

(2002) 01 MAD CK 0083

Madras High Court

Case No: Tax Case (Appeal) No. 503 of 1999 17 January 2002

Sambandam Spinning Mills Ltd.

APPELLANT

Vs

Dy. Commissioner of Income Tax

RESPONDENT

Date of Decision: Jan. 17, 2002

Citation: (2002) 176 CTR 607 : (2003) 129 TAXMAN 953

Hon'ble Judges: V.S. Sirpurkar, J; K. Raviraja Pandian, J

Bench: Full Bench

Advocate: P.P.S. Janarthanaraja, for the Assessee Mrs. Chitra Venkataraman, for the Revenue, for the Appellant;

Judgement

V.S. Sirpurkar, J.

This is an appeal u/s 260A of the Income Tax Act, 1961 (hereinafter referred to as the Act), challenging the order passed by the Tribunal, upsetting the order of the Commissioner (Appeals) and upholding the order passed by the assessing authority. The assessing authority had recorded a finding that the assessee had diverted the profits of the assessee-company to some partnership firms precisely four firms and in fact, the profits shown by these firms were the profits earned by the assessee-company as the directors in these assessee-company and the partners in the firms were almost identical and interested in each other. The Income Tax Officer, in his detailed order, has given that finding and for that purpose he also went into the exercise of sending notice u/s 131 of the Act to these firms to furnish their constitution, trading and profit and loss account etc. In this well-considered order, the Income Tax Officer has taken the accommodation, finances as also the position of the personnel serving in those firms into account for coming to the conclusion that the profits receivable by the directors or their relatives as partners of the intermediary firms were really diverted profits of the assessee-company and the intermediary partnership firms have been functioning for diverting the profits of the assessee-company to the directors and/or their relatives and the profits attributable to sales out purchases from the assessee-company and receivable by

the directors and their relatives should be treated as income of the assessee-company.

2. Learned counsel tried to argue that all the partnership firms excepting one of them had already come into existence prior to the formation and registration of the assessee-company and that should be taken to be a positive factor against the department. He also pointed out painstakingly that the size of the firms and more particularly the accommodation which was one of the factors could not be a relevant factor and it was really an irrelevant consideration on the part of the Tribunal as well as the assessing authority.

3. We do appreciate the argument that the "accommodation" cannot be a be all and end all of the matter while assessing the status of a partnership firm but that is not the only point which has been taken into consideration by the assessing authority. Along with it, the question of the commonness of the directors and the partners the financial transactions between the assessee company and the partnership firms and also the meagre salaries paid to the servants of the partnership firms have been taken into consideration in order to arrive at the conclusion which is undoubtedly a finding of fact. In short, we are being asked to decide a question of fact in the garb of a question of law which is not even a substantial question of law. Our attention was invited to the substantial questions of law framed in the appeal memo. We do not think that any of them can be said to be the substantial question of law.

4. The appeal has no merits and it is accordingly dismissed. No costs.

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