
(1998) 04 MAD CK 0089

In the Madras High Court

Case No : Tax Case No"s. 240 and 241 of 1988

Commissioner of Income Tax

APPELLANT

Vs

D. Selvaraj

RESPONDENT

Date of Decision : 02-04-1998

Acts Referred:

Income Tax Act, 1961 — Section 171, 263

Citation : (2003) 179 CTR 188 : (2000) 243 ITR 32

Hon'ble Judges : R. Jayasimha Babu, J;N.V. Balasubramanian, J

Bench : Division Bench

Advocate : C.V. Rajan, for the Appellant; P.P.S. Janarthana Raja, for the Respondent

Judgement

N.V. Balasubramanian, J.—The two questions of law referred at the instance of the Revenue in respect of the assessee's assessment years 1981-82 and 1982-83 are :

"1. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was correct in holding that only 50 per cent. of the share income from the firm can be assessed as the income of the assessee-Hindu undivided family ?

2. Whether, on the facts and in the circumstances of the case, the entire share income from the firms cannot be included in the total income of the smaller-Hindu undivided family of D. Selvaraj for the assessment years 1981-82 and 1982-83 without cancelling the order u/s 171 recognising the partial partition of the bigger-Hindu undivided family ?"

2. The assessee, one D. Selvaraj is the karta of a Hindu undivided family consisting of wife and a minor son. There was a partition between Selvaraj and his minor son on June 18, 1978, and in the partial partition, the credit balance standing in the books of the firm was allocated equally between the two coparceners. The Income Tax Officer, by an order passed u/s 171 of the Income Tax Act, 1961, recognised the claim of partial partition and passed an order

accepting the partial partition. The assessee, on the basis of the order of the Income Tax Officer, claimed that only 50 per cent. of the share income should be assessed in the hands of the joint family and the balance 50 per cent. should be assessed in the hands of the minor son. The Income Tax Officer did not agree and assessed the entire share income in the hands of the family on the ground that only the balance in the books of the firm was partitioned and not the share of the interest in the firm.

3. The Appellate Assistant Commissioner as well as the Appellate Tribunal allowed the assessee's claim and held that only 50 per cent. of the share income can be assessed in the hands of the joint family and not the entirety. The Revenue challenged the order of the Appellate Tribunal and the two questions of law are referred to us for consideration.

4. Mr. C.V. Rajan, learned counsel for the Revenue, has fairly submitted that the Appellate Tribunal has considered in the case of the assessee's brother, wherein the question whether the entire share or only 50 per cent. of the share income can be assessed in the hands of the Hindu undivided family arose on a similar factual situation and it was held by the Appellate Tribunal that only 50 per cent. of the share income can be assessed in the hands of the Hindu undivided family. It is submitted that this court in T. C. No. 915 of 1984, dated November 5, 1997 (Commissioner of Income Tax Vs. D. Jagadeesan, , has upheld the view of the Appellate Tribunal. We have carefully considered the submission of learned counsel. The Income Tax Officer recognised the partial partition by an order passed u/s 171 of the Income Tax Act, and the order passed by the Income Tax Officer was not set aside either by the Income Tax Officer or by the Commissioner in exercise of the revisional power u/s 263 of the Income Tax Act. We are of the opinion that so long as the order passed by the Income Tax Officer recognising the partial partition operates, it is not open to the Income Tax Officer to ignore the statutory order and levy tax on the entire share income arising from the firm in the hands of the joint family. The effect of the order passed by the Income Tax Officer was that there was a partial partition in the assets of the firm in a manner known to law and so long as the order operates, the attempt of the Income Tax Officer to ignore his earlier order and levy tax on the entire share income in the hands of the Hindu undivided family is not sustainable in law. The Tribunal has come to the correct conclusion holding that only 50 per cent. of the share income of the firm has to be assessed in the hands of the assessee. The earlier judgment of this court is also to the same effect. We find no infirmity in the order of the Appellate Tribunal.

5. Accordingly, we answer both the questions of law referred to us in the affirmative and against the assessee (sic). There will be no order as to costs.