

Cit Vs. R.S. Trust

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Court : Chennai

Decided On : Nov-04-2003

Reported in : [2004]135TAXMAN101(Mad)

Appeal No. : Tax Case No. 71 of 2000 4 November 2003

Appellant : Cit

Respondent : R.S. Trust

Advocate for Pet/Ap. : K. Subramaniam, *for the Revenue.*

Judgement :

R. Jayasimha Babu, J.

The assessment year is 1983-84. The question referred to us is as to whether the Appellate Tribunal was right in law in cancelling the Commissioner's order under section 263, and proceeding to hold that the status of the trust should not be taken as that of Association of Persons.

2. The assessee is a trust created under a trust deed dated 7-9-1981. In terms of the trust deed, the trustees are empowered to carry on any business and /or to engage in any trade of commercial activities which the trustees deem profitable. All the beneficiaries of the Trust are minors. The business in which the Trust was engaged in the relevant previous year was the business of construction of building.

3. The assessing officer made the assessment, after allocating the income of the assessee among the beneficiaries of the Trust. The Commissioner took the view that that manner of assessing the income was prejudicial to the revenue, that assessment should have been made on the Trust as an Association of Persons. For taking that view, the Commissioner placed reliance on the decisions of the Supreme Court in the case of N. V Shanmugam & Co. v. CIT : [1971]81ITR310(SC) , as also the case of CIT v. Indira Balakrishna : [1960]39ITR546(SC) . It must be noticed here that section 161, Income Tax Act was amended and sub-section (1A) was introduced therein by which in case of representative assessee having income which includes profits and gains of business, tax shall be charged on the whole of the income at the maximum marginal rate, only; with effect from 1-4-1985 and that provision was not on the statute book in this assessment year.

4. The Tribunal reversed the order of the Commissioner and held that the Trust could not be assessed as an Association of Persons as it was not possible to regard the business carried on by it as an activity carried on with the consent of the minor beneficiaries who has no part at all to play at the time of the Trust was created.

5. The revenue not being content with the order of the Tribunal, brought this reference contending that the law laid down in the case of N. V Shanmugam & Co. (supra) is what has been given statutory shape in sub-section (1A) to section 161, and that even prior to the introduction of sub-section (M) the content of section 161 was the same, namely, that in case where business was carried on by the representative assessee, the beneficiaries are to be assessed as an Association of Persons.

6. In the case of N. V Shanmugam & Co. (supra), the receivers appointed by the court had been, in a suit for dissolution, empowered by the court to carry on business for the purpose of winding up, and the income received by these receivers was sought to be assessed as that of Association of Persons. The court upheld such an assessment, observing that, 'The profits were earned on behalf of the persons who had a common interest created by the order of the court and

were on that account, 'Association of Persons'.'

7. In this case, there is no creation of common interest either voluntarily or involuntarily as the creation of the Trust was an unilateral act on the part of the settlor. The choice of the beneficiaries was entirely that of the settlor. The terms of the Trust was again a matter decided by the settlor. The beneficiaries had no part to play in authorising the Trust to carry on business as that power to carry on business was derived from the trust deed which was created by the settlor.

8. The express terms of section 161 (1) of the Act is that the tax shall levied upon and recovered from the representative assessee, in like manner and to the same extent as it would be leviable upon and recoverable from the person represented by him. That section does not contemplate the treatment of the beneficiaries of the Trust which carried on business as constituting an 'Association of Persons', in cases where the extent of interest of each of the beneficiaries is known and is determinate.

9. It is not possible to accept the submission that section 161(1A) is either retrospective or that it is only clarificatory. That section casts a new liability which was not a pre-existing one and there is nothing in the provision to justify an interference that it was meant to be retrospective. It is not also provision which can be regarded as clarificatory, having regard to the express language employed in section 161(1) of the Act. The decision in the case of N. V Shanmugam & Co. (supra), arising under the Interest Tax Act, 1922, was based on the finding of the court that a common interest had been created among the erstwhile partners who had earlier been carrying on business voluntarily for the common benefit through the firm that they had constituted, when the court appointed receivers and empowered them to carry on business for purpose of winding up. The order of the court was regarded as one which created the common interest and on that score, they were required to be regarded as Association of Persons.

10. The question referred is answered in favour of the assessee and against the revenue. As the assessee is not represented, we refrain from making any order as to costs.

