

PETITIONER:
K.S. SUBBIAH P-ILLAI

Vs.

RESPONDENT:
THE COMMISSIONER OF INCOME TAX

DATE OF JUDGMENT: 10/03/1999

BENCH:
R.C.Lohati, S.S.M.Quadri, S.P.Bharucha

JUDGMENT:

BHARUCHA., J.

In these appeals filed by the assessee, which -is a Hindu Undivided Family, we are concerned with the Assessment Years 1959-60 to 1965-66 and 1969-70 and 1970-71. The question that we are required to consider reads thus:

"Whether, on the facts and in the circumstances of the case, the remuneration and commission received by Sri K.S.Subbiah Pillai was assessable in the hands of the assessee Hindu Undivided Family?

It may be mentioned at the outset that the same assessee was assessed in Andhra Pradesh for the Assessment Years 1966-67 to 1968-69. The same question arose in regard to those assessments. The question was answered on reference by the High Court of Andhra Pradesh in favour of the assessee and the Revenue did not carry the matter further.

The judgment, of the Andhra Pradesh High Court afore-mentioned was cited before the High Court at Madras "in the reference proceedings out of which these appeals arise but the Madras High Court dissented therefrom. It dilated at length on Hindu Law but, with great respect, missed the point that the Income Tax Appellate Tribunal is the final fact-finding authority and, as it has itself noticed in the judgment under challenge, the Tribunal had held that the remuneration and commission received by the Karta of the HUF were earned by him on account of his personal qualifications and exertions and not on account of the investment of the family funds in the company and, therefore, could not be treated as the income of the HUF.

The High Court, having analysed the law, rightly concluded that the broad principle that emerged was whether the remuneration received by the coparcener was in substance one of the modes of return made to the family because of the investment of the family funds in the business or whether it was compensation made for services rendered by the individual coparcener. If it was the former, it was the income of the HUF: but if it was the latter, then it was the income of the individual coparcener. Applying this test, the High Court held, "There is absolutely no evidence

to support the contention of the learned counsel for the

assessee that the development of the business was due to any peculiar qualification or experience on the part of the assessee. "

We cannot agree. Having analysed the law, as "it did correctly, the High Court should have taken note of the finding recorded by the Tribunal and noticed by it earlier, namely, that the remuneration and commission that were earned by the Karta were earned by him on account of his

personal qualifications and exertions and not on account of the investment of the family funds and, therefore, should

have held that the -income could not be treated as the Income of the HUP.

In the result, the appeals are allowed. The judgment and order under appeal is set aside. The question is answered in the negative and In favour of the assessee. No order as to costs.