(1998) 07 MAD CK 0090

In the Madras High Court

Case No : Tax Case No''s. 1395 and 1396 of 1985 (Reference No''s. 896 and 897 of 1985)

Commissioner of Income Tax APPELLANT

Vs

B. Sivaprakash RESPONDENT

Date of Decision : 16-07-1998

Acts Referred:

Citation : (2000) 243 ITR 872

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

Bench : Division Bench

Advocate : Chitra Venkataraman, for the Appellant; P.P.S. Janarthana Raja, for the Respondent

Judgement

A. Subbulakshmy, J.—The reference has arisen at the instance of the Revenue and the following question of law was referred for the opinion of this court :

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the income from the portion allotted to the assessee''s mother cannot be considered in the assessee''s hands when the alleged partition effected on July 25, 1970, was treated as not valid ?"

2. The assessee, Shri B. Sivaprakash, is an individual having income from property and business. Prior to March 24, 1967, the assessee was a coparcener in the major Hindu undivided family by name Bose Estate and on March 24, 1967, there was a partial partition in the family and the assessee got a portion of the property. On July 25, 1970, the assessee threw a fraction of his portion in the property allotted to him into the hotchpot of the major Hindu undivided family of which he was a co-parcener. The assessee after his marriage on June 2, 1976, has been filing the return of the income from the portion remaining" with him in the status of a Hindu undivided family comprising his wife and himself from the assessment year 1977-78. The Income Tax Officer for the assessment years 1977-78 and 1978-79 while completing the individual assessments of the assessee included in his hands the income of his Hindu undivided family and also

income from the property allotted to his mother by him, on the ground that the partial partition executed on July 27, 1970, was not genuine. The Appellate Assistant Commissioner found that the income belonging to the assessee-Hindu undivided family and his mother should be excluded from the individual hands of the assessee. The Tribunal held that the partition was valid and the income from the property allotted to his mother by him should not be included in the assessment. A similar question like the one involved in this reference in the case of the same assessee has been decided in Tax Cases Nos. 893 to 898 of 1988 by order dated April 27, 1998 (Commissioner of Wealth-tax Vs. B. Sivaprakash,) and it was held that the mother''s 1/3 share in the property should have to be necessarily excluded from the net wealth of the assessee. Following the decision taken in (Commissioner of Wealth-tax Vs. B. Sivaprakash,) T. C. Nos. 893 to 898 of 1988, we answer this question of law in favour of the assessee and against the Revenue. No costs.

