Commissioner of Income-Tax, West Bengal II

Vs

Durga Prasad More

Civil Appeals Nos. 1898 and 1899 of 1968

(K. S. Hegde, A. N. Grover JJ)

26.08.1971

JUDGMENT

HEGDE J. -

These appeals by certificate arise from the decision of the Calcutta High Court in Income-tax References Nos. 78 and 79 of 1964 on its file. Those were references under section 66(2) of the Indian Income-tax Act, 1922 (which for the sake of brevity will hereinafter be referred to as "the Act"). The question referred to the High Court seeking its opinion is :

> "Whether, in the facts and circumstances of the case, and on a proper interpretation of the deed of conveyance and the deed of settlement the Tribunal is right in holding that the house property being premises Nos. 46A and 46B, Wellesley Street, Calcutta, is not trust property ?"

The circumstances under which that question came to be referred may now be set out.

The assessment years with which we are concerned in these appeals are 1958-59 and 1959-60, the previous years being the Diwali Samvat 2013- 2014 and 2014-2015. In the course of the assessment proceedings relating to those years, the assessee claimed before the Income-tax Officer that the income of the property at premises Nos. 46A and 46B, Wellesley Street, Calcutta, should not be taxed in his hands as it was trust property in his hands. The Income-tax Officer rejected that claim and included that income in the total income of the assessee. The Appellate Assistant Commissioner and the Income-tax Appellate Tribunal affirmed and decision of the Income-tax Officer. An application under section 66(1) was rejected by the Tribunal on the ground that no question of law arose from its order. But, the High Court, on an application by the assessee under section 66(2), directed the Tribunal to state a case and submit the question mentioned earlier to it for obtaining its opinion. After hearing the parties, it answered the question in favour of the assessee. The Commissioner has appealed against the order of the High Court.

The premises in question were purchased by the assessee on September 30, 1940, purporting to act as the trustee of the trust created by his wife, Smt. Benarsi Debi, for a consideration of Rs. 1,85,000. The income of those premises had been assessed as the income of the assessee ever since the purchase of those premises. We shall presently refer to the earlier proceedings.

During the assessment of the assessee for the assessment year 1942-43, the assessee put forward the claim that the income of the premises in question was not his income and, therefore, that income should not be brought to tax in his hands and in support of that claim he produced the conveyance

executed in his favour on September 30, 1940, and the deed of settlement executed by his wife on September 10, 1941, nearly about a year after the conveyance. At that stage, it is seen from the records, the Income-tax Officer asked the assessee as to the source from which his wife got that amount. The assessee, apart from saying that it was her stridhana property, appears to have been unable to disclose any source from which his wife could have got the amount from which the premises were purchased. The only further fact he appears to have informed the Income-tax Officer was that two lakhs of rupees were all along lying in the hands of his father-in-law. It was not the assessee's case that the said amount was either deposited in any bank or the same was advanced to others. No material was placed before the Income-tax Officer to show that his wife had any independent source of income. The case of the assessee was that his wife had under an oral trust created for the benefit of herself and her children left in his hands two lakhs of rupees. The Income-tax Officer rejected the version put forward by the assessee and, consequently, he came to the conclusion that the consideration for the sale was paid by the assessee. In the result he brought to tax the income from the premises purchased, in the hands of the assessee. In appeal, the Appellate Assistant Commissioner affirmed the order of the Income-tax Officer. Evidently, before the Tribunal, it was urged on behalf of the assessee that the assessee had not been given enough opportunity to establish his case. The Tribunal while dismissing the appeal observed that it was open to the assessee to establish his case in subsequent assessment proceedings. Thereafter, the income of those premises was being continuously assessed in the hands of the assessee for several years evidently without any objection. It appears from the records that the assessee took up in appeal to the Tribunal one of the orders of assessments made against him after the Tribunal's order referred to earlier. Therein, he did not contest the validity of the inclusion of the income of the premises in question in his income though he took up other grounds. During the assessment years 1942-43 to 1957-58, the income of those premises was assessed in the hands of the assessee. Suddenly, in the assessment proceedings for the assessment years 1958- 59 and 1959-60, the assessee revived his old plea. As mentioned earlier, the same was rejected by the Income-tax Officer, the Appellate Assistant Commissioner as well as by the Tribunal in a somewhat summary manner possibly because of the past history of the case.

As stated earlier, after the Tribunal dismissed the appeal of the assessee, the assessee moved the Tribunal under section 66(1) for referring to the High Court the question set out earlier. The Tribunal refused to accede to his prayer. It held that no question of law arose from its order. Thereafter, he moved the High Court under section 66(2) of the Act and the High Court was pleased to call upon the Tribunal to state a case and submit to it the question mentioned earlier.

Now turning to the documents referred to earlier, the first one is a conveyance in favour of the assessee. Therein, it is mentioned that the assessee was purchasing the property as a trustee of the trust created by his wife for the benefit of herself and her children. The second document is the trust deed executed by the wife of the assessee. It recites that the purchase made under the first document was a purchase on behalf of the trust created by her. The terms of the trust are set out in the document. It is not necessary for our present purpose to refer to those terms. The Income-tax Officer, the Appellate Assistant Commissioner, as well as the Tribunal have referred to these documents in the course of the assessment proceedings. But they were unable to rely on the recitals contained therein. Evidently, they came to the conclusion that those recitals were make-believe statements and the alleged trust does not exist. From the tenor of their orders, it is clear that they were of the opinion that the assessee was trying to evade tax by putting forward the trust. In coming to that conclusion, they relied on the following facts and circumstances :

1. The assessee's wife is not shown to have had any source of income from which she could have

built up a huge sum of two lakhs by 1940;

2. The assessee when he was called upon the explain the source of income of his wife was unable to do so;

3. The sale deed in favour of the assessee was executed even before the trust deed was executed; and

4. Even after the assessee's contention that the income in question was not his income was rejected by the Tribunal, while dealing with his appeal relating to the assessment year 1942-43 and even though the Tribunal told him that he could take up that question again during the subsequent assessment years, the assessee allowed that income to be taxed in his hands for several years without any objection.

The Tribunal is the final fact finding body. It cannot be said that its finding as to the unreality of the trust put forward is not based on any evidence or the same is otherwise vitiated. Prima facie, the said finding is a finding of fact. The High Court, as seen earlier, directed the Tribunal to state a case and submit to the High Court the question set out earlier. From that question, it appears that the High Court was of the opinion that for arriving at its finding the Tribunal had to interpret the two documents referred to in that question. This conclusion of the High Court appears to us to be an erroneous one. The Tribunal did not interpret those documents. It merely found itself unable to accept the correctness of some of the recitals in those documents. That does not mean that the Tribunal interpreted those documents. Whether to accept those recitals or not was within the province of the Tribunal. Unless its conclusion is held to be perverse or is not supported by any evidence or is based on irrelevant evidence, the High Court had no jurisdiction to interfere with its findings.

The references under section 66(2) was heard by a Division Bench of the Calcutta High Court consisting of Mukharji J. (as he then was) and Sen J. The learned judges concurred in the decision though each one of them wrote a separate opinion. As seen earlier, they answered the question in favour of the assessee. The grounds on which Sen J. based his conclusions are : (1) the apparent statements in the documents must be presumed to be real until the contrary is established; (2) the onus of showing that the income in question is taxable in the hands of the assessee was on the department and the department has not discharged that onus; (3) that, as the Income-tax Officer failed to examine the wife and the father-in-law of the assessee, the department must be held to have not discharged its onus; and (4) the circumstances that the assessee had included the income of the premises in question during some years in his own income is an immaterial circumstances as neither the rule of res judicata nor the rule of estoppel is applicable to an assessment proceeding.

Somewhat similar were the conclusions reached by P. B. Mukharji J. The learned judge summarised the grounds on which he came to his conclusions at page 31 of the printed paper book. They are as follows :

> "1. There is no proof and no charge against the assessee that he had concealed any income of his own.
>
> 2. There is no evidence whatever that the assessee as husband advanced this money to his wife and thereby concealed his own income.
>
> 3. The assessee has throughout kept separate accounts of his own income and the income of the trust properties and has returned such income separately without any

concealment or any evasion, and

4. The assessee when asked definitely produced before the taxing authorities both the sale deed as well as the trust deed to show that properties in question were trust properties."

Now we shall proceed to examine the validity of those grounds that appealed to the learned judges. It is true that an apparent must be considered real until it is shown that there are reasons to believe that the apparent is not the real. In a case of the present kind a party who relies on a recital in a deed has to establish the truth of those recitals, otherwise it will be very easy to make self-serving statements in documents either executed or taken by a party and rely on those recitals. If all that an assessee who wants to evade tax is to have some recitals made in a document either executed by him or executed in his favour then the door will be left wide open to evade tax. A little probing was sufficient in the present case to show that the apparent was not the real. The taxing authorities were not required to put on blinkers while looking at the documents produced before them. They were entitled to look into the surrounding circumstances to find out the reality of the recitals made in those documents.

Now, coming to the question of onus, the law does not prescribe any quantitative test to find out whether the onus in a particular case has been discharged or not. It all depends on the facts and circumstances of each case. In some cases, the onus may be heavy whereas, in others, it may be nominal. There is nothing rigid about it. Herein the assessee was receiving some income. He says that it is not his income but his wife's income. His wife is supposed to have had two lakhs of rupees neither deposited in banks nor advanced to others but safely kept in her father's safe. Assessee is unable to say from what source she built up that amount. Two lakhs before the year 1940 was undoubtedly a big sum. It was said that the said amount was just left in the hands of the father-in-law of the assessee. The Tribunal disbelieved the story, which is, prima facie, a fantastic story. It is a story that does not accord with human probabilities. It is strange that the High Court found fault with the Tribunal for not swallowing that story. If that story is found to be unbelievable as the Tribunal has found, and in our opinion rightly, then the position remains that the consideration for the sale proceeded from the assessee and, therefore, it must be assumed to be his money.

It is surprising that the High Court has found fault with the Income- tax Officer for not examining the wife and the father-in-law of the assessee for proving the department's case. All that we can say is that the High Court has ignored the facts of life. It is unfortunate that the High Court has taken a superficial view of the onus that lay on the department.

It is true that neither the principle of res judicata nor the rule of estoppel is applicable to assessment proceedings. But the fact that the assessee included the income of the premises in his returns for several years, and that after objecting to the inclusion of that income in his total income in the assessment year 1942-43, in the absence of any satisfactory explanation, is undoubtedly a circumstance which the taxing authorities were entitled to take into consideration.

Now, coming to the grounds that commended themselves to Mukharji J. (the present Chief Justice of the High Court of Calcutta), we are unable to find out how the learned judge was able to come to the conclusion that there was no proof or charge that the assessee had concealed any income of his. The orders of the Income-tax Officer, Appellate Assistant Commissioner and the Tribunal proceeded on the basis that the assessee was attempting to conceal a portion of his income by putting forward the story that the income from the premises is the income of the trust created by his wife. The proof

of that charge depends on the correctness of the findings of those authorities.

In stating that there is no proof that the consideration for the conveyance passed from the assessee the learned judge, in our opinion, looked at the case from a wrong angle. There is no dispute that the consideration for the sale was in fact paid by the assessee. He says that he paid it on behalf of the trust orally created by his wife. Therefore, the question is whether he has satisfactorily proved that case. If he was failed to prove that case, as we think it to be so, and in the absence of any other alternative case pleaded by him, it follows as a matter of course that the consideration for the sale passed from him. Science has not yet invented any instrument to test the reliability of the evidence placed before a court or tribunal. Therefore, the courts and Tribunals have to judge the evidence before them by applying the test of human probabilities. Human minds may differ as to the reliability of a piece a evidence. But it that sphere the decision of the final fact finding authority is made conclusive by law.

The fact that the assessee kept a separate account in respect of the income and expenditure relating to the premises in question is of little evidentiary value if one takes into consideration the past history of the case. At any rate what value should be attached to that circumstance is for the final fact finding body.

The circumstance that the assessee had at the very outset produced the sale deed and the trust deed before the Income-tax Officer is of no significance. Those documents formed and sheet anchor of the assessee's case. There was no particular virtue in the assessee's producing those documents before the Income-tax Officer.

In our opinion, no question of law arose from the order of the Tribunal and, therefore, the High Court was not justified in directing the Tribunal to state a case and we are further of opinion that the answer given by the High Court to the question referred to it is unsustainable. We, accordingly, discharge that answer and answer that question in the affirmative and in favour of the department. The assessee shall pay the costs of the department both in this court as well as in the High Court - hearing fee one set.

Appeal allowed.

</html