

The Commissioner of Income-Tax, Calcutta

Vs

Smt. Kokila Devi and Others

Civil Appeals Nos. 220 to 250 of 1967

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

20.04.1970

JUDGMENT

HEGDE, J. -

1. These appeals were brought on the strength of the certificates granted by the High Court of Calcutta against its Judgment in references under Section 66(1) of the Indian Income Tax Act, 1922 (hereinafter called the Act).

The questions referred to the High Court are :

"(1) Whether on the facts and in the circumstances of the case and on a proper construction of three deeds executed on the 3rd November, 1944, the 25th September, 1947 and the 17th March, 1951, referred to in the order, the tribunal was right in holding that there was only one beneficiary viz. Sri. Sri. Iswar Gopal Jew, under the trust ?

(2) If the answer to the question (1) be in the negative, then whether the income of the trust was to be assessed at the maximum rate by virtue of the first proviso to Section 41(1) of the Income-tax Act, 1922 ?"

2. The High Court answered the first question in the affirmative and in view of that answer, it did not find it necessary to answer the second question.

3. The facts found by the tribunal, as could be gathered from the statement of the case submitted by it are as follows :

4. Shri Badri Prasad Agarwalla, a Hindu governed by Mitakshra School of Hindu Law, had three wives, (1) Sukti Devi, (2) Krishna Devi and (3) Kokila Devi. From the second wife, Krishna Devi, he had a son named Fulchand born in March, 1929. After the death of the second wife, Badri Prasad Agarwalla took Kokila Devi as his third wife. From her he had six sons, the eldest of whom is Nirmal Kumar born in 1942. On November 3, 1944, he executed a deed of trust by which he transferred to the trustees two of his self-acquired properties situate as 41/16-A, Russa Road and 21, Paika Para Row for the benefit of the deity Sri. Sri. Iswar Gopal Jew whom he had consecrated at his ancestral house at 1/2, Krishnaram Bose Street, Calcutta. The intended purposes of the said trust were set out in the deed itself. Under that deed Kokila Devi was appointed as a trustee. It was provided in that deed that each of the sons of Badri Prasad on attaining majority would automatically become a trustee of that trust. It may be mentioned here that in accordance with this

provision, Fulchand became a trustee on attaining majority in March, 1947 and Nirmal Kumar, the eldest son of Kokila Devi also became a trustee in the year 1960. Under that deed, Kokila Devi was appointed as the sole Shebait of the idol until the sons of Badri Prasad became majors. But as soon as they became majors they were to be joint Shebait of the idol along with Kokila Devi. 2/3rd of the rent realised from the trust properties was to be utilised towards Seva of the deity and the balance 1/3rd was to be retained in the hands of the trustees to meet the collection charges, taxes and other incident expenses relating to the said properties.

5. On September 25, 1947, Badri Prasad executed another deed to which he, Kokila Devi and Fulchand were parties. The deed was admittedly a supplement to the earlier deed, dated November 3, 1944.

6. On March 17, 1951, Badri Prasad executed a third deed. To that deed Badri Prasad, Kokila Devi and Fulchand were parties. This deed was also expressly made as a supplement to the deed of November 3, 1944. The avowed object in executing this deed was to clarify the status, rights and liabilities of the trustees and the Shebait in office for the benefit of and in the interest of the deity and to avoid future litigation. Under this deed, it is mentioned that the properties covered by the first two deeds were given in absolute dedication to the deity established by the settlor at 1/2, Krishnaram Bose, Road, Calcutta and the trustees and Shebait held their offices as such for carrying on daily and periodical Sevass and worship of the deity and they were to hold the properties for and on behalf of the deity. Therein provision was made for the management of the property, for conducting the Sevass and Pujass of the deity and for maintenance of proper and necessary accounts.

7. The Income-tax Officer assessed the income from all the properties in the hands of the trustees at the maximum rate in accordance with the provision contained in the 1st proviso to Section 41(1) of the Act. In appeal, the Appellate Assistant Commissioner confirmed the order of the Income-tax Officer but on a further appeal take to the Income Tax Appellate Tribunal, the Tribunal held that the sole beneficiary under the three deeds was the deity Sri. Sri. Ishwar Gopal Jew. Hence the 1st proviso to Section 41(1) is not applicable to the facts of the case and the trustees should be assessed in the status of an individual in respect of the income received by them on behalf of the deity. The relevant portions of Section 41(1) and the 1st proviso thereto reads :

"In the case of income, profits or gains chargeable under this Act any trustee or trustees appointed under a trust declared by a duly executed instrument in writing whether testamentary or otherwise 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 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 of persons"

8. As seen earlier, the finding of the Appellate Tribunal is that the trustees had no beneficial interest in the income of the properties included in the trust deed and that the sole beneficiary under those deeds is the deity. The question whether a deity can be considered as a 'person' within the meaning of Section 2(9) of the Act had not been canvassed before the High Court or the Tribunals below nor was that question raised before us. Therefore we shall not go into that question. For the purpose of this case we shall proceed on the basis that it is 'a person' within the meaning of Section 2(9) of the Act. Now coming to the deeds, all that the learned counsel for the revenue was able to show us is that in one of the trust deeds, the trustees were referred to as beneficiaries but on a reading of the entire deed, it is clear that reference to them as beneficiaries is a misnomer and that they are not entitled to any benefit under any of those deeds. Therefore the finding of the tribunal that the sole beneficiary under those deeds is the deity is not open to challenge. If that is so, the case clearly falls within the main Section 41 (1) and that the 1st proviso to that section is inapplicable to the facts of the case. On the facts found by the Tribunal, it cannot be said that the income or profits in question are "not specifically receivable by the trustees on behalf of anyone person."

9. The fact that for certain purposes, a trusteeship is considered as "property" and that the trustees have an interest in the trust is irrelevant for our present purpose. In considering the scope of Section 41(1), the only thing that we have to see is whether the income in question was received by the trustees on behalf of any person. If the deity is considered as a "person" then quite clearly the case does not come within the 1st proviso to Section 41(1) and that it has to be dealt with under Section 41(1).

10. For the reasons mentioned above, these appeals fail and they are dismissed. The respondents are ex parte in this Court. Hence there will be no order as to costs in these appeals.

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