

C.G. Babu and Others Vs State of Kerala

Court: High Court Of Kerala

Date of Decision: Jan. 25, 1996

Citation: (1996) 220 ITR 473

Hon'ble Judges: V.V. Kamat, J; G. Sivarajan, J

Bench: Division Bench

Advocate: P. Balachandran and George K. George, for the Appellant; C.K.A. Rahim, Govt. Pleader, for the Respondent

Judgement

V.V. Kamat, J.

The following two questions are referred to this court by the Kerala Agricultural Income Tax Appellate Tribunal,

Additional Bench (Palghat), for our consideration and consequent answers in regard thereto :

1. Whether, on the facts and in the circumstances of the cases, the Tribunal is justified in holding that the assessing authority is justified in including

the above of income from U. T. T. Company and Muthuvelan and Sons separately and, vacating the directions of the Appellate Assistant

Commissioner to club the income of U. T. T. Company with that of Muthuvelan and Sons and to divide the same among partners ? and

2. Whether, on the facts and in the circumstances of the cases, the Tribunal is justified in holding that there is no Sub-partnership in these cases ?

2. The proceedings of these references relate to the assessments of three persons, namely, (1) C. M. Gangadharan (2) C.M. Sahadevan and (3)

C.M. Prabhakaran. Incidentally, they are brothers. For the purposes of these references they are partners of two partnership firms in the name and

style of (1) U. T. T. Company, and (2) Muthuvelan and Sons. The proceedings of these references relate to the assessment years 1979-80 and

1980-81. They came to be assessed for these years by the orders in regard to which the date would be available in the following tabulation :

Name of the assessee Year of Income Date of order

assessment fixed

C. M. Gangadharan 1979-80 46,060 17-10-1984

1980-81 60,450 16-2-1985

C. M. Sahadevan 1979-80 58,620 13-2-1985

1980-81 61,910 13-2-1985

C. M. Prabhakaran 1979-80 38,358 17-10-1984

1980-81 52,600 16-2-1985

3. Factually, it needs to be stated that this first partnership--U. T. T. Company--has 19 partners and the second partnership has five partners. It is

also necessary to specify that apart from these three assesseees as far as the partnership Muthuvelan and Sons is concerned, having five partners,

the remaining are the brothers of the present assesseees, whereas the remaining 16 partners of U. T. T. Company are strangers in the partnership

business of the said firm.

4. It appears that as far as the present assesseees are concerned, their income out of the share of the first partnership U. T. T. Co. under an

independent agreement came to be agreed to be clubbed with their income from Muthuvelan and Sons and by such process, before the Income

Tax Officer they filed returns with regard to the income of this partnership business showing their income from business as such.

5. Perusal of the Income Tax orders (illustratively exhibits A to A-5) specifically show this position that these assesseees have shown income from

other heads also. However, for the assessment years in question, the shares of income have been taken into consideration by the Income Tax

Officer not on the basis of the arrangement, but treating the two partnership firms in relation to the shares of the assesseees separately and

independently. The assesseees approached the Appellate Assistant Commissioner of Agricultural Income Tax and Sales Tax, Palghat, by appeals.

The appellate authority carefully verified the connected records with regard to the share income due from the Union Timber Traders and found that

for the previous years the Tax Officer, Alathur, acted on the basis of the arrangement pleaded. It is also observed that in the share income from the

U. T. T. Company, as far as the present assesseees are concerned, it was assessed to be in the hands of Muthuvelan and Sons--the second

partnership. On the basis of these factual observations, on verification of the connected records the appellate authority accepted the contention put

forth as stated above about the addition of income of the Union Timber Traders with another firm, Muthuvelan and Sons. As a consequence, the

Assessing Officer was directed to re-examine the case and re-fix the income according to the above observations and directions. This was by

separate orders (exhibits B-1 and B-2).

6. The Department took up the matter before the Agricultural Income Tax and Sales Tax Appellate Tribunal, Additional Bench, Palghat. It must be

stated that we have seen the petition of appeal of the Department presented before the Tribunal and it shows that this factual situation of clubbing

the income and as a consequence for the previous years the Department acting thereupon has not been challenged. It is also crystal clear that even

the constitution of a partnership firm does not require either a document of partnership or its registration compulsory. Apart therefrom it will have

to be stated that there is nothing illegal about the arrangement in view of the factual peculiarities as specified hereinbefore. At the cost of repetition

it is necessary to reiterate that as far as the partners of Muthuvelan and Sons, they are brothers inter se as against the situation that except the

assesseees the other 16 partners of U. T. T. Company are strangers, the assesseees being brothers inter se in regard thereto. As stated above, even

the Department has not questioned this position even in the petition of appeal apart from this factor being conspicuous by its total absence in the

order of the Tribunal,

7. For the above reasons with regard to question No. 1 our answer is in the negative, in favour of the assessee and against the Revenue and with

regard to question No. 2 our answer is also in the negative, in favour of the assessee and against the Revenue.

8. A copy of this judgment be sent to the Agricultural Income Tax Appellate Tribunal, Additional Bench, Palakkad, under the seal of the court and

the signature of the Registrar. Order accordingly.