(2001) 10 MAD CK 0014

In the Madras High Court

Case No : Tax Case No''s. 351 to 355 of 1992 (Reference No''s. 165 to 169 of 1992)

Commissioner of Income Tax APPELLANT

Vs

S. Jayaprakash RESPONDENT

Date of Decision : 17-10-2001

Acts Referred:

Citation : (2002) 256 ITR 619

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

Bench : Division Bench

Advocate : Chitra Venkataraman, for the Appellant; None, for the Respondent

Judgement

R. Jayasimha Babu, J.—Three questions are referred to us, but in the light of the answer given by us to the first question, providing answers

to others, is unnecessary.

2. The assessment years are 1976-77 to 1980-81. The assessee was a partner of a firm, Thirumagal and Company in Tiruppur. He had 65 per

cent, share in the firm. On March 5, 1976, he created a trust, ""Sukumar Enterprises"" by a registered document for the benefit of ten beneficiaries

of whom nine were minors. The assessee''s share in that firm was constituted as the trust property under the deed. That firm was dissolved with

effect from April 1, 1979.

3. It was the case of the assessee that the trust took over the business that was run by the erstwhile firm and became the sole proprietor of the

same.

4. On March 22, 1980, a deed of rectification was executed by four persons in which it was stated that the trust deed of March 5, 1976, would

stand rectified, by incorporating therein a clause to the effect that the share of loss debited to the account of any beneficiaries shall be adjusted

against income credited in the earlier periods, and that loss adjusted, if any, shall be deducted out of the capital fund upon the dissolution of the

trust, and further, that, the beneficiaries shall not be personally liable for the loss. That rectification, it was stated, was to take effect from the date

of the principal deed of the trust. The Assessing Officer on these facts took the view that the trust itself was void and income from the share that

had been held in the firm by the assessee prior to the constitution of the trust was to be assessed in his hands. The appellate authority, however,

upheld the validity of the trust and the Tribunal affirmed the view of the Appellate Assistant Commissioner.

5. It is well settled, there is no legal impediment to the trustee of a trust, the beneficiaries of which are minors, becoming a partner in a firm, and that

the genuineness of the firm, is not in any way affected thereby. In the case of SHUBHAM FABRICS Vs. INSPECTING ASSISTANT

COMMISSIONER OF Income Tax AND ANOTHER., , it was held that the trustees representing the trust while the partners in their personal

capacity were representatives of the beneficiaries, but that fact would not affect the genuineness of the firm.

6. Once it is found that the trust is genuine, there was no basis for holding that instead of assessing the trust, the assessment should be made on the

assessee who had authored the trust. The trust having continued to exist, there was no illegality in the trustee being a partner, and the trust later

taking over the business of the dissolved firm and continuing it as the proprietary business of the trust. The Tribunal, was, therefore, right in holding

that the share income from the firm could not be assessed in the hands of the assessee personally. It follows that the share income from the

business of the firm is the income of the trust and not the income of the assessee. The other question referred to us as to whether the rectification

deed is clarificatory in nature and therefore effective from the date of the original deed does not arise for consideration, as irrespective of the

answer given to that question, the assessment of the income of the trust in the hands of the assessee personally would be wholly unjustified.

7. Therefore, we answer the first question, viz.,

Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is right in law in holding that the trust created by the assessee in

respect of her share of interest as a partner in the firm, Thirumagal and Company, Tiruppur, is valid ?

in favour of the assessee and against the Revenue and the other two questions are returned, unanswered, as they do not survive for consideration,

in the light of the answer given to the first question.

