

(2001) 06 MAD CK 0029

In the Madras High Court

Case No : Tax Case No"s. 897 and 898 of 1983 (Reference No"s. 462 and 463 of 1983)

Commissioner of Income Tax

APPELLANT

Vs

S. Dhanushkodi

RESPONDENT

Date of Decision : 06-06-2001

Acts Referred:

Income Tax Act, 1961 — Section 64, 64(1)

Citation : (2002) 176 CTR 567 : (2001) 252 ITR 794 : (2002) 122 TAXMAN 666

Hon'ble Judges : R. Jayasimha Babu, J;K. Gnanaprakasam, J

Bench : Division Bench

Advocate : Chitra Venkataraman, for the Appellant; R. Janakiraman, for the Respondent

Judgement

R. Janakiraman, J.—The common question referred relates to the assessment years 1975-76 and 1976-77. The assessee, in those years,

had no income from any source. However, his two minor sons derived income by virtue of their admission to the benefits of a partnership firm, of

which the assessee also was a partner, representing the joint family of which he was the karta. There was no separate assessment of the assessee

as an individual and his personal income remained unassessed.

2. The Income Tax Officer assessed the son's income in the hands of the father. That was set aside by the Assistant Commissioner and, on appeal

by the Revenue to the Tribunal, the Tribunal confirmed the view of the Assistant Commissioner. At the instance of the Revenue, the question as to

whether the income of the minor children of the assessee from the firm could be assessed in the hands of the father u/s 64(I)(ii) of the Act has been

referred to us.

3. Section 64 of the Income Tax Act was amended with effect from April 1, 1976. Prior to that date, the income of the minor from a firm could be included in that of the parent only if the parent was a partner of the firm. For the assessment year 1975-76, it is the unamended provision that is applicable and, therefore, for the assessment year 1975-76, the income of the minor children could not have been assessed in the hands of the father. The decision of the Tribunal as regards that year, is therefore, correct. However, for the succeeding assessment year 1976-77, the amended provision would apply. It is no longer necessary for the parent also to be a partner of the firm for the income of the minor children from the firm being assessed in his hands. The Tribunal, therefore, was in error in holding that the income of the minor children could not have been assessed in the hands of the father for the year 1976-77.

4. The question referred to us is answered accordingly.