Commissioner of Income-tax, Andhra Pradesh

Vs

Nawab Mir Barkat Ali Khan

Civil Appeal Nos. 1404-07 and 1407A of 1975 with Civil Appeals No. 120B-12 of 1979 and 2989 of 1980

(S. Ranganathan, K. Ramaswamy JJ)

08.11.1990

JUDGMENT

1. These five appeals arise out of the assessments of Nawab Mir Barkat Ali Khan as the legal representative of the late Nizam of Hyderabad (hereinafter referred to as 'the assessee'). The appeals arise out of the assessments made on the assessee for the assessment years 1959-60, 1960-61, 1961-62, 1962-63 and 1963-64. Two questions, which are common to all these assessment years, were answered by the High Court of Andhra Pradesh in favour of the assessee and against the Revenue and the Commissioner of Income-tax has preferred these appeals. We shall deal with these two questions.

2. The first question was in the following terms:

> "Whether, on the facts and in the circumstances of the case, the income of Rs. 83,709, Rs. 83,709, Rs. 84,076, Rs. 84,779 and Rs. 96,431/ - for the assessment years 1959-60, 1960-61, 1961-62, 1962-63 and 1963-64, respectively, relating to HEH the Nizam's Pilgrimage Money Trust are not taxable in the assessee's hands by reason of S. 16(1)(c) of the Income-tax Act, 1922 /Sections 60 and 61 of the Income-tax Act, 1961?"
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> The High Court answered this question in favour of the assessee, following its earlier decision in Commr. of Income-tax v. Nawab Sir Mir Osman Ali Bahadur, (1985) 153 ITR 514. The short point arose this way. The assessee had constituted a trust known as the Nizam's Pilgrimage Money Trust". Cl. 3(c) of the Trust Deed authorised the trustees to utilise the income of the trust, inter alia,...
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> "During the lifetime of the settlor to defray the expenses of Haj of the settlor and of such of the members of his family as he may take with him and of their visit and pilgrimage to various Mahomedan shrines and holy places Hadjaz and Irag and making religious offerings and expending monies for charitable purposes as the settlor in his absolute discretion may from time to time think fit and require out of the income as well as the corpus of the trust fund in such matter and to such extent as the settlor may from time to time direct and for all or any of such purposes as aforesaid to pay such monies out of the income of the corpus of the trust fund as the settlor may from time to time require."

3. The department's argument was that this clause gave the settlor/ assessee the right to reassume power directly or indirectly over the income or assets which had been transferred to the trustees under the Trust Deed. This question was discussed at length by the Andhra Pradesh High Court. Relying upon the exposition of S. 16(1)(c) of the Income-tax Act, 1922 in the decisions of this Courts in CIT v. Raghbir Singh, (1965) 57 ITR 408 : (AIR 1966 SC 18), CIT v. Jayantilal Amratlal, (1968) 67 ITR 1 : (AIR 1968 SC 189), and Hrishikesh Ganguli v. CIT (1 971) 82 ITR 160 : (AIR 1971 SC 2516), the High Court came to the conclusion that though, under the clause, the settlor had a wide discretion to decide ,upon the manner in which the income from the trust could be paid for the above purposes such power was conferred on him only in his capacity as trustee and did not attract the first proviso to S. 16(1)(c) of the 1922 Act/ S. 61 of the 1961 Act. The High Court accordingly answered the question against the department.

4. We have gone through the judgment of the High Court and we are of the opinion that the conclusion of the High Court follows upon the exposition of Section 16(1)(c) of the Income-tax Act by the decisions of this Court earlier cited. It has also been brought to our notice that the Commissioner of Income-tax preferred a special leave petition against the judgment reported in (1985-153 ITR 514) but that the said petition was dismissed by this Court. In the circumstances mentioned above, we are of the opinion that the High Court answered the question correctly and that there are no grounds to interfere.

5. The second question which arises for our consideration is worded as follows:-

> "Whether, on the facts and in the circumstances of the case, the income arising for the respective assessment years from assets transferred by the assessee to trusts for the benefits of (i)(a) Smt. Mazharunnisa, (b) Smt. Laila Begum and (c) Smt. Jani Begum, and (ii) the minor sons born of Smt. Laila Begum and Smt. Jani Begum was, income arising to wife and minor child within the meaning of S.16(3)(b) of the Income-tax. Act, 1922 and to spouse and minor child within the meaning of S. 64(v) of the Income-tax Act, 1961?

6. The short question urged by the department is that the three ladies mentioned in the above question were the wives of the assessee, that, likewise, the sons born of two of them were also legitimate children, and that, therefore, the provisions of S. 16(3)(b) of the Income-tax Act, 1922 and of the corresponding S. 64(v) of the Income-tax Act, 1961 were attracted. It is pointed out that the same question came up for consideration, though in a slightly different context, before the Andhra Pradesh High Court in Nawab Sir. Mir Osman Ali Khan Bahadur v. Income-tax Officer, (1970) 75 ITR 133. It appears that an appeal was preferred against this judgment which has been disposed of by this Court by judgment reported in 1974-97 ITR 239: (AIR 1975 SC 703). However, this Court left open the question whether the three ladies mentioned above were wives of the settlor as contended for by the department or not.

7. Sh. B.B. Ahuja, learned counsel for the appellant, draws our attention to the only facts which are available to him, namely, the facts which have been already discussed in the judgment of the High Court in Nawab Sir Mir Osman Ali Khan Bahadur (supra)-. It appears that in four trust deeds executed on 10th May, 1950, 6th August, 1950, 23rd March, 1957 and 5th December, 1957, the settlor has described the above mentioned persons as his wives. However, in a trust deed executed on 29th December, 1950 one of the ladies, namely, Mazharunnisa was referred to as his wife and the other two - Laila Begum and Jani Begum - were referred to as 'ladies of position', adding within brackets the word 'wife'. Sh. Ahuja, on the strength of certain passages in Mulla's Principles of

Mahomedan Law (19th Edition, para 268 on p. 230 and para 344 on p. 281) submitted that under the Mahomedan law, where no marriage formalities had been gone through, it was sufficient to establish the validity of a marriage to show that there was an acknowledgment that a particular person was the wife of the person who makes the acknowledgment.

8. There is no doubt that there has been some vacillation in the description by the settlor of the three ladies in question but we are unable to accept the plea of Shri Ahuja that, these descriptions can be treated as, a categorical acknowledgment that the ladies were the wives of the settlor. In fact, in the deeds of 1950, though they were described as wives, the expression 'wife' was apparently loosely employed to include also persons who were admitted by the appellant into his palace and given a particular status. This is clear from the parenthesis in the trust deed of December 29, 1950. That apart, the assessee had made a categorical statement before the Income-tax Officer on 9th September, 19,, explaining the circumstances in which the above description was given. An affidavit, by the assessee himself, had also been filed before the Income-tax Officer in which he specifically asserted that except for one Dulhan Pasha Begum, these ladies, whose names were mentioned in the affidavit, were not his wives though they enjoyed a special status as ladies of position in his palace. In the case of Jam Begum we also find that a firman was issued by the assessee on June 7, 1959, referring to her as 'Lady of position'. This declaration made on the. occasion of the demise of this lady is a strong piece of evidence to show that the assessee had never married her and that she was only a lady of position.

9. We are of the opinion that, in these circumstances, the principle of acknowledgment on which Shri Ahuja relies cannot be brought into application. There was no unequivocal or categorical acknowledgment by the assessee that these ladies' were his wives. In these circumstances, we agree with the answer given to this question by the Andhra Pradesh High Court.

10. In the result, these appeals fail and are dismissed. There will be no order as to costs.

11. The appellant applied to the High Court of Andhra Pradesh for directing the Income-tax Appellate Tribunal to refer certain questions of law for its decision. The said questions were said to arise out of the assessments of the late Nizam of Hyderabad in respect of the assessment years 1960-61, 1964-65, 1966-67 and 1967-68. The High Court declined the prayer of the appellant.

12. The appellant filed special leave petitions before this Court which has granted leave to appeal only In respect of following questions Nos. 1 and 3:

> "Whether on the facts and in the circumstances of the case, the Appellate Tribunal was justified in holding that no new facts which were not considered by the High Court earlier in this case in its judgment reported in 75 ITR 133, were brought in by the Income-tax Officer?"
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> "Whether on the facts and in the circumstances of the case, the income relating to "HEH the Nizam's Pilgrimage Money Trust" is not taxable in the assessee's hands by reason of Ss.60 and 61 of the Income-tax Act, 1961?"

13. We have had occasion to deal with one aspect of these questions in our decision of even date in CA Nos. 1404-07 and 1407A of 1975. So far as the first question is concerned, the issue is directly covered by the decision of this Court in Income-tax Officer v. Nawab Mir Barkat Ali Khan Bahadur, (1974) 97 ITR 239 : (AIR 1975 SC 703). In view of the said judgment, this question is no longer a

live one, for reference.

14. So far as question No. 3 is concerned, this is directly governed by our decision of even date in the Civil Appeals above mentioned. Following the same, we concur with the High Court and direct that this question also need not be referred by the Tribunal. In the result, these appeals fail and are dismissed accordingly. There will be no order as to costs.

Civil Appeal No. 2989NT of 1980.

15. This is an appeal from the order of the Andhra Pradesh High Court answering a question referred to it in favour of the assessee and against the Revenue. There was a second question before the High Court but an answer to this was not pressed and, therefore, the Court did not answer it. The appeal before us is, therefore, confined to the first question which reads as follows.-

> "Whether on the facts and in the circumstances of the case, the income arising from assets transferred by the assessee to trusts for the benefit of (i)(a) Smt. Mazharunnisa Begum (B) Smt. Laila Begum and (c) Smt. Jani Begam and (ii) the minor sons born of Smt. Laila Begum and Smt. Jani Begum, was income arising to 'spouse' and 'minor child' within the meaning of the S. 16(3)(b) of the Income-tax Act, 1922?"

We have had to deal with the same question in the case of the same assessee in relation to certain other assessment years in Civil Appeals Nos. 1404-07, 1407A of 1975 which we have disposed of today. For the reasons set out in that judgment, we are of the opinion that the High Court was correct in the answer given to the question. This appeal, therefore, fails and is dismissed. There will be no order as to costs.

Order accordingly.

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