

T.A.V. Trust Alleppey

Vs

Commissioner of Income Tax, Kerala

Civil Appeal Nos. 5958-61 of 1994

(S.P. Bharucha, M.B. Shah, N. Santosh Hegde JJ)

25.02.1999

JUDGMENT

S.P. Bharucha, J.

1. These appeals are directed the judgment and order of a Division Bench of the High Court of Kerala. The High Court answered in the negative and in favour of the Revenue the following question :

"Whether on the facts and in the circumstances of the case the Tribunal was justified in holding that a valid trust came into existence in pursuance of the document dated 17.8.1971 and whether the Tribunal was justified in holding that the assessment for the years 1973-74 and 1974-75 on the trustees had to be made in accordance with the provisions of Section 161 of the Income Tax Act 1961 ?"

The question aforementioned relates to the Assessment Years 1973-74 and 1974-75. (Similar questions for subsequent years were answered similarly and are the subject matter of the connected appeals.)

2. The facts, briefly stated, are that a trust deed was executed on 17th August, 1971. It records this :

"..... And whereas the beneficiaries, viz., Mary Varghese *on behalf of her minor daughters Laizamma Varghese and Rasalin Varghese has transferred and assigned to the trustees* upon trust the sums referred to in clause 17 against their respective names..... Whereas T.J. Joseph and his mother-in-law have *transferred and assigned to the trustees upon trust* the sum of Rs. 50,000/- (Rupees fifty thousand only) *as nominees of minor T.A. Joseph....* Whereas P.J. Joseph had his brothers *have transferred and assigned to the trustees* upon trust the sum of Rs. 25,000/- (Rupees twenty five thousand only) *as nominees of T.S. Varghese....* Whereas Mary Varghese has *transferred and assigned to the trustees upon trust* the sums of Rs. 29,000/- (Rupees twenty nine thousand only) and Rs. 21,000/- (Rupees twenty one thousand only) respectively *as nominees of minors T.S. Varghese and Daisy....* Whereas Mrs. Ammini Abraham has *transferred and assigned to the trustees upon trust* the sum of Rs. 54,000/- (Rupees fifty four thousand only) and Rs. 3,000/- (Rupees three thousand only) respectively *as nominees of minors T.S. Laly and T.S. Daisy....* Whereas all such transfers as aforesaid were made to the Trustees as nominees of the respective beneficiaries and it was agreed prior to the date of such transfers that the trustees should execute such declarations of trust."

The body of the trust deed states, "The trustees hereby accept this trust and acknowledge the receipt of Rs. 3 lacs received from each of the beneficiaries as under which they shall hold for and on behalf of the Trust :

1. Mary Varghese	Rs. 6,000/-
2. Laisamma Varghese	Rs. 33,000/-
3. Rosalin Varghese	Rs. 33,000/-
4. Thankamma Baby	Rs. 6,000/-
5. Daisy Scaria	Rs. 54,000/-
6. Laly Scaria	Rs. 54,000/-
7. Davis alias T.S. Varghese	Rs. 54,000/-
8. Ammini Abraham	Rs. 6,000/-
9. T.A. George	Rs. 54,000/-
Total	Rs. 3,00,000/-"

(Emphasis supplied)

3. The Income Tax Officer rejected the claim that the assessee should be assessed as a representative assessee within meaning of Section 161(1) of the Income Tax Act because he found that the trust created by the trust deed was invalid. (Similar assessments were made for subsequent years.) The Appellate Assistant Commissioner, allowed the assessee's appeal and his order was confirmed by the Income Tax Appellate Tribunal. The Tribunal referred to letters and other documents not mentioned in the Trust Deed to reach the conclusion that the donations to the trust had not been made by minors.

4. From out of the order of the Tribunal, the question aforementioned was referred to the High Court. The High Court, relying upon the provisions of the trust deed which we have quoted, concluded that all contributions to the trust were made by or on behalf of the beneficiaries so that the authors and the beneficiaries were the same persons. It then referred to the provisions of Section 7 of the Trust Act and held that they were mandatory in so far as they spoke of the persons qualified

to create a trust. Thereunder, a trust created by or on behalf of a minor without obtaining the prior sanction of a civil court was not a trust in the eye of law. The trust was created by minors and did not comply with the requirement of Section 7. It was, therefore, invalid.

5. The assessee is in appeal by special leave. It was contended on behalf of the assessee that the final fact-finding authority was the Tribunal. The Tribunal, having gathered all available evidence, had reached the conclusion that the trust was valid. This was a finding of fact which the High Court was not entitled in a reference application to ignore. It was submitted that if we were to accept the correctness of the impugned judgment, the functioning of the Tribunals would be destroyed. It was also submitted that the High Court had picked out the one word "nominee" in the trust deed out of the context and had based its entire judgment thereon, ignoring the letters and documents which the Tribunal had relied upon to come to the conclusion that in fact, the donations to the trust had not been made by or on behalf of minors.

6. In the first place, a reference to the question itself shows that the High Court was required to determine whether or not a valid trust had come into existence. This was a question of law which the High Court had every right to answer.

7. The High Court was entirely right in concluding that the validity of the trust had to be determined in the light of what was stated in the trust deed namely, that the donations had been made by or on behalf of the minors, and that no reference to letters and documents not referred to in the trust deed to arrive at a contrary conclusion was justified.

8. Our attention was drawn by learned counsel for the assessee to the judgment of the Gujarat High Court in *Commissioner of Income-Tax, Gujarat v. Motilal Hirabhai Spg. and Wvg. Co. Ltd.*, 113 ITR 173, where it was stated :

"It is well settled that if evidence is allowed to be let in without any objection, it would not be open to the party aggrieved to raise any objection, as to its admissibility at a subsequent stage. Not only that but once a document is properly admitted, the contents of those documents are also admitted in evidence, though those contents may be treated as conclusive evidence."

9. We do not see how these observations of the Gujarat High Court have any bearing upon the case before us. Nobody here is disputing the letters or documents that the Tribunal relied upon. The question is whether they can be relied upon for the purposes of determining the validity of the trust so as to reach a conclusion contrary to the terms of the trust deed.

10. Reliance was also placed on a judgment of the Madhya Pradesh High Court in *Shri Digambar Jain and others v. Sub-Registrar, Stamps, Indore*, AIR 1970 MP 23. It was stated there that it was the duty of the court to give to the expression of a document its true meaning. It was competent for a court to disregard the literal meaning of the words used in a document and to give to them their real meaning if they were sufficiently flexible to bear that interpretation.

11. It will be noted from what has been quoted above that the trust deed speaks of Mary Varghese having "on behalf of her minor daughters.... transferred and assigned to the trustees upon trust the sums....." Again, it recites in four separate clauses that the donations had been made as "nominees" of the minors. It then recites that "all such transfers as aforesaid were made to the trustees as nominees of the respective beneficiaries". In its operative part, it speaks of the trustees having

accepted the trust and acknowledged the receipt of Rs. 3 lacs "from each of the beneficiaries as under ". This is not a case where some word in a document has been torn out of context. All through the trust deed it is stated that the donations have been made for and on behalf of the minors, expressly and by use of the word "nominee." That is the tenor of the trust deed read as a whole. There is no doubt whatsoever that, therefore, the terms of Section 7 of the Trust Act are violated. The trust was not created "with the permission of a principal civil court of original jurisdiction, by or on behalf of a minor". The trust is therefore, not valid. The appeals are dismissed. The appellant shall pay to the Revenue the Cost of the appeals quantified in the aggregate at Rs. 5,000/-.