(1991) 07 MAD CK 0010

In the Madras High Court

Case No : T.C. No. 1005 of 1980 Reference No. 353 of 1980

Commissioner of Income Tax APPELLANT

Vs

S. Balakrishnan RESPONDENT

Date of Decision : 12-07-1991

Acts Referred:
Income Tax Act, 1961 — Section 256(1)

Citation : (1993) 66 TAXMAN 162

Hon'ble Judges : Thanikkachalam, J;Ratnam, J

Bench : Division Bench

Advocate : N.V. Balasubramaniam, for the Appellant;

Judgement

Ratnam, J.—In this tax case reference u/s 256(1) of the income tax Act, 1961 (''the Act'') at the instance of the revenue, the following

question of law has been referred to this Court for its opinion :

Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is correct in law in holding that the income from the properties

which devolved on the assessee on the death of his mother, cannot be included in the assessment of the individual for the year 1975-76?

Briefly stated, the circumstances giving rise to this reference are as follows: The assessee is an individual. In the course of finalising the assessment

for the accounting period ending on 1-3-1975, relevant to the assessment year 1975-76, the ITO sought to include, in the assessment of the

assessee, the income from a property known as Kottai House and some agricultural lands. The assessee maintained that at income belonged to the

assessee in the status of HUF and was, therefore, not includible in his individual hands. The ITO negatived the stand of the assessee and included the income from the property referred to above in the hands of the assessee in his individual assessment for the year in question. On appeal,

however, the AAC directed the exclusion of the income from properties referred to above from the hands of the assessee- individual and this was

also affirmed by the Tribunal. That is how the question of law referred to earlier has arisen.

2. A brief reference to the factual background would be necessary in order to appreciate the stand taken by the revenue. One Subramania

Mudaliar owned ancestral as well as separate properties and he entered into a deed of partition with his sons in respect of the properties and

certain properties fell to his share. With reference to the properties which fell to the share of Subramania Mudaliar under the partition, on 5-2-

1954, he executed a deed of settlement in favour of his wife, Neelambal, and his daughters. Thereunder, item I comprising two sub-items A and B,

were settled on his wife. With reference to sub-item A of item I, Neelambal was given a right to enjoy that property during her lifetime without

creating any encumbrance on the property and, after her lifetime, the property was directed to be divided among the three sons and their heirs

equally and absolutely in there shares. In regard to sub-item B of item I, Neelambal was given the right to sell and enjoy the sale proceeds with

absolute rights and it was also further provided that, if Neelambal does not sell or dispose of the said property during her lifetime, it was to be

divided among the three sons of the settlor and their heirs equally in three shares. Neelambal died on 18-11-1974 and as deceased Neelambal had

not disposed of sub-item B of item at the time of her death, the assessee and his two brothers and their heirs became entitled to sub-item B of item

I of the properties. The assessee claimed that one-third share of income from sub-item B of item I could not be subjected to tax in his hands as an

individual but that that income should be treated as the income of the HUF consisting of himself and his sons and other heirs. The ITO rejected this

claim. But the AAC as well as the Tribunal accepted the same. Whether the income from sub-item B of item I mentioned in the settlement deed

dated 5-2-1954, executed by Subramania Mudaliar could be assessed in the hands of the assessee as an individual or it should be subjected to tax

treatment as the income of the HUF, is the question. That can be determined only on a careful consideration and interpretation of the terms of the settlement deed, which is annexure ''D'' of the stated case. In the opening part of the settlement deed, the settlor has referred to the partition

between him and his three sons of the self-acquired as well as ancestral properties and the allotment of certain properties to his share. From this

recital, it is seen that the settlor and his sons have become divided. It is thereafter that the settlor, with reference to the properties obtained by him

at the partition, had purported to execute the settlement deed. In other words, after the partition and allotment of properties to the settlor, the joint

family was disrupted and the properties which fell to the share of the settlor became his absolute properties, which could be dealt with by him in

whatever manner he liked. The settlor executed the settlement deed in favour of his wife and daughter and with reference to the Kottai House

property, the settlement deed provided that the wife of the settlor was at liberty to sell and enjoy the sale proceeds with absolute right, but that if

she did not sell or dispose of the property during her lifetime, then, the property should be divided among the three sons of the settlor and their

heirs equally. The learned counsel for the revenue, referring to the use of the word ''heirs'' submitted, that what was intended to be conveyed by the

use of that word was only an alienable and heritable estate and not that the gift was for the benefit of sons of the settlor and their heirs as three

different branches. We are, however, unable to agree with this contention urged by the learned counsel for the revenue. The wife of the settlor,

under the terms of the settlement deed, has been given power to sell and enjoy the sale proceeds with absolute right in regard to sub-item B of item

I and the further provision is to the effect that, if the wife of the settlor did not sell or dispose of the property during her lifetime, then, that property

should be divided among the three sons of the settlor and their heirs equally in three shares. In other words, the use of the expression ''heirs'' in the

settlement deed is not intended to connote a heritable and alienable estate, but to denote a class of beneficiaries along with the son of the settlor,

viz., the assessee and his heirs. That the benefit of the gift was Intended by the settlor to be taken by the sons and their heirs, for the benefit of their

respective branches, is also further strengthened by the provision that the property was to be divided only among the three sons of the settlor and

their heirs equally in three shares. To put it differently, it is obvious from the recital in the settlement deed that the settlor intended that sub-item B of item I in the settlement deed should be taken by each one of his three sons not only for his benefit but also for the benefit of his son''s family; as

otherwise, there was no need for a direction to divide the property only among the three sons and their heirs and that too equally. It is clear from

the recitals in the settlement deed that the settlor had not made provision for the assessee alone taking the one-third exclusively for his use, but that

care had been taken to provide that the gift would enure for the benefit of not only the assessee, but his heirs; or In other words, his branch of the

family. Thus, on a careful consideration of the provisions in the settlement deed, it is seen that the income from the properties could be assessed

only in the hands of the HUF of the assessee and not in his individual hands. We may, however, observe that we ought not to be understood as

having subscribed to the view of the Tribunal as regards the theory of revival of the ancestral character of the properties in terms of the settlement

deed or the transitional shedding of the ancestral character owing to the settlement deed. Thus, on a due consideration of the provisions in the

settlement deed, we are of the view that the Tribunal was right in its conclusion that the income from sub-item B of item I of the properties which

devolved on the assessee on the death of his mother cannot be included in the assessment of the individual for the year 1975-76. We, therefore,

answer the question referred to us in the affirmative and against the revenue. There will be no order as to costs.