

Commissioner of Income-Tax, Kerala & Coimbatore

Vs

Puthiya Ponmanichintakam Wakf.

Civil Appeal No. 397 of 1960 (I. T. R. No. 23 of 1957)

(P. B. Gajendragadkar, M. Hidayatullah, J. C. Shah, K. Subha Rao, Raghuvar Dayal JJ)

14.08.1961

JUDGMENT

SUBBA RAO J. –

This appeal by certificate granted by the High Court of Kerala raises the question of the application of section 41 (1) of the Indian Income-tax Act (hereinafter called the Act) to the facts of the case.

One P. B. Umbichi and his wife executed a deed dated December 20, 1915, creating thereunder a wakf of their properties. It was provided therein should be utilised for the maintenance of their two daughters and their children on the female side. For 40 years up to and inclusive of the assessment year 1954-55, the income-tax assessments were made on the wakf through its manager under section 41 of the Act in the status of an individual. But, for the assessment year 1955-56, the Income-tax Officer treated the assessee as an association of persons, and, on the ground that the shares of the beneficiaries are indeterminate, levied tax at the maximum rate under the first proviso to section 41 of the Act. On appeal, the Appellate Assistant Commissioner of Income-tax held that the Income-tax Officer was not right in holding that the members of the family were indeterminate, but he confirmed the assessment for the reason that, as the shares were not specified among the individual members of the family and also between

"Whether, on the facts and circumstances of the case, the first proviso to section 41 is applicable ?"

The High Court held that the said proviso was not applicable, as under the wakf deed the beneficiaries and their shares were ascertainable. Aggrieved by the said order, the Commissioner of Income-tax has preferred the present appeal.

Mr. Rajagopal Sastri, learned counsel for the Commissioner of Income- tax, contended that on a fair reading of the terms of the wakf deed it would be clear that the muthawalli was only directed to maintain the members of the family, that none of the members of the family had any ascertainable share in the income, and that, therefore, the case squarely fell within the first proviso to section 41 of the Act.

Mr. Viswanatha Sastri, learned counsel for the respondent, in addition to his attempt to sustain the construction put upon the wakf deed by the High Court, contended that the instant case fell outside the scope of section 41 (1) of the Act, as the muthawalli was only receiving the income on behalf of the Almighty, that the Almighty was not a "person", and that, therefore, as the main section did not apply, the proviso also would not be attracted, with the result that the muthawalli would have to be

assessed as an "individual".

As the argument turns upon the construction of section 41 of the Act, it will be convenient at the outset to read the relevant parts thereof :

"41. (1) In the case of income, profits or gains chargeable under this Act which... any trustee or trustees appointed under a trust declared by a duly executed instrument in writing whether testamentary or otherwise (including the trustee or trustees under any wakf deed which is valid under the Mussalman Wakf Validating Act, 1913) are entitled to receive on behalf of any person, the tax shall be levied upon and recoverable from such... trustee or trustees, in the like manner and to the same amount as it would be leviable upon and recoverable from the person on whose behalf such income, profits or gains are receivable, and all the provisions of this Act shall apply accordingly :

Provided that where any such income, profits or gains or any part thereof are not specifically receivable on behalf of any one person, or where the individual shares of the persons on whose behalf they are receivable are indeterminate or unknown, the tax shall be levied and recoverable at the maximum rate, but, where such persons have no other personal income chargeable under this Act and none of them is an artificial juridical person, as if such income, profits or gains or such part thereof were the total income of an association or persons..."

This section in terms applies to a trustee under a wakf deed which is valid under the Mussalman Wakf Validating Act, 1913. Under the substantive part of the section, tax is leviable on the trustee of the wakf in the like manner and to the same amount as it would be leviable upon and recoverable from the beneficiary, that is, the assessment would be at the individual rates of tax applicable to the beneficiary. But, under the first proviso to that section, there are two exceptions to the general rule, viz., (i) where the income is not specifically receivable on behalf of any one person; and (ii) where the individual shares of the persons on whose behalf the income is receivable are indeterminate or unknown. In those two circumstances, tax shall be levied and recoverable at the maximum rate. It is agreed that the first exception does not apply to the instant case. But the question that falls to be decided is whether the individual shares of the persons on whose behalf the income is receivable are indeterminate

Can it be said that, under the document, the individual shares of the beneficiaries are specified ? The document does not expressly specify the shares of the beneficiaries; nor does it do so by necessary implication. Indeed, the individual shares of the beneficiaries are not germane to the objects of the document. The muthawalli was directed to bear, out of the income, the expenses necessary for maintaining the members of the tarwad and to conduct the necessary religious ceremonies. The distribution of the family income and family expenses was left to the discretion of the muthawalli; the document also further contemplated that the muthawalli by his prudent and efficient management would save sufficient amounts for purchasing properties. The directions indicate beyond any reasonable doubt that no specified share of the income was given to any of the beneficiaries, and their right was nothing more than to be maintained, having regard to their reasonable requirements which were left to the discretion of the mu

The alternative contention of learned counsel for the respondent remains to be considered. The argument is that under the wakf deed the properties vest in the Almighty and, therefore, the

muthawalli receives the income only on behalf of the Almighty and not on behalf of any person within the meaning of section 41 (1) of the Act, with the result that section 41 (1) is not applicable to the assessment in question. The argument is rather subtle, but it has no force. There are three effective answers to this contention :

Firstly, it was not raised before the High Court - the only question argued before the High Court was whether the beneficiaries of the trust and their individual shares of the income of the trust were ascertainable.

Secondly, though under the Mahomedan law the properties dedicated under a wakf deed belong to the Almighty, it is only in the ideal sense, for the muthawalli in the name of the Almighty utilises the income for the purposes and for the benefit of the beneficiaries mentioned therein. Under the Mahomedan law, the moment a wakf is created all rights of property pass out of the wakf and vest in the Almighty. The property does not vest in the muthawalli, for he is merely a manager and not a trustee in the technical sense. Though wakf property belongs to the Almighty, the practical significance of that concept is explained in *Jewun Doss Sahoo v. Shah Kubeer-ood-deen* thus :

"Wakf signifies the appropriation of a particular article in such a manner as subjects it to the rules of divine property, whence the appropriator's right in it is extinguished, and it becomes a property of God, by the advantage of it resulting to his creatures."

That is, though in an ideal sense the property vests in the Almighty, the property is held for the benefit of His creatures, that is, the beneficiaries. Though at one time it was considered that to constitute a valid wakf there must be dedication of property solely to the worship of God or for religious or charitable purposes, the Wakf Validating Act, 1913, discarded that view and enacted by section 3 that a Mussalman can create a wakf for the maintenance and support, wholly or partially, of his family, children or descendants provided the ultimate benefit is expressly or impliedly reserved for the poor or for any other purpose recognized by the Mussalman law as a religious, pious or charitable purpose of a permanent character. Section 4 of the said Act goes further and says that a wakf shall not be invalid by the mere circumstance that the benefit reserved for the poor or for religious purposes is postponed until the extinction of the family. It is, therefore, manifest that under the Mahomedan law, the prop

The third and more effective answer to the argument is that section 41 (1) of the Act provides for a vicarious assessment in order to facilitate the levy and collection of income-tax from a trustee in respect of income of the beneficiaries. In express terms it equates the muthawalli of a wakf to a trustee. For the purpose of section 41 the muthawalli is treated as a trustee and, on the analogy of a trustee, he holds the property for the benefit of the beneficiaries. There is no scope for importing the Mahomedan law of wakf in section 41 when the section in express terms treats the Muthawalli as a trustee, though he is not one in the technical sense under the Mahomedan law. If the argument of learned counsel for the respondent be accepted, it would make section 41 of the Act otiose so far as wakfs are concerned, for in every case of wakf the property would be held for the Almighty and not for any person. We, therefore, reject this contention and answer the question in the affirmative.

In the result, we set aside the order of the High Court and hold that the respondent was rightly assessed by the Income-tax Officer at the maximum rate. The appeal is allowed with costs.

Appeal allowed.

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