

(1996) 02 MAD CK 0032

In the Madras High Court

Case No : Tax Cases No"s. 689 and 690 of 1983 (References Nos.390 and 391 of 1983)

Commissioner of Income Tax

APPELLANT

Vs

V. Krishnamurthy

RESPONDENT

Date of Decision : 15-02-1996

Acts Referred:

Income Tax Act, 1961 — Section 143(3), 147, 171, 28, 64(1)

Citation : (1997) 223 ITR 393

Hon'ble Judges : N.V. Balasubramanian, J;K.A. Thanikkachalam, J

Bench : Division Bench

Advocate : C.V. Rajan, Deokinandan, for the Appellant; K.M.L. Majele and K. Ramagopal, for the Respondent

Judgement

Thanikkachalam, J.—At the instance of the Department, the Tribunal referred the following common question of law for the assessment

years 1974-75 and 1975-76 for the opinion of this court u/s 256(1) of the Income Tax Act, 1961 :

Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in holding that the share income of the minor sons

in the firm in which the assessee is a partner representing the Hindu undivided family should not be clubbed in the hands of the assessee in his

individual assessment u/s 64(1)(ii) of the Income Tax Act, 1961 ?

2. The assessee, V. Krishnamurthy, was a partner in T.K.S.V. Murugaiah Mudaliar and Brothers, General Merchants, Vijayapuram, Tiruvarur,

and also in Sivan and Company, Vijayapuram, in the capacity of karta of the Hindu undivided family consisting of himself and his wife. His two

minor sons, N. Swaminathan and K. Venkatesan, were also partners in the firms.

The minor sons were divided members and the division was accepted by the Income Tax Officer u/s 171 of the Income Tax Act. The Income Tax Officer, Nagapattinam, by his order dated June 9, 1980, made assessments on the assessee as individual u/s 143(3) read with section 147(a) of the Act by clubbing the income of the minors for the said two years. The Appellate Assistant Commissioner on appeal deleted the inclusion, since the assessee was a partner in the firm only in the capacity as karta of the Hindu undivided family. Hence, the minor's share income was not included. On appeal, the Tribunal dismissed the Department's appeal. A similar question came up for consideration before the Supreme Court in the Case of Commissioner of Income Tax, Ludhiana, etc.etc. Vs. Shri Om Prakash, etc.etc., , wherein the Supreme Court held that 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-neither in his individual assessment nor in the assessment of the Hindu undivided family. In view of the above decision of the Supreme Court, cited supra, we answer the question referred to us in the affirmative and against the Department. No costs.