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**(1998) 11 MAD CK 0103**

**In the Madras High Court**

**Case No :** Tax Case No. 770 of 1988 (Reference No. 557 of 1988)

Commissioner of Income Tax

APPELLANT

Vs

O.R.M.S.S.S. Sevugan Chettiar

RESPONDENT

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**Date of Decision :** 02-11-1998

**Acts Referred:**

Constitution of India, 1950 — Article 11, 12, 22, 6, 7

**Citation :** (2000) 241 ITR 662

**Hon'ble Judges :** R. Jayasimha Babu, J;A. Subbulakshmy, J

**Bench :** Division Bench

**Advocate :** C.V. Rajan, for the Appellant; S.P.L. Palaniappan, for the Respondent

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**Judgement**

R. Jayasimha Babu, J.—The questions referred to us at the instance of the Revenue, involved the interpretation of the agreement between the Government of India and the Government of Malaysia regarding the avoidance of double taxation and several matters. The assessment year is 1978-79. The questions referred are :

"(1) Whether having regard to the Articles 6, 7, 11, 12 and 22 of the Agreement of Avoidance of Double Taxation between the Government of India and the Government of Malaysia, the Tribunal was justified in law in holding and had valid materials to hold that the income accruing or arising in Malaysia to the assessee, a resident in India, from rubber estates, dividends and interest, is entitled to full relief of tax of the Malay-sian income even at the time of making the assessment ?

2. Whether having regard to the fact that evidence of assessment of sources of income and the extent of income taxed by the Malaysian Government being the only proof that the said Government has exercised the right extended to it by the term "may" in Articles 6, 7, 11 and 12 of the agreement aforesaid, the Tribunal, was correct in deciding that production of evidence of assessment by the Malaysian tax authorities was not a condition for relief ignoring the fact that what

is included in the Indian assessment need not necessarily form part of computation in the Malaysian assessment (vide adjudgment laid down in Article 22.2(b) ?

(3) Whether, having regard to Article 7.3 of the agreement, the Tribunal is in law, correct in concluding that capital gains arising from the sale of immovable property in Malaysia would also be eligible for relief in the same manner as income from property, business, etc. ?"

2. Similar questions were considered by this court in the case of Commissioner of Income Tax Vs. Vr. S.R.M. Firm and others, and were answered in favour of the assessee and against the Revenue.

3. Following the judgment reported in Commissioner of Income Tax Vs. Vr. S.R.M. Firm and others, and for the reasons stated therein, we answer these questions referred to us, in favour of the assessee and against the Revenue.

4. Counsel for the Revenue made an oral application for a certificate of fitness for appeal to the Supreme Court. Having regard to the fact that the questions involve the interpretation of an international treaty, the questions are of general importance and the questions involved are substantial questions of law with regard to the extent of the benefits conferred on the assessee in India in terms of that agreement, we grant the certificate sought. The questions need to be decided by the apex court. We do so also in the light of the fact that Civil Appeals Nos. 5751 to 5757 of 1997 are pending in the apex court against the decision of this court rendered in the case of Commissioner of Income Tax Vs. Vr. S.R.M. Firm and others, .