V. M. R. Trust Vs. Cit

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Court : Chennai

Decided On : Jun-11-2001

Reported in : [2002]253ITR491(Mad)

Appeal No. : T. C. No. 1188 of 1990 (Reference No. 608 of 1990) 11 June 2001

Appellant : V. M. R. Trust

Respondent : Cit

Advocate for Pet/Ap. : R. Venkataram, *for the Assessee* T. Ravikumar, *for the Revenue*

Judgement :

R. Jayasiha Babu, J.

The questions referred to us concern the assessment year 1982-83.

The questions referred are as to whether the assessee-trust can claim the benefit of section 164(1) of the Income Tax Act, 1961, even while it has failed to satisfy the requirements of section 164(1), proviso (ii) of the Act. There is no dispute about the fact that the settlor by her Will had created not one, but several trusts. Three family trusts were created by the Will dated 30-10-1978, executed by Smt. Lakshmiammal. The requirements of section 164(1), proviso (ii), of the Act is that 'the relevant income or part of relevant income is receivable under a trust declared by any person by will and such trust is the only trust so declared by him.'

It is evident that on the plain language of the section, the claim of the assessee does not satisfy the requirement of the provision relied upon by the assessee.

The claim by the assessee was that the beneficiaries, as also trustees of two of the trusts had agreed to transfer all the assets to the third trust and, therefore, that other trust should now be regarded as the only trust declared by the testator. This argument is plainly untenable. What has been declared by the Will is three trusts, and any subsequent action of the assessee cannot erase that fact. They may, as a matter of convenience, choose to transfer the assets of two of the trusts to the third, but that does not make the trust, to which the assets are so transferred the only trust created by the testator.

Counsel relied on the decision of the Andhra Pradesh High Court in the case of CIT v. Trustees of H. E. H. the Nizam's Miscellaneous Trust : [1986]160ITR270(AP) , wherein, it was held that the modification of the direction of the settlor when the trustees act in accordance with the mandatory provisions of the trust deed is permissible. That does not establish the proposition that trustees and beneficiaries can by their overt acts erase the factum of creation of more than one trust by the testator.

In the result, the questions referred to us are answered in favour of the revenue, and against the assessee.