(1996) 01 KL CK 0041

High Court Of Kerala

Case No: Income Tax R. No"s. 197 to 202 of 1989

C.G. Babu and Others		APPELLANT
	Vs	
State of Kerala		RESPONDENT

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 assessment	Income fixed	Date of order
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 assessees as far as the partnership Muthuvelan and Sons is concerned, having five partners, the remaining are the brothers of the present assessees, 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 assessees 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 assessees 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 assessees separately and independently. The assessees 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 assessees 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 assessees the other 16 partners of U. T. T. Company are strangers, the assessees 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.