Jogendra Nath Naskar

Vs

Commissioner of Income-Tax, Calcutta

Civil Appeals Nos. 690 to 694 of 1968

(J.C Shah, V.Ramaswami - I, A.N. Bachawat JJ)

18.02.1969

JUDGMENT

RAMASWAMI J. -

These appeals are brought from the judgment of the Calcutta High Court dated 3rd, 4th, and 5th April, 1963, in Income-tax Reference No. 50 of 1961 on a certificate granted under section 66A of the Indian Income-tax Act, 1922 (hereinafter called "the Act").

One Ram Kristo Naskar left a will dated 17th May, 1899, by which he left certain properties as doubter to two deities, Sri Sri Iswar Kubereswar Mahadeb Thakur and Sri Sri Anandamoyee Kalimata, in the land adjoining his residential house at 74/75 Baliaghata Main Road. He appointed his two adopted sons, Hem Chandra Naskar (since deceased) and Yogendra Nath Naskar as the shebaits. Elaborate provision was made as to the manner in which the income from the property was to be spent. For a long time the income from the property was assessed in the hands of the shebaits as trustees. In respect of the assessment years 1950-51 and 1951-52, the two shebaits contended that there was no trust executed in the case and as such the income form the property did not attract liability to tax and his brother, Yogendra Nath Naskar, as trustees of the doubter estate could not be sustained. The Appellate Assistant Commissioner accepted this contention on appeal and set aside the assessments. Finding that the assessment is have bee

> "Whether, on the facts and in the circumstances of the case, the assessment on the deities through the shebaits under the provisions of section 41 of the Indian Income-tax Act were in accordance with law ?"

After having heard learned counsel for both the parties we are satisfied that in the question reffered by the Appellate Tribunal the words "under the provisions of section 41 of the Income-tax Act" should be deleted as superfluous and the question should be modified in the following manner to bring out the question in real controversy between the parties :

Whether on the facts and in the circumstances of the case, the assessments on the deities through the shebaits were in accordence with law ?

The main question hence presented for determination in these appeals is whether a Hindu deity can be treated as a unit of assessment under section 3 and 4 of the Income-tax Act, 1922.

It is well established by high authorities that a Hindu idol is a juristic person in whom the dedicated property vests. In Manohar Ganesh v. lakhmiram, called the Dakhor temple case, West and

Birdwood JJ. state :

> "The Hindu law, like the Raman law and those derived from it, recognises, not only corporate bodies with rights of property vested in the corporation apart from its individual members, but also the juridical persons or subjected called foundations. A Hindu, who wishes to establish a religious or charitable institution, may, according to his law, express his purposes and endow it, and the rule will give effect to the bounty, or at least protect it so far, at any rate, as it is consistent with his own dharma or conceptions of morality. A trust is not required for this purpose; the necessity of a trust in such a case is indeed a peculiarity and a modern peculiarity of the English law. In early times a gift placed, as it was expressed, 'on the altar of God' sufficed to convey to the Church the lands thus dedicated..... It is consistent with the grants having been made to the juridical person symbolized or personified in the idol....."

The same view has been expressed by the Madras High Court in Vidypurna Tirtha Swami v. Vidyanidhi Tirtha Swami, in which Mr. Justice Subramania Ayyar stated :

> "It is to give due effect to such a sentiment, widespread and deep- rooted as it has always been, with reference to something not capable of holding property as a natural person, that the laws of most countries have sanctioned the creation of a fictions person in the matter, as is implied in the felicitous observation made in the work already cited : 'Perhaps the oldest of all juristic persons in the God, hero or the saint' (Pollock and Maitland's History of English Law, volume 1, 481).
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> That the consecrated idol in a Hindu temple is a juridical person has been expressly laid down in Manohar Ganesh's case which Mr. Prannath Saraswati, the author of the Tagore Lectures on Endowments rightly enough speaks of as one ranking as the leading case on the subject, and in which West J. discusses the whole matter with much erudition. And in more than one case, the decision of the Judicial Committee proceeds on precisely the same footing (Maharanee Shibessouree Debia v. Mothooranath Acharjo and Prosanna Kumari Debya v. Golab Chand Baboo. Such ascription of legal personality to an idol must however be incomplete unless it be linked to a natural person with reference to preservation and management of the property. Hence the treatment of idols as if they were infants perpetually, and the provision of human guardians for them variously designated in different parts of the country. In Prosanna Kumari Debya v. Golab Chand Baboo the Judicial Committee observed thus : 'It is only in an ideal sense that propert
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> In Pramatha Nath Mullick v. Pradyumna Kumar Mullick Lord Shaw observed :
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> "A Hindu idol is, according to long established authority, founded upon the religious customs of the Hindus, and the recognition thereof by courts of law, a 'juristic entity'. It has a juridical status with the power of suing and being sued. Its interests are attended to by the person who has the deity in his charge who is in the law its manager with all the powers which would, in such circumstances, on analogy, be given to the manager of the estate of an infant heir. It is unnecessary to quote the authorities; for this doctrine, thus simply stated, is firmly established."

It should be however be remembered that the juristic person in the idol is not the material image, and it is an exploded theory that the image itself develop into a legal person as soon as it is

consecrated and vivified by the Pran Pratishta ceremony. It is not also correct that the supreme being of which the idol is a symbol or image is the recipient and owner of the dedicated property. This is clearly laid down in authoritative Sanskrit texts. Thus, in his Bhashya on the Purva Mimamsa Adhyaya 9, Pada 1, Sabara Swami states :

> "Words such as 'village of the Gods,' 'land of the Gods' are used in a figurative sense. That is property which can be said to belong to a person which he can make use of as he desires. God however, does not make use of the village or lands, according to its desires". Likewise, Medhathithi in commenting on the expression "Devaswam" in Manu, Chapter XI, Verse 26, writes :
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> "Property of the Gods, Devaswam, means whatever is abandoned for Gods for purposes of sacrifice and the like, because ownership in the primary sense, as showing the relationship between the owner and the property owned, is impossible of application to Gods". Thus, according to the texts, the Gods have to beneficial enjoyment of the properties, and they can be described as their owners only in figurative sense (Gaunartha). The correct legal position is that the idol as representing and embodying the spiritual purpose of the donor is the juristic person recognised by law and in this juristic person the dedicated property vests. As observed by Mr. Justice B. K. Mukherjea :
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> "With regard to Debutter, the position seems to be somewhat different. What is personified here is not the entire property which is dedicated to the deity but the deity itself which is the central part of the foundation and stands as the material symbol and embodiment of the pious purpose which the dedicator has in view. `The dedication to deity', said Sir Lawrence Jenkins in Bhupati v. Ramlal, is nothing but a compendious expression of the pious purpose for which the dedication is designed. It is not only a compendious expression but a material embodiment of the pious purpose and though there is difficulty in holding that property can reside in the aim or purpose itself, it would be quite consistent with sound principles of jurisprudence to say that a material object which represent or symbolises a particular purpose can be given the status of a legal person, and regarded as owner of the property which is dedicated to it."

The legal position is comparable in may respect to the development in Roman law. So far as charitable endowment is concerned Roman law as later development recognised two kinds of juristic persons. One was a corporation or aggregate of person which owned its juristic personality to State sanction. A private person might make over property by way of gift or legacy to a corporation already in existence and might at the same time prescribe the particular purpose for which the property was to be employed, e.g., feeding the poor, or giving relief to the poor or distressed. The recipient corporation would be in a position of a trustee and would be legally bound to spend the funds for the particular purpose. The other alternative was for the donor to create in institution or foundation himself. This would be a new juristic person which depended for its origin upon nothing else but the will of the founder provided it was directed to a charitable purpose. The foundation would be the owner of the dedicated property in

> "During the later Empire - from the fifth century onwards - foundations created by private individuals came to be recognised as foundations in the true legal sense, but only if they took the form of a 'pia causa ('pium corpus'), i.e., were devoted to 'pious uses' only, in short, if they were charitable institutions. Wherever a person dedicated property - whether by gift inter vivos or by will - in favour of the poor, or the sick, or prisoners, orphans, or aged

people, he thereby created ipso facto a new subject of legal rights - the poor-house, the hospital, and so forth - and the dedicated property became the sole property of this new subject; it became the sole property of the new juristic person whom the founder had called into being. Romon law, however, took the view that the endowment is of charitable foundations were a species of Church property. Piae causae were subjected to the control of the Church, that is, of the bishop or the ecclesiastical administrator, as the case might be. A pia causa was reg

We should, in this context, make a distinction between the spiritual and the legal aspect of the Hindu idol which is installed and worshipped. From the spiritual standpoint the idol may be to the worshipped a symbol (pratika) of the Supreme God-head intended to invoked a sense of the vast and intimate reality, and suggesting the essential truth of the Real that is beyond all name or form. It is a basic postulate of Hindu religion that different images do not represent different divinities, they are really symbols of One Supreme Spirit and in which ever name or form the deity is invoked, the Hindu worshipper purports to worship the Supreme Spirit and nothing else.

They have spoken of Him, as Agni, Mitra Varuna, Indra; the one Existence, the sages speak of in many ways. The Bhagavad Gita echoes this verse when it says :

(Thou art Vayu and Yama, Agni, Varuna and Moon; Lord of creation art Thou, and Grandsire). Samkara, the great philosopher refers to the one Reality, who, owing to the diversify of intellects (matibheda) is conventionally spoken of (parikalpya) in various ways as Brahma, Vishnu and Mahesvara. It is however possible that the founder of the endowment or the worshipper may not conceive on this highest spiritual plane but hold that the idol is the very embodiment of a personal God, but that is not a matter with which the law is concerned. Neither God not any Supernatural being could be a person in law. But so far as the deity stands as the representative and symbol of the particular purpose which is indicated by the donor it can figure as a legal person. The true legal view is that in that capacity alone the dedicate property vests in it. There is no principle why a deity as such a legal person should not be taxed if such a legal person is allowed in law to own property, even though in the ideal sense, and to sue

"..... the word 'individual' has not been defined in the Act and there is authority for the proposition that the word 'individual' does not mean only a human being but is wide enough to include a group of persons forming a unit. It has been held that the word 'individual' includes a corporation created by statute, e.g., a University or a Bar Council, or the trustees of a baronetcy trust incorported by a Baronetcy Act."

We are accordingly of opinion that a Hindu deity falls within the meaning of the word "individual" under section 3 of the Act and can be treated as a unit of assessment under that section.

On behalf of the appellant Mr. Chagla referred to section 2, sub- section (31), of the Income-tax Act, 1961 (49 of 1961), which states :

"2. In this Act, unless the context otherwise requires - .....

(31) 'person' includes -

(i) an individual,

(ii) a Hindu undivided family,

(iii) a company,

(iv) a firm,

(v) an association of persons or a body of individuals, whether incorporate or not,

(vi) a local authority, and

(vii) every artificial juridical person, not falling within any of the preceding sub-clauses".

Counsel also referred to section 2(9) and section 3 of Income-tax Act, 1922, which state :

"2. In this Act, unless there is anything repugnant in the subject or context - .....

(9) 'person' includes a Hindu undivided family and a local authority;.....

3. Where any Central Act exacts that income-tax shall be charged for any year at any rate or rates, tax at that rate or those rates shall be charged for that year in accordance with, and subject to the provisions of this Act in respect of the total income of the previous year of every individual, Hindu undivided family, company and local authority, and of every firm and other association of persons or the partners of the firm or the members of the association individually."

On a comparison of the provisions of the two Acts counsel on behalf of the appellants contended that a restricted meaning should be given to the word "individual" in section 3 of the earlier Act. We see no justification for this argument. On the other hands, we are of the opinion that the language employed in the 1961 Act may be relied upon as a parliamentary exposition of the earlier Act even on the assumption that the language employed in section 3 of the earlier Act is ambiugous. It is clear that the word "individual" in section 3 of the 1922 Act includes within its connotation all artificial juridical persons and this legal position is made explicit and beyond challenge in the 1961 Act. In Cape Brandy Syndicate v. Inland Revenue Commissioners, Lord Sterndale M. R. said :

"I think it is clearly established in Attorney-General v. Clarkson that subsequent legislation on the same subject may be looked to in order to see what is the proper construction to be put upon an earlier Act where that earlier Act is ambiugous. I quite agree that subsequent legislation, if it proceed upon an erroneous construction of previous legislation; cannot alter that previous legislation; but if there be any ambiguity in the earlier legislation than the subsequent legislation may fix the proper interpretation which is to be put upon the earlier."

For the reasons expressed we hold that the question of law referred by the Income-tax Appellate Tribunal and as modified by us should be answered in the affirmative and in favour of the Commissioner of Income-tax. We accordingly dismiss these appeals with costs. One hearing fee.

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