(2001) 08 MAD CK 0071

In the Madras High Court

Case No : T.C. No. 1002 of 1990 (Reference No. 487 of 1990)

Commissioner of Income Tax APPELLANT

Vs

M.S. Menon RESPONDENT

Date of Decision : 23-08-2001

Acts Referred:
Income Tax Act, 1961 — Section 22, 28

Citation : (2002) 254 ITR 462

Hon'ble Judges : R. Jayasimha Babu, J;C. Nagappan, J

Bench : Division Bench

Advocate : Chitra Venkataraman, for the Appellant;

Judgement

C. Nagappan, J.—The substantial questions of law that arise in the present reference are as follows :

1. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the assessment made on the receiver

in the status of ''association of persons'' could not be sustained ?

2. Whether, on the facts and in the circumstances of the case, the finding of the Appellate Tribunal that the letting out on hire Padmanabha Theatre

for screening cinematograph films docs not amount to carrying on of a business is sustainable in law ?

3. Whether, on the facts and in the circumstances and in the light of the return filed by the receiver himself for the assessment year 1980-81

admitting certain income as arising from business, the Appellate Tribunal was right in holding that there is no material to show that the receiver in

fact has carried on any business ?

4. Whether, on the facts and in the circumstances of the case, the receiver could

be said to have represented the individual interest of the various

co-owners of the business and the assessment made on the receiver as a single unit is not sustainable ?

2. A question of law similar to the above came up for consideration before this court in the case of CIT v. M. S. Menon in Tax Cases Nos. 1653

to 1665 of 1977 and 506 to 509 of 1981 and this court has answered the reference against the Revenue. That decision is reported in

Commissioner of Income Tax Vs. M.S. Menon, . The relevant portion in the headnote of that decision is extracted below :

The court had appointed a receiver to realise the income from the theatre which was one of the assets of the partnership and to divide the same

equally among the quondam partners. The order of the court appointing the receiver directed the receiver not to carry on any business. The rents

collected by the receiver by hiring the theatre could only be treated as income from property and not as income from business. In such

circumstances, the receiver could not be assessed as an ''association of persons'' and he could be assessed only as an agent or as a trustee of the

individuals who owned the theatre. Therefore, the assessment had to be made on the receiver on the individual shares of the quondam partners.

3. Accordingly, we answer this reference against the Revenue and in favour of the assessee.

