

Moti Lal Chhadami Lal Jain

Vs

Commissioner of Income-Tax.

Civil Appeals Nos. 1426 to 1428 of 1975 and No. 1653 of 1991

(Kuldip Singh, S. Ranganathan, K. N. Singh JJ)

08.04.1991

JUDGMENT

RANGANATHAN J. –

1. These four matters arise out of income-tax assessments of the same assessee and involve the same questions. We grant leave in the special leave petition after condoning the delay of 141 days in the circumstances set out in the application for condonation of delay and proceed to dispose of all the four appeals by this common judgment.

The assessee-appellant in all these cases is a Hindu undivided family known as M/s. Moti Lal Chhadami Lal Jain carrying on business at Firozabad. The Hindu undivided family consisted of the karta, Chhadami Lal Jain, and his son, Bimal Kumar Jain. Civil Appeal No. 1426 of 1975 relates to the assessment year 1962-63, Civil Appeals Nos. 1427 and 1428 relate to the assessment years 1968-69 and 1969-70 and the other remaining civil appeal relates to the assessment year 1973-74.

The facts relevant for the assessment year 1962-63 may now be set out :

For the assessment year in question, the previous year for which ended on July 12, 1961, the assessee-Hindu undivided family derived income from property as well as hire rent and commission from Jain Glass Works P. Ltd., (hereinafter referred to as "the company"). On May 3, 1960, the assessee family had granted a perpetual lease of certain buildings, furnaces and lands owned by it to the company. It appears that a firm known as Jain Glass Works had taken on lease the above assets of the Hindu undivided family at an annual rent of Rs. 62,000 for running its business in the manufacture of glassware. The lease deed recited that the company which had taken over the running business of the firm was to continue to have its factory for manufacture of glassware on the land belonging to the joint family and continue to use and enjoy all the facilities for the manufacture of glassware on the bhatties belonging to the family. In consideration of the use of all the above premises, the company was to pay the Hindu undivided family an annual rent of Rs. 21,000 for the period during which the company continued to have its factory in the premises of the lessor and also to pay the Hindu undivided family a commission at one per cent. of the total turnover of the company for financial year. Under clause (3) of the lease deed, the company was to pay the annual rent of Rs. 21,000 in the following manner :

(a) Rs. 10,000 to Shri Chhadami Lal Jain Trust Degree College, Firozabad.

(b) Rs. 11,000 direct to the lessor, M/s. Moti Lal Chhadami Lal, Hindu undivided family.

On May 5, 1962, another agreement was entered into between four parties : the two male members of the assessee-Hindu undivided family, the company, the Chhadami Lal Jain Trust (hereinafter referred to as "the trust") and the Chhadami Lal Jain Degree College (hereinafter referred to as "the College") which is an educational institution run by the trust. This document referred to the earlier lease agreement between the family and the company and its terms. The agreement recorded, inter alia, that, out of the total rent of Rs. 21,000 payable by the company, a sum of Rs. 10,000 would be paid to the college and the balance to the Hindu undivided family in four equal quarterly instalments. Clause (7) of the deed reads as follows :

"That, in the event of the 'second party' failing to pay the rent every quarter in accordance with the above mentioned conditions or violating the terms of this agreement, then, in the first place, the 'fourth party' shall have full rights to recover Rs. 10,000 (ten thousand rupees) per year as rent by recourse to the court in whatsoever manner it deems fit and shall have first charge on the full property mentioned below. Subsequently, the 'first party' shall recover the balance of Rs. 11,000 per year rent along with the interest costs and expenses from the 'second party' and such recovery will not be objected to by the 'second party' or its successors."

For the assessment year 1962-63, the assessee family returned Rs. 11,000 as lease rent received from the company. It was claimed that the balance Rs. 10,000 was the income of the trust and hence not part of the income of the assessee. It was explained that the university, while granting affiliation to the college, had imposed a condition that security should be given for the running expenses of the college and as such a security was given by creating a charge of Rs. 10,000 in favour of the college on the immovable property of the joint family. The contention was that the sum of Rs. 10,000 out of the rent payable by the lessee for the property got diverted by an overriding title to the college and ceased to be the income of the assessee. This contention was negated by the Income-tax Officer, the Appellate Assistant Commissioner and the Income-tax Appellate Tribunal (the Tribunal). The Tribunal, however, directed the Income-tax Officer to give appropriate relief under section 88 in respect of this amount.

Another bone of contention between the parties related to the income from certain properties claimed to have been transferred by the assessee family to the trust on November 14, 1947. On that date, the assessee executed a trust deed which was also registered at Ferozabad. By this deed, Chhadami Lal, the karta of the assessee family, expressed his desire to create a charitable trust which would fulfil the needs of education, religions and medical facilities in the town of Ferozabad. He, therefore, proceeded to create a trust which would run a boarding house, a dharamshala with a temple, a commercial and industrial institute, a Jain Dharam School, a Jain Aushadhalaya, a students' scholarship fund and a public library and reading room. Clause (3) of the deed provided :

"That the expenditure of the trust and expenses for the above- mentioned objects will be made from the income of the following properties which income will be of the trust. I will have no personal concern with this income nor will it be used for my personal benefit but will be spent on the aims of the trust."

Chhadami Lal constituted himself as the trustee to look after the trust as long as he lived and

manage its affairs. The deed then proceeded to set out the details of "the property the income from which will be used for the purpose of the trust". The properties were said to be of the value of Rs. 6,12,000 and to yield an income of about Rs. 18,000 per annum.

On the strength of the above document, the assessee-Hindu undivided family was not assessed on the income from the properties for the assessment year 1949-50. However, while scrutinising the accounts for the assessment years 1951-52 to 1959-60, the Income-tax Officer assessed the income from the properties in the hands of the family, as he was of opinion that the trust deed only purported to transfer the income from the properties to the trust but not the corpus thereof and that, therefore, the income was not eligible for exemption under section 4(3)(i) of the Indian Income-tax Act, 1922. Appeals by the assessee to the Appellate Assistant Commissioner and the Tribunal were unsuccessful.

It may be mentioned here that, on August 9, 1960, Shri Chhadami Lal and his son had executed another registered document. This document referred to the creation of the trust in 1947 which, it was stated, had been running several educational and charitable institutions regularly and successfully. The document proceeded to say :

"Thus, there has been a great progress in the working of the above- mentioned institutions and the property above-mentioned was felt to be insufficient in the year 1957; therefore, both of us thought it proper that, in order to run the trust successfully, the properties mentioned below should also be invested in the trust and to be under the same so that Shri Chhadami Lal Jain Trust should always run properly and the public good that has been done up to now, as stated above, should continue to be so done in the same rather better way. Public good should continue to be done. Therefore, we, the executants had given to the trust on July 1, 1957, the following property the value of which was Rs. 25,000 (by) cancelling mutation thereof in respect thereof in our name and giving up possession of the below- mentioned property, at the same time, had transferred it to the trust. Since July 1, 1957, we have had no connection with the property mentioned below nor shall we have any concern with it in the future."

The deed then proceeded to mention the details of the property "which has been in the use of the trust above-mentioned since 1957 and will continue likewise to be in the use of the trust always". It then proceeded to appoint eleven persons who were to be trustees to continue to run the trust and the institutions. Chhadami Lal, Bimal Kumar and his wife were three of the trustees, the others being outsiders. Then followed several clauses. Clause (3) referred to "the properties which have been given to the trust before and now" and empowered the trustees to sell or lease out the land to construct a building for the trust if it was found necessary. Clause (5), however, prohibited the trustees from "putting the property of the trust to personal use, wasting it or from mortgaging and selling it except in accordance with clause (3)."

Despite this document, the Income-tax Officer assessed the family on the income from the above properties. Appeals to the Appellate Assistant Commissioner failed but the Tribunal allowed the appeals of the assessee. For the assessment year 1962-63, the Tribunal, following its earlier orders in the case of the trust, viz., I.T.A. No. 17157 of 1963-64 and I.T.A. No. 11774 of 1964-65, allowed the assessee's appeal.

The assessee, aggrieved by the Tribunal's decision on the first contention and the Department,

aggrieved by the decision on the second contention, sought references to the High Court. Thus, two questions were referred to the High Court in relation to the assessment year 1962-63 (Income-tax Reference No. 456 of 1968 - Moti Lal Chhadami Lal Jain v. CIT (1977) 106 ITR 909 (All)). These questions were (see p. 910 of 106 ITR) :

"(1) Whether, on a proper construction of the lease deeds dated May 3, 1960, and May 5, 1962, and accompanying facts and circumstances of the case, the sum of Rs. 10,000 is the income of the assessee and not that of Chhadami Lal Jain Degree College ?

(2) Whether, on the facts and circumstances of the case, the income of Rs. 14,100 from properties purported to have been transferred to Seth Chhadami Lal Jain Trust was not assessable in the hands of the assessee-family ?"

Income-tax Reference No. 47 of 1973 related to the assessment years 1968-69 and 1969-70 for which the relevant previous years ended on September 1, 1967, and September 1, 1968. For these assessment years also, the inclusion of the income of Rs. 13,920 from the properties claimed to have been transferred to the trust in the assessments of the Hindu undivided family having been deleted by the Tribunal following its orders in the appeals relating to 1964-65 to 1967-68, the following question was referred to the High Court (in R.A. Nos. 88 and 89 of 1972-73 dated 8-12-1972) :

"Whether, on the facts and in the circumstances of the case, income of Rs. 13,920 from properties purported to have been transferred to the trust was not assessable in the hands of the assessee-family ?"

It may be mentioned that though a reference was also made by the Tribunal on the other question regarding income from the property (in R.A. Nos. 90 and 91 of 1972-73 dated March 7, 1972), that was not the subject-matter of Income-tax Reference No. 47 of 1973 and hence we are not concerned with that here.

In Income-tax Reference No. 168 of 1979 which relates to the assessment year 1973-74, three questions were referred to the High Court, of which we are concerned with only two here. These are :

"(2) Whether, on the facts and in the circumstances of the case, income of Rs. 6,329 from properties purported to have been transferred to the trust was not assessable in the hands of the assessee-family ?

(3) Whether, on a proper construction of the lease deeds dated May 3, 1960, and May 5, 1962, and accompanying facts and circumstances of the case, the sum of Rs. 10,000 is the income of the assessee and not that of Chhadami Lal Jain Degree College ?"

The questions referred were answered by the High Court against the assessee and in favour of the Department. The judgment of the High Court in Income-tax Reference No. 456 of 1968 is reported in Moti Lal Chhadami Lal Jain v. CIT (1977) 106 ITR 909 (All). This judgment contains the reasons for the conclusion on the question relating to the rental income. But so far as the other question is concerned, the High Court answered it following its earlier decision in Income-tax Reference No. 72 of 1969 arising out of the Tribunal's orders in the case of the trust in I.T.A. Nos. 17157 of 1963-64 and I.T.A. No. 11774 of 1964-65 referred to earlier and reported in CIT v.

Chhadami Lal Jain Trust (1977) 106 ITR 179 (All). The Judgment in Income-tax Reference No. 47 of 1973 follows the decision in Income-tax Reference No. 456 of 1968. In Income-tax Reference No. 168 of 1979, again, the ruling in Moti Lal Chhadami Lal Jain v. CIT (1977) 106 ITR 909 (All) has been followed and the decision given against the assessee. These are the three judgments in appeal before us.

Before considering the questions arising in these appeals, we would like to point out that there is no information before us as to what has happened (a) in the assessment years 1950-51 to 1959-60; (b) in the intervening assessment years 1963-64 to 1967-68 and again, from 1970-71 to 1972-73; (c) in the assessment years subsequent thereto; and (d) for the assessment years 1968-69 and 1969-70 so far as the issue regarding the rental income is concerned. We are indeed surprised that even the assessee who, in all probability, must have been affected by the assessments for those years, should not have cared to place the relevant information before us. It is regrettable that neither party has cared to verify whether any appeals before the authorities or references in the High Court or appeals or special leave petitions are pending for those years. It would have been helpful to both sides if an attempt had been made to find out all the information so that all the connected matters could have been consolidated and heard together.

So far as the question of rental income is concerned, we agree with the view taken by the High Court. The assessee is the owner of the properties in question and has leased out the properties in question to the company for an annual rent of Rs. 21,000. This is the income of the family. The assessee's agreement with the company is only that Rs. 10,000, out of the rent due to it, should be paid directly to the college. This is only a mode of application of the income by the family which will make no difference to its liability to pay tax on the entire rent of Rs. 21,000. Nor does the fact that the college has been given a right, by the four-party agreement, to sue for and recover the sum of Rs. 10,000 directly from the company in case of default alter this position. That is only a mode of recourse provided to the college for the enforcement of the promise made to it by the assessee. The payment to, or recovery of, Rs. 10,000 by the college will only discharge in part the liability of the company to pay a rent of Rs. 21,000 to the assessee under the lease deed.

It is contended on behalf of the assessee that it would not be correct to treat this as a case of a mere application by the assessee of a part of the rental income due to and receivable by it. The right given to the college to sue the company directly coupled with the creation of a charge in its favour on the property yielding the rent for such payment has the result of diverting that part of the rental income at the very source or inception. Under the second agreement, it is urged, not merely an amount of Rs. 10,000 per annum but the very right to receive, and enforce the payment of, that part of the rent is assigned to the college by the assessee. Its effect is that the income from the property thereafter accrues partly to the assessee and partly to the college with the result that the assessee is left only with the right to receive Rs. 11,000 from the company every year. Reliance is placed, in this context, on the decisions in CIT v. Sitaldas Tirathdas (1961) 41 ITR 367 (SC) and Murlidhar Himatsingka v. CIT (1966) 62 ITR 323 (SC).

We are of the opinion that his contention cannot be accepted. As we have pointed out earlier, the right given to the college to sue the company is only the right to recover part of amount which has already accrued to the assessee. The creation of a charge in favour of the college does not make any difference. It only obliges the company to pay a part of the rent to the college on behalf of the assessee but the existence of a mere obligation is not sufficient to constitute diversion of income. The classic statement of the true principle is set out in CIT v. Sitaldas Tirathdas (1961) 41 ITR 367, 374 (SC) :

"Obligations, no doubt, there are in every case, but it is the nature of the obligation which is the decisive fact. There is a difference between an amount which a person is obliged to apply out of his income and an amount which by the nature of the obligation cannot be said to be a part of the income of the assessee. Where by the obligation income is diverted before it reaches the assessee, it is deductible; but where the income is required to be applied to discharge an obligation

(self-imposed and gratuitous) after such income reaches the assessee, the same consequence, in law, does not follow. It is the first kind of payment which can truly be excused and not the second. The second payment is merely an obligation to pay another a portion of one's own income, which has been received and is since applied. The first is a case in which the income never reaches the assessee, who even if he were to collect it, does so, not as part of his income, but for and on behalf of the person to whom it is payable."

In the above passage, it is clear that the expressions "reaches the assessee" and "has been received" have been used not in the sense of the income being received in cash by one person or another. What the passage emphasises is the nature of the obligation by reason of which the income becomes payable to a person other than the one entitled to it. Where the obligation flows out of an antecedent and independent title in the former (such as, for example, the rights of dependents to maintenance or of coparceners on partition, or rights under a statutory provision or an obligation imposed by a third party and the like), it effectively slices away a part of the corpus of the right of the latter to receive the entire income and so it would be a case of diversion. On the other hand, where the obligation is self-imposed or gratuitous (as here), it is only a case of an application of income.

The case of a sub-partnership, referred to on behalf of the assessee, is really a case on the borderline. It is possible to take a view that it is nothing more than a case of one partner agreeing to divide his share of profits from a firm with others and, indeed, this was the view taken earlier : (see *Mahaliram Santhalia v. CIT* (1958) 33 ITR 261 (Cal)). But, apparently in view of the commercial necessities which compel the formation of sub-partnerships, a series of judicial decisions, approved in *Murlidhar Himatsingka v. CIT* (1966) 62 ITR 323 (SC) have held that they represent cases of diversion. That analogy cannot be extended to cases such as the present.

We would also like, in this context, to refer to section 24(1)(iv) of the Income-tax Act, 1961. It provides for a deduction, in the computation of income from house property, in respect of the amount of an annual charge on the property. The statutory provision was initially wide enough to rope in cases of such charges irrespective of the purpose for which they were created and even where they were voluntarily created by an assessee. But the provision has been amended with effect from April 1, 1969, to exclude deduction of an annual charge voluntarily created by the assessee. The case before us is not one of income from house property computed under sections 22 to 24 and we are referring to this only as a matter of interest. This amendment also indicates that a charge voluntarily created would stand on a different footing from super-imposed charges.

For these reasons, we agree with the view taken by the High Court and hold that the assessee is liable to tax on the entire rental income of Rs. 21,000.

Turning now to the second question before us, it talks of the income from the properties "purported to have been transferred to the trust" and, in the words in quotation, lies the crucial issue in the case. There is no dispute that the income from the property is applied wholly for religious and charitable

purposes. Section 4(3)(i) of the Indian Income-tax Act, 1922, and its successor section 11(1)(a) of the Income-tax Act, 1961 (in so far as they were applicable to the assessment years before us), exempt the income derived by an assessee from "property held in trust or other legal obligation" for such purposes. This exemption has been denied to the assessee on the short ground that the properties (with the income from which we are concerned) continue to vest in the assessee and have not been effectively transferred to the trust. This is said to be so for two reasons. The first is that the trust has been created in respect of immovable properties of the value of more than Rs. 100 and this is possible only if the properties had been duly conveyed to the trustees by a deed duly stamped and registered. The second is that the deeds of trust themselves do not speak of the corpus of the properties being held in trust. Clause (3) of the 1947 deed only stipulates that the income from the properties will be the income of the trust. A little later also the deed proceeds to set out the "properties the income from which will be used for the purposes of the trust". In other words, the deed only records the assessee's desire to utilise the income for the objects mentioned in the deed and not for his personal benefit. The document of 1960 does not improve matters any further. So, it is said, no valid trust has been created by the assessee to merit the claim for exemption.

We are of the opinion that the view of the High Court proceeds on an unduly narrow construction of the deeds of 1947 and 1960. We have pointed out that, under the deed of 1947, the karta of the assessee- family is the sole trustee to execute the objects of the trust. It appears to have been overlooked that, while a registered conveyance to the trustees by the owner of immovable property is necessary where the trustees are persons other than the author, this requirement does not arise where the author of the trust is to be the sole trustee. While a trust is not complete until the trust property is vested in trusts for the benefit of the cestui que trust, this can be done by the settlor here he is himself the trustee, by a declaration of trust, using language which, taken in connection with his acts, shows a clear intention on his part to divest himself of all beneficial interest in it and to exercise dominion and control over it exclusively in the character of a trustee. Section 6 of the Indian Trusts Act, 1882, makes this clear beyond all doubt. In the present case, there is a deed which makes clear the unequivocal intention to utilise the income from the properties in the manner set out in the deed of trust. It is in the context of the above legal position that one has to understand the references in the trust deed to the income from the properties belonging to the trust. Indeed, this is made clear by the conduct of the party all through and the language of the second deed. The assessee's full ownership of, and unqualified right to enjoy the properties gets restricted and qualified on the execution of such a trust deed by the various conditions set out and imposed by the trust deed. The execution of the trust deed creates an overriding title in the beneficiaries thereunder (viz., the various cross-sections of the public covered by it) to require that the income from the properties which are made the subject-matter of the trust be utilised in the manner set out therein and in no other manner. Indeed, after the execution of the trust deed, the properties are no longer held by the assessee as the absolute owner thereof; they are held by the assessee under trust and a legal obligation to apply the income exclusively for charitable purposes, thus attracting the provisions of exemption contained in the Act.

For the reasons discussed above, we are inclined to take the view that the deed of 1947 should be construed as a valid trust which has the effect of diverting the income at the source and that the income thereafter has ceased to be the income of the assessee-family. We, therefore, answer the question referred to the High Court on this issue in favour of the assessee.

In the result, Civil Appeals Nos. 1427 and 1428 of 1975 are allowed and the other two civil appeals are allowed in a part. There will, however, be no order regarding costs.

C.A. Nos. 1427 and 1428 of 1975 allowed.

C.A. Nos. 1426 of 1975 and 1953 of 1991 allowed in part.

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