**(1997) 08 MAD CK 0059**

**In the Madras High Court**

**Case No :** Tax Case No. 944 of 1987 (Revision No. 327 of 1987)

K. Vasudevan APPELLANT

Vs

State of Tamil Nadu RESPONDENT

**Date of Decision :** 27-08-1997

**Acts Referred:**
Income Tax Act, 1961 — Section 28

**Citation :** (1999) 240 ITR 771

**Hon'ble Judges :** R. Jayasimha Babu, J;Akbar, J

**Bench :** Division Bench

**Advocate :** Deokinandan and R. Gangadharan, for the Appellant; K.M.L. Majele and T. Mathi, for the Respondent

## Judgement

R. Jayasimha Babu, J.—The assessee is aggrieved by the order of the Tribunal, the order being one relating to the assessment years 1981-

82 and 1983-84 by which the assessee''s claim for exemption u/s 4(b) of the Tamil Nadu Agricultural Income Tax Act, was rejected by the

Tribunal. The Tribunal held that it appeared to it that the properties are not held in trust by the assessee. That constituted the basis for rejecting the

petitioner''s claim.

2. The order so made by the Tribunal, runs counter to what the State itself had accepted, viz., that the assessee was in fact a trust. The assessee is

described in the order of the Assistant Commissioner as a trust. The Assistant Commissioner declined to grant relief to the assessee on the ground

that the income of the trust is liable to tax ""according to the principles in force"". That was the only reason given by the appellate authority for

denying the exemption. It was not contended before the Tribunal by the Revenue that the assessee was not a trust. The Tribunal, on the other hand, has recorded that the State representative supported the orders of the authorities below. If the assessee is a trust, any agricultural income

derived from the property held under trust wholly or partly for charities or religious purposes would be exempted to the same extent to which it is

not included in the total income for the purposes of the Income Tax Act, 1961.

3. Learned counsel for the assessee submitted that the assessee has all along been recognised as a trust for the purpose of assessment and the

Tribunal for the first time, during the course of the arguments before it, called upon the advocate to produce the trust deed, which could not be

done as the trust is a very old trust and the income derived from the properties held by the trust are used for performing poojas in the temples at

Srirangam. Learned counsel also placed before us a copy of the order passed by the Tribunal for the subsequent assessment years 1984-85,

1985-86 and 1987-88. In the common order passed for these years on June 27, 1989, the Tribunal has accepted the fact that the assessee is in

fact a trust entitled to the benefit of section 4(b) of the Act.

4. The learned Government Advocate, however, sought to contend that the Tribunal is the final court of fact and, therefore, its finding is binding on

this court. He has also referred to the decision in P.J. Philip Vs. State of Kerala, . While the Tribunal is indeed the final court of facts, the findings

recorded by it must rest on facts and not on mere suspicion or speculation. Moreover, the finding, if it can be regarded as such runs counter to

what the State itself had pleaded before it, viz., that the assessee was a trust, which was the case of the assessee as well. The assessee''s grievance

that the question was raised without any notice by the Tribunal and, consequently, the assessee did not have the opportunity to set out all the

relevant facts before it including the details of the purposes for which the trust income is utilised, has to be accepted. The fact that the assessee had

been recognised as a trust for the purpose of assessment in the earlier years, appears to be well founded, in the light of the order made by the same

Tribunal for subsequent years. Learned counsel for the assessee stated at the Bar that the order of the Tribunal made for the subsequent

assessment years referred to above has become final and has not been challenged by the State.

5. The order of the Tribunal is, therefore, set aside and the matter is remitted

 

back to the Tribunal for fresh disposal in accordance with law, such

disposal to be made within six months from the date of receipt of a copy of this order.

 