Cit Vs. K.A. Rajagopal

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SooperKanoon Citation : sooperkanoon.com/835412

Court : Chennai

Decided On : Nov-26-2002

Reported in : [2003]132TAXMAN39(Mad)

Appeal No. : Tax Case No. 403 of 1999 Reference No. 399 of 1999 26 November 2002

Appellant : Cit

Respondent : K.A. Rajagopal

Advocate for Pet/Ap. : Mrs. Pushya Sitharaman, *for the Revenue* T. Vasudevan, *for the Assessee*

Judgement :

N.V. Balasubramanian, J.

The Income Tax Appellate Tribunal has stated the case and referred the following question of law for consideration under section 256(1) of the Income Tax Act, 1961 :

'Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is correct in law in holding that remuneration received from the firm by partner representing his HUF is not to be included in the assessment of the HUF, but assessable in the hands of the partner as individual?'

2. The assessment year involved is 1987-88. The assessee is a partner in a partnership firm of B.K.M. Ananthapadmanabha Iyer and Sons representing his joint family. In the assessment proceedings of the assessee, the Income Tax Officer held that the remuneration of the assessee/partner was assessable in the hands of Hindu Undivided Family and not in the hands of the partner in his individual capacity. The Deputy Commissioner (Appeals) on appeal allowed the claim of the assessee holding that the remuneration should be assessed in his individual capacity and not in the hands of the joint family. The order of the Deputy Commissioner (Appeals) was upheld by the Appellate Tribunal.

3. Mrs. Pushya Sitharaman, learned senior standing counsel for income-tax in her fairness has drawn the attention of this court to the case of CIT v. N. Deenadayalan : [2000]241ITR133(Mad) , wherein this court on similar circumstances held that the remuneration received by the partner would be assessable in the individual assessment of the assessee when there was no direct nexus between the joint family funds and the salary received and where the salary was paid for the special skill and personal exertion of the karta.

4. Following the said decision of N. Deenadayalans case (supra) and for the various reasons stated therein, we hold that the Tribunal was correct in law in holding that the remuneration received by the assessee is not to be included as part of the income of the joint family, but should be assessed in the individual assessment of the assessee.

5. Accordingly, the question of law referred to us is answered in the affirmative against the revenue and in favour of the assessee. No costs.