

PRIVY COUNCIL

Maharajah of Pithapuram

Vs.

Commissioner of Income-Tax, Madras

P.C.A.No.38 of 1944

(Lords Thankerton, Simonds, Goddard, Sir Madhanvan Nair and Sir John Beaumont JJ.)

26.02.1945

JUDGMENT

LORD THANKERTON J.

1. This appeal arises on a reference by the Commissioner of Income-tax, Madras, on the requisition of the appellant, under Section 66(a), Income-tax Act, 1922, of the following question of law, viz. :

"Whether the income of the year 1938-39 derived from the assets comprised in the revocable instruments of trust and settlement executed by the petitioner in favor of his four daughters on 5th April 1938, i. e., before the commencement of the Indian Income-tax Act, 7 of 1939, can be deemed to be income of the petitioner under revocable transfers of assets as contemplated by clause (c) of sub section (1) of Section 16 Indian Income-tax Act, 11 of 1922, as amended by the Indian Income-tax (Amendment) Act 7 of 1939."

2. For the year 1939-1910, the appellant was assessed to income-tax on a total income of Rs. 2,19,610, which included a sum of Rupees 1,77,874, representing the total of the income arising from assets settled on his four daughters by the appellant by four deeds, all dated 6th April 1933, and all of which, subject to the necessary variation in the name of the particular beneficiary, were subject to the same conditions, viz.: (i) the properties were to be held in trust for each of his daughters by the appellant during his lifetime as trustee and after his death by his eldest son, the Yuvarajah of Pithapuram, as trustee; (ii) the properties were to be held in trust for each of the daughters for life and on their death, for their issue, male and female, and, in the event of any of the said daughters dying without issue, the properties were to revert to the holder for the time

being of the Pithapuram estate; (iii) the appellant reserved to himself the full power to revoke the settlement or make any fresh disposition he liked; (iv) the trustee for the time being had the right to convert (into money) the properties described in the schedules and invest the same in any of the recognized securities under the Trust Act; (v) so long as the appellant was the trustee he had the absolute and uncontrolled discretion to invest in any kind of securities as he liked and without reference to the provisions of the Trust Act.

3. In each year of assessment up to and including the year 1938-1939, the income arising from the properties settled on each of the daughters was assessed separately in the name of each, though the assessment was made on the appellant as their trustee. In the assessment year 1939-1940, the Income-tax Officer sought to apply an alteration in the law enacted by Section 18, Income-tax (Amendment) Act, 1939 (Act 7 of 1939), which came into force on 1st April 1939, by virtue of a Government Notification in terms of Section 1(2) of the Act, and to treat the income of the daughters as the income of the appellant. The appellant's objections to this course have so far been without success, and are the subject of this appeal. The material part of Section 18 of the Act of 1939 is as follows:

"18. In Section 16 of the said Act,-

(a) for sub-ss.(1)and (9) the following sub-sections shall be substituted, namely :

(1) In computing the total income of an assessee-
? ? ? ? ? ? ? ? ...

(c) all income arising to any person by virtue of a settlement or disposition whether revocable or not, and whether effected before or after the commencement of the Indian Income-tax (Amendment) Act, 1939, from assets remaining the property of the settlor or disponent shall be deemed to be income of the settlor or disponent, and all income arising to any person by virtue of a revocable transfer of assets shall be deemed to be income of the transferor ;

Provided that for the purposes of this clause a settlement, disposition or transfer shall be deemed to be revocable if it contains any provision for the re-transfer directly or indirectly of the income or assets to the settlor, disponent or transferor, or in any way gives the settlor, disponent or transferor a right to reassume power directly or indirectly over the income or assets :

Provided further that the expression 'settlement or disposition' shall for the purposes of this clause include any disposition, trust, covenant, agreement or

arrangement, and the expression 'settlor or disponent' in relation to a settlement or disposition shall include any person by whom the settlement or disposition was made :

Provided further that this clause shall not apply to any income arising to any person by virtue of a settlement or disposition which is not revocable for a period exceeding six years or during the lifetime of the person and from which income the settlor or disponent derives no direct or indirect benefit but that the settlor shall be liable to be assessed on the said income as and when the power to revoke arises to him."

4. Before dealing with the particular grounds of appeal, their Lordships consider it desirable to make some general observations as to Indian income-tax law, which may clear away a certain confusion of thought which would appear to affect certain of the contentions in the present case. In the first place, it is clear to their Lordships that under the express terms of Section 3 Income-tax Act, 1922, the subject of charge is not the income of the year of assessment, but the income of the previous year. This is in direct contrast to the English Income-tax Acts, under which the subject of assessment, is the income of the year of assessment, though the amount is measured by a yardstick based on previous years. The difference is well illustrated by the distinction that in England the source of income must still be extant in the year of assessment but that that is not of relevance in India. Their Lordships may refer to the able judgment of Rankin CJ in, *Behari Lal Mullick v. Commissioner of Income-tax, Bengal*¹ with which they agree.

5. In the second place, it should be remembered that the Income-tax Act, 1939, as amended from time to time, forms a code, which has no operative effect except so far as it is rendered applicable for the recovery of tax imposed for a particular fiscal year by a Finance Act. This may be illustrated by pointing out that there was no charge on the 1938-1939 income either of the appellant or his daughters, nor assessment of such income, until the passing of the Finance Act of 1939, which imposed the tax for 1939-1940 on the 1938-1939 income and authorized the present assessment. By sub section (1) of Section 6 Finance Act, 1939, income-tax for the year beginning on 1st April 1939, is directed to be charged at the rates specified in Part I of Schedule 2, and rates of super-tax are also provided for, and by sub section (3) it is provided that :

"for the purpose of this section and of Schedule 2, the expression 'total income' means total income as determined for the purposes of income-tax or super-tax, as the case may be, in accordance with the provisions of the Income-tax Act,

1922."

6. This can only refer to the Income-tax Act, 1922, as it stood amended at the date of the Finance Act, 1939, and necessarily includes the alterations made by the Amending Act, which had already come into force on 1st April 1939.

7. In this view, the only question is whether the income arising from the properties settled by the four deeds under consideration, falls within the terms of Section 16(1) (c), Income-tax Act. The first question would naturally be whether under these four deeds the assets from which the income arose remained the property of the appellant, or whether they involved a transfer of assets, though clearly a revocable transfer. From the way in which the present case has been presented throughout, including the hearing before the Board, their Lordships find it unnecessary to consider this question or to express any view on the matter. In the question referred, these deeds are regarded as involving revocable transfers of assets; in their judgment the High Court state: "It is admitted, as it must be, that the deeds executed by the assesses operate to transfer the assets"; and, at the hearing before the Board, both parties accepted the same view. The only argument left to the appellant was to found on the express insertion of the words "whether effected before or after the commencement" of the 1939 Amendment Act in the first category of settlements, and their absence in the latter case of revocable transfers of assets, and to seek to derive there from an implied exclusion in the latter case of transfers effected prior to the commencement of the Amending Act, viz., 1st April 1930. Their Lordships can find no reason to justify such an alteration of the plain words of the section, which would involve the insertion after the words "a revocable, transfer of assets" of the limiting words, "effected after the commencement of the Indian Income-tax (Amendment) Act, 1939."

8. Accordingly their Lordships are of opinion that the decision of the High Court was right and should be affirmed and they will humbly advise His Majesty that the appeal should be dismissed. The appellant will pay the respondent's costs of the appeal.

Appeal dismissed.

Cases Referred.

1. 14 AIR 1927 Calcutta 558 : 54 Cal 680 : 108 IC 609 : 2 ITC 838