Commissioner of Income-Tax, West Bengal Calcutta

Vs

Shri Prem Bhai Parekh and Others

Civil Appeal No. 2272 of 1966

(J. C. Shah, K. S. Hegde, A. N. Grover JJ)

20.04.1970

JUDGMENT

HEGDE, J. -

1. This is an appeal by certificate, granted by the High Court of Calcutta under section 66-A(2) of the Indian Income-tax Act, 1922 (to be hereinafter referred to as the Act), against the decision of that court in a reference under section 66(1) of that Act.

2. The two questions of law referred to the High Court by the tribunal are : (1) Whether section 16(3) of the Act was ultra vires the Central Legislature and (2) Whether, on the facts and in the circumstances of the case, the income arising to the three minor sons of the assessee by virtue of their admission to the benefits of the partnership of Messrs. Ajitmal Kanhaiyalal was rightly included in the total income of the assessee under section 16(3)(a)(iv) of the Act.

3. The assessee at whose instance those questions were referred did not press for an answer in respect of question No. 1. Therefore, that question was not dealt with by the High Court. Hence, we need not go into that question. The High Court answered the second question in favour of the assessee.

4. The facts necessary for the purpose of deciding the point in dispute as set out in the statement of the case submitted by the tribunal are as follows :

5. The assessee Shri Ajitmal Parekh, was a partner of the firm, M/s. Ajitmal Kanhaiyalal, having 7 annas share therein. He continued to be a partner of that firm till July 1, 1954, which was the last date of the accounting year of the firm, relevant for the assessment year 1955-56. On July 1, 1954, the assessee retired from the firm. Thereafter, he gifted to each of his four sons Rs. 75,000/-. Out of his four sons, three were minors at that time. There was a reconstitution of the firm with effect from July 2, 1954, as evidenced by the partnership deed dated July 5, 1954. The major son of the assessee became a partner of the reconstituted firm and his minor sons were admitted to the benefits of that partnership in the reconstituted firm. The major son had 2 annas share. His three minor brothers were admitted to the benefits of the partnership, each one of them having 2 annas share. In the assessment year 1956-57, the Income-tax Officer held that the income arising to the minors by virtue of their admission to the benefits of the partnership came within the purview of section 16(3)(a)(iv) of the Act. He included that income in the total income of the assessee for that year. In appeal the Appellate Assistant Commissioner substantially upheld the order of assessment made by the Income-tax Officer but he held that the minors were entitled to only 1-9 pies share in the firm. The assessee took up the matter in appeal to the Income-tax Appellate Tribunal. The Tribunal

upheld the decision of the Appellate Assistant Commissioner.

6. On the facts found by the tribunal, the High Court came to the conclusion that answer to question No. 2 should be in the negative and in favour of the assessee.

7. The Tribunal found that the capital invested by the minors in the firm came from the gift made in their favour by their father, the assessee. That finding was not open to question before the High Court, nor did the High Court depart from that finding. But on an interpretation of section 16(3)(a)(iv), the High Court opined that the answer to the question must be in favour of the assessee. Section 16(3)(a)(iv) reads :

> "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 ...
>
> (iv) from assets transferred directly or indirectly to the minor child, not being a married daughter by such individual otherwise than for adequate consideration."

8. Before any income of a minor child can be brought within the scope of section 16(3)(iv), it must be established that the said income arose directly or indirectly from assets transferred directly or indirectly by his father. There is no dispute that the assessee had transferred to each of his minor sons, a sum or Rs. 75,000/-. It may also be that the amount contributed by those minors as their share in the firm came from those amounts. But the question still remains whether it can be said that the income with which we are concerned in this case arises directly or indirectly from the assets transferred by the assessee to those minors. The connection between the gifts mentioned earlier and the income in question is a remote one. The income of the minors arose as a result of their admission to the benefits of the partnership. It is true that they were admitted to the benefits of the partnership because of the contribution made by them. But there is no nexus between the transfer of the assets and the income in question. It cannot be said that the income arose directly or indirectly from the transfer of the assets referred to earlier. Section 16(3) of the Act created an artificial income. That section must receive strict construction as observed by this court in Commissioner of Income-tax Gujarat v. Keshavlal Lallubhai Patel(55 ITR 637). In our judgment before an income can be held to come within the ambit of section 16(3), it must be proved to have arisen - directly or indirectly - from a transfer of assets made by the assessee in favour of his wife of minor children. The connection between the transfer of assets and the income must be proximate. The income in question must arise as a result of the transfer and not in some manner connected with it.

For the reasons mentioned above, this appeal fails and the same is dismissed with costs.

</html