

K A Ramachar and Another

Vs

Commissioner of Income-Tax, Madras

Civil Appeals Nos. 142 and 143 of 1960

(J. L. Kapur, M. Hidayatullah, J. C. Shah JJ)

10.01.1961

JUDGMENT

HIDAYATULLAH, J. –

These are two appeals by the legal representatives of one A. R. Rangachari, who died during the pendency in the High Court at Madras, of proceedings in a reference under section 66(1) of the Income-tax Act made by the Income-tax Appellate Tribunal, Madras Bench. The following was referred to the High Court for its decision :

"Whether the inclusion in the assessee's total income of the profits settled by him on his wife and two daughter is justified in law ?"

The High Court answered the question in the affirmative. The appeals have been field with a certificate granted by the High Court.

Rangachari was one of five partners of firm, Messrs. Chari and Ram, and held a six-anna share in the profits and loss of the partnership. On September 22, 1947, he executed three deeds of settlement, which are marked exhibits A, A-1 and A-2 in favour of his wife, a married adult daughter and a minor daughter. To each of them he assigned a fourth share of the profits of the firm payable to him (but not the losses), for a period of 8 years, vesting the right in them to receive the said share of profits absolutely and exclusively and declaring the settlements to be irrevocable during the above period. It is not necessary to refer to the three documents, because the terms are the same. A few clauses of the deed, exhibit A, may be quoted. After recitals which included the following :

"Whereas the settlor has settled upon his minor daughter, Srimathi Meera Bai, one-fourth of his share of profits payable to him from the firm for a period of eight years; And whereas out of natural love and affection, the settlor is desirous of conferring upon the beneficiary a similar portion of his share of profits from the firm",

the deed goes on to say :

"Now this indenture witnesseth as follows :

1. The settlor hereby assigns unto the beneficiary all the rights of the settlor in respect of one-fourth of his share of profits in the firm (but not the losses) payable to him during a period of eight year commencing from the date hereof to be taken and

enjoyed by the beneficiary in absolute and exclusive right.

2. The settlor shall not have any manner of right or interest in the said one-fourth share hereby settled and the right to receive from the firm one-fourth of the settlor's share during the said period of eight years shall exclusively vest in the beneficiary.

3. The beneficiary shall be entitled directly to receive and collect from the firm the share of profits hereby transferred for the said period of eight years.

8. This settlement shall be irrevocable".

For the assessment year 1947-48 corresponding to the previous year ending on April 13, 1947, the profits due to Rangachari amounted to Rs. 86,491-13-0. This amount was credited to the account of Rangachari and Rs. 21,622-15-3, being one-fourth thereof, were transferred profits of the previous year ending April 13, 1948, were disposed of. The assessee claimed that these amounts could not be included in his total income for purposes of assessment, being excluded by reason of the third proviso to section 16(1)(c) of the Income-tax Act. He also contended that the amount payable to his wife and two daughters never became his income, being diverted by an overriding title, and that the case was governed by the rule laid down by the Privy Council in Bejoy Singh Dudhuria's cases.

The assessee's contentions were not accepted by the Income-tax Officer and his appeals to the Appellate Assistant Commissioner and the Tribunal also failed. In so far as the assessment year 1947-48 was concerned, the Income-tax Officer held that the income had already accrued to the assessee, because the deeds were executed five months after the close of the account year. He also held that the transfer to the minor daughter fell within section 16(3), as there was no adequate consideration for the transfer. With regard to the wife and married daughter, he held that section 16(1)(c) was not applicable, because what had been transferred was income first accruing to the assessee, while section 16(1)(c) contemplated income which accrued to a person to whom the transfer was made. The same reasons (except the first) were given for rejecting the assessee's contentions in respect of the other assessment year.

It is not necessary to refer in detail to the decisions of the Appellate Assistant Commissioner, the Tribunal and the High Court. The High Court in an elaborate judgment pointed out that section 16(1)(c) did not apply to these proceedings and that the third proviso therefore, not attracted. It also held that the income had accrued to the assessee, in the first instance, and had then been applied for payments under the deeds.

This court has recently decided three cases, which have a direct bearing in this connection. In *Provat Kumar Mitter's* case the assessee had executed a deed of trust under which dividends from certain shares, which continued to be his assets, were transferred to his wife. It was held that the case did not fall within section 16(1)(c) and that the rule in *Bejoy Singh Dudhuria's* case also did not apply. In *Tulsidas Kilachand v. Commissioner of Income-tax* the husband had created a trust of the shares, constituting himself as the trustee, to pay to the wife dividends from those shares for a period of seven years. It was held that the case was not governed by section 16(1)(c) but by section 16(3)(b). In *Commissioner of Income-tax v. Sitaldas Tirathdas* the rule laid down by the Privy Council in *Bejoy Singh Dudhuria's* case was considered along with the case of the Privy Council in *Bejoy Singh Dudhuria's* case was considered along with the case of the Privy Council in *P. C. Mullick v. Commissioner of Income-tax* and it

An examination of the deeds of settlement shows that the disponent had stated that from the profits "payable to him" certain amounts in specified share were to be paid to his wife and two daughters. No doubt, the assessee in those deeds created a right in favour of the disponees to get the amounts direct from the firm of which he was a partner. The tenor of the documents shows that the profits were first to accrue to him and were then applied for payments to the disponees. Learned counsel for the appellants contended that what had been assigned was an actionable claim, to wit the right to profits, and, therefore, the profits were diverted, before they accrued to the disponent. This, in our opinion, is neither in accordance with the law of partnership nor with the facts as we have found on the record. Under the law of partnership, it is the partner and the partner alone who is entitled to the profit. A stranger, even if he were an assignee, has and can have no direct claim to the profits. By the deeds in question

For the above reasons, we are in entire agreement with the High Court in the answer given and dismiss these appeals with costs.

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