
(1997) 03 MAD CK 0079
In the Madras High Court
Case No : T.C.P. No's. 70 to 73 of 1996

Commissioner of Income Tax

APPELLANT

Vs

G.S.R. Krishnamurthy

RESPONDENT

Date of Decision : 20-03-1997

Acts Referred:

Income Tax Act, 1961 — Section 256, 256(2), 256(2), 37(1)
Income Tax Rules, 1962 — Rule 9B

Citation : (1999) 235 ITR 785

Hon'ble Judges : N.V. Balasubramanian, J; Abdul Hadi, J

Bench : Division Bench

Judgement

N.V. Balasubramanian, J.—The batch of petitions filed u/s 256(2) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), by the

Revenue covers two assessment years, namely, 1985-86 and 1986-87. The questions sought for by the revenue are as under :

T. C. P. Nos. 70 and 71 of 1996 (assessment year 1985-86) :

1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law and had valid materials in holding that gifts made by the producers to the children of the assessee cannot be construed as consideration received by the assessee for the professional service rendered by him and accordingly in excluding these gifts from the total income of the assessee ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in allowing a sum of Rs. 1 lakh towards exploitation right remaining unpaid for the assessment year 1985-86 ?

T. C. P. Nos. 72 and 73 of 1996 (assessment year 1986-87) :

1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law and had valid materials in holding that gifts made by the

producers to the children of the assessee cannot be construed as consideration received by the assessee for the professional services rendered by

him and accordingly in excluding these gifts from the total income of the assessee ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law and had material in holding that out of total

consideration of Rs. 1,45,000 towards lease consideration received by the assessee only a sum of Rs. 29,000 is to be assessed for the assessment

year 1986-86 ?

2. The first question in T. C. P. Nos. 70 and 71 of 1996 is a common question for other two T. C. P. Nos. 72 and 73 of 1996. The second

question found in T. C. P. Nos. 70 and 71 of 1996 is different from the second question in T. C. P. Nos. 72 and 73 of 1996. Hence, we propose

to deal with the common question arising out of T. C. P. Nos. 70 to 73 of 1996 together and deal with the other two questions separately.

3. The assessee is an individual and is a leading cine artiste. During the assessment proceedings, relating to the assessment years 1985-86 and

1986-87 the Assessing Officer noticed that the children of the assessee have been receiving substantial amount of gifts year after year since the

assessment year 1980-81. He noticed many such gifts were from film producers in whose films the assessee had played a leading role. He found

the total amount of gifts received during the assessment year 1985-86 was Rs. 2,35,000 and during the assessment year 1986-87 it was Rs.

2,22,000. The Assessing Officer on the view that the gifts made by various producers to the children of the assessee were in fact a part of the

remuneration paid to the assessee by the film producers for the professional services rendered by the assessee as a film artiste made an addition of

a sum of Rs. 2,35,000 for the assessment year 1985-86 and a sum of Rs. 2,22,000 for the assessment year 1986-87, which represented the value

of the gifts received by the assessee's children.

4. The assessee preferred an appeal before the Commissioner of Income Tax (Appeals) against the order of the Income Tax Officer making the

additions. The Commissioner (Appeals) examined the gifts and found that except

two gifts, the other gifts were made by producers who had business connection with the assessee during the previous years relevant to the assessment years. The Commissioner (Appeals), therefore, held that in cases where the donors had no business connection during the relevant previous years, there was no justification for making any addition. But, as regards the producers for whom the assessee worked during the relevant accounting years, the Commissioner (Appeals) held that the assessee had business connection with the film producers during the relevant accounting years, and the Income Tax Officer was justified in holding that the gifts were made to the children of the assessee because of the business connection of the film producers with the assessee. In other words, the Commissioner (Appeals) came to the conclusion that the assessee should have prevailed upon the film producers to pay a part of the professional service rendered by the assessee in the form of gift to his children and, therefore, the Income Tax Officer was justified in making additions representing the gifts from the producers for whom the assessee had rendered professional service during the relevant accounting years.

5. The assessee as well as the Revenue preferred separate appeals against the order of the Commissioner (Appeals) to the Income Tax Appellate Tribunal. The Appellate Tribunal, after hearing the arguments of the assessee as well as the Revenue, held that the recipients of the gifts were the children of the assessee and the donors were also verifiable. The Appellate Tribunal held that the mere fact that the assessee had rendered certain professional service would not be sufficient to hold that the gifts were made by the producers towards the professional fees payable to the assessee. The Appellate Tribunal also noticed that the donors have submitted their gift-tax returns which were accepted by the Department and gift-tax was also paid by them. The other finding that was given by the Appellate Tribunal was that the donors have not claimed in their account any deduction against the cost of the production of films any of the amounts gifted. The Appellate Tribunal also found that the donees realised the gifts through bank accounts. The Appellate Tribunal, from the above findings, came to the conclusion that the gifts made by the producers to the assessee's children were not in consideration for the service rendered by the assessee as an artiste, and the Department has failed to establish the

link or nexus between the service rendered and the gifts made by the producers to the children of the assessee. The Tribunal, therefore, held that

the amounts gifted to the children of the assessee cannot be considered as income of the assessee and directed the deletion of the additions made

by the Assessing Officer from the total income of the assessee.

6. The Revenue filed applications before the Appellate Tribunal, u/s 256(1) of the Act with a request to the Tribunal to state a case and refer

common questions of law for the two assessment years. The Appellate Tribunal, however, held that the findings of the Appellate Tribunal were

findings of fact and no referable question of law arose out of the order of the Appellate Tribunal. The Revenue has now filed these petitions seeking

a direction for reference.

7. Mr. C. V. Rajan, learned counsel for the Revenue, submitted that the Tribunal failed to consider that the producers, in whose films the assessee

played a leading role, have been making systematic gifts from the year 1980-81 onwards to the children of the assessee. He further submitted that

there was no natural love and affection on the part of the film producers to make systematic gifts to the children of the assessee and in the absence

of any natural love and affection and in view of the systematic gift made to the children of the assessee year after year, the gifts should be

considered as having been made towards professional service rendered by the assessee. The Appellate Tribunal, according to learned counsel for

the Revenue, has failed to see that there was a professional connection between the assessee and the producers during the relevant accounting

years, and only due to professional connection between the assessee and the film producers, the film producers have made the gifts to the children

of the assessee. According to learned counsel for the Revenue, the gift was merely a device adopted by the assessee. The Appellate Tribunal,

according to learned counsel for the Revenue, should have gone deep into the matter and found out whether there was any other motive apart from

the professional service rendered by the assessee to the producers to make gifts year after year to the children of the assessee. According to

learned counsel for the Revenue, the Department has established that there was a nexus between the gifts made by the producers to the children of

the assessee and the professional service rendered by the assessee to such

producers and the Appellate Tribunal was not correct in holding that there was no nexus at all between the gifts and the services rendered by the assessee to the film producers. Therefore, he submitted that a question of law does arise out of the order of the Appellate Tribunal.

8. Mr. Janarthana Raja, learned counsel for the assessee, on the other hand, submitted that the Tribunal has come to the correct conclusion on the facts of the case. He has submitted that the Tribunal noticed that the producers have filed their gift-tax returns which were accepted by the Revenue and the Department has also collected gift-tax from them. The Tribunal also noticed that the producers have not claimed the money gifted as cost of production expenses of the films. Further, he has submitted that the donees have also realised the amount by way of cheque. According to counsel for the assessee, the finding given by the Appellate Tribunal that there was no nexus between the amount gifted and the professional service rendered by the assessee is a finding of fact and the Department has failed to establish that there is a nexus between the amount gifted and the professional service rendered by the assessee. According to learned counsel for the assessee, the Tribunal came to the correct conclusion, that the amount gifted does not form part of the income of the assessee. In short, the contention of learned counsel for the assessee was that the finding of the Appellate Tribunal is a pure finding of fact and this court should reject the tax case petitions.

9. Mr. Janarthana Raja, learned counsel for the assessee, strongly placed reliance on a decision of this court in Commissioner of Income Tax, Tamil Nadu-I Vs. B.M. Sundaravadanam, , wherein this court has held that where a receipt is sought to be taxed as income, the burden lies on the Department to prove that it is within the taxing provision and only where the character of the receipt is established as income, the burden of proof that it is not taxable lies on the assessee. This court in that case held that where the donor has paid to the assessee who was a doctor full professional fees due to him, there was no further legal obligation on the part of the donor to make any further payment and if any further payment was received by the assessee, then, it should be construed as if there was no legal right on the part of the assessee to receive the payment for the professional service rendered by him. This court, therefore, held that the amount

received by the assessee cannot be regarded as income. He also placed reliance on another decision in the case of Patnaik and Co. Ltd. Vs. Commissioner of Income Tax, Orissa, , and submitted that the finding of the Appellate Tribunal is a finding on facts and this court should not go behind the statement of fact found in the appellate order.

10. We have carefully considered the submissions of learned counsel for the Revenue as well as learned counsel for the assessee. The fact remains that from the year 1980-81 onwards, the children of the assessee have been receiving gifts year after year from the producers in whose picture the assessee had played a leading role as a film artiste, and it continued during the assessment years 1985-86 and 1986-87. It is seen that this practice continued during subsequent years also. The Commissioner of Income Tax (Appeals) held that the gifts were received from the producers who had business connection with the assessee during the relevant accounting years. He deleted certain additions made in which the assessee had some business connection in subsequent years. The Appellate Tribunal held that the recipients of the gifts are the children of the assessee and the gifted amounts were realised through bank account. The Appellate Tribunal also held that the donors have filed gift-tax returns and paid gift-tax on the amounts gifted. The Appellate Tribunal also found that the donors did not claim as deduction the amount gifted to the children of the assessee as a part of production cost of the films. The Appellate Tribunal further held that the Department was not able to establish any link between the service rendered and the gifts made by the producers to the children of the assessee. Therefore, the Appellate Tribunal drew an inference that the amounts gifted to the children of the assessee cannot be regarded as income of the assessee at all. We are of the opinion that the inference drawn by the Appellate Tribunal whether a particular amount can be regarded as income or not is a question of law.

11. This court in C.P. Chitrarasu (By Legal Representative C. Socrates) Vs. Commissioner of Income Tax, , held as under (page 538) :

The nature and character of an income is essentially a question dependent on the inference to be drawn from the facts as they appear on the record. The inference is not an inference of fact but an inference of law and where on facts found, the tax authorities come to the conclusion that an

income arises from vocation or occupation, such an inference must be treated as an inference of law. That is how this court must have thought it necessary to direct the Tribunal to refer the question as to whether the sum of Rs. 48,176 was liable to tax as income arising from vocation or occupation. While it cannot be disputed that a finding of fact relied on by the Tribunal must be accepted by this court as binding for purposes of the reference u/s 66 of the Indian Income Tax Act, 1922, or section 256 of the Income Tax Act, 1961, in so far as the present case is concerned, on the question as to whether the amount in question can be treated as income arising from vocation or occupation being dependent upon a legal inference to be drawn on established facts, we must hold that the assessee is entitled to canvass the question as directed by this court to be referred for the opinion of this court.

12. The Supreme Court in the case of Dr K. George Thomas Vs. Commissioner of Income Tax , Kerala, has held that the facts must be found by the Tribunal and, the High Court must proceed on the basis of the facts found by the Tribunal and the High Court cannot afresh go into the facts overruling the facts found by the Tribunal, unless there is a question to that effect challenging the facts found by the Tribunal. The basic facts were found by the Tribunal, but, the question whether the inference drawn on the facts found by it, is correct or not would give rise to a question of law. Hence, it cannot be said that the finding of the Appellate Tribunal that the amount received by the children of the assessee was not the income of the assessee is a finding of fact.

13. The Supreme Court in SREE MEENAKSHI MILLS LIMITED Vs. COMMISSIONER OF Income Tax, MADRAS., , at page 40, has held that where the ultimate finding on the issue is an inference to be drawn from the facts found on the application of the proper principles of law, then, it cannot be correct to say that in such cases, the inference from the facts is not a question of law. Admittedly, the Tribunal found certain facts and on the basis of the facts, it has drawn a certain inference. Hence, the question whether a particular receipt is of an income nature or not can be decided only on appreciation of the well established principles applicable to the facts of the case and, hence, the question raised can be regarded as a question of law.

14. What is required to be decided in the present case is whether the gifts received by the children of the assessee are the income of the assessee and for that purpose, it is necessary to examine the nature of the transaction and whether the receipt has any connection with the business carried on by the assessee and whether the receipt arose because of the business or the profession carried on by the assessee. In our view, the question has to be decided on the application of legal principles to the facts found by the Appellate Tribunal and hence, we are of the opinion that a question of law does arise out of the order of the Tribunal. Therefore, we hold that the first question sought for by the Revenue for both the assessment years arises out of the order of the Appellate Tribunal. Therefore, we direct the Appellate Tribunal to state a consolidated case and refer the first common question of law in the tax case petitions, T. C. P. Nos. 70 to 73 of 1996 for the assessment years 1985-86 and 1986-87. The Appellate Tribunal is directed to enclose along with the statement of case, the letters of the producers and the orders of assessment of the assessee for the assessment years from 1980-81 onwards.

15. The second question in T. C. P. Nos. 70 and 71 of 1996 relates to the addition of a sum of Rs. 1 lakh towards exploitation right remaining unpaid for the assessment year 1985-86. The facts leading to the said question are that the assessee entered into an agreement with one Sri Vijayakrishnan Movies, a partnership firm, and under the agreement the assessee had agreed to take on lease the sole and exclusive lease rights of distribution and exploitation of the Telugu feature film, ""Hema Hemeelu"" for the coastal districts of Andhra Pradesh for a period of seven years from December 1, 1984, onwards. The total consideration for the grant of lease was Rs. 3 lakhs, and under the agreement a sum of Rs. 50,000 was paid by the assessee on the date of signing of the agreement and the balance amount of Rs. 2,50,000 was to be paid by the assessee to the lessor in some convenient instalments, as mutually agreed by both the parties. The assessee paid a sum of Rs. 2 lakhs and the balance of Rs. 1 lakh was not paid to the lessor during the previous year relevant to the assessment year 1985-86. The assessee claimed that the said one lakh rupees which was due to be paid should be allowed as a deduction. The Assessing Officer disallowed the same. On appeal, the Commissioner of Income

Tax (Appeals) also confirmed the disallowance. The Appellate Tribunal, on the appeal preferred by the assessee, held that the method of accounting adopted by the assessee was mercantile in nature and the liability to pay a sum of Rs. 1 lakh arose during the previous year relevant to the assessment year 1985-86, and the liability to pay the sum had accrued during the said previous year. The Appellate Tribunal, therefore, held that the assessee was entitled to deduction of the balance amount of Rs. 1,00,000 during the previous year relevant to the assessment year 1985-86.

16. Mr. C. V. Rajan, learned counsel for the Revenue, submitted that the Tribunal has overlooked that rule 9B of the Income Tax Rules are

applicable to the facts of the case, and under rule 9B of the Rules, the assessee is not entitled to claim deduction of the said sum of Rs. 1 lakh. It is

seen in the order of the Tribunal that rule 9B was not invoked before the Appellate Tribunal. Further, rule 9B of the Rules deals with the case of

profits and gains in the business of distribution of feature films carried on by a person. Here, according to learned counsel for the assessee, the

assessee was only a lessee of a film distributor and hence rule 9B is not applicable to the facts of the case. Mr. C. V. Rajan, learned counsel for

the Revenue, has not seriously disputed the above position canvassed on behalf of the assessee. Therefore, once rule 9B is out of operation, then,

the question of taxability of the expenditure has to be considered on the basis of the system of accounting maintained by the assessee. It is seen that

the assessee was maintaining the mercantile system of accounting and it is also seen that the liability to pay the sum of Rs. 1 lakh had accrued

during the previous year, relevant to the assessment year in question. Accordingly, the view of the Appellate Tribunal that the assessee was entitled

to the deduction of Rs. 1 lakh is based on materials and we are of the view that the finding of the Appellate Tribunal is based on materials and no

referable question of law arises out of the order of the Appellate Tribunal. Accordingly, we reject the second question of law common for T. C. P.

Nos. 70 and 71 of 1996 on the ground that no referable question of law arises out of the order of the Appellate Tribunal.

17. Now, we will consider the second question of law in T. C. P. Nos. 72 and 73 of 1996. The facts leading to the said question are as follows :

The assessee has leased out the distribution rights of a picture called, ""Allari Bullodu"" for a period of five years for a total consideration of Rs.

75,000. As per the agreement, the lessee agreed to pay a sum of Rs. 15,000 as annual lease amount and the first instalment of such payment fell in

February, 1986. Similarly, the assessee has leased out the distribution rights of a picture, ""Athanekante Ghanudu"" to one V. Visweswarayya for a

period of five years, for a total consideration of Rs. 70,000. Here also, as per the agreement, the first instalment of Rs. 14,000 fell due to the

assessee in the previous year relevant to the assessment year 1986-87. The Income Tax Officer included the entire lease amount comprising all the

instalments for both the pictures, in the total income of the assessee. The Commissioner of Income Tax (Appeals) held that as per the lease deed,

only a sum of Rs. 15,000 representing the first annual instalment has become due to the assessee as on February 27, 1986, with regard to the film,

Allari Bullodu"" and a sum of Rs. 14,000 was due in respect of other picture. With reference to subsequent instalments for both the films, he held

that further instalments on both films would fall outside the purview of the assessment period relevant to the assessment year. In this view of the

matter, he held that only the first instalment of both the pictures should be included in the total income of the assessee for the assessment year

1986-87. The Appellate Tribunal considered the lease agreements and came to the conclusion that only the first instalment became due and

payable during the previous year relevant to the assessment year 1986-87 and the subsequent instalments would become due subsequent to the

completion of the previous year relevant to the assessment year 1986-87. The Appellate Tribunal has come to the above conclusion on the basis

of the specific recitals contained in the lease deeds. The contention of learned counsel for the Revenue is that the assessee has already received the

entire sum and under clause 3 of the agreement, it is open to the assessee to adjust the yearly lease amount against the amount of deposit made by

him. According to learned counsel for the Revenue, since the amounts have already been received, the assessee is liable to be taxed on the entire

amount of instalments paid. Mr. Janarthana Raja, learned counsel for the assessee, on the other hand, submitted that the finding of the Appellate

Tribunal does not involve any question of law and no reference is called for on the said question. However; we are not able to accept the

contention of learned counsel for the assessee. The question involves interpretation of agreements as to when the amount became due. It is significant to notice that the assessee has received the entire lease amount and under the lease deeds, it is open to him to adjust the lease income against the amount already received by the assessee. The question whether in such cases, the entire amount became due even on the date of signing of the agreement has to be decided on the construction of the lease agreements. Accordingly, we are of the view that a question of law does arise out of the order of the Tribunal. Therefore, we direct the Appellate Tribunal to state a consolidated statement of case and refer the common question of law which is set out as question No. 2 for the assessment year 1986-87 for our opinion. The Appellate Tribunal is directed to enclose the lease agreement relating to the picture ""Allari Bullodu"" and similar agreement for the other picture ""Athnekanta Ghanudu"" along with the statement of case. Accordingly, we direct the Appellate Tribunal to state a case with reference to the first question for both the assessment years. The second question for the assessment year 1985-86 is rejected and the second question for the assessment year 1986-87 is directed to be referred. The petitions are ordered accordingly. There will be no order as to costs.