
(1997) 12 MAD CK 0101

In the Madras High Court

Case No : Tax Case No. 796 of 1986 (Reference No. 501 of 1986)

Commissioner of Income Tax

APPELLANT

Vs

A.P.S. Parameswaran Pillai

RESPONDENT

Date of Decision : 17-12-1997

Acts Referred:

Income Tax Act, 1961 — Section 168, 28

Citation : (2000) 241 ITR 748

Hon'ble Judges : P. Thangavel, J; N.V. Balasubramanian, J

Bench : Division Bench

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

Judgement

N.V. Balasubramanian, J.—The assessment year involved is 1981-82 and the assessment was made on a Hindu undivided family and A. P.

S. Parameswaran Pillai, was the karta. The assessee was assessed in the status of ""Hindu undivided family (specified)"".

2. The facts leading to the reference are as follows : One A. P. S. Sethurama Pillai was the karta of a Hindu undivided family consisting of himself

and his sons. There was a partition in the family in which certain properties were allotted to his share and he was assessed in the status of Hindu

undivided family consisting of himself and his wife. It seems that after the partition, A.P.S. Sethurama Pillai passed away and the properties

obtained by AP.S. Sethurama Pillai on partition devolved on his heirs. The Income Tax Officer included the income derived from the assets

devolved on the assessee from the estate of Sethurama Pillai as income arising from the joint family and he made an addition of 1/7th share income

from the estate of the late Sethurama Pillai in the hands of the joint family.

3. The assessee preferred an appeal to the Appellate Assistant Commissioner and the Appellate Assistant Commissioner held that the 1/7th share

income devolving on A. P. S. Sethurama Pillai cannot be assessed in the hands of his Hindu undivided family.

4. The Revenue went up on appeal challenging the order of the Appellate Assistant Commissioner of Income Tax before the Income Tax

Appellate Tribunal and the Appellate Tribunal following its earlier order rendered in the case of the assessee in I.T.A. No. 109/Mds of 1983 for

the assessment year 1979-80 dated July 1, 1980, held that the income had to be separately assessed under the provisions of section 168 of the

Income Tax Act, 1961, and the same was not assessable in the assessment of the assessee-Hindu undivided family.

5. The Tribunal, on an application preferred by the Revenue, referred the following question of law as arising out of the order of the Income Tax

Appellate Tribunal :

Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that until there was full distribution of

the estate of the late A.P.S. Sethurama Pillai the share income from the estate had to be separately assessed u/s 168 of the Income Tax Act, 1961,

and that the same was not assessable in the assessment of the assessee-Hindu undivided family ?

6. It is seen from the earlier order of the Tribunal that the Tribunal decided the case against the Revenue on two grounds. One was that the

provisions of section 168 of the Income Tax Act would apply even in the case of intestate succession income from the undistributed estate of the

deceased and it cannot be assessed in the hands of the heirs until the entire distribution of the estate took place. The second ground on which the

Tribunal held in favour of the assessee was that even assuming that there was succession as provided under the Hindu Succession Act, the

property would devolve on the heirs of the deceased u/s 8 of the Hindu Succession Act and the income from the properties devolved on

succession has to be assessed in the status of individual and not in the hands of the Hindu undivided family. The Department has challenged both

the findings of the Appellate Tribunal. However, we are not inclined to go into the question whether the order of the Appellate Tribunal on the

applicability of section 168 of the Act is correct or not, as we are of the view that the case can be disposed of in the light of the second reasoning given by the Tribunal.

7. In a Full Bench decision of this court in the case of The Additional Commissioner of Income tax, Madras-I Vs. P.L. Karuppan Chettiar, this court has taken the view that the property devolving u/s 8 of the Hindu Succession Act on the legal heirs should be treated as individual property and the income arising from the said property should be assessed in the status of the individual. The view of this court rendered in The Additional Commissioner of Income tax, Madras-I Vs. P.L. Karuppan Chettiar, , was subsequently confirmed by the apex court in the case of Commissioner of Income Tax Vs. P.L. Karuppan Chettiar, , wherein the Supreme Court held that the income from the properties is not assessable in the hands of the Hindu undivided family. Since the second reason given by the Appellate Tribunal is in conformity with the decision of this court as well as the decision of the Supreme Court, we are of the view that it is not necessary to render any opinion and decide the first point decided by the Appellate Tribunal, as the conclusion of the Tribunal is sustainable in view of the decision of the Supreme Court.

8. We are, however, of the view since that the question of law referred to us challenges both the findings of the Tribunal the question of law should be reframed and the question is reframed as under :

Whether, on the facts and circumstances of the case, the Appellate Tribunal was right in law in holding that the share income from the estate was not assessable in the assessment of the assessee-Hindu undivided family ?

9. We are of the view that the Tribunal was correct in holding that the share income cannot be assessed in the hands of the assessee-Hindu undivided family. Accordingly, the question of law as reframed by us is answered in the affirmative and against the "Revenue, but in the circumstances of the case, there is no order as to costs.