

(1998) 01 MAD CK 0045

In the Madras High Court

Case No : T.C. No. 152 of 1992 (Reference No. 18 of 1992)

Commissioner of Income Tax

APPELLANT

Vs

P.S.M. Swamy

RESPONDENT

Date of Decision : 09-01-1998

Acts Referred:

Income Tax Act, 1961 — Section 64(1)

Citation : (2000) 241 ITR 478

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.—Though the notice in the tax case reference was not served on the assessee, we decided to take up the tax case,

as the issue raised in the question is concluded in favour of the assessee and we find that it is not necessary to wait for the service of notice on the

respondent and for his appearance.

2. The assessee is a partner in the firm of Senthil Traders at Tenkasi, representing his Hindu undivided family. His wife one Smt. Jyothi was also a

partner in the same firm and the firm paid a salary of Rs. 9,000 to the assessee in his individual capacity. The Income Tax Officer for the

assessment year 1981-82 completed the assessment including the salary income received by the assessee from the firm under the head ""Income

from other sources"" and the share income of the assessee's wife in the same firm was clubbed under the provisions of Section 64(1)(i) of the

Income Tax Act, 1961. It is, however, necessary to mention here that the share income received from the firm by the assessee as a partner

representing the Hindu undivided family was assessed in the hands of the Hindu undivided family separately. The Income Tax Officer, in this manner made an assessment of Rs. 9,000 in the individual assessment of the assessee and clubbed the share income of the assessee's wife amounting to Rs. 53,077. The assessee went on appeal before the Appellate Assistant Commissioner disputing the clubbing of the share income of the assessee's wife with the remuneration received by the assessee. The Appellate Assistant Commissioner accepted the contention of the assessee and held that the share income of the wife of the assessee cannot be clubbed in the individual assessment of the assessee. The Appellate Tribunal, on appeal by the Revenue, confirmed the finding of the Appellate Assistant Commissioner and dismissed the appeal preferred by the Revenue. The Revenue being aggrieved, sought for a statement of the case from the Appellate Tribunal and on the basis of the directions of this court in T. C. P. No. 202 of 1990, dated July 31, 1990, the Appellate Tribunal has referred the following question of law u/s 256(2) of the Act for our consideration : "Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the share income of the assessee's wife in the firm should not be clubbed u/s 64(1)(i) of the Income Tax Act with his salary income from the same firm in his individual capacity ?

3. It is not disputed that the assessee was a partner representing the Hindu undivided family in the partnership firm and the share income derived was separately assessed in the hands of the Hindu undivided family. The salary income received by the assessee was assessed by the Income Tax Officer and the assessee has not challenged the method of assessment made by the Income Tax Officer in taxing the salary income in his individual capacity. Admittedly, the assessee is a partner representing the joint family and when he is a partner in the representative capacity he cannot be regarded as a partner in his individual capacity. Therefore, where a person is a partner in the partnership firm not in his individual capacity but as a karta of the Hindu undivided family or representing the joint family in the firm, the share income accruing to the wife on account of her being a partner in the partnership firm cannot be clubbed in the hands of her husband who is assessed in his individual capacity. The Supreme Court in the

case of Commissioner of Income Tax, Ludhiana, etc.etc. Vs. Shri Om Prakash, etc.etc., , construing the provisions of Clause (i) of Sub-section

(1) of Section 64 of the Act, 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.

We are of the view that the decision of the Supreme Court would squarely apply to the facts of the case and we find there is no amendment in the

case of clubbing of the income of the spouse in the hands of other spouse unlike in the case of clubbing of the minor income as we find in Clause

(in) of Sub-section (1) of Section 64 of the Act. In the absence of any change in the statutory law, we are of the view that the decision of the

Supreme Court in Commissioner of Income Tax, Ludhiana, etc.etc. Vs. Shri Om Prakash, etc.etc., would apply to the facts of the present tax

case.

4. Following the said decision of the Supreme Court, we answer the question of law referred to us in the affirmative and against the Revenue. No

costs.