

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 20-03-2019

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI

AND

THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

Judgment Reserved on : 13.03.2019 Judgment Delivered on : 20.03.2019

T.C.A.Nos.886 TO 892 OF 2007 & 1282 TO 1288 OF 2008

T.C.A.Nos.886-892/2007 :

R.P.Sarathy
for Minor Pranuthi

...

Appellant

-VS-

The Joint Commissioner of Income Tax,
Special Range,
Salem.

...

Respondent

T.C.A.Nos.1282-1288/2008 :

The Commissioner of Income Tax,
Special Range,
Salem.

...

Appellant

-VS-

Minor M.Pranuthi,
by Guardian Sri R.P.Sarathy

...

Respondent

1 / 30

T.C.A.No.886 of 2007 is filed under Section 260A of the Income Tax Act,1961, against the order of the Income Tax Appellate Tribunal, Chennai 'D' Bench, dated 02.09.2005, passed in ITA No.833/Mds/2001.

For Appellant in T.C.A.Nos.886-892/2007 &
Respondent in T.C.A.Nos.1282-1288/2008 : Mr.S.Sridhar

For Respondent in T.C.A.Nos.886-892/2007 &
Appellant in T.C.A.Nos.1282-1288/2008 :
Mr.T.R.Senthil Kumar,
Senior Standing Counsel,
for Mrs.K.G.Usha Rani.

COMMON JUDGMENT

Dr.Vineet Kothari,J.

While T.C.A.Nos.886 to 892 of 2007 have been filed by the Assessee, T.C.A.Nos.1282 to 1288 of 2008 have been filed by the Revenue, both calling in question the correctness of the order passed by the learned Income Tax Appellate Tribunal, Chennai 'D' Bench, dated 02.09.2005, in I.T.A.Nos.833 to 839/Mds/2001.

2. The Assessment Years in question before us are from AY-1995-1996 to 1999-2000 i.e., for 5 years.

3. The facts leading to the filing of the present Appeals, in brief, are as under :

3.1. The Assessee-Ms.M.Pranuthi, born on 14.12.1990, was a Minor, when, unfortunately, both her parents viz., father and mother died in a car accident on 28.06.1993. While her mother died on 28.06.1993, her father succumbed to injuries on 05.07.1993. Her grandmother also died in the same accident. At that point of time, the Assessee-Ms.M.Pranuthi was only two-and-a-half years old child. Her grandfather Sri R.P.Sarathy was her sole guardian. The Minor Ms.M.Pranuthi naturally inherited the property of her parents and grandmother and the income from such sources, which is the subject matter of controversy in the present appeals, continued to be agricultural income and money lending as well as income from partnership firm business of coffee.

3.2. The Assessing Authority, namely, Joint Commissioner of Income Tax, assessed such taxable income in the hands of Minor Ms.M.Pranuthi, holding that Section 64(1A) of the Income Tax Act could not be applied, as both the parents of the minor girl had unfortunately

expired and, therefore, the clubbing provisions enacted in Section 64(1A) of the Act could not be invoked and, as such, the entire income earned was liable to be taxed in the hands of the Assessee-Minor herself.

3.3. The First Appellate Authority, namely, CIT (A) upheld the said Assessment Order and also negated the contention of the Assessee that Re-assessment proceedings under Section 147/148 of the Act were not justified.

3.4. Being aggrieved, the Assessee, through her grandfather-Mr.R.P.Sarathy, filed further appeals before the learned Income Tax Appellate Tribunal, which held that income of the minor child could not be taxed in the hands of the grandfather-Mr.R.P.Sarathy by invoking Section 64(1A) of the Act and Explanation (b) thereto and since there is no other provision to assess the minor's income in the hands of minor herself, if the parents do not survive and the clubbing provisions cannot be applied in the hands of the grandparents or anybody who maintains the minor child, the orders of the lower authorities holding that such income was taxable in the hands of the minor were not sustainable. Accordingly, the Assessee's Appeals were allowed by the learned Tribunal.

3.5. The Revenue has come up in High Court by way of Appeals against the said order of the learned Tribunal under Section 260A of the Act, whereas, the Assessee has filed the Appeals under Section 260A of the Act, essentially on the ground that the Tribunal failed to pronounce upon the validity of Re-assessment proceedings under Section 147/148 of the Act for three of the Assessment Years in question.

4. Since common points are involved in all these Cross-Appeals, they are being heard together and disposed of by this Common Judgment.

5. T.C.A.Nos.886 to 892 of 2007, filed by the Assessee, have been admitted by a Co-ordinate Bench of this Court earlier on 11.07.2007 on the following Substantial Questions of Law :

(1) Whether the Tribunal is correct in not considering the grounds relating to the reopening of the assessments for the Assessment Years 1995-96, 1996-97 and 1997-98 inasmuch as the reopening of the said assessments were not legally sustainable ?

(2) Whether the Tribunal is correct in not considering the scope of the powers of the respondent in making prima facie adjustment on the facts and in the circumstances of the

case relating to the Assessment Years 1997-98 and 1998-99 ?

(3) Whether the Tribunal is correct in not considering the legal grounds raised in support of the exemption from taxation for the income earned by the minor appellant for the assessment years under consideration in the light of the finding on the non-applicability of the clubbing provisions in Section 64(1A) of the Act ?

6. T.C.A.Nos.1282 to 1288 of 2008, filed by the Revenue, have been admitted by another Co-ordinate Bench of this Court on 19.08.2008 on the following Substantial Questions of Law :

(1) When the parents of the minor are not alive, whether or not the income of the minor is taxable in the hands of the person who is entitled to or in respect of the minor as a representative assessee under Sections 160 and 161 of the Income Tax Act ?

(2) Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the paternal grandfather who filed the return ought to have shown the income in the return filed as guardian of the minor in view of Section 160 (ii) of the Income Tax Act instead of assuming a non-existent status of

a caretaker and thereby evading the obligation to declare the entire income in the return filed ?

7. However, we consider it appropriate to re-frame the said Questions of Law in the following manner :

(1) Whether the Provisions of Chapter XV, comprising Sections 159, 160 and 161, read with Section 64(1A) of the Act, are applicable in the facts and circumstances of the case, and whether the minor child has to be assessed to taxable income in her own hands or in the hands of the surviving guardian, namely, grandfather ? and

(2) Whether the Re-assessment proceedings undertaken by the Assessing Authority for Assessment Years 1995-1996, 1996-1997 and 1997-1998 were justified or not ?

8. To answer the aforesaid Questions of Law, particularly, Question 1, we have to understand the Scheme of Taxation in the Income Tax Act,1961, by referring to its certain provisions.

9. Chapter II, comprising Sections 4 to 9A, are the **Charging Provisions** of the said enactment.

10. Chapter III deals with **Exemptions and Deductions** in the form of Incomes which do not form part of Total Income, comprising Sections 10 to 13B.

11. Chapter IV provides for manner of **Computation of Total Income** under different Heads of Income, such as, Salaries, Income from House Property, Profits and Gains of business or profession, Capital Gains and Income from Other Sources, comprising Sections 14 to 59.

12. Chapter V, comprising Sections 60 to 65, deals with **Income of Other Persons to be included in Assessee's Total Income.**

13. Chapter VI deals with **Aggregation of Income and Set off or Carry Forward of Loss** from Sections 66 to 80.

14. Chapter VIA deals with **Deductions to be made from Gross Total Income to arrive at Total Income.** Sections 80A to 80U are in the said Chapter.

15. Since the Chapters thereafter up to Chapter XIV are not relevant for the purpose of present controversy, a reference thereto is skipped here.

16. Chapter XV is very much relevant here, as it specifically deals with **Liability in Special Cases** and provides for various **Legal Representatives** and other **Representative Assessees**, who are liable to be taxed for the income earned by other persons as beneficiaries. This Chapter XV comprises Sections 159 to 180A.

17. The next Chapter XVI deals with **Special Provisions applicable to Firms**, which are not relevant to the controversy in hand and Chapter XVII deals with **Collection and Recovery of Tax**, comprising Sections 190 to 234F, which also is not relevant and so are the remaining Chapters.

18. The case in hand before us brings to fore mainly the following provisions, which deserve to be quoted here for ready reference for their interplay and interdependence to decide the controversy in hand :

“Section 64 :

Income of individual to include income of spouse, minor child, etc. (1) In computing the total income of any

individual, there shall be included all such income as arises directly or indirectly—

(i) Omitted by the Finance Act, 1992, w.e.f. 1-4-1993.

(ii) to the spouse of such individual by way of salary, commission, fees or any other form of remuneration whether in cash or in kind from a concern in which such individual has a substantial interest :

Provided that nothing in this clause shall apply in relation to any income arising to the spouse where the spouse possesses technical or professional qualifications and the income is solely attributable to the application of his or her technical or professional knowledge and experience.

xxxxx”

Section 64, Sub-section (1A) :

(1A) In computing the total income of any individual, there shall be included all such income as arises or accrues to his minor child, not being a minor child suffering from any disability of the nature specified in section 80U :

Provided that nothing contained in this sub-section shall apply in respect of such income as arises or accrues to the minor child on account of any—

(a) manual work done by him ; or

*(b) activity involving application of his **skill, talent or specialised knowledge and experience.***

***Explanation.**—For the purposes of this sub-section, the income of the minor child shall be included,—*

(a) where the marriage of his parents subsists, in the income of that parent whose total income (excluding the income includible under this sub-section) is greater ; or

(b) where the marriage of his parents does not subsist, in the income of that parent who maintains the minor child in the previous year,

and where any such income is once included in the total income of either parent, any such income arising in any succeeding year shall not be included in the total income of the other parent, unless the Assessing Officer is satisfied, after giving that parent an opportunity of being heard, that it is necessary so to do.”

The aspects relating to disability under Section 80U, special skill or talent of minor child and subsistence of marriage of parents are not applicable and attracted in the present case.

19. Learned counsel for the Assessee drew our attention to the '**Budget Speech**' of the Finance Minister on 29.02.1992, when the said Sub-section (1A) was inserted in Section 64 of the Act by the Finance Act,1992,

with effect from 01.04.1993. Para 60 of the said **Budget Speech** is also quoted below for ready reference :

*“60. It is said that the **child is the father of man**, but some of our taxpayers have converted children into tax shelters for their fathers. The tax law provides for **clubbing of income from gifts given by parents** but this does not apply to other income, including income from other gifted assets, and the practice of **cross gifting** is widely used to evade clubbing. The **Chelliah Committee** has recommended that in order to **plug this loophole**, which accounts for a **substantial leakage of revenue**, the **income of a minor child should be clubbed with that of the parent**. There is merit in this suggestion and I propose to accept it. Recognising however the existence of a number of child prodigies, especially child artistes in our country, I propose to **exclude their professional income**, as also any wage income of minors, from the purview of such clubbing. The practice of clubbing the income of minor children with that of the parent for tax purposes is in vogue in a number of countries.”*

20. The Memorandum of Explanation of the provisions in the Finance Bill,1992, in this regard, are also quoted below for ready reference :

“MEASURES AGAINST TAX AVOIDANCE

Clubbing of minors’ income

Section 64 of the Income-tax Act provides that in computing the total income of any individual, there shall be included all such income as arises directly or indirectly to a minor child of such individual from,—

(i) the admission of the minor to the benefits of partnership in a firm,

(ii) assets transferred directly or indirectly to the minor child by such individual otherwise than for adequate consideration, and

(ii) assets transferred directly or indirectly by such individual to any person or association of persons otherwise than for adequate consideration, to the extent to which income from such assets is for the immediate or deferred benefit of such individual’s minor child.

In reality as well as in law, the minor children cannot administer their property nor can they take decisions on the disposal of income arising therefrom. These responsibilities fall on the parents, who, for all practical purposes, treat and use this income as part of

their own income. Exclusion of minor children's income from the income of their parents also leads to tax avoidance. The existing provisions of section 64 with regard to clubbing of minor's income have also led to litigation between the Income-tax Department and the assessees.

The Bill, therefore, seeks to amend Section 64 of the Income-tax Act to provide that all income of a minor is to be included in the income of his parent. However, the income derived by the minor from manual work or from any activity involving his skill, talent or specialised knowledge or experience will not be included in the income of his parent. It is also being provided that the income of the minor will be included in the income of that parent whose total income is greater. Where the marriage of the parents does not subsist, the income of the minor will be includible in the income of that parent who maintains the minor child in the relevant previous year."

21. Similarly, the learned counsel for the Assessee also drew our attention to some questions and answers on the part of the Central Board with reference to Voluntary Disclosure of Income Scheme,1997, which, according to him, touched the present controversy and that too is quoted below for ready reference :

“Question No.3 : Whether the undisclosed income can be declared by the minor after the Assessment Year 1992-93 or it is to be declared by his parents in whose hands it is taxable ?

Answer : Minor can declare his undisclosed income of 1992-93 or earlier assessment years. From Assessment Year 1993-94, his income is includible in the parents' income and he is not obliged to file a return himself. Only parents can declare the minor's income for Assessment Year 1993-94 or later.”

22. Besides the aforesaid Section 64(1A) of the Act and its background for enactment and amendment, what we find is more relevant and important and which seems to have escaped the attention of the authorities under the Act or Provisions in Chapter XV (dealing with Liability in Special Cases), which, in its various parts and provisions, discusses the liability of the Legal Representatives to deal with their obligations to discharge the Income Tax Liability relating to other beneficiaries, whom they represent viz., minors and others.

23. Sections 159 and 160 of the Act, to their relevant extent, are also quoted below for ready reference :

“CHAPTER XV

LIABILITY IN SPECIAL CASES

A.—Legal representatives

Legal representatives.

159. (1) Where a person dies, his legal representative shall be liable to pay any sum which the deceased would have been liable to pay if he had not died, in the like manner and to the same extent as the deceased.

(2) For the purpose of making an assessment (including an assessment, reassessment or recomputation under section 147) of the income of the deceased and for the purpose of levying any sum in the hands of the legal representative in accordance with the provisions of sub-section (1),—

(a) any proceeding taken against the deceased before his death shall be deemed to have been taken against the legal representative and may be continued against the legal representative from the stage at which it stood on the date of the death of the deceased;

(b) any proceeding which could have been taken against the deceased if he had survived, may be taken against the legal representative; and

(c) all the provisions of this Act shall apply accordingly.

(3) *The legal representative of the deceased shall, for the purposes of this Act, be deemed to be an assessee.*

(4) *Every legal representative shall be personally liable for any tax payable by him in his capacity as legal representative if, while his liability for tax remains undischarged, he creates a charge on or disposes of or parts with any assets of the estate of the deceased, which are in, or may come into, his possession, but such liability shall be limited to the value of the asset so charged, disposed of or parted with.*

(5) *The provisions of sub-section (2) of section 161, section 162, and section 167, shall, so far as may be and to the extent to which they are not inconsistent with the provisions of this section, apply in relation to a legal representative.*

(6) *The liability of a legal representative under this section shall, subject to the provisions of sub-section (4) and sub-section (5), be limited to the extent to which the estate is capable of meeting the liability.*

B.—Representative assesseees - General provisions
Representative assessee.

160. (1) *For the purposes of this Act, “representative assessee” means—*

(i) *in respect of the income of a **non-resident** specified in sub-section (1) of section 9, the agent of the non-resident, including a person who is treated as an agent under section 163;*

(ii) *in respect of the income of a **minor, lunatic or idiot, the guardian or manager** who is entitled to receive or is in receipt of such income on behalf of such minor, lunatic or idiot.*

xxxxx”

24. Section 161 makes liable every representative-assessee, as regards the income in respect of responsibilities and liabilities as if the income were received by or accruing to or in favour of him beneficially, and shall be liable to assessment in his own name in respect of that income, but any such assessment shall be deemed to have been made upon him in his representative capacity only.

25. The representative-assessee under Section 162 of the Act will have a right to recover the tax so paid by him in his capacity as representative-assessee from the person on whose behalf the same is paid.

26. It may be stated here that the constitutional validity or *vires* of the provisions of Section 64(1A) of the Act were brought under challenge

before this Court and have already been examined and upheld by a Full Bench of this Court in the case of *K.M.Vijayan v. Union of India*, (1995) 215 ITR 317 (Madras) FB, with the following observations :

“34. In view of the foregoing reasons, we uphold the constitutional validity of sub-section (1A) of Section 64. We also hold that it is within its legislative competence for Parliament to enact sub-section (1A) of Section 64 since it falls under Schedule VII, List I, Entry 82. Further, we hold that sub-section (1A) of Section 64 is not violative of Article 14 and Article 19. In that view of the matter, it is not possible to strike down sub-section (1A) of Section 64 as illegal, unconstitutional and ultra vires the Constitution, as alleged by the petitioners. In the result, the writ petitions are dismissed. No costs.”

In his concurring opinion, Abdul Hadi, J. as he then was, added the following words, explaining the main object behind the enactment of Section 64 (1A) of the Act :

*“48. But, it appears to me that the object of **section 64(1A)** has not come in mainly as anti-avoidance measure, though incidentally such anti-avoidance was also in the contemplation of the Legislature. The main object behind the legislation of the said provision seems to be that all*

minor's income should be clubbed with the parent (except of course that which has been excluded specifically as mentioned above), since for all practical purposes, the parent treats and uses the said minor's income as part of his or her own income. This position is apparent from the following passage appearing in the Memorandum explaining the provisions in the Finance Bill, 1992, which, inter alia, brought out the abovesaid [section 64\(1A\)](#) (see [1992] 194 ITR (St.) 179 :

'In reality as well as in law, the minor children cannot administer their property nor can they take decisions on the disposal of income arising therefrom. These responsibilities fall on the parents, who, for all practical purposes, treat and use this income as part of their own income. Exclusion of minor children's income from the income of their parents also leads to tax avoidance. The existing provisions of [section 64](#) with regard to clubbing of minor's income have also led to litigation between the Income-tax Department and the assesses.

The Bill, therefore, seeks to amend [section 64](#) of the Income-tax Act to provide that all income of a minor is to be included in the income

of his parent. However, the income derived by the minor from manual work or from any activity involving his specialised knowledge or experience will not be included in the income of his parent.'

The net result is, if section 64(1A) is at least partially an anti-avoidance measure, it would fall under entry 82 of List I itself. If it is not an anti-avoidance measure at all, even then, Parliament will be entitled to enact such a provision in view of article 248 and entry 97 of List I, as already stated above, in the light of the two Supreme Court decisions cited supra.”

27. Thus, as far as the validity part is concerned, that is beyond pale of doubt. But, what is sought to be contended by the learned counsel for the Assessee before us and which is not found palatable or acceptable to us is, that Section 64 (1A) of the Act is the **Charging Provision** and, therefore, after 01.04.1993, when Sub-section (1A) was inserted in Section 64, the income arising or accruing to a minor child cannot be taxed except by way of clubbing the same in the hands of either of the parents. But, in the present case, since both the parents had unfortunately expired, the clubbing provisions could not be applied and hence the Tribunal was justified in not

imposing any tax on such income arising or accruing to the minor from money lending business or share from partnership firm, carrying on the coffee business.

28. What seems to have escaped the attention of the learned counsel for the Assessee as well as the authorities below in the present case is, the existence of Sections 159 and 160 of the Act, particularly, Section 160 (1) (ii), which specifically provides that **in respect of the income of a minor, lunatic or idiot, the guardian or manager of such minor, lunatic or idiot shall be the representative-assessee** and, therefore, he is under obligation to return such income accruing or arising to such incapacitated assesseees in the eye of Contract Law and discharge their tax obligations. The representative-assessee is assessee for all purposes under the Act and he has to discharge the tax obligations on the income accruing or arising to a minor, who cannot be said to be outside the net of tax under the provisions of the Act. Though the minor may not have capacity to contract because of his or her tender age, but he or she can very well hold the property and it is the **guardian** of such minor, who manages the estate of the minor. That is the reason, why '**Guardian**' has been included in the definition of

representative-assessee under Section 160 (1) (ii) of the Act. The insertion of clubbing provisions in Section 64(1A) w.e.f. 01.04.1993 does not mean that prior to this date Minor was not taxable in respect of taxable income accruing or arising to her. She was never out of tax net and was always liable to be taxed.

29. As already discussed above, the charging provisions of the Act do not exclude the charge and Assessment of Income in the hands of minor. On the contrary, the definition of the word '**Person**' in Section 2 (31) of the Act includes **an individual, a Hindu Undivided Family, a Company, a Firm, an Association of persons or a body of individuals, a local authority and every artificial juridical person. Thus, all individuals, including a Minor, is a person, subject to charge of tax under the Act.** Similarly, the definition of '**Assessee**' under Section 2 (7) of the Act means, **a person by whom any tax or any other sum of money is payable under this Act and includes every person, who is deemed to be an assessee under any provisions of this Act.** Therefore, neither the definition clause nor the charging provisions leave any escape for taxability of income in the hands of a Minor.

30. Hence, the only question which could arise in the present cases is, as to who is to be treated as the representative-assessee, liable to discharge the tax obligations of such Minor in the absence of both the parents, who unfortunately died in a road accident ?

31. The answer is obvious, simple and clear. It is to be found in Section 160 (1) (ii) of the Act and it is the '**Guardian**', namely, **grandfather-Mr.R.P.Sarathy**, in the present case, who not only filed Returns of Income and even paid tax in the first instance, but thereafter claimed exemption and also the refund of tax, as noted by the Assessing Authority. Unfortunately, these relevant provisions in Chapter XV do not appear to have been considered by any of the authorities below, namely, Assessing Authority, First Appellate Authority and even the Tribunal, which dealt with this case.

32. The clubbing provisions in Section 64(1A) of the Act cannot be said to be charging provisions and they were enacted as an anti-evasive measure to plug the loopholes in the taxation of the income of Minors, which was found to be used by parents, but not taxed and also to avoid diversion of parents' income to the Minor by way of gifts or otherwise

and then out of that corpus of funds, income of interest etc., arising out of the hands of the Minors, not being brought to tax and, therefore, the clubbing provisions were introduced in Sub-section (1A) to Section 64 to add the income of Minor in the hands of parent, having higher taxable income. The only exception was, where the Minor, by his or her own skills, earns some income, which was to be taxed in the hands of minor child itself, without attracting the clubbing provisions. The clubbing provisions are, therefore, nothing but machinery provisions to obligate the parent of the child to discharge the tax obligations in respect of income arising or accrued to the minor child. If parents viz., father and mother are not available, as in the present case, Section 160 (1) (ii) of the Act will stand attracted and the Guardian like the grandfather in the present case will become the Legal Representative, liable to discharge all the tax obligations under the Act on behalf of the minor. The later amendment by insertion of Sub-section (1A) to Section 64 of the Act, therefore, cannot be said to mean that the income taxable in the hands of the Minor was brought to tax for the first time by the Finance Act,1992, with effect from 01.04.1993.

33. As already stated, the above provision in Chapter V dealing with '**Income of other persons to be included in Assessee's total income**', popularly known as '**Clubbing Provisions**', are not the **charging provisions**, but are **Machinery Provisions** to plug the loopholes in tax evasion and to bring to tax the income of spouse, minor child etc., in the hands of the spouse or parent, as the case may be.

34. Thus, we are of the clear opinion that the Tribunal has wholly erred in holding that since there is no provision to assess the minor's income in the hands of the minor and, if the parents do not survive, the income cannot be clubbed in the hands of any of his grandparents or anybody, who maintains minor child, and, therefore, the orders of two authorities bringing the income of minor to tax in the hands of the Minor deserve to be quashed.

35. While the foundational error in the order of the Tribunal is leaving the income of the Minor untaxed altogether, the error committed by the two authorities below, namely, Assessing Authority and First Appellate Authority, was that they held the income to be taxable in the hands of the minor girl herself, altogether forgetting the provisions of Sections 159 and

160 (1) (ii) in Chapter XV of the Act. They also possibly did not fully comprehend the entire Scheme of the Act in a composite and harmonious manner and instead of considering the question as to who should be assessed and held liable to pay the tax, they fell in error of taxability or non-taxability entirely in respect of the income of the Minor, which was apparently taxable under the provisions of the Act. The income from share of partnership firms and income of interest from money lending business do not have any exemption from tax in the exemption provisions contained in Chapter III, comprising Sections 10 to 13B and, therefore, what was apparently taxable has been let off by the learned Tribunal to be altogether non-taxable and that too ignoring the important provisions of the Act, as aforesaid.

36. Once we come to the conclusion that Income in the present case was taxable in the hands of representative-assessee-Guardian and grandfather Mr.R.P.Sarathy for the period for which the said minor girl Ms.M.Pranuthi remained a Minor, we do not find any justification for holding otherwise, by pronouncing upon the question of validity of Re-assessment proceedings under Section 147/148 of the Act. The said

proceedings were also apparently rightly invoked on the basis of Return of Income filed by grandfather Mr.R.P.Sarathy himself on behalf of Minor only as **NIL Return** and only an **Intimation of Assessment** under Section 143 (1) (a) of the Act was issued by the Assessing Authority. In order to bring to tax such escaped income, the Assessing Authority rightly invoked Section 147/148 of the Act.

37. Therefore, all the Substantial Questions of Law in the aforesaid present Appeals are answered against the Assessee and in favour of the Revenue.

38. It is brought to the notice of this Court that the Guardian of the Minor, namely, Mr.R.P.Sarathy has expired recently on 04.01.2019 and that the Minor Ms.M.Pranuthi has become major. Therefore, it is made clear that our answers have been given for the period in which Ms.Pranuthi was only Minor in the years from 1995 to 1999 and the assessment/reassessment made against her grandfather as Legal Representative was valid and the consequential recovery action can now proceed against her and her assets or business, as the case may be.

39. We, accordingly, dismiss the Appeals viz., T.C.A.Nos.886 to 892 of 2007 filed by the Assessee and allow the Appeals viz., T.C.A.Nos.1282 to 1288 of 2008, filed by the Revenue. No costs.

Index : Yes
Internet : Yes
Speaking Order

(V.K.,J.) (C.V.K.,J.)
20-03-2019

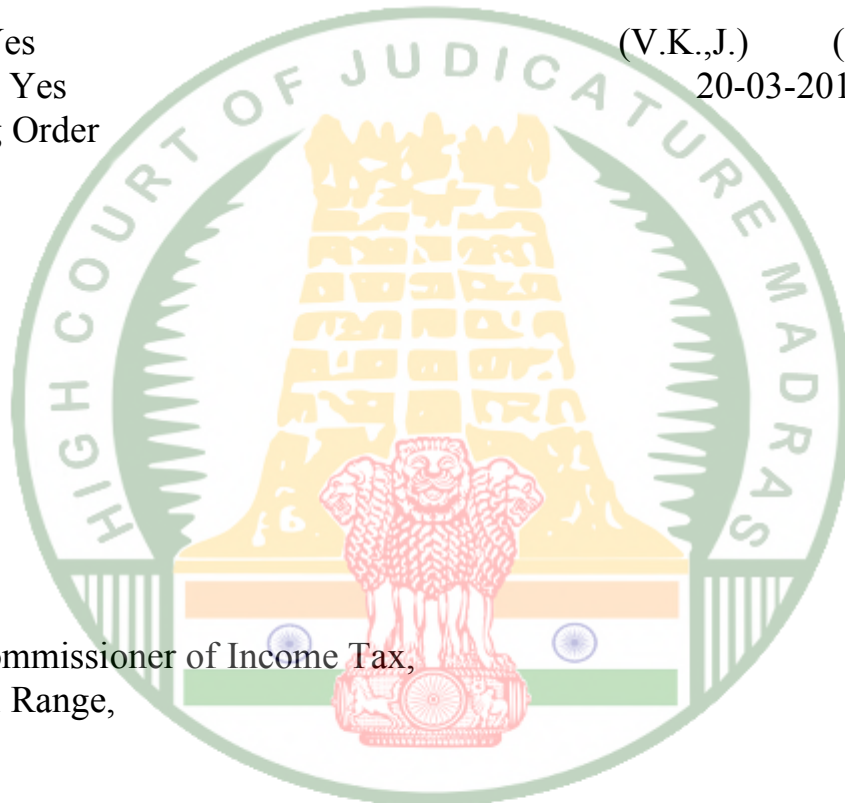
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To

1.The Commissioner of Income Tax,
Special Range,
Salem.

2.The Joint Commissioner of Income Tax,
Special Range,
Salem.

3.Income Tax Appellate Tribunal,
Chennai 'D' Bench,
Chennai.

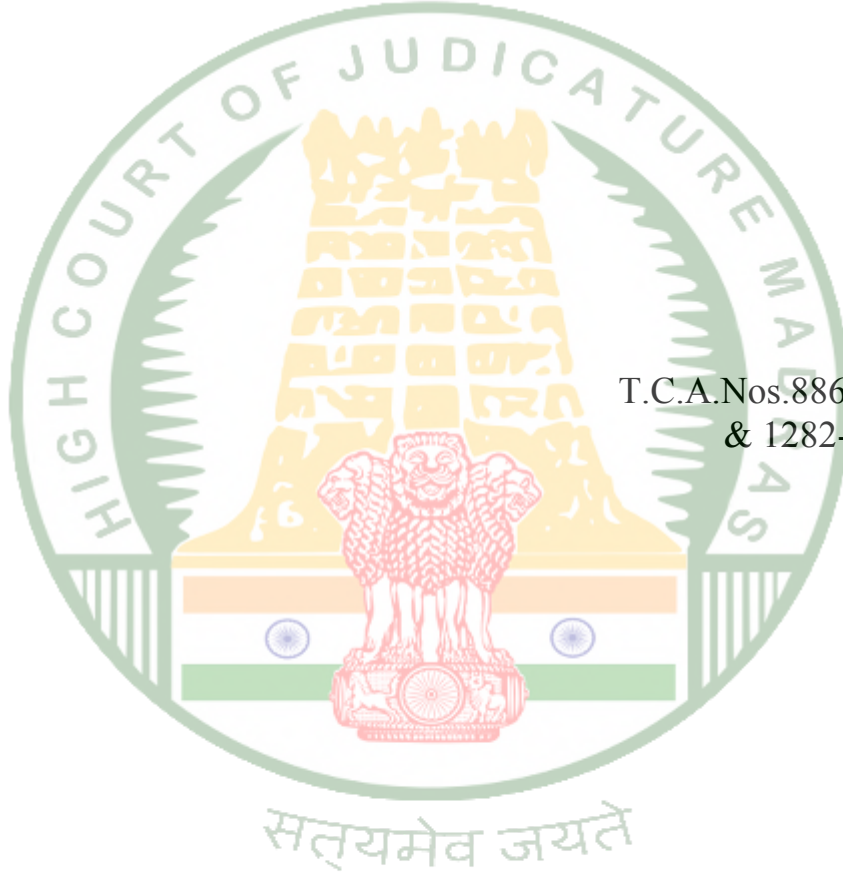


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Judgment dt.20.03.2019 in TCA No.886/2007
[R.P.Sarathy for Minor M.Pranuthi v. JCIT]

DR.VINEET KOTHARI, J.
and
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