

(1997) 08 MAD CK 0084

In the Madras High Court

Case No : T.C. (Rev.) No's. 175, 176 and 673 to 676 of 1986 and Revision No's. 85 and 86 of 1986 and 198 to 201 of 1986

B.M. Mehta and others

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 11-08-1997

Acts Referred:

Income Tax Act, 1961 — Section 28

Citation : (1999) 238 ITR 725

Hon'ble Judges : R. Jayasimha Babu, J;Akbar, J

Bench : Division Bench

Advocate : Deokinandan, for the Appellant; K.M.L. Majele, for the Respondent

Judgement

R. Jayasimha Babu, J.—The issue involved in all the cases is the tax-ability of the interest earned by a partner of a firm engaged in the

manufacture of tea and the salary income of the partner received from that firm.

2. All the revision petitioners are partners in the same firm. The assessment years in question are 1974-75, 1975-76, 1976-77 and 1980-81.

3. Learned counsel contended that Income Tax has been paid under the Indian Income Tax Act, and the same amount cannot be subjected to tax

under the State Act. Counsel relied on the decision of this court in B.M. Mehta and others Vs. State of Tamil Nadu, .

4. The statutory rule is quite clear namely rule 7 of the Tamil Nadu Agricultural Income Tax Rules, 1955, which provides that in respect of

agricultural income from tea grown and manufactured by the seller in the State of Tamil Nadu the portion of the income worked out under the

Indian Income Tax Act and left unassessed as being agricultural shall be assessed under the Act after allowing such deductions under the Act and

the rules made thereunder. The Assessing Officer is required to accept the computation made by the Income Tax Officer under the Central Act.

4. The assessee, however, failed to produce the order of assessment made by the Income Tax Officer under the Indian Income Tax Act either

before the Assessing Officer or before the Assistant Commissioner to whom they had preferred appeals.

5. The order of the Tribunal which affirmed those orders of the Assessing Officer and the appellate authority also does not contain any reference to

the order if any passed by the Income Tax Officer under the Income Tax Act in respect of the income of the assessee. No such order was

produced even at the time of hearing of these matters.

6. In these circumstances, the assessee is not entitled to the benefit of rule 7. There is total absence of any proof of payment of tax under the

Indian Income Tax Act.

7. It has been held in more than one case by the apex court that the salary received by a partner of a firm is of the same character as the share of

the income from the profits of the partnership. The Supreme Court in the decision reported in Commissioner of Income Tax, Madras Vs. R.M.

Chidambaram Pillai and Others, , to which decision the Appellate Tribunal has also adverted, held that salary paid to a partner retains the same

character of income of the firm.

8. The Tribunal was therefore right in holding that the salary received by the partner to the extent of 60 per cent. of income is taxable. Bonus also

stands on the same footing as the share of profit received by the partner to the extent of 60 per cent. of income and is taxable as held in the case

reported in Commissioner of Income Tax, Madras Vs. R.M. Chidambaram Pillai and Others, . In Commissioner of Income Tax, Madras Vs.

R.M. Chidambaram Pillai and Others, , the apex court held that the flexible arrangement among partners regarding distribution of the income may

take many forms, but the essential agricultural character and consequential legislative immunity cannot be lost because of tags and labels (page

301) :

"That which we call a rose, by any other name would smell as sweet." Needless to say, the position is different if the situation is of a stranger - not

a partner - drawing a salary".

9. The Supreme Court thereafter approved the following passage from the Law of Income Tax by A. C. Sampath Iyengar, sixth edition, 1973,

pages 1063-1064, volume II. That passage was characterised by the Supreme Court as one which has ideological clarity (page 302) :

Any interest, salary, bonus, commission or remuneration paid by a firm to any of its partners cannot be deducted by the firm as an expenditure in

its profit-computation. The reason is this : The partners in a firm are ultimately entitled to the entire profits of the firm, according to their shares in

the business. Therefore, the entirety of such profits should be brought to charge and no portion be exempted by giving the same away to a partner

as his salary, bonus, commission, remuneration or interest. A partner is bound to find the necessary finances for the partnership and hence any

interest on capital supplied by the partner is not deductible. A partner rendering services to the firm stands on the same footing as his providing

capital; only instead of in money, in kind. Further, no remuneration is permissible to a partner for his rendering services to the firm, since the

carrying on of the business of the partnership is a primary duty which all the partners, or some of the partners acting for all, are required to do by

the law relating to partnership.

10. The apex court held in that case that salary paid to a partner by a firm which grows and sells tea, is exempt from tax under rule 24 of the Indian

Income Tax Rules, 1922, to the extent of 60 per cent. thereof representing agricultural income and is liable to tax only to the extent of 40 per cent.

11. What has been done in the cases which have now arisen is to tax 60 per cent. of the salary and bonus representing agricultural income. We

find no error in the order of the Tribunal. These revisions are, therefore, dismissed.