
(1993) 08 MAD CK 0072

In the Madras High Court

Case No : T.C. No. 1400 of 1980. (Reference No. 493 of 1980)

Commissioner of Income Tax

APPELLANT

Vs

V.S. Thiagaraja Mudaliar

RESPONDENT

Date of Decision : 26-08-1993

Acts Referred:

Income Tax Act, 1961 — Section 256

Citation : (1994) 206 ITR 343

Hon'ble Judges : K.A. Swami, C.J.; T. Somasundaram, J

Bench : Division Bench

Advocate : J. Jayaraman, for the Appellant; Meenakshi Sundaram, for the Respondent

Judgement

K.A. Swami, C.J.—The Income Tax Appellate Tribunal has made this reference u/s 256(1) of the Income Tax Act, 1961 (herein after referred to as "the Act"), at the instance of the Revenue. The questions referred are as follows :

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the remuneration and sitting fees paid to the assessee by Messrs. Thiru Arooran Sugars Limited. Messrs. Venkatesa Thyagaraja Limited and Messrs. Tiruchy Distilleries and Chemicals Limited is not the income of the Hindu undivided family and is assessable in the assessee's hands in the status of an individual ?

Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the remuneration and sitting fees having been received by the assessee in his individual capacity, such income was assessable in his hands in the status of an individual and, therefore, such income was properly assessable in his hands ?"

2. It is not necessary to consider these questions afresh because both are covered by a Division Bench judgment of this court in Commissioner of Income Tax, Tamil Nadu-II Vs. V.S. Thyagaraja Mudaliar, . In that decision, it has been

held that in deciding the question as to whether the remuneration received by a coparcener is his individual income it is to be seen whether it will be remuneration received by the coparcener in substance though not in form, one of the modes of return made to the family because of the investment of the family funds in the business or whether it is compensation made for the services rendered by the individual coparcener and if it is the former, it is the income of the Hindu undivided family and if it is the latter, it would be the income of the individual coparcener. It has been held that if the income is earned essentially as a result of the funds invested by the family, the fact that the coparcener had rendered some service would not change the character of the receipt. But, if the remuneration is really for services rendered by the coparcener, the mere fact that his service was availed of because or he had obtained qualification shares from and out of the family funds will not make the receipt the income of the family. Accordingly, the questions have been answered in favour of the assessee and against the Revenue. No costs.