

Commissioner of Income-Tax, Bombay City

Vs

Ratilal Nathalal

Civil Appeal No. 159 of 1952

(S.R. Dass, N.H. Bhagwati, B. Jagannath Das JJ)

05.04.1954

JUDGMENT

JAGANNADHADAS, J. -

This is an appeal under Section 66A of the Indian Income-tax Act from the judgment of the High Court of Bombay given on a reference to it by the Income-tax Appellate Tribunal under Section 66 of the Act.

The proceedings relate to the four assessment years, 1942-43, 1943-44, 1944-45, and 1945-46, and arise under the following circumstances : There was a Hindu undivided family consisting of one (1) Ramjibhai, (2) his son, Ratilal Nathalal - the respondent before us, (3) Ramjibhai's wife, kamlawanti, (4) Ratilal's wife, Kantabai, and (5) Ramjibhai's unmarried daughter, Pushpa. On the July 27, 1933, Ramjibhai and Ratilal, who were the sole coparceners, at the time, of the said Hindu undivided family, executed a trust deed in respect of four items of house property belonging to the joint family, which owned at the time and continued to own other properties also. The effect of the trust deed was that the income of the property settled on trust was to be enjoyed by Ramjibhai during his lifetime, and that after his death the said income was to be enjoyed by the respondent, Ratilal, alone, with a right of residence provided in favour of his mother, Kamlawanti, in a part of one of the houses comprised in the trust deed. After the death of the respondent Ratilal, the income is to be enjoyed by his wife, Kantabai, and the natural born sons in existence at the time of the death of the survivor of Ramjibhai and Ratilal. There was an express power of revocation of the trust deed reserved to the said Ramjibhai by a specific clause therein. Ramjibhai enjoyed the income during his lifetime but the said income was being assessed as joint family income under Section 16(1)(c) of the Act and as an addition to the other admitted joint family income.

Section 16 of the Indian Income-tax Act was modified in 1939 and clause (c) of sub-section (1) thereof as amended is as follows :

"In computing the total income of an assessee -

..... 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 (VII of 1939), from assets remaining the property of the settlor or disponer, shall be deemed to be income of the settlor or disponer, 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 retransfer directly or indirectly of the income or assets to the settlor, disponent or transferor, or in any gives the settlor, disponent or transferor a right to reassume power directly or indirectly over the income or assets : 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 :

It is by virtue of this clause and in view of the power of revocation of the trust having been expressly reserved in favour of Ramjibhai by the trust deed, that the income in his hands was being assessed without dispute on the footing that the settlor was the Hindu undivided family, and that the income of Ramjibhai is, therefore, to be treated as the income of the Hindu undivided family. Ramjibhai died on the July 23, 1940. The Income-tax authorities continued, after the death of Ramjibhai, to assess the income, in the hands of the respondent arising from the properties settled as the family income. The respondent objected on the ground that under the terms of the settlement it was only his individual income and that Section 16(1)(c) had no application to him. The Income-tax authorities overruled this contention. The assessee appealed to the Income-tax Appellate Tribunal; but by order dated the March 16, 1950, it confirmed the view taken by the Income-tax authorities. Thereupon at the instance of the respondent, the Tribunal stated a case to the High Court of Bombay under Section 66(1) of the Act and referred the following question for its decision :

"Whether in the circumstances of the case and on the true construction of the settlement deed, is the income from the trust property liable to be included in the income of the assessee Hindu undivided family ?"

The contention of the assessee before the High Court was two-fold : (1) that the settlor under the trust deed was not the Hindu undivided family as the Income-tax authorities were inclined to hold, but that the settlement was by two individual male members of the family, viz., Ramjibhai and Ratilal; and (2) that, in any case, the income in the hands of Ratilal was his individual income and not the joint family income. On the first point, the learned Judges held against the assessee's contention. In their view the two individuals, Ramjibhai and Ratilal, executed the trust deed not in their individual capacity but as the sole coparceners of the Hindu undivided family and as representing the said family. On the second point, however, they held in favour of the assessee and against the Commissioner. This appeal has accordingly been brought by the Commissioner of Income-tax against that decision.

The view taken by the High Court that the settlement deed was executed by both Ramjibhai and Ratilal on behalf of the Hindu undivided family as the settlor has not been disputed before us on either side. The sole question for our consideration is whether or not the view taken by the High Court on the second point is right. The view taken by the learned Judges of the High Court appears from the following passage in the judgment :

"Now the settlement of this property was made by Ramjibhai and Ratilal not in their individual capacity but as members of the joint family and as representing that family. It is clear on this trust deed that the income which Ratilal receives after the death of Ramjibhai is received by him not on behalf of the joint family but in his

own individual capacity. Ratilal alienated the property in one capacity and he receives the benefit under the trust deed in an altogether different capacity. Therefore it cannot be stated that this trust deed in any way benefits the joint family."

The learned Attorney-General for the Income-tax Commissioner, while not seriously disputing that on a mere construction of the trust deed the income in the hands of Ratilal was intended to be his individual income, contends that the learned Judges erred in importing any question of capacity in which the income is held by Ratilal, into the application of Section 16(1)(c). He puts his argument in this way. The last portion of Section 16(1)(c) provides that all income arising to any reason by virtue of a revocable transfer of assets shall be deemed to be the income of the transferor. The first proviso to Section 16(1)(c) enacts that a settlement shall be deemed to be revocable if it contains any provision for the retransfer directly or indirectly of the income or assets to the settlor. The second proviso enacts that the expression "settlor" in relation to a settlement shall include any person by whom the settlement or disposition was made. It is, therefore, urged that by virtue of the second proviso, Ratilal, though only one of the two persons who executed the settlement deed, is the "settlor", and that the provision in the trust deed that the income was to be enjoyed by Ratilal after the death of Ramjibhai is, in substance, "a provision contained in the trust deed for a retransfer of the income to the settlor." In this view, the last portion of clause (c) of sub-section (1) of Section 16 is attracted, and the income arising to Ratilal must be deemed to be income of the transfer, i.e., of the Hindu undivided family, in view of the finding not disputed by either side that the settlor was the joint family. The fallacy of this argument consists in treating the respondent Ratilal as one out of two settlors for the purpose of the second proviso while treating the family as the settlor for the purpose of the last portion of clause (c) of Section 16(1). If, at the outset, the settlor was the Hindu undivided family and the trust deed was executed by both the persons as the sole surviving coparceners representing the family, the second proviso which treats one out of a group of settlors as the "settlor" cannot come into operation because the Hindu undivided family is a unit independent of and larger than the two coparceners and is not merely a collection of the individuals who acted on its behalf. Therefore, the provision in the settlement deed giving the income back to Ratilal, even if it be take as a retransfer of the income, cannot be treated as such retransfer to the original settlor, viz., the Hindu undivided family. Hence the last portion of clause (c) of Section 16(1) does not come into operation. It follows accordingly that the contention on behalf of the appellant that what was intended under the terms of the trust deed as the individual income of the respondent Ratilal becomes the joint family income by a process of successive application of the fictions enacted in the last portion of clause (c) of Section 16(1), and the two provisos thereto, cannot be accepted. This is enough to dispose of the appeal. It is unnecessary, therefore, to express any opinion on the contention raised in reliance on *Ramji Keshavji v. Commissioner of Income-tax, Bombay*, that there is no "retransfer of income" in this case.

This appeal accordingly fails and must be dismissed with costs.

Appeal dismissed.

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