ANDHRA PRADESH HIGH COURT

Potti Veerayya Sresty

Vs

Commissioner of Income-Tax

(Kondaiah and Sriramulu, JJ.)

28.06.1971

JUDGMENT

Sriramulu, J.

1. At the instance of the assessee, the following question of law, under Section 256(1) of the Income-tax Act, 1961 (hereinafter called "the Act"), has been referred to us for our opinion:

> "Whether, on the facts and in the circumstances of the case, the sum of Rs. 4,934 is includible in the assessee's income for the assessment year 1965-66 under Section 64(iii) of the Income-tax Act, 1961 ?"

2. The facts that are material for answering the reference may briefly be stated :
The assessee, who was assessed to tax in the status of individual, transferred promissory notes and cash of the total value of Rs. 40,000 to his wife on June 19, 1962. The assessee's wife invested a portion of the said assets in a cloth business of her own. For the assessment year 1965-66 the assessee's wife filed a return of her own, showing an income of Rs. 4,934 from the said cloth business. The Income-tax Officer was of the view that the said income arose to the assessee's wife out of the assets transferred to her without adequate consideration by the assessee and was, therefore, includible in the assessment of the assessee for the relevant assessment year under Section 64(iii) of the Act and accordingly included it in the assessee's total income.

3. The inclusion of the said income in the assessee's total income was upheld by the Appellate Assistant Commissioner in first appeal. In second appeal against the assessment, the assessee contended, and the Tribunal accepted, that the assets of the value of Rs. 40,000 were transferred by the assessee to his wife in order to obtain her consent for the adoption of a son by him. The Tribunal observed that "although the assets were transferred to the wife for obtaining her consent for adopting a son, still the transfer was 'without adequate consideration', and the income arising from the assets so transferred was includible in the total income of the assessee under Section 64(iii) of the Act". The Tribunal accordingly upheld the inclusion of the said income in the assessee's total income under Section 64(iii) of the Act. Hence, this reference.

4. Sri T. Venkatappa, the learned counsel appearing for the assessee, contended that (1) the assets were transferred by the assessee to his wife for adequate consideration, and (2) that even

assuming that the assets were transferred by the assessee to his wife, otherwise than for adequate consideration, still the income in question did not arise to the wife either directly or indirectly out of the assets transferred to her by her husband. In any case the income of Rs. 4,934 was not includible in the total income of the assessee. In support of his argument the learned counsel relied upon the decision of the Supreme Court in *Commissioner of Income-tax v. Prem Bhai Parekh, .*

5. Sri K. Srinivasa Murthy, the learned counsel appearing for the department, contended to the contra. His contention was that the meaning that was to be given to the phrase "adequate consideration" was consideration in money or money's worth. What the court has to see is whether the assessee in consideration of the transfer made by him to his wife, received either money or money's worth, which was equivalent to the value of the assets so transferred. In return for assets of Rs. 40,000 transferred by him to his wife, the assessee received the consent of his wife for adopting a son. That may give spiritual benefit to the assessee. Spiritual benefit cannot be valued in terms of money. It is, therefore, not adequate consideration. On the other hand, by adopting a son, the assessee has lost certain portion of his wealth in favour of his son. It is, therefore, positively a case of reduction in wealth. The assessee did not receive any monetary benefit by obtaining the consent of his wife for adopting a son. *In Commissioner of Income-tax v. Prem Bhai Parekh* the transfer was by a father to his minor child. The minor child invested the assets so transferred to him by his father in a partnership business, to the benefits of which he was admitted. The profits that the minor derived from the partnership firm for his share was not in consequence of his investing the assets transferred to him by his father, but on account of the fact that the other partners had agreed to admit him to the benefits of a partnership. It was, on those facts, the Supreme Court held that there was no nexus between the income earned and the assets transferred. In the present case the wife invested the assets in a business of her own and earned an income. For earning that income there was no necessity for her to depend upon the agreement of others. Therefore, the ruling in Commissioner of Income-tax v. Prem Bhai Parekhdoes not apply to the facts of this case. The department was justified in including the income of the assessee's wife in the total income of the assessee under Section 64(iii) of the Act.

6. For appreciating the contentions raised in this case, it is advantageous to notice the relevant portion of Section 64(iii) of the Act :

"In computing the total income of any individual, there shall be included all such income as arises directly or indirectly-
(iii) subject to the provisions of Clause (i) of Section 27, to the spouse of such individual from assets transferred directly or indirectly to the spouse by such individual otherwise than for adequate consideration or in connection with an agreement to live apart."

7. Section 27(1) of the Act relates to transfer of a house by an individual to the spouse, with which we are not concerned here. The transfer of the assets by the assessee to his wife was not made in connection with an agreement to live apart.

8. On a plain reading of Section 64(iii) of the Act, it is evident that the income arising to the wife can be included in the total income of her husband, if the following conditions are fulfilled: (1) there must be a transfer of assets by the assessee to his wife; (2) the transfer in favour of the wife by the assessee must be otherwise than for adequate consideration ; and (3) the income in

question should have arisen or accrued to the wife directly or indirectly from the assets transferred to her by her husband.

9. It is undisputed in this case that the assessee transferred assets of the value of Rs. 40,000 to his wife and that by the investment of a portion thereof in a cloth business, the income, in question, has been earned by the wife. Two conditions have to be satisfied before the said income of the wife can be aggregated with the assessee's income for the purpose of taxation and those are, (1) the income in question should have arisen directly or indirectly to the wife from the assets transferred to her by her husband, and (2) that these assets were transferred by the assessee to his wife otherwise than for adequate consideration. In support of the first contention the learned counsel Sri Venkatappa strongly relied upon the decision of the Supreme Court in Commissioner of Income-tax v. Prem Bhai Parekh. The revenue on the other hand contended that the decision of the Supreme Court in Commissioner of Income-tax v. Prem Bhai Parekh strongly relied upon by the assessee's counsel, did not apply to the facts of this case.

10. In Commissioner of Income-tax v. Prem Bhai Parekh an individual, who was a partner in a firm having seven annas share, retired from the firm and on the following day transferred Rs. 75,000 to each of his four sons, three of whom were minors. The firm was reconstituted. The major son of the individual was taken as partner and the three minor sons of the individual were admitted to the benefits of the partnership. The Tribunal found that the capital invested by the minors came from the gifts made to them by their father. On those facts the question that arose before the court was, whether the income that fell to the share of the minors arose to them directly or indirectly from out of the assets transferred to them by their father. The learned judge, Hegde J., speaking for the Supreme Court, observed :

> "The connection between the gifts mentioned earlier and the income in question is a remote one. The income of the minors arose as a 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."

11. A scrutiny of the above facts and the above observations of the Supreme Court reveal that the income in that case arose to the minors not because they invested the assets transferred to them by their father without adequate consideration, but because they were, by the agreement of the other partners; admitted to the benefits of the partnership. The proximate or the direct cause for the earning of the income was the admission of the minors to the benefits of the partnership and not the transfer of assets by their father to them, or the investment of those assets in the business. The admission of the minors to the benefits of the partnership was solely dependent upon the agreement of the other partners.

12. In the instant case before us the wife was a major and for investing all or some of the assets transferred to her by her husband, in a business of her own, she did not require the consent or agreement of any other person. The income, therefore, arose to the wife directly from the assets transferred to her by her husband. There is a proximate connection or nexus between the assets transferred by the husband to the wife and the income that arose therefrom. We have, therefore, necessarily to hold that the decision in *Commissioner of Income-tax v. Prem Bhai Parekh* does

not apply to the facts of this case.

13. Having held that the income, in question, has been earned by the wife out of the assets transferred to her by her husband, the next question that arises for our consideration is whether those assets were transferred by the assessee to his wife otherwise than for adequate consideration. This brings us to the question as to what constitutes, in law, "adequate consideration".

14. The term consideration is a legal term. It has not been defined in the Income-tax Act. The term "consideration" is defined in the Indian Contract Act and that definition is as follows I "When, at the desire of the promisor, the promisee or any other person has done or abstains from doing, or does, or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise."

15. In the case before us without obtaining the consent of his wife, the assessee could not have adopted a son. It was, therefore, necessary for the assessee to obtain consent of his wife for such adoption. The finding given by the Tribunal is that for obtaining the consent of the wife for adopting a son, the assessee had effected the transfer of those assets. Thus at the instance of the assessee, i.e., the promisor, the promisee, i.e., the wife, has done something, i.e., given her consent for adoption. It is, therefore, a consideration within the meaning of that word under the Indian Contract Act. It is a good and valid consideration in support of the transfer.

16. Good consideration to support a contract under the provisions of the Indian Contract Act is one thing and "adequate consideration" to avoid tax under the Income-tax Act is quite a different thing. In Hindu law adoption of a son to the husband may bring religious benefit both to the father and mother. To that extent it cannot be said that the mere giving of consent by the wife to the husband for adoption entirely enured for the benefit of the husband. Giving consent for the adoption also enures to the benefit of the wife. Even assuming for a moment that giving consent to her husband for adopting a boy formed a legal and valid consideration for the transfer, still it cannot be said that it has brought any benefit to the assessee in terms of money or money's worth. Since the law insists that the consideration for transfer must be adequate, there must be some means to measure the adequacy of the consideration. That is to say, the consideration that supports the transfer should be one the value of which can be measured in terms of money or money's worth. In the instant case the religious benefit, even assuming for a moment, is received by the assessee by obtaining such a consent and by adopting a son, still it is in our judgment not a consideration which could be measured in terms of money or money's worth. We find support for our view in *Philip John Plasket Thomas v. Commissioner of Income-tax*[1], We are, therefore, not inclined to accept the contention of the assessee that the transfer in this case was supported by adequate consideration.

17. The phrase "adequate consideration" also occurred in Section 16(3)(a)(iii) of the Indian Income-tax Act, 1922. That phrase came up for judicial consideration before the court in Rai Bahadur H.P. *Banerjee v. Commissioner of Income-tax*[2], in In re Sardarni Narain Kaur, [1943] 11 I.T.R. 448, 452 ; 453 (Lah.).and Tulsidas Kilachand v. Commissioner of Income-tax, (4) . In the above cases it has been held that natural love and affection may be a good consideration to support a contract, but that would not be adequate consideration within the meaning of the phrase occurring in the Income-tax Act. Those rulings, although rendered under the 1922 Act, still hold

good under the 1961 Act, because the language used in both the sections is identical.

18. Although the transfer in this case has not been effected by the assessee to his wife for natural love and affection, but for obtaining her consent for his adopting a son, still as that consideration is not measurable in terms of money or money's worth, we hold that it does not amount to adequate consideration.

19. Thus in view of our finding that the assets have been transferred by the assessee to his wife otherwise than for adequate consideration and the income, in question, directly arose to the wife from the transfer of the assets by her husband, it naturally follows that the income earned by the wife from her cloth business is includible in the assessee's total income.

20. We, therefore, answer the question in the affirmative and against the assessee: The assessee shall pay the costs of this reference to the Commissioner of Income-tax. Advocate's fee is Rs. 250.

Cases Referred.

1[1963] 49 I.T.R. (S.C.) 97

2[1941] 9 I.T.R. 137, 147 to 149 (Pat)