
(1984) 04 MAD CK 0031
In the Madras High Court
Case No : T.C.P. No. 453 of 1983

Commissioner of Income Tax

APPELLANT

Vs

K.V. Somasundaram

RESPONDENT

Date of Decision : 16-04-1984

Acts Referred:

Citation : (1985) 45 CTR 323 : (1986) 160 ITR 404

Hon'ble Judges : V. Ratnam, J;G. Ramanujam, J

Bench : Division Bench

Advocate : J. Jayaraman, for the Appellant; K.J. Rebello, for the Respondent

Judgement

Ramanujam, J.—In this reference petition, the Revenue seeks a direction from this court to the Tribunal to refer the following question 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 salary received by K. V.

Somasundaram as a managing partner in Messrs. K. V. Somasundaram & Co. should be assessed in the hands of the Hindu undivided family,

even though the assessee is represented in the firm as the karta of his Hindu undivided family ?

2. After hearing the counsel on both sides at some length and after going through the order of the Tribunal, we do not think that any referable

question arises out of the Tribunal. The assessee is the karta of a Hindu undivided family and in that capacity, he was a partner in a partnership firm

by name messrs. K. V. Somasundaram & Company. The share income from the firm was assessed in the hands of the assessee as the karta of the

Hindu undivided family. For the assessment year 1978-79, the assessee while

filing the return of income of the Hindu undivided family with reference to the share income from the firm excluded a sum of Rs. 12,000 representing the salary paid to him on the ground that it represented his individual income. The Income Tax Officer, however, rejected the said contention holding that the payment of salary to the assessee who is a partner of the firm in his capacity as the karta, cannot be treated as his individual income and that, in any case, the assessee is not an employee and, therefore, it cannot be taken to be his salary income. In this view, the Income Tax Officer included the sum of Rs. 12,000 in the total income of the assessee-Hindu undivided family for the assessment year 1978-79. The assessee preferred an appeal to the Appellate Assistant Commissioner but without success. Thereafter, the assessee took the matter to the Tribunal contending that the salary paid to the karta was for services rendered to the firm and, therefore, the sum of Rs. 12,000 received as salary should be taken to represent his individual income. The Tribunal accepted this contention and held that the sum of Rs. 12,000 should be excluded from the assessee's total income for the assessment year 1978-79. Aggrieved by the decision of the Tribunal, the Revenue has sought a direction to the Tribunal to refer the aforesaid question for the opinion of this court.

3. The following facts are not in dispute. The firm of Messrs K. V. Somasundaram & Co. had three partners, viz., (1) K. V. Somasundaram, representing the Hindu undivided family of himself and other coparceners, (2) T. S. Venugopal and (3) T. S. Dhananjayan. The deed of partnership provided that K. V. Somasundaram should function as managing partner and for acting as such managing partner, he was to be paid a sum of Rs. 1,000 per month as salary. The other partner, Venugopal, has been entrusted with the day to day management of the firm's business under the partnership deed and he was also to be paid a sum of Rs. 1,000 per month for his services. There is no provision in the partnership deed for payment of any amount either as salary or remuneration to the third partner, T. S. Dhananjayan, and he has to receive only the share income due to him as per the clauses in the partnership deed. Thus, out of the three partners, one partner is designated as managing partner and another has been entrusted with the duty of attending to the day to day business of the

firm and each of them is to be paid a sum of Rs. 1,000 per month for the services rendered by them. The Tribunal has taken the view that since the assessee has been asked to take up the management of the partner ship, the sum of Rs. 1,000 per month received by him should be taken to be towards his services and, therefore, the sum of Rs. 12,000 has to be treated as his individual income. Mr. Jayaraman, the learned counsel for Revenue, questions the said view taken by the Tribunal on the ground that the Tribunal has not gone into the question as to what are the functions that were performed by the assessee as managing partner of the firm and it has erroneously assumed that the assessee has rendered certain services to the firm and a sum of Rs. 1,000 per month has been paid by the firm to the assessee for those services. According to the learned counsel, it is not possible for the Tribunal to make any assessment or inference unless there are positive materials to indicate that a sum of Rs. 1,000 has been paid to the assessee for any particular service or services rendered by him. In this case, there are absolutely no materials to indicate as to what are the services rendered by the assessee to the firm for which a sum of Rs. 1,000 per month could be taken to have been paid. It is no doubt true as contended by the learned counsel for the Revenue that the Tribunal has proceeded on the basis that the assessee as the managing partner of the firm has to render certain services and it is for those services a sum of Rs. 1,000 per month had been paid and the Tribunal has not referred to the nature of the services actually rendered by the assessee. However, it is significant to note that out of the three partners, the first partner, namely, the assessee, has been designated as the managing partner and a sum of Rs. 1,000 per month has been fixed under the partnership deed itself as the remuneration for functioning as the managing partner. The second partner who has been entrusted with the management of the day to day business of the firm has also been given a sum of Rs. 1,000 per month as remuneration for his services. The third partner has not been paid any amount apart from the share income due to him as per the partnership deed. The fact that the third partner is to merely receive a share of income and is not entitled to any other amount apart from the share of income, will clearly indicate that the extra payment made to the other two partners apart from their share of income, can only be for the services rendered by

them. The extra payment is not made to the said partners merely because they are partners of the firm. If that is so, the third partner also has to be paid some amount. But since the third partner has not been paid any amount, the payment made to the other two partners can only be for the services rendered by them to the firm, one as the managing partner of the firm and the other as the person attending to the day to day business of the firm. Merely because the Tribunal has not considered the nature of the functions performed by the assessee to the firm, it is not possible to construe the monthly payment of Rs. 1,000 to the assessee as relatable to the shareholding as the karta of the Hindu undivided family. If a person is entrusted with the overall management of a firm and its business by designating him as the managing partner, it can easily be assumed that such a partner has to necessarily manage the affairs of the firm. It is not the case of the Revenue in this case that though the assessee has been designated as the managing partner, he did not attend to any work connected with the overall management of the firm and its business and that some other person was attending to the same. Therefore, the sum of Rs. 1,000 per month paid by the firm to the assessee can only be taken as compensation paid by the firm for services rendered by him as the managing partner. In this view of the matter, we do not find any error in the order of the Tribunal. The reference petition is, therefore, dismissed. There will be no order as to costs.