

(1997) 11 MAD CK 0079

In the Madras High Court

Case No : TC No's. 175, 176 and 673 to 676 of 1986

B.M. Mehta and Others

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 11-11-1997

Acts Referred:

Tamil Nadu Agricultural Income Tax Act, 1955 — Section 3
Tamil Nadu Agricultural Income Tax Rules, 1955 — Rule 7

Citation : (1997) 11 MAD CK 0079

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

Bench : Division Bench

Advocate : P.H. Arvind Pandian, for M/s Subbaraya Aiyar, Padmanabhan and Ramamani, for the Appellant; T. Mathi, for the Respondent

Judgement

R. Jayasimha Babu, J.—The issue involved in all the cases is the taxability 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 contained that Income Tax has been paid under the Indian IT 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, r. 7 of the Tamil Nadu Agrl. IT Rules, 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 IT 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 AO is required to accept the computation made by the ITO under the Central Act.

5. The assessee however, failed to produce the order of assessment made by the ITO under the Indian IT Act either before the AO or before the Asstt. Commr. to whom they had preferred appeals.

The order of the Tribunal which affirmed those orders of the AO and the Appellate Authority also does not contain any reference to order, if any, passed by the ITO under the IT 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 r. 7. There is total absence of any proof of payment of tax under the Indian IT 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 *Commissioner of Income Tax, Madras Vs. R.M. Chidambaram Pillai and Others*, to which decision the 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 *CIT vs. R. M. Chidambaram Pillai (supra)*. In the *CIT vs. R. M. Chidambaram Pillai (supra)* the apex Court held that the flexible arrangement among the partners regarding the 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.

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.

The Supreme Court thereafter approved the following passage from *Law of Income Tax* by A. C. Sampath Iyengar, 6th Edition, 1973 pp. 1063,

1064 Vol.II). That passage was characterised by the Supreme Court as one which has ideological clarity :

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's 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.

9. 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 r. 24 of the Indian

IT 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.

10. 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.