

**(2002) 09 MAD CK 0226**

**Madras High Court**

**Case No:** Tax Case No. 439 of 1997

Commissioner of Income Tax

APPELLANT

Vs

P.S.T.S. Thiruvirathnam and Sons

RESPONDENT

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**Date of Decision:** Sept. 30, 2002

**Acts Referred:**

- Income Tax Act, 1961 - Section 40

**Citation:** (2004) 186 CTR 400 : (2003) 261 ITR 406

**Hon'ble Judges:** R. Jayasimha Babu, J; K. Raviraja Pandian, J

**Bench:** Division Bench

**Advocate:** J. Naresh Kumar, for the Appellant; T.V. Ramanathan, for the Respondent

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### **Judgement**

R. Jayasimha Babu, J.

The question referred is,

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in overlooking the decision of the jurisdictional High Court in the case of [A.S.K. Rathnaswamy Nadar Firm Vs. Commissioner of Income Tax, Madras](#), and of the Patna High Court in the case of [Chandmul Rajgarhia Vs. Commissioner of Income Tax](#), and holding that the salary paid to the partners should not be disallowed u/s 40(b)?"

2. The assessment year is 1986-87.

3. The assessee is a partnership firm. Its partners were paid salaries in their individual capacities while they represented their respective Hindu undivided families in the firm as partners. Their claim that the salary paid to them should not be disallowed u/s 40(b) of the Act was rejected by the Assessing Officer whose order was upheld by the Commissioner. The Tribunal, however, held that the salary paid to the partners was an allowable deduction.

4. This court in the case of [R.M. Appavu Chettiar Sons, Madurai Vs. The Commissioner of Income Tax, Madurai](#), has held that the Hindu undivided family or its representative does not have any specific status in the Partnership Act and that the salary payments made to the partners representing Hindu undivided families is required to be disallowed u/s 40(b) of the Income Tax Act, 1961. The law laid down in that judgment is applicable to the facts of this case as well.
5. Counsel for the assessee, however, submitted that the question should not be answered by us as according to him under the circular issued by the Central Board of Direct Taxes if the amount of tax involved is less than Rs. 30,000, the Department is not to pursue the matters in the higher forum. We have perused the circular of November 4, 1987. It is not an unqualified embargo on the Revenue proceeding with the matter where the amount of tax in issue is Rs. 30,000 or less. Several exceptions are set out in that circular. If the assessee wanted the benefit of that circular it should have put the Revenue on notice when the Revenue applied for having the question referred so that the Revenue could gather the relevant material, if any, to show that the matter was within the excepted category.
6. After the question has been referred to us, we cannot now permit the assessee to raise this objection.
7. For the reasons stated in the judgment of this court in the case of [R.M. Appavu Chettiar Sons, Madurai Vs. The Commissioner of Income Tax, Madurai](#), we hold that the salary paid to the partners who represented their Hindu undivided families was required to be disallowed u/s 40(b).