the broad principles for guidance in deciding when a group of persons should be deemed to be an association of persons for the purpose of assessment. The earlier relevant decisions have been summarised in Mohammed Noorullah v. Commissioner of Income-tax and we will refer to it in the first place. This decision was given in an appeal from, a decision of this court reported as Estate of Khan Sahib Mohd. Oomer Sahib v. Commissioner of Income-tax. In the above case the court was called upon to deal with co-sharers under Mohammadan law who owned a business of manufacturing and selling of beedies. The nature of the business was such that it could not be divided up, but had to be carried on as one whole, with a unity of control, and all the parties desired to preserve, and did preserve this unity. After the death of Md. Oomer Sahib, the previous owner of the business, the business was carried on by mutual agreement and consent by his widow, acting on her own behalf and on behalf of her minor children and her minor step-son. It appeared that the after the death of the privies owner, the estate was inherited and the business was continued and run by a combination of individuals (the heirs) who had pooled their resources for the common purpose of the earning income, and it was, therefore, held that the heirs had constituted themselves into an association of persons. We have here not a business, but agricultural lands, and there is also no question of the property by its very nature being incapable of division, and requiring to be looked after as a whole with unity of control.

Agricultural lands are capable of division and separate enjoyment. In the present case, there was an factual division by mates and bounds. The Supreme Court decision in Commissioner of Income-tax v. Indira Balkirshna was also a case of co-heirs owning a common business. While a partition suit between them was pending, and even before that, i.e., after the death of the father, the business was carried on by the consent of all the parties as one unit, as indeed it had to be, because it had to be carried on as one unit with unity of control. In such circumstances, it was held that the co-heirs had constituted themselves into an association of persons within the meaning of section 3 of the Indian Income-tax Act, 1922.

The above two decision of the Supreme Court dealt with an association of individuals in relation to a business, whose very nature required unity of control and management for the purpose of running it. There are also other decisions under the Indian Income-tax Act, dealing with income from landed property under section 9 of the Act, and these will have direct relevance for dealing with a case arising under the Agricultural Income-tax Act. In *In re Elias*, certain persons who jointly purchased properties in definite shares executed a general power of attorney on favour of one of themselves to manage all their affairs in relation to the properties aforesaid. They were assessed as an association of individuals. Derbyshire C.J., after observing that the words 'association of individuals' have to be construed in their plain ordinary meaning, stated :

'Did these individuals join in a common purpose, or common action, thereby becoming an association of individuals In my view they did. In the first place, they joined together in the purchase of this property..... In the second place, they have remained joint as owners of this property from the date of the purchase down to the present time. Thirdly, they have joined together, as the power of attorney shows, for the purpose of holding this property and of using it for the propose of earning income to the next advantage of them all. Under these circumstances, it seems to me that the looking at the position and construing the words of the Act in their ordinary common meaning, the four persons named are 'an association of individuals'.

Costello J. also observed :

'When we find, as we do find in this case, that there is a combination of persons formed for the promotion of a joint enterprise banded together, if I may so put it, as co-adventures, to use an archaic expression, then, I think, no difficulty whatever arises in the way of the saying that in this particular case these four persons did constitute an association of individuals.....'

The next decision is Commissioner of Income-tax v. Laxmidas Devidas. That was a case where two individuals joined together in purchasing certain immovable properties, contributing the purchase money in equal shares, and the properties were jointly held and managed by or on behalf of them. The management resulted in profits which were shared equally. It was held that the two persons formed an association of individuals, because they were associated together for the purpose of acquiring property and deriving profit from it. Another case is Dwarkanath Harischandra Pitale, In re. It dealt with income from immovable properties. In that case two brothers became entitled to certain house properties in Bombay as legatees under a will of their grandfather. Initially the executor under the will managed the properties. Then he handed over the properties to the assessee under a deed of release. From that time, the assessee held the properties jointly and managed them jointly. They divided the net income after paying all expenses and municipal tax between themselves. Beaumont C.J., who delivered the judgment, observed :

'..... They did not purchase the property for the purpose of the managing it; they received it under a will, and it may be said, that in the first instance they did not constitute an association of individuals. But as soon as they selected to retain the property and manage it as a joint venture producing income, it seems to me that they became an association of individuals.....'

In Commissioner of Income-tax v. Baporia, it was pointed out that the when an individual inherits share in property he has no opportunity of deciding whether he will, by reason of having inherited that share, form an association of individuals or renounce such relationship. By merely inheriting a share of property, no person can be said to have become a member of an association, unless there is some

forbearance or act on his part to show that his intention and will companies the new status which he had been asked to receive. In that case it was found that the appointment by the co-heirs of a single person as their agent to realise the income from shares and the property inherited by them from their father and mother under the Mohammadan law and the continuance of this arrangement for a long number of years was sufficient to constitute an association of individuals.

All the above cases arose before the amendment by Act 7 of 1939 which introduced section 9(3) of the Indian Income-tax Act. They enunciate certain general principles for finding out who constitutes an association of persons in regards to property jointly owned by them. Section 9(3) must be deemed to be granting an exemption to co-owners who happen to own specified, but undivided, shares in the common property (tenants-in-common) from being assessed as an association of individuals. The applications of this exemption did not arise in the above cases.

A Bench of this court in *M. M. Ipoh v. Commissioner of Income-tax* dealt with the assessment of a Nattukottai Chettiar family, which carried on business in money-lending, rubber plantation and purchase and sale of properties in the Malay States, Burma and India. A partition of the business was effected between the father and his minor son represented by his mother. After the partition was entered into, there was evidence about an agreement to the effect that the properties should be continued to be held by the Meyappa and Chettiappa (father and minor son) in two equal shares and under the management of the M. S. M. firm, who was to get 10 per cent. commission of the profits for looking after the properties. Srinivasan J., who delivered the judgment of the Bench, referred to and adopted three tests for determining the existence of an association of persons, which were laid down in *Estate of Khan Sahib Mohd. Omer Sahib v. Commissioner of Income-tax*, viz :

(1) the exercise of volition by, or in the case of minors on behalf of those, who form the association;

(2) unity of purpose and objectivity; and

(3) the ultimate object of the association must be to produce income, profits and gains and to be earned on their behalf.

The learned judge further stated that in the light of the decided cases, it may further be added that, in the absence of express volition to form an association, such volition could be implied if a person who would otherwise be entitled to separate elects to remain joint. In any event, it is quite clear that in order to constitute an association of individuals, the above indicia in some form or other must exist. These decisions show that before persons, who shared in the relationship of co-heirs, co-legatees or co-sharers, and who own either distinct and separate items of property or specified and defined shares in undivided common property could be held to have formed an association of persons, there must be evidence to show that they had agreed or elected, to remain joint in pursuance of a common purpose for managing their individual items of property or their individuals shares in a common undivided property. But this rule about the constitution of an association of persons will be subject to an exemption in the case of tenants-in-common by virtue of the later amendment of in section 9(3) of the Income-tax Act.

In every case referred to above, there was evidence of an agreement either express or implied to show that the individual had agreed to come together either for the purpose of acquiring the property and exploiting it or for the purpose of exploiting inherited or bequeathed properties so that they could earn an income by their united activities. But in the present case, the proved facts are materially different. Subramania Iyer originally owned 14 1/2 shares after setting apart 5 1/2 shares for the Thanjavur Palace Devasthanam. He gifted 5 1/2 shares out of it, after dividing it by metes and bounds to his grandsons by his daughter. However, they permitted Subramania Iyer to look after the properties thus settled on their behalf. Subramania Iyer then divided the remaining 9 shares, taking one share for himself and giving 8 shares to his son and his grandson by his son. Even these properties were demarcated by metes and bounds. His son and son's son also permitted Subramania Iyer to look after their property. Subramania Iyer maintained a common pannai or farm for looking after the cultivation of all these properties. It was easy for him to divide the income in the proportion of the shares, which tolled

with the proportion attributable to the distinct parcels of land given to each group. But there is no evidence that, while Subramania Iyer was thus managing the several parcels of the property, his grandsons by the daughter, on the one hand, and his son and sons son, on the other, entered into an arrangement inter se among themselves for the purpose of common exploitation of their distinct properties. The arrangement could very well be consistent with the case put forward by the assessee that what in fact happened was a separate individual arrangement, between the different owners of the land and Subramania Iyer, without the owners themselves coming to an agreement inter se regarding joint cultivation. Thereafter, Subramania Iyer, for the purpose of his own convenience, as manager or agent for the different owners, used a common pannai for the purpose of cultivation. It was therefore urged, and in our opinion rightly, by the learned counsel for the assessee-respondent that the management by Subramania Iyer of the different parcels of land by a common pannai would not ipso facto prove an agreement between the different owners to associate together for the purpose of cultivation. We may recall that Derbyshire C.J. stressed that the word 'association' should be given its ordinary meaning. The dictionary meaning of the words 'associate' is to join in a common purpose or action. 'Any combination of persons who have joined together in a profit-making enterprise would, according to ordinary parlance, amount to an association' (Yahya Ali J. in *Mohamad Abdul Kareem & Co. v. Commissioner of Income-tax*). In the present case there is no evidence of such an association having been formed inter se between the different owners. If the factum of common cultivation by a single agent or manager of different parcels of land owned by different persons could by itself be held to be sufficient to constitute the owners into an association of persons, it would lead to undesirable results. It is a common experience in this part of the country, where the system of absentee landlords prevails, that different owners of agricultural lands give them for cultivation to one lessee or manager or agent. The lessee or manager or ploughs and bulls and common pannai servants for cultivation, and after collecting the produce, he apportions it among the different owners in proportion to the yields from their lands. There is no scope for construing such owners as having formed an association solely by reason of their having engaged one and the same lessee, or manager or agent for the purpose of

cultivation. The fact that, in the present case, the different owners of the land formed members of one family or acquired their properties by settlement or partition from one person could not by itself lead to any alteration to this principle. Even in such a case it is necessary to prove the essential requirement, viz., that as between themselves they had associated together and decided upon the common exploitation of their lands for common benefit and that it was only in pursuance of that agreement single person was selected to carry out the common purpose of joint cultivation. This essential requirement is absent in this case.

Our attention was drawn to a decision of a Bench of this court (Jagadisan and Srinivasan JJ.) in T.C. No. 3 of 1963. The genealogical tree set out in the judgment shows that the members of the assessee's family has become divided by partitioning their common estate and the tabulation of the lands allotted to each sharer in terms of acres and cents would show that in fact there was an outright partition by metes and bound. The lands were cultivated under a common pannai and a common account was maintained and expenses were incurred in common. At the end of each year the net agricultural income was apportioned amongst the sharers in the ratio of their holdings. they were assessed as an association of individuals by the Agricultural Income-tax Officer. When the matter came before the Bench, Jagadisan J., speaking for the Bench, seems to have assumed that it was a case of a mere tenancy-in-common and made the observation that when tenants-in-common of property divide the income in the ratio of their definite shares without division of the corpus by the metes and bounds, they cannot be said to have earned their respective income by a joint endeavour, effort or enterprise and that a joint management of the undivided property held in shares, either by one of the shares or by a duly appointed attorney, would not knot them together as an 'association of individuals'. He quoted with approval a decision of the Lahore High Court in *Nizam-Ud-Din of Lahore, In re and Indira Balkrishna v. Commissioner of Income-tax*.

The principle thus stated by Jagadisan J. refers to the protection we have adverted to earlier in favour of tenants-in-common from being classified as an association of persons granted by section 3(3) of the Agricultural Income-tax Act, which is in part material with section 9(3) of the Indian Income-tax Act. But we wish to point out

with due respect that Jagadisan J. appears to have overlooked this. On the facts of the above case, there was no tenancy-in-common as the parcels of land owned by each individual were distinct. It appears to us that when the question arises also in the case of persons who own separate parcels of land defined by metes and bounds, and who for the cultivation of their respective shares or parcels, engage one and the same manager, agent or lessee, the crucial test will always be whether the individuals had come together for a joint endeavour or effort or enterprise for the joint cultivation of their lands and the common manager, agent or lessee was engaged only in pursuance of the joint purpose thus formed between them.

For the foregoing reasons, we are of the opinion that the assessment on Subramania Iyer, his grandsons by his daughter, son and sons son as an 'association of individuals' cannot be supported.

Sri Parasaran, learned counsel for the respondent, urged another argument derived from the language of section 2(q) of the Act read with section 2(n) of the Act. Under section 2(q) a 'person' is defined as an 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, etc. The words, 'to hold' have been defined in section 2(n) of the Act as meaning with its grammatical variations and cognate expressions to possess and enjoy either as owner or tenant or mortgagee in possession or as maintenance-holder or in one or more of those capacities. According to Sri Parasaran, it is necessary that an association of persons should own or hold property in one of the capacities mentioned in section 2(q), and that it would not suffice if the individuals comprising the association own or hold the property. It would be necessary to look for some conveyance from the individuals to the association. But the association may not be competent under the statute to receive property by conveyance. But according to the learned Government Pleader, this argument overlooks two points. First, under the terms of the definition of 'person' just now mentioned, an association of individuals could hold property for another, i.e., on behalf of the individuals who comprised the association. The word 'hold' in such a context should be given its ordinary meaning and not the special meaning mentioned in the definition in

section 2(nn) of the Act. The preamble to section 2 of the Act states that the special terms and the various definitions in that section, would apply unless the context otherwise requires. The context of section 2(q) would make it appear that the word 'hold' is used there only in the ordinary sense of 'enjoyment or being in possession of' without the restrictions mentioned in the definition in section 2(nn). Secondly, the Government Pleader submits that the second part of the definition in section 2(q) refers to an association of individuals without the restrictive clause of owning or holding property and that this may again lead to the inference that the requisite of 'holding property' as defined in section 2(nn) is not applicable to the assessment of an association of individuals. But it is not necessary to pursue this line of reasoning further and for a decision on this point because for the reasons given by us earlier in the judgment the essential ingredients to constitute an association of individuals are lacking in this case. Therefore, while we cannot uphold the reasons given by the Tribunal for its view that there is no association of individuals in this case, we affirm its decision for the different reasons given by us, and dismiss the revision case.

Tax Case No. 52 of 1963.

The prior facts leading to this revision case, as found by the authorities below and regarding which there is no dispute before us, are briefly the following. One K. P.M. Abdul Khader and K. P.M. Abdul Majeed are brothers. They owned 309.66 acres of wet and dry lands in Nannilam Taluk. By executing a partition deed and release deed they divided the property by metes and bounds and each got 154.83 acres. Abdul Khader thereafter in 1956 settled specified extents of 30 acres and odd in agricultural areas each to his minor son, Haja Sheriff, and to his wife, Rokkayya Ammal. There were similar gifts to Abdul Majeeds wife and daughter. Applications for composition of agricultural income-tax for the year 1958-59 were submitted to the Assistant Agricultural Income-tax Officer, Nannilam, by Abdul Khader, his wife, the guardian of Haja Sheriff, and other beneficiaries under section 65 of the Agricultural Income-tax Act, 1955. Holding that the provisions of section 9(2)(a)(iii) and section 9(2)(a)(iv) of the Act would apply to the settlements in favour of the wife and the minor son, Abdul Khader was asked to give his consent for clubbing together the income from these lands for the purpose of

assessment. The assessee filed his objections. The applications for composition were thereupon rejected and Abdul Khader was called upon to file a return of accounts for all the lands comprised in the three applications. Abdul Khader filed a revision petition before the Commissioner of Agricultural Income-tax, Madras. In the meantime, Abdul Majeed, who had so settled varying extents of land on his children under different documents, also applied for composition under section 65 of the Act and the Agricultural Income-tax Officer refused the application for composition on the ground that he too did not give his consent for clubbing the properties together under sections 9(2)(a)(iii) and 9(2)(a)(iv) of the Act. Abdul Majeed also filed a revision petition before the Commissioner of Agricultural Income-tax, Madras. It is common ground that the properties of both the brothers, even after the partition and after several settlements, continued to be managed by Abdul Khader. The Commissioner of Agricultural Income-tax disposed of the revision petitions by a short order, which reads :

'It is seen from the return filed by Sri Abdul Khader that the lands of the two brothers are cultivated in common and the net total income is shared by the brothers and that the income shown by Sri K. P.M. Abdul Khader is half of the net total income of the their estate. In the move circumstances, I feel it is a fit case to deal with as an association of individuals. I therefore, direct that the assessment be made accordingly.'

Abdul Khader has filed this revision case against the above order of the Commissioner of Agricultural Income-tax, Madras.

Learned counsel appearing the for the petitioner urged in the first place that in the circumstances of the case there is no proof regarding the constitution of an association of individuals. Secondly, after the various settlements in favour of his wife and minor son and others, the petitioner had with him property only to an extent of 64.01 acres equivalent to 40.715 standard acres. Section 9(2) of the Act will become applicable only when a question of assessment on agricultural income arises, and in such a case, for the purpose of the computing the total agricultural income of the assessee, all the income arising from the assets transferred to the wife gratuitously and the income from the asset transferred to the minors child

other than a married daughter gratuitously shall be included; but proceedings for composition under section 65 of the Act is different from assessment proceeding after computing the agricultural income and therefore section 9(2) cannot be applied in the course of the composition for the purpose of adding to the lands of assessee, the lands settled by him on his wife and minor child.

We will take up for the consideration first last mentioned argument above. It is based on the scope of composition proceedings under section 65 of the Act, as laid down in the Commissioner of Agricultural Income-tax v. K. Subbiah Gounder. The question that arose in that case was whether an order of composition under section 65 of the Act was appealable under section 31 of the Act. The learned judges observed that an order granting permission to compound and fixing the amounts to be paid by a person holding agricultural lands in lieu of agricultural income-tax does not amount an order of assessment and that in a proceeding under section 65 there is no assessment of the income of there son or an assessment of tax as such. They held that an order of composition is not subject to appeal under section 31 of the Act. Section 65(1) of the Act provides that any person who holds land not exceeding fours times the exempted extent (under section 10 of the Act lands not exceeding 12 1/2 standard sacred in area will be exempt from assessment) may apply to the prescribed officer for permission to compound the agricultural income-tax payable by him and to pay in lieu thereof a lump sum at the rate or rates specified in Part II of the Schedule. Prior to the amendment in 1961 (Act 51 of 1961), section 65(4) continued a proviso that the provisions of sections 35 and 36 shall so far as may be apply in relation to the composition of agricultural income-tax under this section (section 65) as they apply in relation to the assessment of agricultural income-tax under this Act. Act 51 of 1961 added to this proviso the provisions of sub-section 9(2) of the Act. It is on this addition of section 9(2) to the proviso to section 65(4) that the department has relied for insisting on adding to the extent of laid in the assessees possession the extent settled by him of his wife and minor son. By this addition the extent of the land in his holding would exceed 50 standard acres, and the would not be entitled to obtain composition under section 65. But if the lands settled on the wife and minor son are excluded, the balance of the land belonging to him would come top only 40.715 standards acres, which, would be within the maximum prescribed in

section 65 of the Act. The learned counsel for the petitioner argues that for computing the agricultural income of any individual for the purpose of assessment, section 9(2) permits the addition to his income, the income from the assets gifted to his wife and minor son, but in the case of composition under section 65 of the Act, since no question of computing the agricultural income arises and since the only questions to find out the area of the land in his holding, and then apply the schedule of rates for composition in respect of that area, there is no scope for applying section 9(2) of the Act, and therefore the reference to that section by the amendment to section 65 will, in practice, be pointless and unworkable. We are not prepared to accept this argument. The proviso to section 65 states that the provisions of section 9(2) shall, so far as may be, apply in relation to the composition of agricultural income-tax as they apply in relation to the assessment of agricultural income-tax under the Act. The clause 'so far as may be' is important. It would show that what was contemplated was not a literal application of section 9(2) to section 65, which may produce a fruitless result, as contended by the petitioner, but what was contemplated was the application of the principle of section 9(2). Section 9(2) states that for computing the income of a person there shall be added thereto the income from the assets gifted to his wife and minor child, other than married daughter. The principle behind this provision is that the assets gifted to the wife and to the minor child shall be deemed as an addition to the assets of the assessee for the purpose of fixing his liability to pay agricultural income-tax. Composition means substituting a fixed sum in lieu of agricultural income-tax. If we are to apply the principle of section 9(2) to section 65, it would mean that for the purpose of the composition, the land in the assessee possession should be deemed to be augmented by the land gifted to his wife and to his minor child other than a married daughter.

The learned Government Pleader referred to the Madras Plantations Agricultural Income-tax Act (Amendment Act 29 of 1958), section 34 of which provides for the composition of tax for the year 1957-58. It reads :

'Notwithstanding anything contained in this Act, any persons liable to pay agricultural income-tax under the principal Act as amended by this Act in respect of any agricultural income derived from any land other than land used for growing

tea, coffee, rubber, cinchona or cardamom during the period of twelve months ending on the 31st day of March, 1958, may apply to the prescribed officer for permission to compound such agricultural income-tax, and to pay in lieu thereof a lump sum at the rate or rates specified below.....'

We may note in this connection that originally Act V of 1955 was intended it cover only plantations growing produce like tea, coffee, rubber, etc. Section 65, as it stood then, allowed composition only in the case of plantations limited to a total area 50 standard acres. By Act 29 of 1958, the Act of 1955 was extended to all agricultural lands. For the purpose of the dealing with the agricultural lands other than plantations, section 34 was specifically enacted, giving a schedule of rates for composition and removing the upper limit of 50 standard acres. Section 34 was to be in force only for 1957-58, and it was extended year after the year to subsequent years. The learned Government Pleader submits that while section 65 is a general provision which will apply to all lands including plantations for tea, coffee, etc., section 34 of the Plantations Agricultural Income-tax (Amendment) Act, 1958, is a special provisions dealing with lands other than lands used for plantations of tea, coffee, rubber, cinchona or cardamom, and applicable only for the period specified therein. He contends that the principle that a special provisions should operate in preference to a general provision will apply in such a case, and, therefore, the question of composition in the present case should be dealt with under section 34 of the Plantation Agricultural Income-tax (Amendment) Act, 1958, and not under section 65. We are inclined to agree with this contention. It is also trussed by the learned Government Pleader that section 34 of the Plantations Agricultural Income-tax (Amendment) Act, 1958, does not refers to any condition and out the applicant for composition holding land not exceeding four times the exempted extent. It applies to all cases where a person is liable to pay agricultural income-tax under the principal Act, in respect of lands other than plantations of coffee, tea, etc. Therefore, for the purpose of composition under section 34 of the Plantations Agricultural Income-tax (Amendment) Act, 1958, of the income-tax due by a person, in fixing the amount of composition it will be proper to include besides his own land, the land gifted to his wife and minor child other than a married daughter. We accept this argument.

It would appear from the record of the case that the Commissioner of Agricultural Income-tax did not at all go into the question of the application of section 9(2) to cases of composition, a point dealt with the assessing authority. He disposed of the case on the short ground that the facts showed that there was an association of individuals. It was the assessing authority who insisted that the two petitioners, who applied for the composition, should include the lands settled on their wives and children. It was against that order that they were aggrieved and applied to the Commissioner in revision. The Commissioner, however, failed to decide the point and dealt with the matter on some other basis. It was cited out by the High Court under section 54(4)(a) of the Agricultural Income-tax Act would include not merely the power of remand to the Commissioner for deciding a question which he had not decided, but it can itself decide a question of law that is raised before it and pass such order thereon as it thinks fit. Since the question of applicability of section 89(2) of the Act to composition proceedings was specifically raised before the revising authority, but was omitted to be decided by that authority, we have decided it in this judgment itself, instead of remitting the matter to the assessing authority. Our view recorded and the foregoing paragraphs is that section 34 of the Plantations Agricultural Income-tax (Amendment) Act, 1958, has to be applied to the composition proceedings in the present case, and that the principle of section 9(2) of the Agricultural Income-tax Act, 1955, can be applied in the manner stated above for the purpose of calculating the composition fee.

We next come to the question of 'association of individuals'. Unfortunately, we do not find any material from which one can infer that Abdula Khader and Abdul Majeed as well as the settles from them had joined together in a joint enter price for the common cultivation of their lands and dividing the income. Since this is a case where each individual had specific parcels of land, there is no question about a tenancy-in-common. From the mere circumstance that the lands thus owned by the different individuals were being cultivated by one and the same agent or manager, it will not automatically follow that the different owners had entered into a mutual agreement for the purpose of the common exploitation of their lands by one and the same individual. As pointed out earlier in T.C. No. 49 of 1963, the result could be equally consistent with a situation where each owner, for his own advantage gave his parcel of land to the same agent or manger or lessee and then

all that person, for the purpose of his own convenience, might have utilised a single pannai or farm for cultivation, and then divided the income in the ratio of the parcels of lands belonging to the different owners. In the absence of any finding or evidence to show that there was such a joint enterprise on the part of the different owners, it was not per for the Commissioner to have assessed the assessee as an 'association of individuals'. We adopt the same reasoning for this purpose, as we have done in T.C. No. 49 of 1963, and we allow the revision case and set aside the order of the Commissioner. It will be open to the assessing authority to deal with the composition applications pending before him in the light of the observations contained in this judgment.

Tax Case No. 59 of 1963.

The assessee, A.M. P. Thiruvambalam Chettiar, executed a partition deed on June 30, 1954, between himself, his son, Vadapuri, his minor daughter, Raja Rajeswari, his married daughter, Soundaravalli, and his grand-daughter, Umamaheshwari, and allotted to them specific items of properties. All the shares filed separate returns for 1958-59 and 1959-60. The Agricultural Income-tax Officer made enquiries in various villages and found that the lands of all the four persons were cultivated as a common farm under the management of Thiruvambalam Chettiar, and expenses were incurred in common, even the plough, bulls, cattle-shed, etc., were all common, the accountant maniyam and talayaris looking after the farm were also common and the haystack was kept in common. From these facts, the assessing authority, as well as the Appellate Assistant Commissioner, inferred that the four persons formed 'an association of individuals' within the meaning of section 2(q) of the Agricultural Income-tax Act and assessed them as such. Thiruvambalam Chettiar appealed to the Appellate Tribunal. The Appellate Tribunal held that this was a case of property held by tenants-in-common and that, therefore, section 3(3) would apply. Therefore, the order of the assessing authority directing the assessee to be assessed as an 'association of individuals' was set aside. The State of Madras has filed this revision case against that order.

As was the case in T.C. No. 49 of 1963 here again, in our opinion, the Tribunal made a mistake in deducing a tenancy-in-common in a case where each sharer held the property in separate holdings divided by metes and bounds. There was no question of any unity of possession. The interest of each owner in particular items of property belonging to them was known and defined. Therefore, we cannot support the reasoning of the Tribunal for its conclusion, as this is not a case of tenancy-in-common. But here also, we have certain members of Thiruvambalam Chettiars family who got, on a partition, specified extents of land, which was originally a common property. Thereafter, for the purpose of their individual convenience, the owners of the different parcels of land entrusted them for cultivation to Thiruvambalam Chettiar, so that he may cultivate the land and give the due share of the income to the several owners. That the owners of different parcels of land had selected one and the same individual (whether manager or agent or lessee) for cultivating their lands and that this individual, thereafter, for his own cultivating their lands and that this individual, thereafter, for own convenience, used a common pannai or farm for cultivating the several parcels of land would not, by itself, be sufficient to prove a joint endeavour or a common enterprise on the part of the several owners to pool their lands together and derive income therefrom for their common benefit. Reference was made by the learned Government Pleader to the keeping of a common haystack. It is not improbable that the lessee did so for the purpose of convenient storage so that he could distribute the hay later on to the individual shares in quantities proportionate to the paddy yielded from their lands. There is, therefore, no substance in the contention put forward that this is a case of an 'association of individuals.'

Another contention urged by the learned counsel for the respondent was this. The different owners, who got the properties on division, submitted separate returns of their income. The assessing authority clubbed these returns together and assessed the four persons as an 'association of individuals'. The learned counsel, Sri Kunchithapatham, for the respondent points out that while notices under section 16(2) of the Act were served separately on the four persons, who filed their individual return, no notice was served for the purpose of assessment on them after treating them as an association of individuals with Thiruvambalam Chettiar as 'principal officer' of the association as defined in section 2(u) of the Act. It is urged

that owing to the failure on the part of the assessing authority to serve such a notice, the respondents had no opportunity for urging their objections to being assessed as an 'association of individuals'. The respondents counsel urged that without a separate notice under section 16(2) of the Act on the principal officer of the association of individuals, the assessment itself is invalid. We see considerable force in this argument, but, however, in the circumstances of this case, we prefer to rest our decision on the finding given already, that the data adduced are not sufficient for constituting the four persons, who have submitted separate returns, into an association of individuals. We, therefore, dismiss the revision case, though for reasons different from those given by the Tribunal below. It will be open to the assessing authority to assess the different persons on the basis of their return and in accordance with law.

No costs.