(1998) 11 MAD CK 0121

In the Madras High Court

Case No : Tax Case No. 599 of 1988 (Reference No. 463 of 1988)

Commissioner of Income Tax — APPELLANT

Vs

O.S.T.C. Chinniah — RESPONDENT

Date of Decision : 30-11-1998

Acts Referred:
Constitution of India, 1950 — Article 134A

Citation : (2000) 241 ITR 664

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

Bench : Division Bench

Advocate : C.V. Rajan, for the Appellant; None, for the Respondent

Judgement

R. Jayasimha Babu, J.—The question referred to us is as to whether the income received in Malaysia can be subject to tax in India in accordance with the agreement for Avoidance of Double Taxation entered into between the two countries. This court in the case of Commissioner of Income Tax Vs. Vr. S.R.M. Firm and others, , held that such income cannot be taxed in India in view of the provision contained in the agreement entered into between the two countries even though such income may be taxable under the other provisions of the Income Tax Act, 1961.

2. Following that judgment and for the reasons stated therein, we hold that the income received by the assessee in Malaysia is not taxable in India, having regard to the provisions of the agreement entered into between the two countries for avoidance of double taxation.

3. Counsel for the Revenue sought for a certificate of fitness to appeal to the Supreme Court on the ground that the question involved is one of general importance and one that requires to be decided by the Supreme Court. Counsel also submitted that Civil Appeals Nos. 5751 to 5757 of 1997 are pending in the Supreme Court against the decision of this court in the case of Commissioner of Income Tax Vs. Vr. S.R.M. Firm and others, . Having regard to the fact that the

Supreme Court is already seized of the matter, and the question is one which involves the interpretation of the agreement between India and Malaysia and the question is one of general importance and is one which is required to be decided by the Supreme Court, we grant the certificate as prayed for under Article 134A of the Constitution of India.

