

HC dismissed writ as issue to be decided wasn't pure question of law

Summary – The High Court of Madras in a recent case of T.T. Krishnamachari & Co., (the Assessee) held that where issues of applicability of section 56(1) in case of assessee-firm required in-depth consideration of factual position and assessment had been completed in names of assessee-firm and protectively against partners, they had to necessarily avail appeal remedy available to them under provisions of Act and writ petition was not maintainable

Facts

- After completing assessment, the Assessing Officer noticed that the assessee-firm had been allotted certain shares at Rs. 10 per share; that on behalf of the firm, shares were allotted in the name of its partners; and that during the same period shares of same company were allotted to other companies at much higher value.
- The Assessing Officer reopened assessment on grounds that the assessee was allotted shares at less than fair market value and, thus, the aggregate fair market value of the said shares to the extent it exceeded the consideration, required to be taxed as deemed income under the head 'income from other sources' under section 56(1). The reassessment was completed accordingly.
- The assessee filed writ petition challenging the reassessment order. The revenue raised a preliminary objection contending that the writ petition was not maintainable, as the petitioner had an effective alternative remedy of appeal as against the impugned order.

Held

- The Assessing Officer had observed that the taxation on the same issue for the assessment year 2010-11 was being done in the hands of the assessee's partners protectively as the partners held the shares in their names on behalf of the firm. In those proceedings, the partners contended that the taxation on allocation of those shares could be done only in the hands of the firm and they were holding it on behalf of the firm. To prove the same, the partners produced evidence to show that the amounts for purchase of shares were routed through the bank account and that the investment in shares has been duly reflected in the balance sheet relating to the firm.
- Thus, the issues to be decided in the instant case are not pure questions of law, but require in-depth consideration of the factual position and then apply the legal principles. The assessment having been completed in the names of the petitioner-firm and protectively against the partners, they have to necessarily avail the appeal remedy available to them under the provisions of the Act. This is more so because the petitioners have not been able to establish that the appellate remedy is not efficacious, nor the petitioners were able to convince the Court that their cases fall within the well-defined exceptions which have been drawn as to when jurisdiction under article 226 of the Constitution could be exercised.

- For the above reasons, the preliminary objections raised by the revenue is to be sustained and the writ petitions are not maintainable.