Commissioner of Income-Tax, Bombay

Vs

Manilal Dhanji

Civil Appeal No. 323 of 1961

(S. K. Das, M. Hidayatullah, J. C. Shah JJ)

31.01.1962

JUDGMENT

S.K. DAS J. –

The Commissioner of Income-tax, Bombay City I, has preferred this appeal to this court on a certificate of fitness granted by the High Court of Bombay under section 66A(2) of the Indian Income-tax Act, 1922.

The assessee, who is the respondent before us, was assessed to income- tax as an individual in respect of his income for the assessment year 1954-55. The taxing authorities included in the assessee's total income for the year two sums, namely, a sum of Rs. 410 and a sum of Rs. 14,170. It was stated that these two sums accrued in the relevant account year in the following circumstances. On January 12, 1953, the assessee created a trust in respect of a sum of Rs. 25,000, the trustees whereof were the Central Bank Executor & Trustee Co., the assessee himself, his wife and brother. The scheme of the trust deed was that the said sum of Rs. 25,000 was set apart by the assessee and it was provided that the interest on that amount should be accumulated and added to the corpus and a minor daughter of the assessee, named Chandrika, was to receive the income from the corpus increased by the addition of interest, when she attained the age of 18 on February 1, 1959. She was to receive the income during her lifetime and af

On behalf of the assessee the contention was that the sum of Rs. 410 aforesaid was not liable to be included in the total income of the assessee inasmuch as Chandrika, the minor daughter of the assessee, had no right to the income nor any beneficial interest therein in the relevant year of account under the provisions of the trust deed and, therefore, neither section 16(3)(a)(iv) nor section 16(3)(b) applied to the case. As to the sum of Rs. 14,170 the case of the assessee was that it should not be included in his total income as the sole beneficiary, because the beneficiaries under the trust settlement were not only the assessee but his wife and children as well. It was contended that the assessee received the amount in trust for himself and his wife and children and it was open to the department to proceed under the first proviso to section 41(1) of the Income-tax Act and recover tax on a separate assessment made on the assessee as a trustee in respect of the said sum at the maximum rate, because the indiv

The Income-tax Appellate Tribunal, on an appeal by the assessee, did not accept these contentions. The Tribunal was then moved to state a case to the High Court on two questions of law. Those questions were :

"1. Whether the sum of Rs. 410 is properly includible in the assessee's total income

> either in accordance with the provisions of section 16(3)(b), and/or section 16(3)(a)(iv) of the Indian Income-tax Act, 1922 ?
>
> 2. Whether the sum of Rs. 14,170 is properly includible in the total income of the assessee as the sole beneficiary thereof under the trust settlement made on 1-12-1941 by Dhanji Devsi ?"

On being satisfied that these questions of law arose out of the order of the Tribunal dated April 24, 1957, the Tribunal stated a case under section 66(1) of the Income-tax Act. The High Court answered both the questions in favour of the assessee by its judgment and order dated September 25, 1958. Thereafter the High Court granted a certificate of fitness under section 66A(2) of the Income-tax Act and, as we have already stated, the present appeal has been brought to this court on the strength of that certificate.

We proceed now to deal with the first question which relates to the sum of Rs. 410. The question is whether this sum was properly includible in the assessee's total income under the provisions of section 16(3)(b) of the Income-tax Act, because Mr. Rajagopal Sastri appearing for the appellant has not pressed the claim which was made before the Tribunal on behalf of the department under the provisions of section 16(3)(a)(iv). Before we go to the provisions of section 16(3)(b) it is advisable to set out the material portions of clauses 3 and 4 of the trust deed of January 12, 1953. Those clauses were in these terms.

> "3. The trustees shall hold and stand possessed of the trust fund and the investments for the time being representing the same and receive the income, dividend, interest and rents thereof and invest the same and the resulting income, dividend, interest and rents thereof so as to accumulate at compound interest to the intent that such accumulations shall be added to the principal trust fund until the settlor's daughter Chandrika shall attain the age of eighteen years which age she will attain on the 1st February, 1959, and after the expiration of the above named period the trustees shall deal with and dispose of the trust fund as hereinafter stated.
>
> 4. The trustees shall hold and stand possessed of the trust fund and the accumulations thereof upon trust to pay the net interest and income thereof after deducting all outgoings and charges for collection to the said Chandrika for her life for her maintenance...."

It is clear from these clauses that during the minority of Chandrika, the income from the trust funds was to be accumulated and added to the trust funds and after she attained majority on February 1, 1959, she was to get only the income from the enlarged trust funds. Now, in the relevant year of account Chandrika was still a minor and under the terms of the trust deed she had no right to the trust income nor any beneficial interest therein; she could neither receive nor enjoy the income. She did not derive any benefit whatsoever from the trust funds during her minority and even after she attained majority, she did not have any right to the trust income which arose during her minority and her only right was to enjoy the income arising from the enlarged trust funds, i.e., the original trust funds and the accumulations of trust income during her minority. Therefore, the sum of Rs. 410 was not the income of Chandrika, but was the income of the trustees and the income was impressed with a trust, namely, that it s

We shall presently read section 16(3), but before we do so it is necessary to refer to the scheme of

section 16 of the Income-tax Act. The section deals with the computation of total income as defined in section 2(15) of the Act, and provides what sums are to be included or excluded in determining the total income. The definition of total income in section 2(15) involves two elements - (a) the income must comprise the total amount of income, profits and gains referred to in section 4(1), and (b) it must be computed in the manner laid down in the Act. The exemption granted under the Act is of two kinds; certain classes of income are exempted from tax and also excluded from the computation of total income, while certain other classes of income exempted from tax are to be included in the assessee's total income. Now, clause (a) of sub-section (1) of section 16 provides that sums exempted from tax under certain provisions of the Act should be included in the assessee's total income. Clause (b) lays down the mode

The sub-section creates an artificial liability to tax and must be strictly construed.

Now, let us read the sub-section :

> "16. (3) In computing the total income of any individual for the purpose of assessment, there shall be included -
>
> (a) so much of the income of a wife or minor child of such individual as arises directly or indirectly -
>
> (i) from the membership of the wife in a firm of which her husband is a partner;
>
> (ii) from the admission of the minor to the benefit of partnership in a firm of which such individual is a partner;
>
> (iii) from assets transferred directly or indirectly to the wife be the husband otherwise than for adequate consideration or in connection with an agreement to live apart; or
>
> (iv) from assets transferred directly or indirectly to the miner child, not being a married daughter, by such individual otherwise that for adequate consideration; and
>
> (b) so much of the income of any person or association of person as arises from assets transferred otherwise than for adequate consideration to the person or association by such individual for the benefit of his wife or a minor child or both."

The argument on behalf of the appellant is that the conditions laid down in clause (b) of sub-section (3) of section 16 are fulfilled in the present case and, therefore, the department was entitled to include in the total income of the assessee so much of the income in the hands of the trustees as arose from the assets transferred by the assessee for the benefit of his minor child. It is pointed out that the conditions laid down in clause (b) are - (I) that there must be income in the hands of any person or association of persons (trustees in the present case); (2) the income must arise from assets transferred otherwise than for adequate consideration to the trustees; and (3) the transfer must be for the benefit of the minor child. It is argued that when the conditions are fulfilled and the only exceptional case, namely, where the transfer is for adequate consideration is out of the way, clause (b) must apply and the department is entitled to include the income in the hands of the trustees in computing the t

At first sight the argument appears to be attractive and supported by the words used in the clause. On a closer scrutiny, however, it seems to us that clause (b) must be read in the context of the

scheme of section 16 and the two clauses (a) and (b) of sub-section (3) thereof must be read together. So read, the only reasonable interpretation appears to be the one which the High Court accepted, namely, that the scheme of the section requires that an assessee can only be taxed on the income from a trust fund for the benefit of his minor child, provided that in the year of account the minor child derives some benefit under the trust deed - either he receives the income, or the income accrues to him, or he has a beneficial interest in the income in the relevant year of account. But if no income accrues, or no benefit is derived and there is no income at all (so far as the minor child is concerned), then it is not consistent with the scheme of section 16 that the income or benefit which is non-existent so far as at portion of the income which is set apart for the benefit of the child would be taxable in the hands of the settlor. All these illustrations only establish the principle that the minor child must derive some benefit in the relevant year of account before clause (b) would apply.

Furthermore, we are also of the view that clauses (a) and (b) to the sub-section must be read together. Clause (a) begins with the expression "so much of the income of a wife or minor child of such individual as arises directly or indirectly", and this is followed by the four circumstances numbered (i), (ii), (iii) and (iv). There is no doubt that so far as clause (a) is concerned, there must be income of the wife or a minor child. Mr. Rajagopal Sastri has not disputed this. The obvious intention of the legislature in enacting clause (b) as to see that the provisions of clause (a) were not defeated by the assessee creating a trust and in order to deal with that mischief it enacted clause (b). Instead of the expression "so much of the income of a wife or minor child" the expression used in clause (b) is "so much of the income of any person or association of persons, etc.". Obviously, when trust is created the income is income in the hands of the trustees. But the underlying principle in the two clauses (a) an

Our attention has been drawn to section 64 of the Income-tax Act, 1961 (43 of 1961). That section corresponds to section 16 of the Income-tax Act, 1922, and clause (v) of section 64 has made the position clearly by using the expression "immediate or deferred benefit" so that even a benefit which is postponed and does not arise in the year of account will entitle the department to include the income in the hands of the trustees in the total income of the settlor. We do not, however, think that the Act of 1961 can be taken as declaratory of the law which existed previously; nor can section 64(v) be taken as determinative of the true scope and effect of clause (b) of sub-section (3) to section 16. The legislature may have thought fit in its wisdom to widen the scope of the law that existed previous to it so as to take in deferred benefit as well. We think that we must interpret clause (b) of sub- section (3) of section 16 in the context of the section as it occurs in the Income-tax Act of 1922.

We have been referred to two English decisions, Dale v. Mitcalfe [(1927) 13 Tax Cas. 41.] and Mauray v. Commissioners of Inland Revenue [(1944) 26 Tax Cas. 91.]. One of the decisions (Dale v. Mitcalfe [(1927) 13 Tax Cas. 41.]) related to section 25 of the English Income Tax Act, 1918 (8 & 9 Geo. V, c. 40) and the other related to section 20(1)(c) of the English Finance Act, 1922 (12 & 13 Geo. V, c. 17). Those provisions were differently worded and appear in a different context and decisions of the English courts given on provisions differently worded and appearing in a different context are not, in our opinion, helpful in determining the true scope and effect of clause (b) of sub-section (3) of section 16 of the Income-tax Act, 1922.

We have, therefore, come to the conclusion that on a true construction of clause (b) of sub-section (3) of section 16, the view expressed by the High Court was correct and the sum of Rs. 410 did not form part of the total income of the assessee. The High Court correctly answered the first question referred to it.

We now turn to the second question. The relevant clause of the trust deed of December 1, 1941, is clause 7 which reads as follows :

> "The trustees shall hold and stand possessed of the trust fund mentioned in the Second Schedule hereto and the accumulations thereof referred to in clause 3 hereof upon trust to pay the net interest and income thereof to the settlor's son Manilal for the maintenance of himself, his wife and for the maintenance, education and benefit of all his children till his death."

The question before us is whether under this clause the income received by the assessee is impressed with a trust in favour of himself, his wife and children to whom he is accountable as a trustee for the amount received. In other words, the question is whether the trust deed of December 1, 1941, created two trusts, the one requiring the trustees to pay the income from the trust funds to the assessee and the second requiring the assessee to spend the income for the maintenance of himself and his wife and for the maintenance, education and benefit of his children. In cases where property is given to a parent or other person standing or regarded as in loco parentis, with a direction touching the maintenance of the children, the question often arises whether the settlor intended to impose a trust by the direction or whether the direction was only the motive of the gift. The line between the two classes of cases has not been drawn always very firmly. It is, however, clear that in construing provisions of this ki

We are unable to hold that in the case before us clause 7 of the trust deed merely expressed a wish or desire or hope on the part of the settlor. We are in agreement with the High Court that the direction contained in clause 7 created a trust in favour of the assessee, his wife and children. The expression "for the maintenance of himself and his wife and for the maintenance, education and benefit of all his children" is not indicative of a mere desire or hope. It imposes a binding and obligatory trust. In re Booth : Booth v. Booth [[1894] 2 Ch. 282.] a testator gave the residue of his estate to his executors, on trust, to pay to his wife, or permit her to receive the annual income thereof during her life, "for her use and benefit and for the maintenance and education of my children". It was held that the wife took the income subject to a trust for the maintenance and education of the children. A similar view was expressed in Raikes v. Ward [(1842) 66 E.R. 1106; 1 Hare 445.] and Woods v. Woods [(1836) 40 E.R.

On behalf of the appellant our attention was drawn to section 8 of the Indian Trusts Act, 1882 (II of 1882), which states that the subject matter of a trust must be property transferable to the beneficiary and it must not be merely beneficial interest under a subsisting trust. It is contended that the assessee held a beneficial interest in the income from the trust funds under the trust deed of December 1, 1941, and in respect of that beneficial interest another trust could not be created in favour of himself, his wife and children. We think that this argument proceeds on a misconception. The assessee did not create a second trust in respect of the beneficial interest which he held under the trust deed of December 1, 1941. The assessee's father created two trusts by that trust deed, one requiring the trustees to pay the trust income to the assessee and the other requiring the assessee, who was himself a trustee, to spend the income for the maintenance, education and benefit of his children. It is not dispute

Under section 41 of the Income-tax Act it was open to the department either to tax the trustees of the trust deed or to tax those on whose behalf the trustees had received the amount. The true position of the assessee in this case was that he was a trustee and not the sole beneficiary under the trust deed. He held the income on trust for himself, his wife and his children. The shares of the

beneficiaries were indeterminate and, therefore, under the first proviso to section 41(1) of the Income-tax Act, it was open to the department to levy and recover the tax at the maximum rate from the assessee; but that did not entitle the department to include the sum of Rs. 14,170 in the total income of the assessee as though he was the sole beneficiary under the trust deed. Mr. Rajagopal Sastri made it clear that the intention of the department was to include the sum in the total income of the assessee in order to levy and charge super-tax on him. This, we do not think, the department was entitled to do. In respect of t

The result, therefore, is that the appeal fails and is dismissed with costs.

Appeal dismissed.

</html