

[2001] 249 ITR 726 (Madras), [2002] 175 CTR 177 (Madras)

HIGH COURT OF MADRAS

Commissioner of Income-tax

v.

S. Kamalahasan

R. JAYASIMHA BABU AND K. GNANAPRAKASAM, JJ.

TAX CASE NOS. 443 AND 444 OF 1988 REFERENCE NOS. 307 AND 308 OF 1988

NOVEMBER 29, 2000

*C.V. Rajan for the Applicant. V. Ramakrishnan for the Respondent.*

JUDGMENT

Jayasimha Babu, J. - The assessee is a film actor. He had visited Singapore and according to the information which the revenue had received from his sponsors there, certain amounts have been paid to him. That information was given after the tour to Singapore had proved abortive on account of the disputes that arose between the actor and his troupe and the people who had sponsored the arrangement in Singapore.

2. Elaborate enquiry was held by the department which examined the actor, his brother as also his secretary. The sponsors in Singapore at whose instance the whole enquiry commenced were not examined. Nor was the complainant allowed to be cross-examined by the assessee.

3. Though the Assessing Officer held that the amounts mentioned in the draft agreement between the parties had been received by the assessee and were to be taxed, the Commissioner limited the addition to the assessee's income in the sum of 5,676.80 Singapore dollars on the ground that that was the only sum which was remitted to India. However, the remittance was not to the assessee but was admittedly a sum which was paid to the secretary, Seshadri, and the money remained in the bank account not of the assessee but of Seshadri.

4. The Tribunal, in appeal filed by the assessee, examined the entire evidence and accepted the evidence that had been given by Seshadri who had stated that that amount of 5,676.80 Singapore dollars was received by him and that the money was meant for meeting the expenses of the troupe and was in fact so spent. He also stated that the assessee had agreed to accompany the troupe to Singapore without any remuneration. It was also brought in the evidence that after the troupe went to Singapore disputes arose and that the promised payments were not made and that the troupe returned to India without completing the tour as scheduled.

5. The Tribunal found that Seshadri to whom the money was paid was the troupe manager. The money received by him had not reached the assessee and according to Seshadri, it was not meant to be paid to the assessee at all. The Tribunal accepted the explanation given by Seshadri that the money was expended for the purpose of meeting the expenditure which had to be incurred by the troupe which consisted of several members including the well-known film actor Ganesan.

6. The Tribunal also noted the fact that the sponsor at Singapore had neither been examined nor allowed to be cross-examined although that sponsor was the one who claimed he paid large sums of money to the assessee. The Tribunal concluded that the evidence of the payment of money by the sponsors in Singapore to Seshadri by itself did not establish that the assessee had received any concealed income. Having regard to the facts and circumstances of the case, it cannot be said that the finding so recorded by the Tribunal was not warranted by the evidence on record.

7. We answer the question referred to us as to whether the Tribunal was right in holding that the sum of 5,676.80 Singapore dollars cannot be taxed in the hands of the assessee, in the affirmative, in favour of the assessee and against the revenue.