

Smt. Mohini Thaper (deceased, by Legal Representatives)

Vs

Commissioner of Income-Tax (Central), Calcutta and Others

Civil Appeal Nos. 1374 and 2146 to 2149 of 1970

(K.S. Hegde, A.N. Grover, H.R. Khanna JJ)

23.09.1971

JUDGMENT

HEGDE J. -

1. All these appeals by certificate are filed by the legal representatives of late Karam Chand Thapar who was the assessee in this case. He died after the assessments were made. The assessment years with which we are concerned in these appeals are 1949-50, 1950-51, 1951-52, 1952-53 and 1953-54. The facts of the case lie within a narrow compass. Late Karam Chand Thapar made certain cash gifts to his wife, Smt. Mohini Thapar. From out of those gifts, she purchased certain shares and the balance amount she invested. The shares earned dividends and the investments yielded interest. The interest realised and the dividends earned were included in the income of Karam Chand Thapar from the purpose of assessment in the assessment year mentioned earlier. The assessee objected to the inclusion of that amount in his income. The question is whether the department was entitled to include the dividends and interest in question in computing the taxable income of the assessee. The Income-tax Officer held that they were liable to be included in the income of the assessee. That decision was upheld by the Appellate Assistant Commissioner. On a further appeal taken by the assessee to the Tribunal, the Tribunal upheld the order of the Assistant Commissioner. Thereafter, at the instance of the assessee, the question set out below was submitted to the High Court under section 66(1) of the Indian Income-tax Act, 1922, in respect of the assessment year 1949-50 :

"(1) whether, on the facts and in the circumstances of the case, the income of Rs. 21,225 derived from deposits and shares held by the assessee's wife, Smt. Mohini Devi Thapar, was income from assets directly or indirectly transferred by the assessee to his wife within the meaning of section 16(3) of the Income-tax Act ?"

Similar questions were referred in respect of other assessment years. The High Court answered these questions in favour of the revenue. Hence, these appeals.

Section 16(3) (a) (iii) of the Act the provision relevant for the purpose of these appeals, read thus :

"(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 -

(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;...."

The assets transferred in this case is the gift of the cash amounts made by the assessee to his wife. The transfers in question are direct transfers. But those assets, as mentioned earlier, were invested either in shares or otherwise. Hence it was urged on behalf of the revenue that the incomes realised either as dividends from shares or as interest from deposits are income indirectly received in respect of the transfer of cash directly made. This contention of the revenue appears to be sound. That position clearly emerges from the plan language of the section.

It was urged by Dr. Pal, learned counsel for the assessee, that there is no nexus between the income earned and the transfer of the assets. According to him before an income can come within section 16(3) (a) (iii) it must be an income directly arising from the assets transferred. In other words, he urged that only such income which can be said to have directly sprung from the assets transferred can come within the scope of section 16(3) (a) (iii). We are unable to accept this contention as sound. Otherwise, the expression "as arises directly or indirectly" in section 16(3) (a) would become income that arises directly from the assets transferred but also that arises indirectly from the assets transferred. We are in agreement with the contention of Rr. Pal that the income that can be brought to tax under section 16(a) 9(iii) must have a nexus with the assets transferred directly or indirectly. But in this case the income with which we are concerned has a nexus with the assets transferred.

In support of his contention Dr. Pal relied on the decision of this court in Commissioner of Income-tax v. Prem Bhai Parekh. The facts of that case are as follows : The assessee, who was a partner in a firm having 7 annas share therein, retired from the firm on July 1, 1954. thereafter he gifted Rs. 75,000 to each of his four sons, three of who were minors. There was a reconstitution of the firm with effect from July 2, 1954, where by the major son became a partner and the minor sons were admitted to the benefits of partnership in the firm. The question was whether the income arising to the minors by virtue of their admission to the benefits of partnership in the firm could be included in the total income of the assessee under section 16(3) (a) (iv), a provision similar to section 16(3) (a) (iii). 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. This court overruling the contention of the revenue came to the conclusion that the connection between the gifts made by the assessee and the income of the minors from the firm was a remote one and that it could not be said that the income arose directly or indirectly from the assets transferred. Hence the income arising to the three minor sons of the assessee by virtue of their admission to the benefits of partnership in the firm could not be included in the total income of the assessee. The ratio of the decision is found at page 30 of the report. This is what the court observed in that case :

"The connection between the gifts mentioned earlier and the income in question is a remote one. The income of the minors arose as 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 that 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 v. Keshavlal Lallubhai Patel. 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 or 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."

The ratio of that decision is inapplicable to the facts of the present case.

Here we are dealing with an income which has proximate connection with the transfer of the assets made by the assessee.

In the result, these appeals fail and they are dismissed with costs. Costs one set.

Appeals dismissed.

</html