**BOMBAY HIGH COURT**

Currimbhoy Ebrahim Baronetcy

Vs

Commissioner of Income-Tax

(V.S. Desai and Y Tambe. JJ.)

16.08.1962

**JUDGMENT**

**V.S. Desai, J.**

1. The questions raised on this reference arise out of the assessment of the assessee for the assessment year 1957-58 and they are as follows :

"1. Whether on the facts and in the circumstances of the case the annual value of Flats Nos. 7 and 8 of 'Currimbhoy Manor' and 'Poona Bungalow No. 20, was liable to assessment in the hands of the assessee trustees under section 9 of the Act ?

2. Whether on the facts and in circumstances of the case the rent receivable by the Custodian of Evacuee Property can be considered to be a charge within the meaning of section 9(1)(iv) of the Act or whether it constituted an effective alienation at source ?"

2. The assessee is a corporation created by a statute, viz, Sir Currimbhoy Ebrahim Baronetcy Trust Act, IV of 1913 (hereinafter referred to as Act IV of 1913), and has been all along assessed to tax as trustees of Sir Currimbhoy Ebrahim Baronetcy Trust in the status of an association of persons. The income of the assessee is from the immoveable property and Government securities and the question with which we are mainly concerned in the present case relates to the income of the two flats Nos. 7 and 8 of the property known as Currimbhoy Manor at Bhulabhai Desai Road, Bombay, and of another property at Poona, known as Poona bungalow No. 20. Under the Act IV of 1913, these two flats in Bombay and the bungalow in Poona were to be allowed to be occupied rent-free by the incumbent of the office of Baronetcy for the time being. In the year 1949, the then incumbent of the office of Baronetcy was declared an evacuee under the Evacuee Property Act and on the 21st November, 1949, the Custodian of Evacuee Property passed an order under section 7 of Ordinance No. 27 of 1949, declaring flats Nos. 7 and 8 of Currimbhoy Manor in Bombay and the Poona bungalow No. 20 as evacuee property, and further declaring that the right of residence given to Sir Currimbhoy Ebrahim free of rent would henceforth vest in

the custodian. The trustees challenged the order passed by the Custodian of Evacuee property and ultimately went up to the High Court. In view of the decision of the High Court, however, the trustees ultimately admitted the claim of the Custodian of Evacuee Property, Bombay, that he was entitled to give on rent the said property and receive the rent of the said property. In the assessment of the assessee, the Income-tax Officer held that the trustees continued to be the owners of the flats Nos. 7 and 8 in Currimbhoy Manor and bungalow No. 20 at Poona, in spite of the orders passed by the Custodian of Evacuee Property, and assessed the income from the said two properties as income of the assessee under section 9 of the Act. The assessee appealed to the Appellate Assistant Commissioner against the order of the Income-tax Officer. The appeal was allowed and the Income-tax Officer was directed by the Appellate Assistant Commissioner to delete the income of the said properties from the income of the assessee. The department then filed an appeal before the Tribunal against the order of the Appellate Assistant Commissioner. The Tribunal accepted the department's contention that, although the interest of the evacuee had now vested in the Custodian, the ownership of the properties still continued to vest in the trustees and the income of the properties computed under section 9 was liable to be assessed in the hands of the trustees as heretofore. It accordingly allowed the appeal filed by the department and restored the order passed by the order passed by the Income-tax Officer. Then, at the instance of the assessee, it drew up the statement of the case and referred to this court the two questions which we have already stated.

3. Under Act IV of 1913, the legal ownership of the properties with which we are concerned, namely, the flats, Nos. 7 and 8 of Currimbhoy Manor in Bombay and the Poona bungalow No. 20, was vested in the trustees. The incumbent of the Baronetcy for the time being had only a right to occupy the said properties without paying any rent. He had no other claim or interest in respect of the said properties. The income of property which is to be computed under section 9 is the income of the owner of the property and, therefore, of the trustees in whom the ownership was vested. As has been held by our court in D. M. Vakil v. Commissioner of Income-tax, the income from property is an artificially defined income and the the liability arises from the fact that the assessee is the owner of the property. The liability does not depend on the owner of the owner to let the property and it also does not depend upon the capacity of the owner to receive the bona fide annual value. There is no doubt and it was also not disputed by Mr. Mehta that, before the vesting of the interest of the Baronet in the Custodian of Evacuee Property, the income from these properties was assessable in the hands of the trustees. The vesting of the said interest of the Baronet in the Custodian, in our opinion, could not in any way affect the said position. Mr. Mehta has argued that, under the provisions of the Administration of Evacuee Property Act, 1950, on the vesting of the interest of the Baronet in the Custodian, the Custodian was invested with the power of letting out the properties and turn them to income. According to him,

therefore, the right to obtain income from the property now belonged to the Custodian and the trustees' power to turn the property to account was gone. It should, therefore, be held that income from the property would no longer be income assessable in the hands of the trustees. We are unable to accept this contention of Mr. Mehta. As we are have already pointed out earlier, the criterion of assessment under section 9 is the ownership of the property and, so far as the ownership of property is concerned, there has been no change by the interest of the Baronet having vested in the Custodian. That the trustees are not in a position to obtain any rent from the properties is not, in our opinion, material since the liability of the trustees as owners of the properties does not depend upon their power to let the properties nor on their capacity to receive income therefrom. Mr. Mehta has pointed out that incapacity of the trustees to let out these properties arises in the present case from the provisions of Act IV of 1913 itself, and this feature distinguishes it from the case in D. M. Vakil v. Commissioner of Income-tax, which was followed by the Tribunal, and to which we have referred above. We do not see how the circumstance that incapacity is created by the statute and not by a trust deed as in D. M. Vakil v. Commissioner of Income-tax can make any difference to the case. Under the Act IV of 1913, the legal ownership of these properties was vested in the trustees in the same way as it was vested in them under the trust deed in D. M. Vakil v. Commissioner of Income-tax. The incapacity created in the present case was under the provisions of the statutory trust, whereas, in the other case, it was under the terms of a trust deed executed by the testatrix under the testamentary trust. In our opinion, therefore, the Tribunal was right in the view that it has taken and our answer, therefore, to the first question raised on this reference must be in the affirmative. We answer it accordingly.

4. The second question raised on the reference requires two questions to be answered. Firstly, whether the rent receivable by the Custodian of Evacuee Property in respect of the said properties can be considered to be a charge within the meaning of section 9(1)(iv) of the Income-tax Act and, secondly, whether it could be regarded as income effectively alienated at the source and, therefore, not income assessable in the hands of the trustees. So far as the first of these questions is concerned, the answer to it will be clearly in the negative on a mere perusal of the provisions of section 9(1)(iv) of the Act and Mr. Mehta also has very fairly not attempted to support the contention that it would be a charge as is specified in section 9(1)(iv). We do not, therefore, find it necessary to discuss it any more. As to the latter part of the contention that it is income alienated at the source, it appears that the said contention is also not well founded. As we have already pointed out earlier, the income computed under section 9 is not real or the actual income received, but is an artificially defined income computed on the basis of the bona fide letting out. This is the income for tax purposes of the owner which flows from his ownership of the property and, so long as the ownership remains vested in him, the liability in respect of the income attaches to him. What is the actual income of the property or who gets it are not matters which

arise for consideration. Even before the interest of the Baronet vested in the Custodian, the trustees were not getting income of the property. It cannot, therefore, be said that it is as a result of the Baronet having been declared evacuee, and his interest having been vested in the Custodian, that there has been an alienation of the income at the source. Our answer, therefore, to the second question is in the negative.

5. The assessee will pay the costs of the department.