BOMBAY HIGH COURT

Commissioner of Income-Tax

Vs

Abubaker Abdul Rehman

(Beaumont, C.J.)

01.11.1938

JUDGMENT

Beaumont, C.J.

1. This is a reference made by the Commissioner of Income-tax under Section 66 sub-section (2) of the Indian Income-Tax Act, and the questions raised, like a good many other questions under this Act, is not free from difficulty. Shortly, the question whether income-tax should be assessed on the Mutavalees of a Wakf or whether the tax should be assessed on the beneficiaries of the Wakf deed. The deed of Wakf is dated the 18th July 1931 and by it certain immoveable properties were conveyed to the trustees, upon certain trusts, which, as amended by a later deed, are, stated shortly, to pay all charges for repairs, insurance and other outgoings of the income and then to pay 1/8th of the balance of the income to the settlors wife for life and other 7/8ths to the settlors children. The 1/8ths, after the death of the wife is to follow the other 7/8ths, and putting it quite generally and so far only as is material for the purpose of the present reference, the trust is to pay the income to the children and remoter issue of the settlor so long as any such issue exists, and after the extinction of all the children and remoter issue of the settlor, the property is to be held for the use of charitable, religious or pious purposes of a permanent character recognised by the Mussalman Law for the benefit of Sunni Halai Memon Mahomedans. These trusts are, I think, good under the Mussalman Wakf Validating Act of 1918.An argument was addressed to us that in any case the trustees are not liable to be assessed to tax because of section 4, sub-section (3) (i) of the Income-Tax Act which exempts income derived from property held under trust or other legal obligation wholly for religious or charitable purposes. In my opinion, this property, although validly given as Wakf under the Wakf Validating Act, is not held for religious or charitable trusts. Prior to the date of the Act it had been held by the Privy Council that trusts of this nature for the benefit of the settlors family and afterwards for charity were void, and in my opinion, the Wakf Act did not in any way alter the law as declared by the Privy Council. It only validated trusts which otherwise would have been held void. That view is in accordance with a decision of the Full Bench of the Lahore High Court in *Umar Baksh v. Commissioner of Income-tax, Punjab*[1] The main question which arises is whether under the Wakf the trustees or the

beneficiaries ought to be assessed. Up to a recent date, the Commissioner of Income-tax had assessed the beneficiaries on the income which they received under the Wakf deed, as appears from his order of the 20th of June 1935 which is an accompaniment to exhibit "E". But recently he has altered that practice in accordance with what he considers to be the law as laid down by this Court in Commissioner of Income-tax, Bombay v. Laxmidas and Commissioner of Income-tax, Bombay v. Dwarkanath Pitale and two unreported cases to which the learned Commissioner refers. Those cases, in my opinion, do not govern the present questions, because in none of those cases was the Court dealing with trustees. In all those cases immovable property had become vested in two or more persons who were using it for the purpose of producing income for their own benefit, and the Court held that they were properly assessable as an association of individuals under section 3 in respect of their respective interests in the property. But in none of those cases, as I have said, was there any question as between a trustee and beneficiary. The trustees in this case are no doubt an association of individuals, but that consideration does not determine the question whether they or their beneficiaries should be assessed to income-tax. There are graver practical difficulties in assessing trustees where, as in India, the tax is imposed on a sliding scale. Such an assessment may result in beneficiaries being charged at a higher rate than is appropriate to them because they have a wealthy trustee, and in a trustee being charged at a higher rate than is appropriate to him because he holds large trust income. The question whether trustees or the persons beneficially entitled to the income of the property should be assessed to income-tax came before this court and subsequently before the Privy Council, in Sir Currimbhoy Ebrahims case reported, in this Court and in the Privy Council. I think that both this Court and the Privy Council adopted the view which LORD CAVE had expressed in a case under the English Act, viz., *Williams v. Singer*[2] that prima facie it is the owner of the income who has to be assessed and that where property is vested in a trustee in trust for a beneficiary, prima facie it is the beneficiary who is to be assessed, though there may be cases, and Sir Currimbhoy Ebrahims case was one of them, in which the assessment is properly made upon the trustee, there being nothing in the Income-Tax Act which precludes assessment on a trustee.Now, in this case the learned Advocate-General has argued that in assessing income derived from immovable property under the Indian Income-Tax Act, it is the owner of the property who must be assessed under Section 9. He admits that the owner need not be the legal owner, and that when property is vested in a trustee in trust for a beneficiary simply, the beneficiary may be the owner. But this consideration cannot apply to trusts which create interests in succession, since a reversioner cannot be assessed upon income to which he is not entitled. Moreover in the trust which falls for consideration in this case, and in most trusts under Indian Law, the ultimate beneficiaries are not ascertainable, and there is no existing beneficial owner of the corpus of the property. So that if the argument of the learned Advocate-General is accepted, it must follow that in most cases of trusts it is the trustee who will be assessable on income of immovable property. This seems to me inconsistent with the general scheme of the Act, which undoubtedly recognises trusts (See Section 38 to 40). A difficulty does, however, arise on the language of Section 9 of the Act. Before dealing with that section, it is necessary to look at some of the earlier sections. Section 3 is the charging section with charges tax in respect of all income, profits and gains of the previous

year. Section 4 applies the Act to all income, profits or gains as described in Section 6. Section 6 enacts that the following heads of income, profits and gains, shall be chargeable to income-tax in the manner hereinafter appearing, namely, (i) salaries, (ii) interest on securities, (iii) property, (iv) business, (v) professional earnings, and (vi) other sources. Section 7 deals with the method of assessing salaries, and Section 8 deals with assessing interest on securities. Then comes Section 9 which deals with the income of property. Sub-section (1) is in these terms :

> "The tax shall be payable by an assessee under the head Property in respect of the bona fide annual value of property consisting of any building or lands appurtenant thereto of which he is the owner, other than such portions of such property as he may occupy for the purposes of his business, subject to the following allowances."

Then follow various allowances in respect of outgoings for repairs, insurance premiums and so forth which may be deducted. The effect of Section 9 seems to be that the assessable income of immovable property is the annual value of such property, as defined in sub-section (2), less the authorised allowance, and without taking into account any part of the property which the assessee may occupy for the purposes of his business. No doubt the language of sub-section (1) does seem to involve that the assessee must be the owner of the property from which the income is derived, but in my opinion, in order to bring the section into conformity with the general scheme of the Act, it is necessary to read the words "of which he is the owner" as meaning "of which annual value he is the owner". I think that the Privy Council really adopted this view of the section in Sir Currimbhoy Ebrahims case (Supra), because their Lordships discussed the question whether the Baronet was the owner within the meaning of Section 9 in some detail. They held that he was not the owner, because he was only entitled to the balance of income which remained after providing for a Sinking Fund and Repair Fund, and then simply as so much money. But if the "owner" in Section 9 means owner of the property from which the income is derived, there was no question to discuss, since the Baronet was at the most of tenant for life. As far as I know, the construction which, I think, should be placed on Section 9 is the one which has been adopted in practice, and we have been referred to no authority in support of the Audited in practice, and we have been referred to no authority in support of the Advocate Generals argument that the income of the immovable property must be assessed on the owner of such property, and not on the owner of the income. I think, therefore, that the original view of the learned Commissioner was right and that it is the beneficiaries who should be assessed, and not the Mutavalees of the property.

The actual questions raised are :

(1) Whether in the circumstances of the case Mutavalees (assessee) constitute an association of individuals within the meaning of Section 3 of the Indian Income-tax Act, 1922 ?

(2) Whether the Mutavalees (assessee) can be said to be the owners of the properties within the

meaning of Section 9 of the Indian Income-Tax Act, 1922, and were rightly assessed as such ?

(3) Whether the assessees were in any event rightly assessed as owners of the Wakf properties under Section 9 of the said Act ?

(4) Whether according to law the Income-tax Authorities were not bound to assess as regards the income of the Wakf immovable properties directly the five beneficiaries mentioned in the deed of Wakf dated the 18th day of July 1931 and supplemental indenture dated the 29th day of October 1934 ?

The answers to the questions will be as follows :-

(1) In the affirmative.

(2) In the negative.

(3) In the negative.

(4) The Income-tax Authorities were bound to assess the five beneficiaries.

Costs to be paid on the original side scale.

Rangnekar, J.

I agree. I confess the question raised on this reference is not free from doubt, but upon the whole I have come to the conclusion that the view which we have then is in accordance with the scheme of the Act and the principles laid down in Sir Currimbhoy Ebrahims case and Williams v. Singer. True, that the whole object of the Act is to tax the income of the subject where it is found. If the income is found with the beneficiary, the beneficiary is primarily liable to be taxed, and if the income is found with the trustee, then it is the trustee who is liable.I agree, therefore, that the question should be answered in the way proposed by My Lord the Chief Justice.

Reference answered accordingly.

Cases Referred.

1(1931) (I.L.R. 12 Lah. 725)
2[(1921) 1 A.C. 65]