(1998) 04 MAD CK 0094

In the Madras High Court

Case No : Tax Case No''s. 893 to 898 of 1988 and Reference No''s. 680 to 685 of 1988

Commissioner of Wealth-tax APPELLANT

Vs

B. Sivaprakash RESPONDENT

Date of Decision : 27-04-1998

Acts Referred:

Citation : (2000) 243 ITR 99

Hon'ble Judges : Janarthanam, J;A. Subbulakshmy, J

Bench : Division Bench

Advocate : R. Sivaraman, for C.V. Rajan, for the Appellant; P.H. Aravind Pandian, for Subbaraya Aiyar, Padmanabhan and Ramamani, for the Respondent

Judgement

Janarthanam, J.—The Hindu undivided family (HUF) of one A.T. Bala-krishnan consisted of himself, his two sons, one daughter and wife. The assessee--Shri B. Sivaprakash, is one of the two sons of the said A.T. Balakrishnan.

2. The property at No. 301, T. H. Road, Madras, is the self-acquired property of the said assessee. What he did was, he threw the said self-acquired property in the hotchpot of the Hindu undivided family on July 27, 1970, and, on the same day, a partial partition was effected in respect of the said self-acquired property allotting 2/3rds share in the said property to himself and 1/3rd share in favour of his mother.

3. The assessments involved are in respect of the years 1971-72 to 1976-77.

4. In computing the net wealth, the Wealth-tax Officer included the entire value of the property at No. 301, T. H. Road, Madras, on the ground that the partial partition effected regarding that property was not valid,

5. On appeal, the Appellate Assistant Commissioner, holding that the partial partition made on July 27, 1970, was a valid one and that the income from that portion of door No. 301, T. H. Road, allotted to the assessee''s mother under the

abovesaid partition could not be considered as the wealth of the assessee, vide order in ITA No. 1728/Mds/1976-77, "C" Bench, Madras, dated November 27, 1977, relating to the assessment year 1972-73 and following the aforesaid order of the Tribunal, directed the Wealth-tax Officer to exclude that portion of the value of the property of door No. 301, T. H. Road, from the net wealth of the assessee.

6. On appeal by the Revenue, the Tribunal, upheld the orders of the Appellate Assistant Commissioner, as they were in accordance with the order of the Tribunal in the assessee''s own case in WTA No. 1728/Mds/1976-77 dated November 27, 1977.

7. It is on these facts, at the instance of the Revenue, the Tribunal referred the common question of law, as below, for the opinion of this court :

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the value of the property at door No. 301, T. H. Road, Madras, allotted to the assessee''s mother, Smt. Bagyalakshmi Animal, should be excluded from the net wealth of the assessee ?"

8. Our attention had been drawn to Tax Case No. 31 of 1982, relating to the case of the assessee''s father, Mr. A.T. Balakrishnan and in that case, a Division Bench of this court, by its order, dated March 18, 1998 Commissioner of Income Tax Vs. A.T. Balakrishnan (Decd.) and Others, , took the view that the partial partition effected in the said family, as relatable to the property at door No. 301, T. H. Road, Madras, was a valid one and following the aforesaid decision of the other Bench of this court, we hold that the mother''s 1/3rd share in the said property has to be necessarily excluded from the net wealth of the assessee. The common question is thus answered in favour of the assessee and against the Revenue.

9. These tax case (references) are thus disposed of. There shall, however, be no order as to costs, on the facts and in the circumstances of these cases.

