

1961
August 10.

THE COMMISSIONER OF INCOME-TAX,
MADRAS

v.

S. A. S. MARIMUTHU NADAR

(P. B. GAJENDRAGADKAR, K. SUBBA RAO and
M. HIDAYATULLAH, JJ.)

Income Tax—Earned income relief—If can be granted on minor son's share of profits included in father's income—Income-tax Act, 1922 (11 of 1922), ss. 2(6AA), 16(3) (a)(ii).

The respondent formed a partnership firm with his two major sons, and his two minor sons were admitted to the benefits of the partnership to the extent of their shares. In the relevant assessment years the income of the minors was added to the total income of the respondent under s. 16(3)(a) (ii) of the Income-tax Act and he was granted "earned income relief" only to the extent of his own individual share of the profits. He claimed earned income relief under s. 2(6AA) of the Income-tax Act on the share of the profits of the minor sons which was included in his total income.

Held, that the general intention of s. 2 (6AA) of the Income-tax Act is to give relief in cases where the income of a minor is included in the total income of the father who has to pay income tax on the consolidated amount of profits and the section means that in the case of a firm the father being the partner who is actively engaged in the conduct of the business of the firm while the minor is not, earned income relief should be given to the father to the extent of the minors' share of the profits also.

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 427 and 428 of 1960.

Appeals from the judgment and order dated August 28, 1956, of the Madras High Court in case Referred No. 28 of 1953.

H. N. Sanyal Additional Solicitor General of India, *K. N. Rajagopal Sastri*, *T. M. Sen* and *P. D. Menon*, for the appellants.

Narayanaswami and *R. Gopalakrishnan*, for the respondents.

1961. August 10. The Judgment of the Court was delivered by

HIDAYATULLAH, J.—These are two appeals against the judgment of the Madras High Court dated August 28, 1956, by which a composite question embracing two assessment years, referred by the Income-tax Appellate Tribunal (Madras Bench, 'B') was answered against the Department. The question, which was referred to the High Court, was as follows :

“Whether the assessee is entitled to earned income relief on the share income of the two minor sons for 1949-50 assessment year and on the share income of one minor son for 1950-51 assessment year included in the computation of the total income of assessee under the provisions of section 16(3)(a)(ii) of the Income-tax Act ?”

The respondent, S.A.S. Marimuthu Nadar, was the manager of a Hindu undivided family. The family consisted of Marimuthu Nadar, his two major sons and two minor sons. On August 16, 1946, the family divided, and a firm came into existence. Marimuthu Nadar and his two major sons took 4/16th share each and the two minor sons were admitted to the benefits of partnership to the extent of 2/16th share each. For the assessment year, 1949-50 (the previous year ended on, August 16, 1948) the share of profits of Marimuthu Nadar from the partnership was Rs. 9,812, while the share of profits of his two minor sons was Rs. 8,124 and Rs. 8,381. The income of the minors was added to the total income of Marimuthu Nadar under s.16(3)(a)(ii) of the Income-tax Act. Marimuthu Nadar was granted earned income relief only to the extent of his own individual share of the profits from the partnership. In the assessment year, 1950-51, the elder of the two minor sons had become major, and it was only the share of the

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remaining minor son which was included in the total income of Marimuthu Nadar. In that year also, he was given earned income relief only on his share of the profits but not on the share of the profits of the minor son, which was included in his total income. Marimuthu Nadar's share of profits was Rs. 12,344 and that of his minor son, Rs. 10,143.

Marimuthu Nadar appealed to the Appellate Assistant Commissioner and also to the Appellate Tribunal; but his appeals were unsuccessful. At the instance of Marimuthu Nadar, the Tribunal referred the above question to the High Court for its decision. The High Court answered the question in the affirmative and in favour of the assessee. The Commissioner of Income-tax, Madras, has therefore, appealed with a certificate under s.66(a)(2) of the Indian Income-tax Act.

There is no dispute about the amounts involved, nor about the inclusion of the share of the profits of the minors from the partnership, in the total income of the father. The contention, however, is that earned income relief can only be granted to the father in respect of his own individual share of profits and not in respect of the share of the minor or minors, as held by the High Court. The Income-tax Officer, the Appellate Assistant Commissioner and Tribunal held that in view of the definition of "earned income" in s. 2(6AA), only that portion of income was entitled to this relief which satisfied the condition that it was earned by the person to whom it belonged before its inclusion in the total income of another, and that in the case of an unregistered firm, the minor or the wife, as the case may be, must, as a partner, have been actively engaged in the conduct of the business before earned income relief would be admissible. The High Court held that inasmuch as the profits were earned by Marimuthu Nadar working as a partner actively engaged in the conduct of the business and the share of the minors was included

in his total income, the definition justified the inclusion of the minors' share in the amount, on which earned income relief could be claimed.

Section 2(6AA), omitting portions not relevant, reads as follows :

“earned income” means any income of an assessee who is an individual,...unregistered firm...

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(b) Which is chargeable under the head ‘Profits and gains of business, profession or vocation’ where the business, profession or vocation is carried on by the assessee or, in the case of a firm, where the assessee is a partner actively engaged in the conduct of the business, profession or vocation ;

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and includes any such income which, though it is the income of another person, is included in the assessee’s income under the provisions of this Act, but does not include any such income which is exempt from tax under sub-section (2) of section 14 or under a notification issued under section 60.”

The general intention behind the section, in spite of its obscurity, is fairly clear. It is to give to an assessee, earned income relief in respect of the income of another person, included in his total income under the provisions of this Act. The only difficulty is about the conditions under which such relief is to be granted. The words of the last paragraph of the section are “and includes any such income”, and the question is what income is indicated by the word “such”. Three readings of the section were considered at the hearing ; but one of them must be rejected as clearly not admissible. That reading is to take “such” back to the words “any income of an assessee” in the opening part of the definition. It is not necessary to give detailed reasons why this reading is not permissible. It is

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enough to say that if the latter part of the section is read in this extended form, it makes no sense.

The other two readings were pressed upon us for our acceptance respectively by the rival parties. It is admitted by both sides that the quality of the income which is entitled to earned income relief by virtue of the latter part of s.2(6AA) must be that of "earned income" as defined in the first part of the sub-section. The question is, who must earn that income, or, in other words, in an unregistered firm, is it a condition precedent that the minor or the wife must be actively engaged in the conduct of the business, or is it sufficient if the father or the husband is so engaged ?

The words "such income" refer, as we have said, not to the words "any income of an assessee" in the earlier part but to the whole definition of "earned income" given by the Act, before it says what is to be included in it. In other words, by "such income" is meant, earned income determined in the same manner in which that income is to be determined under the earlier part of the definition. The definition requires that "earned income" should be (a) income of an assessee who is, *inter alia*, an individual or an unregistered firm ; (b) if chargeable under the head "profits and gains of business...", the business must be carried on by the assessee, if an individual, or in the case of a firm, where the assessee is a partner actively engaged in the conduct of the business. The emphasis is upon the assessee carrying on the business himself or as an active partner in the conduct of the business.

The two conditions were obviously satisfied by Marimuthu Nadar in respect of his own share of the profits from the partnership. The question is whether they are satisfied in respect of the share of the profits of the minors in the two assessment years. According to the Department, "such income" must be earned income, and earned by the person who receives it in the first instance and not by the

person in whose total income it is included by the Act. In other words, to get the benefit, the income must be earned actively by the minor or the wife, before it can qualify for the earned income relief in the hands of the father or the husband, as the case may be. The case of the other side is that so long as the father or the husband has worked actively as a partner, the income would be entitled to the relief, even though it was initially the income of the minor son or the wife. In the case of a minor, the position is clear, because a minor cannot be a partner actively engaged in the conduct of the business, and it is impossible that the section is meant to apply to a minor only when a minor is engaged actively in business as a partner. In the case of a wife, however, the matter is not so simple, because the wife may be actively engaged in the conduct of the business with her husband or the husband may be dormant. If the wife is actively engaged and the husband is not, on the reading suggested by the assessee, earned income relief would not be admissible to the husband, but on the reading suggested by the Department, it would be. If the husband is actively engaged in the business but the wife is not, then according to the reading suggested by the assessee, the husband would be entitled to the earned income relief, but not so, on the reading suggested by the Department.

Now, the general intention of the section is to give relief in cases where the income of the minor child or the wife is included in the total income of the husband who has to pay income-tax on the consolidated amount. Cases of wives and minors actively engaged in the conduct of a business are very few indeed, whereas cases of fathers and husbands actively engaged in the conduct of the business while their minor children or wives, as the case may be, are dormant, are very numerous and of common and natural occurrence. It is to be expected that the law is framed not for rare cases but for cases which one encounters

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daily in ordinary life. There is also equity (if equitable considerations can be taken into account in a taxing Act) in giving earned income relief to a person who has to pay tax on income which belongs to another but which he has himself earned. In our opinion, the section can only be read as enacting that for purposes of earned income relief, "such income" will be included which, though it is the income of another person, has been earned by the assessee, or, in the case of a firm, where the assessee is a partner, by his being actively engaged as partner in the conduct of the business. The words "where the assessee is a partner" must be given effect to, even when the income of the minor or the wife is considered under the latter part, and they also point to the same conclusion. In reading the definition in this way, no violence is done to the language of it. The condition that the assessee must have worked actively as a partner is thus applicable also to the latter part of the definition. In our opinion, the High Court was right in the answer which it gave.

The appeals fail, and are dismissed with costs.

Appeals dismissed.

CHANDRAKANT KRISHNARAO PRADHAN
AND ANOTHER

v.

THE COLLECTOR OF CUSTOMS, BOMBAY
AND OTHERS

(P. B. GAJENDRAGADKAR, K. SUBBA RAO,
M. HIDAYATULLAH, J. C. SHAH and
RAGHUBAR DAYAL, JJ.)

Custom House Agents—Licence—Rules governing grants thereof—Validity—Agent's liability for short collection of customs duties—Custom House Agents Licensing Rules, 1960, rr. 4, 6(a), 6(b), 6(c), 8, 9(2) (p), 10 (1) (c), 11, 15 (g), 15(k), 12, 17, 19, 22 Forms C. D.—Sea Customs Act, 1878 (8 of 1878), as amended by Act 21 of 1955, ss. 4, 9, 39 (1), 202—Constitution of India, Arts. 19 (1)(g) 19 (6).

The petitioners were working as *Dalals* at New Customs