

**(1984) 12 MAD CK 0062**

**In the Madras High Court**

**Case No : I. T. APPEAL No's. 1553 TO 1555 (MAD.) OF 1984**

SECOND Income Tax OFFICER

APPELLANT

Vs

K. A. S. A. ARUNACHALA NADAR.

RESPONDENT

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**Date of Decision : 27-12-1984**

**Acts Referred:**

**Citation : (1986) 17 ITD 1070**

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## **Judgement**

1. These three appeals raise a common issue. When the appeals were taken up for hearing none was present for the assessee. Nor was there any request for adjournment. The appeals were, therefore, heard ex parte for disposal on merits.

2. The assessee is an HUF. It is a partner in the registered firm of Everest Litho Press. The issue for decision in the three appeals is whether the salary and interest paid to Shri Arunachala Nadar (the karta of the assessee-family) by the said firm is to be assessed in the hands of the assessee-family here as share of profits from the firm or as the income of the karta in his individual capacity. The relevant factual position is as under :

Assessment year

Salary paid to karta

Interest paid to karta

Assessee-familys share of profit from the firm

Total of columns 2, 3 and 4

(1)

(2)

(3)

(4)

(5)

Rs.

Rs.

Rs.

Rs.

1981-82

8,000

7,196

12,433

27,629

1982-83

8,000

8,883

12,985

29,868

1983-84

5,000

10,665

17,864

33,529

3. The ITO brought to tax in the hands of the assessee-family, the salary and interest income of the karta also for each of the three years with the brief remark that in doing so, he was following the decision of the Tribunal in the case of Janakarajan. It was common ground before me that this decision of the Tribunal had nothing to do with the issue in appeal here and that ITO erred in relying on that decision. That was a case where an HUF claimed deduction of the salary paid by it to its karta from its share of profits from a registered firm in which it was a partner. It is, therefore not necessary to notice that decision of the Tribunal. Being aggrieved the assessee filed appeals to the AAC.

4. The AAC disposed of these appeals by a consolidated order dated 27-3-1984. In his view, there was no case for assessing the salary and interest income of the karta in the hands of assessee-family here. In recording this conclusion, he noted. the following.

4. The AAC disposed of these appeals by a consolidated order dated 27-3-1984. In his view, there was no case for assessing the salary and interest income of the

karta in the hands of the assessee-family here. In recording this conclusion, he noted the following.

1. Arunachala Nadar, the karta, was over 65 yrs old. He was in charge of the administration of the press. He looked after bookig of orders and execution thereof. His work included supervision of the work of the staff. He also undertook tours for the purpose of business,

2. The assessee-familys accounts in the books of the firm showed a credit balance. This implied that the salary in question was not paid to the detriment of the assessee-familys funds.

3. The salary in question was credited separately to the account of the karta and not to the assessee-familys account.

4. That the karta rendered individual services to the firm stood proved, e.g., factory administration was by its very nature work which required personal exertion by an individual. This cannot be regarded as part of the normal duty of a partner.

5. There was also sufficient judicial authority for allowing the assessee's claim - Commissioner of Income Tax, Mysore Vs. Gurunath V. Dhakappa, and Shri Raj Kumar Singh Hukam Chandji Vs. Commissioner of Income Tax, Madhya Pradesh, .

6. As regards the interest income this was on the credit balance in the kartas individual account in the books of the firm. This balance merely represented the accumulated deposits of the salary income of each year. This income was also the individual income of the karta.

5. Shri V. S. Kandaswamy, the departmental representative, submitted that the AACs action was bad in law. He contended, if it could be said that the salary and interest income had been earned primarily through the use of the joint family funds, then the mere fact that in the process of gaining that advantage there was an element of personal service or skill or labour, would not alter the character of the said income. It is submitted that the Madras Bench A had occasion to consider a similar question and had come to the conclusion that in such cases, it was the assessee-family which was to be taxed on such salary. The further submission is : once the salary is found to be taxable in the hands of the family, interest income on the accumulated deposits of salary also would be taxable in the hands of the assessee-family here. This decision of the Madras Bench A was recorded in the case of ITO v. N. Rajagopalan [IT Appeal No. 272 (Mad.) of 1983, dated 27-8-1983]. A copy of the order was also placed before me.

6. I find that the issue before me is not difficult to decide because of the fact that the Supreme Court has had occasion to consider this very issue more than once. In Prem Nath and Others Vs. Commissioner of Income Tax, Delhi and Rajasthan, , it not only considered this issue but also referred to its earlier decision. In Prem Nath's case (supra) the assessee was an HUF. Prem Nath was the manage of the family. He was admitted to a partnership styled K. C. Raj &

Co. as representing his family. Under the terms of the partnership Prem Nath was entitled to allowance of Rs. 700 per month for rendering service to the partnership. In proceedings for assessment of Income Tax of the HUF, the ITO rejected the contention that the remuneration paid to Prem Nath was the individual income of Prem Nath. The Supreme Court held that the ITOs action was wrong. Briefly, the reasoning of the Supreme Court was as under :

(a) Prem Nath was a working partner and he was allowed a salary of Rs. 700 per month. There is no evidence on record that the remuneration agreed to be paid was not for services rendered to the partnership.

(b) In *Gurunath v. Dhakappas* case (supra) the karta of a family jointed a registered firm as partner representing his family. He was appointed manager of the firm on a remuneration of Rs. 500 per month. There was no finding by the Tribunal that the salary was paid to the manager because the assets of the family were utilised by the firm. It was held by the Court that the remuneration received by the karta was not the familys income. In reaching that conclusion the Court relied upon its earlier judgment in *V.D. Dhanwatey Vs. The Commissioner of Income Tax, M.P. Nagpur*, . It was observed therein that remuneration paid to a member of an HUF, who represents the family in a partnership, will be treated as the income of the family if it is directed related to the investment in the partnership business with the assets of HUF. If there is real and sufficient connection between the joint family funds and the remuneration paid by the partnership to the manager of the joint HUF, who is a partner, the remuneration would be taxable as the income of the family.

(c) In *Commissioner of Income Tax, Mysore Vs. D.C. Shah*, an HUF was a partner in the two firms through its manager. The manager received remuneration from the firm. The Court held that in the absence of any real and sufficient connection between the investment of the joint family funds and the remuneration paid to the manager, the remuneration was not earned on account of any detriment to the joint family assets and the remuneration received by the manager as the managing partner of the two firms was not assessable as the income of the HUF.

(d) In *Raj Kumar Singh Hukum Chandjis* case (supra) the Court held that it had to be seen whether the remuneration received by the coparcener was in substance though not in form was but one of the modes of return made to the family because of the investment of the family funds in the business; or whether it was a compensation made for the services rendered by individual coparcener. If the former, it is an income of the family but if it is the latter then it is the income of the individual coparcener. Where it is essentially a remuneration for the services rendered by a coparcener, the circumstances that his services were availed of because he was a member of the family which had invested funds in that business or that he had obtained qualification shares from out of the family funds would not make the receipt, the income of the family. Similarly, where the income is essentially earned as the result of the funds invested the fact that a coparcener had rendered some service would not make it the income of the

coparcener.

(e) There was no real and sufficient connection between the investment of the joint family assets and remuneration paid to Prem Nath. Hence, the remuneration of Rs. 700 per month could not be assessed in the hands of Prem Nath.

7. Applying the above principles, the first point of relevance is that there is not finding that the salary in question was paid to Arunachala Nadar because the assets of the family were utilised by the firm. In fact the ITO in making the impugned additions has referred to the decision of the Tribunal in Janakarajan which had nothing to do with the issue in appeal here. It follows that no real and sufficient connection had been established between the joint family funds and the remuneration received by Arunachala Nadar. On the other hand, the AAC has recorded factual details relating to the competence and experience of Arunachala Nadar and the nature of the services rendered by him. which go to show that essentially the remuneration was for services rendered by Arunachala Nadar. Hence, the salary income in question cannot be included in the assessment of the assessee-family here. Once the salary income is excluded, interest income also has to be excluded. This is because, there was not dispute before me that the interest income in question was wholly referable to the accumulated credit balance from the deposit of salary received by Arunachala Nadar in his account with the firm. I therefore, see no room for interference with the order of the AAC.

8. The appeals are dismissed.