(1998) 01 MAD CK 0075

In the Madras High Court

Case No : Tax Cases No''s. 432 to 434 of 1983 (References No''s. 214 to 216 of 1983)

Commissioner of Income Tax — APPELLANT

Vs

M. Sadasivamurthy — RESPONDENT

Date of Decision : 29-01-1998

Acts Referred:
Income Tax Act, 1961 — Section 64

Citation : (2000) 246 ITR 39

Hon'ble Judges : N.V. Balasubramanian, J;A. Subbulakshmy, J

Bench : Division Bench

Advocate : C.V. Rajan, for the Appellant;

Judgement

N. V. Balasubramanian, J.—The assessee is a partner. The assessee is assessed in the status of an individual. For the assessment years 1976-77, 1977-78 and 1978-79, the assessee is a partner of a firm styled as Annama-layar Match Works, Sivakasi, in his capacity as a "karta" of the Hindu undivided family. His wife is also a partner in the said firm. The Income Tax Officer, who completed the assessment of the assessee for the assessment years in the status of an individual, included the share income arising to the assessee''s wife under the provisions of Section 64 of the Income Tax Act, 1961. The assessee appealed to the Appellate Assistant Commissioner who allowed the appeals.

2. The Department carried the matter in appeal before the Income Tax Appellate Tribunal and the Appellate Tribunal also held that the provisions of Section 64 of the Income Tax Act cannot be invoked to club the wife''s income in the assessee''s hands in his individual capacity. On the application filed by the Revenue, the following common question of law has been referred by the Appellate Tribunal for our consideration u/s 256(1) of the Income Tax Act :

"Whether, on the facts and in the circumstances of the case, the share income of the wife from the partnership firm in which the assessee is a partner as karta of the Hindu undivided family cannot be included in the income of the assessee u/s

64 of the Income Tax Act ?"

3. Though the assessee has not been served, we have decided to proceed to hear the tax cases as the question seems to be covered by the decision of the Supreme Court.

4. Mr. C. V. Rajan, learned counsel for the Revenue, relied on the decision of the Supreme Court in Commissioner of Income Tax, Ludhiana, etc.etc. Vs. Shri Om Prakash, etc.etc., , wherein the Supreme Court held that the share income arising to the wife cannot be included in the hands of the spouse in his individual capacity and when her spouse is a partner in a representative capacity.

5. We have carefully gone through the decision of the Supreme Court in Commissioner of Income Tax, Ludhiana, etc.etc. Vs. Shri Om Prakash, etc.etc., . The Supreme Court held as under (headnote) :

"Where a person is a partner in a partnership firm not in his individual capacity but as the karta of the Hindu undivided family, neither the income accruing to his wife on account of her being a partner in the same partnership firm nor the income accruing to his minor children on account of their being admitted to the benefits of such partnership firm, can be included in the total income of such person in his individual assessment or in the assessment of the Hindu undivided family."

6. We are of the opinion that the decision of the Supreme Court in Commissioner of Income Tax, Ludhiana, etc.etc. Vs. Shri Om Prakash, etc.etc., fully governs the facts of this case and we find no infirmity in the order of the Appellate Tribunal hold that the provisions of Section 64 of the Income Tax Act cannot be invoked to club the wife''s share income in the assessee''s hands made in his individual capacity as he was a partner is in the representative capacity in the service.

7. Accordingly, we answer the common question of law referred to us in the affirmative and against the Department.

