

# KERALA HIGH COURT

Commissioner of Income-Tax

Vs

V.J. Aleykutti, T.J. Joseph

(K.S Paripoornan and D J Raju, JJ.)

31.01.1991

## JUDGMENT

### **K.S. Paripoornan, J.**

1. This batch of 13 references are at the instance of the Revenue. The respondents in this batch of cases are three different assessees, Smt. V.J. Aleykutti, Shri K.J. Mathew and Shri T.J. Joseph. Some important aspects that arise for consideration in these cases are common. So the cases were heard together as agreed to by the Revenue and the respondent-assesseees.

2. Before we advert to the question/questions of law referred in the various cases by the Income-tax Appellate Tribunal (in short, "the Tribunal") for the decision of this court, it will be useful to specify the different assesseees in the different cases and the assessment years involved in the said cases. As stated earlier, in all the cases, the references are at the instance of the Revenue, the applicant.

3. The details of the various cases are as follows :

Income-tax References Nos. 71 and 72 of 1986 :

Respondent-assessee ... Smt. V.J. Aleykutti.  
Assessment years . . . 1969-70 and 1970-71.

Income-tax References Nos. 64 and 65 of 1988 :

Respondent-assessee ... Sri T.J. Joseph.  
Assessment years ... 1969-70 and 1970-71.

Income-tax References Nos. 68 and 69 of 1988 :

Respondent-assessee .. , Sri K.J. Mathew.  
Assessment years ... 1969-70 and 1970-71.

4. In the above batch of six cases, we are concerned with the interpretation to be placed on Section 64(1)(v) of the Income-tax Act, 1961, before the section was substituted by the Taxation Laws (Amendment) Act, 1975, with effect from April 1, 1976.

5. In the next batch of cases, the details are as follows :

Income-tax Reference No. 34 of 1986 :

Respondent-assessee ... Dr. K.J. Mathew.  
Assessment year ... 1976-77.

Income-tax Reference No. 141 of 1986 :

Respondent-assessee ... Smt V.J. Aleykutty.  
Assessment year ... 1978-79.

Income-tax Reference No. 53 of 1987 :

Respondent-assessee ... Dr. K.J. Mathew.  
Assessment year ... 1978-79.

Income-tax Reference No. 67 of 1988 :

Respondent-assessee ... Dr. K.J. Mathew.  
Assessment year ... 1977-78.

Income-tax References Nos. 88 to 90 of 1988 :

Respondent-assessee ... Smt. V.J. Aleykutty.  
Assessment years ... 1980-81 to 1982-83.

6. In this later batch of seven cases, we are concerned with the interpretation to be placed on Section 64(1)(vii) of the Income-tax Act, 1961, after its amendment by the Taxation Laws (Amendment) Act, 1975, read along with Explanation 3 to the section.

7. We shall broadly state the facts in the first batch of six cases, Income-tax References Nos. 71 and 72 of 1986, 64 and 65 of 1988 and 68 and 69 of

1988. The facts are substantially similar in all the cases. The assessees made gifts to three trusts. Their minor children are the beneficiaries in the trusts. From the statement of the case, it is seen as follows :

Income-tax References Nos. 71 and 72 of 1986 : (Illustrative case)

8. The assessee, an individual, gifted Rs. 12,500 on March 30, 1967, and a sum of Rs. 12,000 on

March 30, 1968, to one "KKM Trust". The assessee gifted a sum of Rs. 25,000 on March 31, 1969, to one "Oriental Trust". Again, the assessee gifted the following sums to one "Kudakaseri Trust", which was formed on August 9, 1965 :

Rs. 5,000 on August 9, 1965 ;

Rs. 15,000 on March 22, 1966 ; and Rs. 12,000 on March 31, 1967.

9. There were many beneficiaries in the above three trusts. Admittedly, the assessee's six children were entitled to 85% of the income of the KKM Trust. Similarly, the assessee's three minor children were entitled to 50% of the income in the Oriental Trust. The three minor children of the assessee were the sole beneficiaries in Kudakaseri Trust. The income due to the minor children of the assessee from the above three trusts was sought to be included in the income of the assessee under Section 64(v) of the Income-tax Act as it stood then. On an earlier occasion, in connection with the assessment years 1969-70 and 1970-71, the matter came up" to this court at the instance of two of the assessees, Smt. K.J. Aleykutty and Sri K.J. Mathew, in Income-tax References Nos. 32 and 33 of 1976. By judgment dated June 16, 1978, this court opined that the Tribunal, in concurring with the decision of the authorities below, in the matter of the inclusion of the minors' income in that of the assessee's income, did not approach the question from a proper perspective and failed to advert to the decisions of the Supreme Court in *CIT v. Prem Bhai Parekh<sup>1</sup>* and *Smt. Mohini Thapar v. CIT<sup>2</sup>* So, this court declined to answer the question whether the income arising to the minor children of the assessee by virtue of all being beneficiaries in the trust can rightly be included in the total income of the assessee under Section 64(v) of the Income-tax Act, 1961. The Tribunal was directed to dispose of the appeals in accordance with law and in the light of the observations contained in the said judgment. Thereafter, the matter was considered by the Tribunal in the appeals relating to one of the assessees, Sri K. J. Mathew, and an order was passed by the Tribunal for the assessment years 1969-70 and 1970-71. The order is dated June 30, 1979, which is the main order which has been followed in the case of the other two assessees also, and for all the subsequent years, by the Income-tax Appellate Tribunal.

10. The main order passed by the Tribunal, dated June 30, 1979, is annex-ure C in Income-tax References Nos. 68 and 69 of 1988. After adverting to the history of the case, Section 64(v) of the Income-tax Act, and the decision of the Supreme Court in Prem Bhai Parekh's case [ 1970] 77 ITR 27,(Supra) the Tribunal concluded thus :

"But, this is in pursuance of the provisions of the trust deed. It is true that a portion of the income of the trusts is derived from the amounts donated to them by the assessee. But then, in view of the principle laid down by the Supreme Court in Prem Bhai Parekh's case [1970] 77 ITR 27, it cannot be said that the income accruing to the minor children of the assessee which accrues to them by reason of the provisions of the trust deed had arisen either directly or indirectly from the amounts donated by the assessee to the two trusts."

11. When the appeals of the other assessees for the years 1969-70 and 1970-71 came up for

consideration before the Tribunal, as also when the appeals of the three assessees for the subsequent years came up, the Tribunal relied upon its main order dated June 30, 1979, rendered in I. T. A. Nos. 331(Coch) of 1970-71 and 423(Coch) of 1971-72, relating to the assessment years 1969-70 and 1970-71, the appeals relating to the assessee, Sri K.J. Mathew.

12. We shall now extract the question/questions of law referred to this court in the above first batch of cases, Income-tax References Nos. 71 and 72 of 1986 ; 64 and 65 of 1988 and 68 and 69 of 1988--relating to the assessment years 1969-70 and 1970-71 of the assessees, Smt. V.J. Aleykutty, Sri T.J. Joseph and Sri K.J. Mathew, and they are as follows : Income-tax References Nos. 71 and 72 of 1986 :

"Whether, on the facts and in the circumstances of the case, the income from the three trusts accruing to the minor children of the assessee is assessable in the hands of the assessee under Section 64(v) of the Income-tax Act, 1961?"

Income-tax References Nos. 64 and 65 of 1988 :

"Whether, on the facts and in the circumstances of the case, the income from the three trusts accruing to the minor children of the assessee is assessable in the hands of the assessee under Section 64(v) of the Income-tax Act, 1961?"

Income-tax References Nos. 68 and 69 of 1988:

"Whether, on the facts and in the circumstances of the case, the income from the two trusts accruing to the minor children of the assessee is assessable in the hands of the assessee under Section 64(v) of the Income-tax Act, 1961?"

13. Section 64(1)(v) of the Income-tax Act which arises for consideration in these cases, as it stood at the relevant time, is to the following effect:

"Section 64 (Section 16(3) of 1922 Act) amendments.--Sub-section (1) was substituted for the following by the Taxation Laws (Amendment) Act, 1975, with effect from April 1, 1976 :

(1) In computing the total income of any individual, there shall be included all such income as arises directly or indirectly-- ...

(v) to any person or association of persons from assets transferred otherwise than for adequate consideration to the person or association of persons by such individual, to the extent to which the income from such assets is for the immediate or deferred benefit of his or her spouse or minor child (not being a married daughter) or both."

14. The question/questions of law referred in the second batch of cases-Income-tax Reference No. 34 of 1986, (assessment year 1976-77, Dr. K. J. Mathew), Income-tax Reference No. 141 of

1986 (assessment year 1978-79, Smt V.J. Aleykutty), Income-tax Reference No. 53 of 1987 (assessment year 1978-79, Dr. K.J. Mathew), Income-tax Reference No. 67 of 1988 (assessment year 1977-78, Dr. K.J. Mathew) and Income-tax Reference Nos. 88 to 90 of 1988 (assessment years 1980-81, 1981-82 and 1982-83, Smt. V.J. Aleykutty) are to the following effect: Income-tax Reference No. 34 of 1986 :

"Whether, on the facts and in the circumstances of the case, the income of the minor children of the assessee from trusts of which they are the beneficiaries is includible in the total income of the assessee under Section 64(1)(vii) of the Income-tax Act, 1961?

Whether, on the facts and in the circumstances of the case, and also in view of the fact that the comparable Section 64(1)(v) renumbered as 64(1)(vii) with effect from April 1, 1976, is Section 16(3)(b) and not Section 16(3)(a)(iv) of the 1922 Act, the Tribunal is right in relying on Prem Bhai Parekh's case [1970] 77 ITR 27 (SC)(supra), without relying on Sir Harinder Singh's case [1972] 83 ITR 416?(Supra)" Income-tax Reference No. 141 of 1986 :

"Whether, on the facts and in the circumstances of the case, the income received by the minor children of the assessee who are beneficiaries in a trust to which the assessee had transferred funds/assets could be assessed as the income of the assessee under Section 64 of the Income-tax Act, 1961?"

Income-tax Reference No. 53 of 1987:

"Whether, on the facts and in the circumstances of the case, the income received by the minor children of the assessee who are beneficiaries in a trust to which the assessee had transferred funds/assets could be assessed as the income of the assessee under Section 64 of the Income-tax Act, 1961?"

Income-tax Reference No. 67 of 1988 :

"(1) Whether, on the facts and in the circumstances of the case, the income of the minor children of the assessee from trusts of which they are the beneficiaries is includible in the total income of the assessee under Section 64(1)(vii) of the Income-tax Act, 1961?

(2) Whether, on the facts and in the circumstances of the case and also in view of the fact that the comparable Section 64(1)(v) renumbered as 64(1)(vii) with effect from April 1, 1976, is Section 16(3)(b) and not Section 16(3)(a)(iv) of the 1922 Act, the Tribunal is right in relying on Prem Bhai Parekh's case [1970] 77 ITR 27 (SC)(Supra), without relying on Sir Harinder Singh's case [1972] 83 ITR 416?(Supra)"

Income-tax References Nos. 88 to 90 of 1988:

"Whether, on the facts and in the circumstances of the case, the income received by the

minor children of the assessee who are beneficiaries in a trust to which the assessee had transferred funds/assets could be assessed as the income of the assessee under Section 64 of the Income-tax Act, 1961?"

15. In this later or second batch of cases, the provision of law which is relevant is Section 64(1)(vii) of the Income-tax Act, 1961. It is as follows :

64. Income of individual to include income of spouse, minor child, etc. -- (1) In computing the total income of any individual, there shall be included all such income as arises directly or indirectly -- ...

(vii) to any person or association of persons from assets transferred directly or indirectly otherwise than for adequate consideration to the person or association of persons by such individual, to the extent to which the income from such assets is for the immediate or deferred benefit of his or her spouse or minor child (not being a married daughter) or both."

16. We heard counsel for the Revenue, Mr. P.K.R. Menon, as also counsel for the respondent-assessee, Mr. George. Even at the outset, we expressed to counsel that it will be extremely difficult to answer the question/questions referred to this court by the Tribunal, in the absence of the various trust deeds under which income has been received by the children of the assessee. Counsel for the assessee has filed C. M. P. No. 933 of 1990 in Income-tax Reference No. 71 of 1986 along with an affidavit of the advocate, dated March 5, 1990, stating that, for a proper adjudication of the case, a perusal of the trust deeds referred to in the assessment order as well as in the appellate order are very much necessary and since the Revenue has not produced the relevant trust deeds, the assessee may be permitted to produce photostat copies of the relevant trust deeds of "The K. K. M. Trust", "The Oriental Trust" and "The Kudakaseri Trust" before this court. Photostat copies of the above trust deeds have also been filed along with the C. M. P. as annexures R1-(A), R1(B) and R1 (C). We are of the view that it is not permissible or proper to let in additional material in this court in a reference and at the time of the hearing. It is for the Tribunal to forward the above trust deeds along with the statement of the case, either on its own initiative or at the request of any of the parties to the reference application. If the trust deeds have not been included as annexures to the statement of the case by the Tribunal, it is not permissible for this court to permit any one of the parties either to produce copies of relevant documents or to peruse the same. We dismiss C. M. P. No. 933 of 1990 in Income-tax Reference No. 71 of 1986.

17. We are of the opinion that, for satisfactorily answering the question referred to this court in the above cases, a perusal of the relevant trust deeds is necessary. In the main order passed by the Tribunal dated June 30, 1979, the Tribunal largely relied on the decision of the Supreme Court in *CIT v. Prem Bhai Parekh*<sup>3</sup> and held that it cannot be said that the income that accrued to the minor children of the assessee, by reason of the provisions of the trust deed, had arisen either directly or indirectly by the amounts donated by the assessee to the trust. The Tribunal concluded that the income accruing to the minor children of the assessee from the trust cannot be assessed

in the hands of the assessee. In Prem Bhai Parekh's case [1970] 77 ITR 27 (SC)(Supra), the assessee who was a partner of a firm having 7 as. share therein, retired from the firm on July 1, 1954. Thereafter, he gifted Rs. 75,000 to each of his four sons, three of whom were minors. There was a reconstitution of the firm with effect from July 2, 1954, whereby the major son became a partner and the minor sons were admitted to the benefits of partnership in the firm. The question was whether the income arising to the minors by virtue of their admission to the benefits of partnership in the firm could be included in the total income of the assessee under Section 16(3)(a)(iv) of the Income-tax Act which was to the following effect (at pp. 29, 30):

"In computing the total income of any individual for the purpose of assessment, there shall be included--(a) so much of the income of a wife or minor child of such individual as arises directly or indirectly ....

(iv) from assets transferred directly or indirectly to the minor child, not being a married daughter, by such individual otherwise than for adequate consideration."

18. In construing the above section, the Supreme Court held thus (at p. 30) :

"There is no dispute that the assessee had transferred to each of his minor sons, a sum of Rs. 75,000. It may also be that the amount contributed by those minors as their share in the firm came from those amounts. But the question still remains whether it can be said that the income with which we are concerned in this case arises directly or indirectly from the assets transferred by the assessee to those minors. 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. Section 16(3) of the Act created an artificial income. That section must receive strict construction as observed by this court in *CIT v. Keshavlal Lallubhai Patel*<sup>4</sup> In our judgment before an income can be held to come within the ambit of Section 16(3), it must be proved to have arisen--directly or indirectly--from a transfer of assets made by the assessee in favour of his wife or minor children. The connection between the transfer of assets and the income must be proximate. The income in question must arise as a result of the transfer and not in some manner connected with it."

19. In a recent decision in *CIT v. Prahladrail Agarwala*<sup>5</sup> the scope of the above decision has been highlighted in paragraph 8 of the judgment thus :

"There is no doubt that the wife became a partner because of the capital contributed by her in the firm, but, as observed by the High Court, in the judgment under appeal, it was upon agreement by the remaining partners that she became a member of the partnership. The mere contribution of the capital by the wife to the firm would not automatically have entitled her to partnership in the firm. The partnership was based on agreement, and it is

the event of agreement between the partners that brought the assessee's wife into the firm as a partner."

20. It is largely by relying upon the decision in Prem Bhai Parekh's case [1970] 77 ITR 27 (SC) that the Tribunal held that the income accruing to the minors from the various trusts cannot be included in the income of the respective assessees. We should state that the language of Section 16(3)(a)(iv) of the Indian Income-tax Act, 1922, and Section 64(1)(v) of the Income-tax Act, 1961, seem to be different. Whether the dictum laid down in Prem Bhai Parekh' case [1970] 77 ITR 27(Suupra) will ipso facto apply to the situation governed by Section 64(1)(v) of the Income-tax Act, 1961, requires further evaluation. That apart, the crucial aspect in Prem Bhai Parekh's case [1970] 77 ITR 27 (SC)(Supra), as explained in *CIT v. Prahladrai Agarwala*<sup>6</sup> is that it is as a result of the agreement between the partners that the minor (or the wife) were entitled to the benefits or became a partner in the firm and as a result of such membership in the firm, the minor (or the wife) received the income. In other words, it is not the mere contribution of capital by the minor (or the wife) in the firm that entitled the minor (or the wife) to membership in the firm automatically. It is as a result of a further agreement between the partners that the minor (or the wife) became entitled to the benefits of the firm and received the income in question. The receipt of such an income was said to be not as a result of the transfer and the connection between the gift obtained by the minor (or the wife) and the income received by the minor (or the wife) from the firm was said to be remote. How far the ratio laid down in Prem Bhai Parekh's case [1970] 77 ITR 27 (SC) is applicable to the present case requires further appraisal.

21. The Revenue contends that the decision of the Supreme Court in Col. H.H. Sir Harinder Singh v. CIT [1972] 83 ITR 416, which construed Section 16(3)(b) of the Indian Income-tax Act, 1922, is more relevant, so far as this case is concerned. Section 16(3)(b) of the Indian Income-tax Act, construed by the Supreme Court in the said decision, is as follows (at p. 422) :

"16. (3) In computing the total income of any individual for the purpose of assessment, there shall be included-- ...

(b) so much of the income of any person or association of persons as arises from assets transferred otherwise than for adequate consideration to the person or association by such individual for the benefit of his wife or a minor child or both."

22. In the said decision, the Supreme Court has made a distinction between a direct transfer of assets by the assessee to his wife or minor child and a transfer of the assets to any other person for the benefit of his wife or minor child or both and has analysed the scope of the section in that light (at p. 424) :

"The former provision clearly refers to assets transferred directly or indirectly to the wife by the husband and the latter, provision refers to assets transferred directly or indirectly to the minor child not being a married daughter....

From a plain reading of Section 16(3)(b) it is clear that what is to be included, in computing the total income of the assessee, is that part of the income of the trust which is received for the benefit, in this case, of the minor daughter."

23. Placing heavy reliance on the decision of the Supreme Court in Col. H.H. Sir Harinder Singh's case [1972] 83 ITR 416, counsel for the Revenue contends that this is a single case where there is a transfer of assets to trustees under the deed of trust for the benefit of the settlor's minor children and the case is plainly hit by Section 64(1)(v) of the Income-tax Act, 1961, before April 1, 1976, and by Section 64(1)(vii) after April 1, 1976. It is true that Section 64(1) of the Income-tax Act should be strictly construed. Even so, the court cannot ignore the clear and unambiguous expression contained in the statute. All expressions used in the statute must receive a proper interpretation--*Vide CIT v. Manilal Dhanji*<sup>7</sup> and Col, H.H. Sir Harinder Singh's case [1972] 83 ITR 416 (SC) page 423. It appears that Section 64(1) of the Income-tax Act was enacted to guard against a growing tendency on the part of the assesseees in making attempts to avoid or reduce tax liability by means of settlements and to provide against the disposal by the assesseees of a part of their property in such a way that the income will no longer be received by them while, at the same time, retaining powers over or interest in the property or its income.--See *Tulsidas Kilachand v. CIT*<sup>8</sup>

24. On a resume of the above, it is evident that it is essential to find out on what basis the minor children of the assesseees received income from the various trusts. The various aspects that arise for consideration are :

- (1) Who created the trust ?
- (2) Who are its beneficiaries ?
- (3) What are the terms and conditions under which the beneficiaries received income ?
- (4) Who are all the persons who contributed to the corpus of the trusts; and what are the various clauses in the trust deeds by which the corpus is to be administered and income distributed to the various beneficiaries?

25. These and other aspects are germane to the enquiry and also to consider whether the income received by the various beneficiaries are includible in the income of the different assesseees. It does not appear from the order of the Tribunal that the various trust deeds were perused and their terms evaluated by the Tribunal before finding that the income that accrued to the various beneficiaries under the three different trusts are not includible in the income of the various assesseees. What is more, in forwarding the statement of the case, the Tribunal has not chosen to annex the trust deeds as part of the statement of the case. An interpretation of the various trust deeds is highly essential to understand the basic facts and the applicability of the relevant provisions of law to the cases on hand. In the absence of the trust deeds, we are not in a position to answer the question/questions of law referred to this court. We should also indicate that the relevant statutory provision which falls to be considered in the first batch of cases--Income-tax

References Nos. 71 and 72 of 1986, 64 and 65 of 1988 and 68 and 69 of 1988--is Section 64(1)(v) of the Income-tax Act, 1961, before its substitution by the Taxation Laws (Amendment) Act of 1975. The relevant statutory provision in the second batch of cases for the years subsequent to April 1, 1976, is Section 64(1)(vii) of the Income-tax Act, 1961. The phraseology of the above two provisions seems to be different. The decision which has been relied on to interpret Section 64(1)(v) of the Act as also Section 64(1)(vii) of the Act is one which was rendered in the context of Section 16(3)(a)(iv) of the Indian Income-tax Act, 1922, the language of which also seems to be a little different. These and other aspects have not been borne in mind at all by the Tribunal when it mechanically adopted the reasoning contained in the decision of the Supreme Court in Prem Bhai Parekh's case [1970] 77 ITR 27 (SC) and held that the income received from various trusts by the minor children of the different assesseees is not includible in the income of the assesseees. We are of the view that the Tribunal has not evaluated and appraised all basic facts and the relevant statutory provisions before reaching the decision it did. The decision rendered by the Appellate Tribunal is not in accordance with law.

26. Therefore, we decline to answer, the question/questions of law referred to this court in this batch of 13 cases. We direct the Income-tax Appellate Tribunal to restore the respective appeals to file and dispose of the appeals afresh in accordance with law and in the light of the observations contained hereinabove.

27. The references are answered as above.

28. A copy of this judgment under the seal of this court and the signature of the Registrar will be forwarded to the Income-tax Appellate Tribunal, Cochin Bench.

#### Cases Referred.

1[1970] 77 ITR 27 ; AIR 1970 SC 1518

2[1972] 83 ITR 208

3[ 1970] 77 ITR 27

4[1965] 55 ITR 637 (SC)

5[1989] 177 ITR 398 (SC) ; AIR 1990 SC 270

6[1989] 177 ITR 398 (SC)

7[1962] 44 ITR 876 (SC)

8[1961] 42 ITR 1 (SC) page 4