
Commissioner of Income Tax Vs V. Nellaiappan

Tax Cases No"s. 324 to 326 of 1980 (References Nos 141 to 143 of 1981)

Court: Madras High Court

Date of Decision: Sept. 6, 1994

Acts Referred:

Income Tax Act, 1961 " Section 64, 64(1)

Citation: (1995) 214 ITR 465

Hon'ble Judges: K.A. Thanikkachalam, J; Gulab C. Gupta, J

Bench: Division Bench

Advocate: N.V. Balasubramaniam, for the Appellant; R. Janakiraman, for the Respondent

Judgement

Thanikkachalam, J.

At the instance of the Department, the following common question of law is referred to us for our opinion relating to

the assessment years 1972-73 to 1974-75:

Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the inclusion of the share income

of the minor children from the firm Messrs. Rm. K. V. Textiles made u/s 64(1)(ii) of the Income Tax Act, 1961, in the assessee"s individual

assessment is not correct?

2. These reference applications relate to the assessment years 1972-73 to 1974-75. The assessee is an individual. He was a partner in the firm,

Rm. K. V. Textiles, representing the Hindu undivided family, consisting of himself and his wife. In making the assessment, the Income Tax Officer

included the share income of the assessee"s minor children, Viswanathan, Loganayaki and Seethalakshmi, from the firm for the respective

assessment years u/s 64(1)(ii) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"). The assessee preferred an appeal before the

Appellate Assistant Commissioner, who directed the exclusion of such share income relying on the earlier decision of the Tribunal on this point and

also of the decision of the Andhra Pradesh High Court in Commissioner of Income Tax Vs. Sanka Sankaraiah, . As against this order, the

Revenue preferred appeals before the Appellate Tribunal. The Appellate Tribunal pointed out that the decision of the Andhra Pradesh High Court

in Commissioner of Income Tax Vs. Sanka Sankaraiah, was followed by the Gujarat High Court in the decision in Dinubhai Ishvarlal Patel Vs.

K.D. Dixit, Income Tax Officer, Ahmedabad and Others, . The Tribunal has also noted that the Allahabad High Court has taken a different view in

Madho Prasad Vs. Commissioner of Income Tax, . Following the above-mentioned two decisions, the Tribunal confirmed the order of the

Appellate Assistant Commissioner in respect of the assessment years in question.

3. Before this court, learned standing counsel for the Revenue submitted that though in the earlier decision, the Supreme Court in Commissioner of

Income Tax (Central), Ludhiana and Others Vs. Harbhajan Lal and Others, , has held that the income of the minors could not be included in the

total income of the assessee, who is the father and a partner in the firm, in his capacity as karta of the Hindu undivided family, in the later decision

of the Supreme Court in the case Commissioner of Income Tax Vs. Dharampal Ram Kumar, , it was held that the income arising out of the share

in the firm in the name of the wife is includible in the hands of her husband, who is also a partner in the capacity as karta of the Hindu undivided

family. We have also heard learned counsel for the assessee, who relied upon the earlier decision of the Supreme Court in Commissioner of

Income Tax (Central), Ludhiana and Others Vs. Harbhajan Lal and Others, . The fact remains that in the present case the assessee filed his return

as an individual. He is a partner in the firm in his capacity as karta of the Hindu undivided family. The minor children of the assessee were admitted

to the benefits of the partnership firm. The Income Tax Officer included the minors' income from the firm in the hands of the father in his individual

assessment by invoking the provisions of section 64(1)(ii) of the Act. The point for consideration is whether the income arising from the share

belonging to the minor in the partnership firm is includible in the hands of the father, who is also a partner in the firm in his capacity as the karta of

the Hindu undivided family. Such income is not includible in the individual assessment of the father, as per the decision of the Gujarat High Court in

Dinubhai Ishvarlal Patel Vs. K.D. Dixit, Income Tax Officer, Ahmedabad and Others, and that of the Andhra Pradesh High Court in

Commissioner of Income Tax Vs. Sanka Sankaraiah, . The decision of the Supreme Court in Commissioner of Income Tax (Central), Ludhiana

and Others Vs. Harbhajan Lal and Others, , clearly points out that the income arising out of the share of the minor children is not includible in the

hands of the assessee, who is their father, since he happened to be a partner in the firm in his capacity as karta of the Hindu undivided family. In the

later decision of the Supreme Court in Commissioner of Income Tax Vs. Dharampal Ram Kumar, , the question was where the assessee is a

partner in the firm in his capacity as karta of the Hindu undivided family, the share of profits derived by his wife from the firm can be included u/s

64 of the Act, in the individual assessment of the assessee in the status of individual. While considering this question, the Supreme Court pointed

out that the question with regard to the includible nature of the share income belonging to the wife u/s 64 of the Act in the hands of her husband in

his individual assessment, was not considered and decided on the merits in Commissioner of Income Tax (Central), Ludhiana and Others Vs.

Harbhajan Lal and Others, . Therefore, the Supreme Court directed the Tribunal to refer the question and state the case to the High Court u/s

256(2) of the Act. In such circumstances, the above-said question arising in Commissioner of Income Tax Vs. Dharampal Ram Kumar, was not

finally decided by the Supreme Court. Hence, we have Commissioner of Income Tax (Central), Ludhiana and Others Vs. Harbhajan Lal and

Others, , where the question arising in this reference was finally heard and decided. In view of the aforementioned discussion, we hold that the

Tribunal was correct in its conclusion that the income arising out of the shares belonging to the minors in the firm is not includible in the hands of the

father, who is also a partner of the firm in his capacity as the karta of the Hindu undivided family in his individual assessment in the status of

individual. Accordingly, we answer the question referred to us in the affirmative and against the Department in respect of all the assessment years

under consideration. No costs. Counsel fee is fixed at Rs. 1,000 (one set).