

Supreme Court of India

Commissioner Of Income Tax, Bihar vs Trilok Nath Mehrotra And Ors. on 1 October, 1997

Equivalent citations: 1998 (2) BLJR 1457, JT 1998 (4) SC 246, (1998) 2 SCC 289

Bench: S Sen, S S Ahmad

ORDER

1. The following question of law arising out of the order of the Tribunal was sought to be raised by the Department:

"Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the salary could not be assessed in the hands of the HUF"

2. The Tribunal rejected the application under Section 256(1). The Revenue made an application under Section 256(2) of the Income Tax Act before the High Court. The High Court also rejected that application. The Revenue has now come up in appeal.

3. The law is well settled by several decisions of this Court that if a member of a Hindu Undivided Family (in short "HUF") joins a partnership and he is given a salary for managing the firm or rendering special services to the firm, the salary will be his individual income. But if his salary is really a part of the return of the investments made by the HUF in the partnership firm, the salary income would be added to the income of the HUF. Reference can be made to the two decisions of this Court in the case of Raj Kumar Singh Hukam Chandji v. CIT, (1970) 2 SCC 436 and also the case of Prem Nath v. CIT, where this proposition of law was reiterated. As against this, reference was made in the High Court to the case of CIT v. R.M. Chidambaram Pillai, The High Court was of the view that this judgment is in conflict with the other judgments of this Court and on that basis a certificate for fitness of appeal under Section 261 was granted

4. We do not find any conflict in the law laid down in the case of R.M. Chidambaram Pillai with the law laid down in the earlier two cases. The decision in the case of Raj Kumar Singh Hukam Chandji was rendered by a Bench of three Judges. Therefore, even assuming that there was a conflict between that decision and the decision rendered in Chidambaram Pillai case which was rendered by a Bench of two Judges, the decision of the larger Bench will prevail.

5. However, we are of the view that there is no conflict between these two decisions. The proposition which really came up for decision in Court in Chidambaram Pillai case was whether salary paid to a partner of a partnership firm would be treated as agricultural income. The firm was engaged in agricultural activities. Its income had been assessed as partly agricultural and partly non-agricultural. This Court took the view that partnership firm is a compendious way of describing the partners. So if a portion of the income of a partnership is given to the managing partner or a partner for rendering services, then the income will be nothing but a special share of the profits of the firm. The profits being agricultural income, the special share given to the partner must bear that character. Therefore, by application of Rule 24 of the Indian Income Tax Rules, 60% of the salary paid to a partner will have to be assessed as agricultural income. Only 40% of the salary was liable to be taxed under the Income Tax Act. It may be pointed out that it was not the case of the Revenue

that the salary income received by the partner will have to be added back to the income of the HUF. That being the position we do not find any conflict in these two decisions.

6. Here the Appellate Assistant Commissioner held that salary should not be assessed in the hands of HUF as it was separately given to the managing partners individually for their services. This finding was on the basis that the salary was found to have been paid for services rendered by the partners to the firm. On further appeal, the Tribunal sustained the finding of the Appellate Assistant Commissioner. Therefore, on the basis of the finding of fact, it must be held that the Tribunal had come to a right decision. In that view of the matter, the appeals are dismissed. There will be no order as to costs.