Philip John Plasket Thomas

Vs

Commissioner of Income-Tax Calcutta

Civil Appeals Nos. 352 - 355 of 1962

(S. K. Das, A. K. Sarkar, M Hidayatullah JJ)

22.03.1963

JUDGMENT

S. K. DAS J.–

These are four appeals on certificates granted by the High Court of Calcutta under s. 66-A(2) of the Indian Income-tax Act, 1922. The appeals are from the decision of the High Court dated February 28, 1961 in Income-tax Reference No. 49 of 1956.

We may first state the relevant facts. One P. J. P. Thomas is the appellant before us. He was the assessee before the taxing authorities. He held 750 'A' shares in J. Thomas & Co., Ltd., of 8 Mission Row, Calcutta. The assessee entered into an engagement to marry one Mrs. Judith Knight, stated to be a divorcee, and the engagement was announced in certain newspapers on September 3, 1947. on December 10, 1947 the assessee and Mrs. Knight presented to the Company an application to transfer the said 750 'A' shares to Mrs. Judith Knight. A transfer deed of that date stated :

> "I, Philip John Plasket Thomas of 8, Mission Row, Calcutta, in consideration of my forthcoming marriage with Judith Knight of 35, Ridgeway, Kingsbury, London (hereinafter called the said transferee) do hereby transfer to the said transferee the 750 'A' shares numbered 1-750 standing in my name in the books of J. Thomas & Co., Ltd., to hold to the said transferee..... Executors, administrators and assigns, subject to the several conditions on which I hold the same at the time of the execution thereof. And I, the said transferee, do hereby agree to take the said shares subject to the same conditions."

On December 15, 1947 the Company transferred the shares to Mrs. Judith Knight and registered her as the owner of the shares. On December 18, 1947 the marriage was solemnised. On January 26, 1948 the fact of marriage was communicated to the Company and the name of the shareholder was changed in the books of the company to Mrs. Judith Thomas. It is undisputed that during the relevant periods the shares stood registered in the name of the assessee's wife and when the income in question arose to her she was the wife of the assessee. The four accounting years with which the assessments were concerned were those ending respectively on April 30, 1948, April 30, 1949, April 30, 1950 and April 30, 1951. The four assessment years were 1949-1950, 1950-1951, 1951-1952 and 1952-1953. It appears that for the years 1949-1950 and 1950-1951 assessments of P. J. P. Thomas which had by then been already completed were reopened under s. 34 of the Indian Income-tax Act, 1922 and the dividends of Rs. 97,091/- and Rs. 78,272/- as grossed up and paid to Mrs. Judith Thomas during the accounting years ending April 30, 1948 and April 30, 1949 were re-assessed in the hands of P. J. P. Thomas. For the assessment years 1951-1952 and 1952-1953, the

dividends paid by the company to Mrs. Judith Thomas during the accounting periods ending April 30, 1950 and April 30, 1951 were held by the Income-tax Officer to be includible in the total income of P. J. P. Thomas under s. 16(3)(b) of the Act and accordingly orders were passed including the sums of Rs. 1,00,000/- and Rs. 16,385/- being the grossed up dividends for the two years respectively in the total income of P. J. P. Thomas.

Against the said assessment orders the assessee preferred appeals to the Appellate Assistant Commissioner. By a common order dated May 11, 1955 the Appellate Assistant Commissioner confirmed the orders of the Income-tax Officer holding that not only the provisions of s. 16(3)(b) but also the provisions of s. 16(3)(a)(iii) of the Act applied in these cases. Against the order of the Appellate Assistant Commissioner the assessee preferred four appeals to the Appellate Tribunal and contended (1) that he transferred the shares to Mrs. Judith Knight when she was not his wife, (2) that the transfer of shares was absolute at the time when it was made and no condition was attached to the transfer, and (3) that the transfer was for adequate consideration. On these grounds the assessee contended that the provisions of s. 16(3) of the Act were not attracted to the cases in question. The Appellate Tribunal by a consolidated order dated April 4, 1956 disagreed with the view of the Income-tax Officer and the Appellate Assistant Commissioner that the provisions of s. 16(3)(b) applied, but it held that the cases fell within s. 16(3)(a)(iii) of the Act, because the transfer became effective only after the marriage. It further held that the transfer could also be construed as a revokable transfer within the meaning of s. 16(1)(c) of the Act. Therefore the Appellate Tribunal dismissed the four appeals.

The assessee then made four applications for referring two questions of law arising out of the Tribunal's order to the High Court. These questions were :

> 1. In the facts and circumstances of these cases, whether the dividends paid by J. Thomas & Co. Ltd., to Mrs. Judith Thomas, grossed up to the sums of Rs. 97,091/-, Rs. 78,272/-, Rs. 1,00,000/- and Rs. 16,385/- respectively for the four years in question could be included in the income of Mr. P. J. P. Thomas and be taxed in his hands under the provisions of section 16(3)(a)(iii) of the Indian Income-tax Act ?
>
> 2. In the facts and circumstances of these cases, whether the dividends referred to above could be included in the total income of Mr. P. J. P. Thomas under the provisions of sec. 16(1)(c) of the Indian Income-tax Act ?

The Tribunal accepted these applications and referred the aforesaid two questions to the High Court. By its decision dated February 28, 1961 the High Court answered the first question against the assessee and the second question in his favour. The assessee then moved the High Court for a certificate of fitness under s. 66-A(2) of the Act and having obtained such certificate has preferred the present appeals to this court. The appeals relate only to the correctness or otherwise of the answer given by the High Court to the first question. As the Department has filed no appeal as to the answer given by the High Court to the second question, it is unnecessary for us to consider the correctness or otherwise of that answer.

The answer to the first question depends on the determination of two points : (1) what on its proper interpretation is the true scope and effect of s. 16(3)(a)(iii) of the Act, and (2) whether the transfer made by the assessee in favour of Mrs. Knight took effect only from the date of the marriage between the assessee and Mrs. Knight. A third point as to adequate consideration for the transfer was also gone into by the High Court, but in the view which we have taken of the first two points

involved in the question it is unnecessary to decide the point of adequate consideration.

Before we proceed to a consideration of the question, it is necessary to set out the relevant provisions of law. Section 16 so far as it is relevant reads :

> "16. Exemptions and exclusions in determining the total income -
>
> #(1) XX XX XX(2) XX XX XX##
>
> (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 benefits of partnership in a firm of which such individual is a partner;
>
> (iii) from assets transferred directly or indirectly to the wife by 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 minor child, not being a married daughter, by such individual (otherwise than for adequate consideration);
>
> #(b) XX XX XX XX XX".##

Sub-s. (3) of s. 16 of the Act was introduced in 1937. For the purpose of its application it is immaterial whether the partnership was formed before or after 1937 and whether the transfer was effected before or after that date. However, the sub-section deals only with income arising after its introduction. It clearly aims at foiling an individual's attempt to avoid or reduce the incidence of tax by transfering his assets to his wife or minor child, or admitting his wife as a partner or admitting his minor child to the benefits of partnership, in a firm in which such individual is a partner. It creates an artificial income and must be strictly construed [see Bhogilal Laherchand v. Commissioner of Income-tax ([1954] 25 I.T.R. 523.)]. Clauses (a)(i) and (a)(ii) of the sub-section provide that in computing the total income of an individual there should be included the income arising directly or indirectly to his wife from her share as a partner or to his minor child from the admission to the benefits of partnership, in a firm of which such individual is a partner. We are not directly concerned with cls. (a)(i) and (a)(ii). We are concerned with cl. (a)(iii). Under that clause the income arising from assets transferred by an individual to his wife has to be included in the transferor's total income. There are two exceptions to this rule, viz., (1) where the transfer is for adequate consideration, or (2) where it is in connection with an agreement to live apart. The second exception has no bearing on the cases before us.

The first and principal point which has been urged before us on behalf of the appellant is this. It is pointed out that at the time the transfer of shares was made by the assessee to Mrs. Judith Knight the latter was not the wife of the former and therefore cl. (a)(iii) which talks of "assets transferred directly or indirectly to the wife by the husband" has no application, apart altogether from any

question of adequate consideration. This argument on behalf of the appellant was advanced before the High Court also. The High Court sought to meet it in the following way. Mukharji J. who gave the leading judgment said that in order to determine whether a particular case came under cl. (a)(iii) or not, the relevant point of time was the time of computation of the total income of the individual for the purpose of assessment and the section did not limit any particular time as to when the transfer of assets should take place. He then observed :

> "It appears to me that as the addition of the wife's income to the husband's income under this sub-section is made, the relevant time of the relationship between husband and wife which has to be considered by the taxing authorities is the time of computing of the total income of the individual for the purpose of assessment. That is how I read the opening words of section 16(3) of the Act : 'In computing the total income of any individual for the purpose of assessment'."

Bose J. expressed a slightly different view. He said that the material consideration under s. 16(3)(a)(iii) was whether the transferee was actually the wife of the assessee during the relevant accounting period when the income from the assets transferred to her accrued. In effect both the learned Judges held that for the application of cl. (a)(iii) it was not necessary that the relationship of husband and wife must subsist at the time when the transfer of the assets in made; according to Mukharji J. the crucial date to determine the relationship is the date when the taxing authorities are computing the total income of the husband and according to Bose J. the crucial time is the time when the income accrues to the wife. It must also be stated in fairness to Mukharji J. that he did not accept the view that the words 'husband' and 'wife' in cl. (a)(iii) included prospective husband and prospective wife. He accepted the view that the words "husband" and "wife" must mean legal husband and legal wife. Even so he expressed the view that on a true construction of s. 16(3)(a)(iii) the time when the relationship has to be construed is the time when the computation of the total income of the husband is made.

Learned counsel for the appellant has very strongly contended before us that the view expressed by the learned Judges of the High Court as to the proper interpretation of cl. (a)(iii) is not correct. On a plain reading of sub-s. (3) of s. 16 it seems clear to us that at the time when the income accrues, it must be the income of the wife of that individual whose total income is to be computed for the purpose of assessment : this seems to follow clearly from cl. (a) of sub-s. (3). Therefore, in a sense it is right to say that the relationship of husband and wife must subsist at the time of the accrual of the income : otherwise the income will not be the income of the wife, for the word 'wife' predicates a marital relationship. The matter does not, however end there. When we go to sub-cl. (iii) we find that only so much of the income of the wife as arises directly or indirectly from assets transferred directly or indirectly to the wife by the husband shall be included in the total income of the husband. Therefore, sub-cl. (iii) predicates a further condition, the condition being that the income must be from such assets as have been transferred directly or indirectly to the wife by the husband. This condition must be fulfilled before sub-cl. (iii) is attracted to a case. It is clear that all income of the wife from all her assets is not includible in the income of the husband. Thus on a proper reading of s. 16(3)(a)(iii) it seems clear enough that the relationship of husband and wife must also subsist when the transfer of assets is made in order of fulfil the condition that the transfer is "directly or indirectly to the wife by the husband".

Learned counsel for the respondent has contended before us that the transfer mentioned in s. 16(3)(a)(iii) need not necessarily be post-nuptial and he has argued that the main object of the provision is the principle of aggregation, that is, the inclusion of the income of the wife in the

income of the husband, because of the influence which the husband exercises over the wife. He has also pointed out that sub-cl. (i) which refers to the membership of the wife in a firm of which her husband is a partner is indicative of the object of the provision because it does not talk of any assets being brought into the firm by the wife. He has further argued that in sub-cl. (iii) the word 'wife' is merely descriptive and means the women referred to in cl. (a), and the word 'husband' has reference merely to the individual whose total income is to be computed for the purpose of assessment. In support of this argument he has relied on the expression "such individual" occurring in sub-s. (3)(a). We are unable to accept these arguments as correct. It is indeed true that all the four sub-clauses of cl. (a) must be harmoniously read as this court observed in Commissioner of Income-tax v. Sodra Devi ([1957] 32 I.T.R. 615, 623.); but we see no disharmony between sub-cl. (i) and sub-cl. (iii) on the interpretation which we are putting. Sub-cl. (i) talks only of the membership of the wife in a firm of which her husband is a partner; it has no reference to assets at all. Sub-cl. (iii) however talks of assets and qualifies the word "assets" by the adjectival clause "transferred directly or indirectly to the wife by the husband". We fail to see how any disharmony results from giving full effect to the adjectival clause in sub-cl. (iii). Nor do we see why the words 'husband' and 'wife' should be taken in the archaic sense contended for by the learned counsel for the respondent. In re Smalley, Smalley v. Scotton ([1979] 2 Ch. 112.), a decision on which learned counsel for the respondent relies, the facts were these. A testator by his will gave all his property to "my wife E.A.S". The testator left a lawful wife M.A.S. and children by her and contributed to their support, but about five years before his death had contracted a bigamous marriage with a widow E.A.M. who lived with him and was known as E.A.S., and believed she was and was reputed to be his wife. The will was produced by E.A.M. It was held that the will taken in connection with the surrounding circumstances, indicated that the testator intended to benefit E.A.M., she being in a secondary sense and by repute his wife. The rules of construction which were followed in that case were those laid down by Lord Abinger in Doe v. Hiscocks ((1839) 5 M. & W. 263, 367.). Lord Abinger said :

> "The object in all cases is to discover the intention of the testator. The first and most obvious mode of doing this is to read his will as he has written it, and collect his intention from his words. But as his words refer to facts and circumstances respecting his property and his family, and others whom he names or describes in his will, it is evident that the meaning and application of his words cannot be ascertained, without evidence of all those facts and circumstances. To understand the meaning of any writer, we must first be appraised of the persons and circumstances that are the subjects of his allusions or statements : x x x All the facts and circumstances, therefore, respecting persions or property to which the will relates, are undoubtedly legitimate, and often necessary evidence, to enable us to understand the meaning and application of his words."

We are dealing here with a statute and the statute must be construed in a matter which carries out the intention of the legislature. The intention of the legislature must be gathered from the words of the statute itself. If the words are unambiguous or plain, they will indicate the intention with which the statute was passed and the object to be obtained by it. There is nothing in sub-s. (3) of s. 16 which would indicate that the word 'wife' of the word 'husband' must not be taken in their primary sense which is clearly indicative of a marital relationship. Nor are we satisfied that the object of the legislature is just the principle of aggregation. We have said earlier that sub-s. (3) of s. 16 clearly aims at foiling an individual's attempt to avoid or reduce the incidence of tax by transferring his assets to the wife or minor child or admitting his wife as a partner or admitting his minor child to the benefits of partnership, in a firm in which such individual is a partner. This object does not require that the word 'wife' or the word 'husband' should be interpreted in an archaic or secondary

sense.

Learned counsel for the respondent has drawn our attention to certain English decisions, particularly the decision of the House of Lords in Lord Vestey's Executors and Vestey v. Commissioners of Inland Revenue ((1949) 31 T.C. 1.). One of the questions which was considered in that decision was whether for the purpose of either s. 18 of the Finance Act, 1936 (in England), or s. 38 of the Finance Act, 1938 (in England) "wife" included a "widow". Their Lordships had to consider the earlier decision of the Court of Appeal in Commissioners of Inland Revenue v. Gaunt ((1941) 24 T.C. 69.), which held that the one word included the other. Their Lordships ultimately held, over-ruling the decision in Gaunt's case ((1941) 24 T.C. 69.), that the word "wife" did not include a "widow." The English decisions proceeded on the footing that in England it is a principle of Income Tax law, embodied in rule 16 of the General Rules, that for Income Tax purposes husband and wife living together are one. Lord Morton said :

> "I think that the treatment of husband and wife by the Legislature for Income Tax purposes rests on the view that any income enjoyed by one spouse is a benefit to the other spouse. It is not surprising, therefore, that in the Sections now under consideration a benefit to the wife of the settlor is treated as being a benefit to the settlor, but it seems to me unlikely that this principle is being extended by these Sections to the widow of the settlor."

Now, it is quite clear to us that the treatment of husband and wife in the Indian Income-tax Act, 1922 does not rest on the view that any income enjoyed by one spouse is a benefit to the other spouse; for sub-s. (3) of s. 16 makes it quite clear that all income enjoyed by the wife is not to be included in the income of the husband and only such of the wife's income as comes within the sub-section is to be included in the income of the husband. We therefore think that the English decisions are not in point and there are no reasons why the word 'wife' or the word 'husband' should not be given its true natural meaning.

This brings us to the second question, namely, whether the transfer of shares made by the assessee in favour of Mrs. Judith Knight of December 10, 1947 was to take effect only from the date of their marriage. It is admitted that on December 10, 1947 the assessee and Mrs. Knight were not married. It is also admitted that they were engaged to be married and the engagement was announced on September 3, 1947. The transfer deed which we have earlier quoted contained no words of postponement. On the contrary, it contained words which indicated that the transfer took effect immediately. Learned counsel for the respondent has rightly pointed out that the expression in the transfer deed "in consideration of my forthcoming marriage" can have every little meaning as a real consideration, because on September 3, 1947 the parties had mutually promised to marry each other; therefore the promise to marry had been made earlier than December 10, 1947. Learned counsel for the respondent has argued before us that the transfer of shares was really a gift made to Ms. Knight in contemplation of the forthcoming marriage and the gift was subject to a condition subsequent, namely, that of marriage which if not performed would put an end to the gift. This does not however advance the case of the respondent in any way. A gift may be made subject to conditions, either precedent or subsequent. A condition precedent is one to be performed before the gift takes effect; a condition subsequent is one to be performed after the gift had taken effect, and if the condition is unfulfilled that will put an end to the gift. But if the gift had already taken effect on December 10, 1947 and the condition subsequent has been later fulfilled, then the gift is effective as from December 10, 1947 when the assessee and Mrs. Knight were not husband and wife. That being the position, sub-cl. (iii) of s. 16(3)(a) will not be attracted to the case as the transfer of the shares

was not made by the husband to his wife.

We were also addressed on the question as to the circumstances in which a gift to an intended wife or husband may be recovered when the marriage does not take place through the fault of either of the two parties. We do not think that that question falls for decision in the present case. From whatever point of view we look at the transfer of shares in the present case, whether it be in consideration of a promise to marry or be a gift subject to the subsequent condition of marriage, the transfer takes effect immediately and is not postponed to the date of marriage. If that be the true position, as we hold it to be, then sub-cl. (iii) of s. 16(3)(a) is not attracted to these cases, apart altogether from any question as to whether there was adequate consideration for the transfer within the meaning of that sub-clause.

For the reasons given above we allow the appeals and answer the question referred to the High Court in favour of the assessee. The appellant will be entitled to his costs in this court as also in the High Court; there will be one hearing fee.

Appeals allowed.

</html