

# CALCUTTA HIGH COURT

Commissioner of Income-Tax

Vs

Sir S.M. Bose

(Harries ,J.)

15.05.1950

## JUDGMENT

### **Harries, C.J.**

1. This is a reference made by the Income-tax Appellate Tribunal under Section 66 of the Indian Income-tax Act at the instance of the Commissioner of Income-tax. The assessee is Sir S.M. Bose, the present Advocate-General of West Bengal. In the assessment for the year in question the income from certain properties purchased by the assessee in the names of his sons and made the subject matter of a trust in favour of his daughter were added to his own income. The assessee appealed, but on appeal the Appellate Assistant Commissioner came to the conclusion that these properties were the subject-matter of a bona fide trust and that the income from these properties belonged to the daughter and could not be regarded as part of the income of the assessee. The income was therefore excluded from the total income of the assessee for the purposes of the assessment. There was an appeal to the Appellate Tribunal and the Commissioner of Income-tax contended that the Appellate Assistant Commissioner was wrong in holding that the income from the trust property was not assessable as part of the assessee's income. The Appellate Tribunal however upheld the view of the Appellate Assistant Commissioner that the income from these trust properties formed no part of the assessee's income and could not be assessed to tax as being part of it. The Commissioner being dissatisfied asked the Tribunal to state a case and the Tribunal have stated the following questions:

- (1) "Whether the Tribunal was right in holding that the trust deed dated 15th December, 1941, executed by the assessee was a valid and proper trust in favour of the assessee's daughter."
- (2) " If the answer to question No. 1 be in the affirmative whether income from the trust properties was taxable in the hands of the assessee as his income, by virtue of the provisions of Section 16(1) (c) of the Indian Income-tax Act.

2. No argument has been addressed to us which would suggest that the trust deed of 15th December, 1941, was not a valid and proper trust in favour of the assessee's daughter. The document is annexed to the case and it is in the ordinary form of an out and out trust on the English model. The settlor settles certain property on him self as trustee to hold the property in trust for the beneficiary who is his daughter. There is an out and out divesting and there is no power of revocation and the settlor does not retain any right whatsoever over the property either the corpus or the income. The deed provides that the trustee is to take possession and after paying outgoings he has to pay the income of the trust estate to his daughter Aloka during the term of her natural life for her sole and separate use. There are provisions as to how the income is to be dealt with on the death of Aloka. But it is to be observed that the settlor retains no control whatsoever over that income and has no right to it.

3. The argument before the Appellate Tribunal and before us is that by reason of Clause (3) in particular of this deed the settlor has retained control over the income and therefore it must be regarded as his income for the purposes of taxation. Reliance is placed on Section 16(1)(c) and the first proviso thereto of the Indian Income-tax Act. That section in so far as it is material is as follows:

In computing the total income of an assessee-

\* \* \* \*

(c) all income arising to any person by virtue of a settlement or disposition whether revocable or not, and whether effected before or after the commencement of the Indian Income-tax (Amendment) Act, 1939, from assets remaining the property of the settlor or disponent, shall be deemed to be income of the settlor or disponent, and all income arising to any person by virtue of a revocable transfer of assets shall be deemed to be income of the transferor: Provided that for the purposes of this clause a settlement, disposition or transfer shall be deemed to be revocable if it contains any provision for the retransfer directly or indirectly of the income or assets to the settlor, disponent or transferor, or in any way gives the settlor, disponent or transferor a right to reassume power directly or indirectly over the income or assets.

4. The argument on behalf of the Commissioner of Income-tax is that Clause (3) in particular gives the settlor a right to reassume power directly or indirectly over the income or the assets. Stress is laid on the provisions in Clause (3) which provides that as long as the present trustee, namely, the settlor or persons named as trustees in addition or substitution shall act as trustees they shall not be accountable to any of the beneficiaries under these presents relating to his or their dealings as to the income of the trust estate. It is suggested that what this means is that the settlor has retained control over the income. In my view however this provision does not give the settlor control over the income. It is merely a provision limiting the rights of the beneficiary to question certain acts of the trustee. The deed is an out and out settlement to the trustee and after the execution of this deed the trustee held this property upon certain trusts and he could not obtain any of the income without a breach of trust.

5. Provisions are made to prevent frivolous litigation and prevent questioning the bona fides of the trustee, but those provisions do not have the effect of giving the settlor a right to reassume power directly or indirectly over the income or the assets. After this deed was executed the income of these properties belonged to the cestui que trust and if the settlor as trustee used this income he would be guilty of a breach of trust. The first proviso to Section 16(1)(c) only contemplates cases where the settlor can lawfully reassume power over the income or the assets. Unless that was so, the proviso would cover every trust where a settlor has made himself trustee because a trustee acting dishonestly could always assume control over the income.

6. It appears to me that the view of the Appellate Assistant Commissioner and of the Appellate Tribunal cannot be assailed. The settlor by this trust put this income for ever out of his control, and that being so the income from these trust properties could not be assessed as part of the income of the assessee.

7. The result therefore is that the questions submitted must be answered as follows:

(1) In the affirmative.

(2) In the negative.

8. The assessee is entitled to the costs of these proceedings. Certified for two Counsel.

**Sinha, J.**

9. I agree.