(1998) 04 MAD CK 0068

In the Madras High Court

Case No : Tax Case No. 1162 of 1987 (Reference No. 679 of 1987)

Commissioner of Income Tax — APPELLANT

Vs

J.K.S. Manickam — RESPONDENT

Date of Decision : 16-04-1998

Acts Referred:

Citation : (2000) 244 ITR 596

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

Bench : Division Bench

Advocate : C.V. Rajan, for the Appellant; S. Balaji, for K. Ramagopal and P. Subha Rao, for the Respondent

Judgement

N.V. Balasubramanian, J.—At the instance of the Revenue, the Appellate Tribunal has stated the case and referred the following substantial

question of law for our consideration in relation to the assessment year 1980-81 :

Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the assessee is entitled to share the loss

in the firm in which the assessee''s father is a partner and in respect of which the assessee has overriding title ?

2. The assessee claimed during the course of the assessment proceedings in the assessment year 1980-81 as a result of partial partition, l/3rd share

of the income of his father from the firms belonged to him by overriding title. The Income Tax Officer however, rejected the claim on the ground

that the losses belonged to his father. The Commissioner of Income Tax (Appeals) as well as the Appellate Tribunal held that the losses belonged

to the assessee and the assessee is entitled to set off the losses against his individual income. The Appellate Tribunal followed its earlier order in the case of ITA No. 2265 (Mds.) of 1983, dated May 22, 1985, and held that the assessee was entitled to set off the losses. In another case, viz., J.

K. K. Angappa Chettiar, who belongs to the same group of the assessee, this court in the case of Commissioner of Wealth-tax Vs. J.K.K.

Angappa Chettiar, , held that as a result of the partial partition effected between the assessee and his minor sons, there was a diversion of the profit

from the firm and the profit attributing to the interest of the minor sons cannot be treated as wealth of the assessee as a result of the partial partition.

That case arose under the Wealth-tax Act and the same principle laid down by this court would equally apply to the share of the losses also.

Following the said decision, we find no error in the order of the Appellate Tribunal in holding that the assessee is entitled to the share of the loss in

the firm, even though the assessee''s father is a partner.

3. Therefore, the question referred to us is answered in the affirmative, against the Revenue and in favour of the assessee. However, in the

circumstances of the case, there will be no order as to costs.

