courtkutchehry.com

Company: Sol Infotech Pvt. Ltd.

Website: www.courtkutchehry.com

Printed For:

Date: 24/10/2025

Commissioner of Income Tax and Another Vs K.R. Kanakarathinam and Another

Tax Case No''s. 168 and 574 to 582 of 1975 (Reference No''s. 151 and 397 to 405 of 1975)

Court: Madras High Court

Date of Decision: July 23, 1979

Acts Referred:
Income Tax Act, 1961 â€" Section 56

Citation: (1984) 146 ITR 364

Hon'ble Judges: Sethuraman, J; Balasubrahmanyan, J

Bench: Division Bench

Advocate: J. Jayaraman and Nalini Chidambaram, for the Appellant; S. Swaminathan, for the Respondent

Judgement

Sethukaman, J.
All these references deal with the ''assessment years 1960-61 to 1969-70. In these cases the common questions of law

referred to this court are :

1. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the lease income derived by the two

assessees should be assessed separately and not in the status of an association of persons ?

2. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that Kanakarathinam and his wife,

Yeshodammal, leased out the cinema theatre as tenants-in-common for the sake of convenient earning of rental income.

2. Under two sale deeds dated November 15, 1959, Kanakarathinam and his wife, Yeshodammal, separately purchased 5/8 and 3/8th share

respectively in a building known as ""Opera House"" at Bangalore. ""Opera House"" was a cinema theatre. It was leased out on a monthly rent of Rs.

950 for the building and Rs. 550 for the machinery and furniture, etc., totally in all Rs. 1,500 per month. The ITO took the view that since the

letting of the building is inseparable from the letting of the machinery and furniture the income from the letting of the building ""Opera House"" was

chargeable as income from other sources u/s 56(iii) of I.T. Act, 1961. He took the assessable entity as an association of persons consisting of

Kanakarathinam and his wife, Yeshodammal.

3. The assessee appealed to the AAC, who held that the leasing of the theatre was joint operation because of the many conditions stipulated in the

lease deed and that the two co-owners of the theatre had joined in a common purpose in order to manage the affairs together, ultimately leading to

the earning of the lease income. In his view, if the co-owners were not acting in union with each other, the leasing of the theatre would not have

been possible and that, therefore, there was a joint venture, which was rightly treated as ah assessable unit and described as an association of

persons. The matter was taken on appeal to the Tribunal by the assessee. In the view of the Tribunal, since the property was incapable of division

by metes and bounds, it was leased out. The Tribunal considered that this was only a convenient method of earning the rental income from the

property consisting of the building, machinery, furniture, etc. In its view, the income was liable to be separately assessed in the hands of the two

individuals, who were only tenants-in-common of the property. This order of the Tribunal has given rise to the questions set out already.

4. It is indeed unfortunate that the Tribunal has not annexed to the statement of the case either of the sale deeds in the respective names of

Kanakarathinam and Yeshodamnial, or the lease deed. Even as regards the lease, there was a statement before us on behalf of the assessee''s

counsel that at the time of purchase by the respective individuals there was a subsisting lease deed and that the lessee was asked to attorn to the

respective co-owners. It was also stated that the lease executed subsequent to the two co-owners coming on the scene was only in favour of the

same lessee. The submission, therefore, was that there was merely an exercise of a right of ownership in the respective individuals granting a lease

of the property. The learned counsel for the Commissioner of Income Tax contended that this being a commercial asset the parties could only have

come together for exploiting the said asset and that, in such a case, it should be held that they had joined together for earning profits and should be

considered as an association of persons.

5. The matter, as to when an association can be said to have come into existence, came up for decision by the Supreme Court on several

occasions.

6. The earliest authority on this point is in Commissioner of Income Tax, Bombay Vs. Smt. Indira Balkrishna, . There one Balkrishna Purushottam

Purani died leaving behind him three widows and two daughters. The heirs inherited the estate of the deceased, which consisted of immovable

properties in Ahmedabad, shares in joint stock companies, money lying in deposit and share in a registered firm. Returns of income were submitted

by the legal heirs of Balkrishna Purushottam Purani and also in the name of the estate of Balkrishna Purushottam Purani. The description of the

status was as individual. The question was whether there was an association of persons which could be assessed on the entire income as a unit or

whether the income was separately assessable in the hands of the respective heirs. In that case there was no finding that the three widows had

combined in a joint enterprise to produce any income nor had they done any act which helped to produce any income. It was, therefore, held that

they had not the status of an association of persons. In setting out the principles applicable to such cases, their Lordships pointed out at page 551 :

Therefore, an association of persons must be one in which two or more persons join in a common purpose or common action, and as the words

occur in a section which imposes a tax on income, the association must be one the object of which is to produce income, profits or gains.

7. Their Lordships further quoted a passage from a decision of the Calcutta High, Court in B. N. ELIAS AND OTHERS, IN RE., wherein

Costello J. had formulated the test as follows (p. 551 of 39 ITR):

It may well be that the Intention of the Legislature was to hit combination of individuals who were engaged together in some joint enterprise but

did not in law constitute partnerships.....When we find,...

that there is a combination of persons formed for the promotion of a joint enterprise.....then I think no difficulty whatever arises in the way of

saying that...these persons did constitute an association.....

This passage was quoted with approval.

8. At page 552 a note of caution was sounded and it was :

There is no formula of universal application as to what facts, how many of them and of what nature, are necessary to come to a conclusion that

there is an association of persons within the meaning of Section 3 of the Indian Income Tax Act, 1922, it must depend on the particular facts and

circumstances of each case as to whether the conclusion can be drawn or not.

9. We have to consider this question in the light of the facts here. Though the lease deed itself has not also been annexed to the statement of the

case, still from the narration of the facts given in the order of the Tribunal, it is clear that in the lease deed jointly executed, it was stipulated that

Kanakarathinam should get Rs. 937.50 as and by way of rent for his 5/8ths share and that Yeshodammal should get Rs. 562"50 in respect of her

3/8ths share. Thus under the document as executed in the present case it is clear that the rent was separately payable to the respective co-owners.

The two co-owners could have executed separate lease deeds, but as it was a single property with some furniture, etc., they should have thought it

more convenient to execute a common lease deed. The conditions stipulated in respect of the rent payable were separately set out so as to show

that the transaction was being entered into by each individual co-owner separately with the lessee. Thus, taking into account the peculiar facts of

this case, it has to be held that the income by way of rent accrued separately in respect of the 5/8ths and 3/8ths share to Kanakarathinam and

Yeshodammal respectively. Further, it would appear that at the time when the purchase was separately effected by these two individuals from their

vendors, the two vendors to the two individuals had themselves a separate and distinct share in the property and they purchased only such a

separate share. It appears that Kanakarathinam purchased from the executors of one Rengamma who had died executing a will in respect of her

5/8ths share. Similarly, Yeshodammal purchased it from her father who was originally a co-owner with a 3/8ths share along with Rengamma in

respect of this very property.

10. This is also an additional factor which goes to emphasise that the respective co-owners had no common intention of combining together for the

purchase of the property and exploiting it as such. Though as stated earlier the sale deed itself has not been annexed to the statement of the, case,

we were able to gather the facts only from the copy of the lease deed, which was available to the Tribunal and which was placed before us.

11. The result is, that the questions referred to us are answered in the affirmative and in favour of the assessee. The assessees will be entitled to

their costs. One set counsel''s fee Rs. 500.