

Prince Muffakham Jah Bahadur

Vs

Commissioner of Expenditure-Tax, Hyderabad

Civil Appeals Nos. 2143 to 2147 of 1969

(K.S. Hegde, H.R. Khanna JJ)

09.03.1973

JUDGMENT

HEGDE, J. -

1. In these appeals by special leave, a common question of law arises for decision and that question relates to the meaning of the word "realization" in Section 5(o)(ii) of the Expenditure Tax Act, 1957, which will be hereinafter referred to as "the Act". The facts relevant for the purpose of deciding the question of law arising for decision in all the appeals are identical.

2. In Civil Appeal No. 2147 of 1969, at the instance of the assessee, the Income Tax Appellate Tribunal, Hyderabad Bench, referred the following question to the High Court of Andhra Pradesh :

"Whether, on the facts and in the circumstances of the case, the expenditure of Rs. 94,500 incurred by the assessee in London is exempt under Section 5(o) of the Expenditure Tax Act?"

3. Similar questions have been referred to the High Court in other appeals.

4. The High Court answered the above-mentioned question in the negative and in favour of the revenue. Aggrieved by that decision, the appellants have brought these appeals.

5. We shall now set out the material fact. The two assessee who are the appellants in these appeals are the grandsons of the former Nizam of Hyderabad. On January 8, 1950, the Nizam constituted a trust under which his two grandsons and his daughter-in-law were given certain benefits. Each of the two grandsons were entitled to get every year a sum of Rs. 1,26,000 from the trustees. The trust created was followed up by a tripartite agreement between the Nizam, the Governor-General of India and the trustees. The corpus of the trust was deposited with the Government of India and the Government of India was to pay to the trustees certain sums of money every year in India under the tripartite agreement. The trust deed provided that the trustees shall pay to the two beneficiaries every year Rs. 1,26,000. The payment is required to be made in India. After the execution of this trust, the two grandsons of the Nizam as well as his daughter-in-law went and resided in London. Every year the trustees were realizing the amount due from the Government and remitting the amounts due to the beneficiaries to London and those amounts were expended by them in London. These facts are all admitted. The question for decision is whether the expenditure incurred by the two grandsons, who are beneficiaries under the trust, is exempt under Section 5(o)(ii) of the Act. The contention of the assessee is that the amount in question was realized by them in London and hence they are entitled to the benefit of Section 5(o)(ii). That contention has been rejected by the

Tribunal. The Tribunal came to the conclusion that the amount in question accrued in India. The trustees were liable to pay that amount to the assessee only in India. When the trustees remitted that amount to the assessee to London, they were merely functioning as the agents of the assessee. That being so the Tribunal held that the amounts in question were realized by the assessee in India. This finding was assailed on behalf of the assessee before the High Court but the High Court rejected the contention of the assessee and affirmed the decision of the Tribunal.

6. Mr. Setalvad, appearing for one of the assessee, contended that the amount in question was realized by the assessee only in London and not in India. In support of that contention he relied on the language of Section 5(o)(ii) of the Act. Under the Act expenditure by a person beyond the limit prescribed is brought to charge under Section 3 of the Act. Section 5 provides for certain exemptions. One of the exemptions provided is that found in Section 5(o). That provision to the extent material for our present purpose reads thus :

"No expenditure-tax shall be payable under this Act in respect of any such expenditure as is referred to in the following clauses, and such expenditure shall not be included in the taxable expenditure of an assessee -

* * * (o)(i) * * *

(ii) from any income or capital accrued or realized outside India by an assessee who is not a citizen of India but is resident in India or being a citizen of India or a Hindu undivided family, is not resident or not ordinarily resident in India....."

Explanation to that proviso is not necessary for our present purpose.

7. It was held by the Tribunal that the assessee are citizens of India, but they were not ordinarily resident in India. This finding was not challenged before us. So the only question for decision is whether they realized the amounts due under the trust in London. If they had realized that amount in London, then they would be exempt from payment of expenditure-tax under Section 5(o), but, on the other hand, if the income in question had accrued as well as been realized in India, then the exemption provided under Section 5(o) is not available to the assessee. Therefore, all that we have to see is whether the amounts in question were realized by the assessee in London.

8. We have earlier seen that, as per the terms of the trust deed, read along with the terms of the tripartite agreement, the assessee were entitled to receive the amounts in question only in India. The trustees could not have paid them those amounts outside India. But, in fact, the trustees have year after year been remitting those amounts to the assessee to London and the assessee were receiving those amounts without any objection. From these circumstances the Tribunal has drawn the inference that, when the trustees remitted the amounts in question to the assessee at London, they were only doing so as the agents of the assessee. The Tribunal opined that the trustees must have been sending the amounts in question to London under the assessee instructions. The finding of the Tribunal in this regard is essentially a finding of fact. Therefore, all that we have to see is whether that finding is either perverse or not based on any evidence. We are unable to agree with the learned counsel for the assessee that the finding in question is either perverse or the same is not based on any evidence. It was open to the Tribunal to come to the conclusion, on the facts and circumstance of the case, that the trustees acted under instructions from the assessee. That appears to be a reasonable inference. If the trustees were sending the amounts in question to the assessee to London under instructions from the assessee as found by the Tribunal, in law it means that the

assessee had realized those amounts in India itself and, consequently, they are not entitled to the exemption provided in Section 5(o).

9. In the result, these appeals fail and they are dismissed with costs. One hearing fee.

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