(1996) 03 MAD CK 0152

In the Madras High Court

Case No : T.C. No. 850 of 1983 (Reference No. 425 of 1983)

Commissioner of Income Tax APPELLANT

Vs

Venkatesh RESPONDENT

Date of Decision : 11-03-1996

Acts Referred:

Income Tax Act, 1961 — Section 28

Citation : (1999) 237 ITR 122

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, for the Respondent

Judgement

K.A. Thanikkachalam, J.—At the instance of the Department, the Tribunal referred the following question 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 right in law in holding that the trust income should not be included in the Income Tax assessment of the assessee minor for the assessment year 1978-79 ?"

2. The dispute before the Tribunal in the appeal filed by the Department was the inclusion of the trust income of Venkatesh Trust of Rs. 2,915 in the total income of the assessee, minor Venkatesh, represented by father and guardian, Shri C. R. Rajendran. In upholding the assessee''s case and deleting the inclusion of the amount, the Appellate Assistant Commissioner followed the order of the Tribunal in the assessee''s own case for the assessment year 1977-78 in ITA No. 602 (MDS) of 1979, B-Bench, dated November 27, 1979. In the appeal preferred by the Department, the Tribunal following its order for the earlier year in the case of the same assessee on an identical issue, rejected the contention of the Department and dismissed its appeal. Similar question came up for consideration before this court in the case of Commissioner of Income Tax Vs. Sitalakshmi, ,

wherein this court held that since the assessee did not attain the age of 18 years during the relevant accounting year ending on March 31, 1977, the trust income could not be taxed in her hands. In view of the abovesaid decision of this court, in the case of Commissioner of Income Tax Vs. Sitalakshmi, , who is the sister of the assessee herein, we hold that there is no infirmity in the order passed by the Tribunal, in coming to the conclusion that the income of the trust during the assessment year under consideration is not taxable in the hands of the minor. Accordingly, we answer the question referred to us in the affirmative and against the Department. No costs.

