

BOMBAY HIGH COURT

D.R. Shahapure

Vs

Commissioner of Income-Tax

(Stone, C.J.)

11.09.1944

JUDGMENT

Stone, C.J.

This is a reference under Section 66(1) of the Indian Income-tax Act. The question submitted to the Court is in these terms :-

"Whether the sum of Rs. 280 is income arising from assets remaining the property of the assessee, and as such whether it has to be deemed, under the first part of clause (1)(c) of Section 16 of the Income-tax Act, to be the income of the assessee ?" The income in question arises by virtue of an entry which the assessee made in his business books on 6th May, 1937. The relevant parts of that entry are as follows :

"To-day I am making a family arrangement for my own good. All my estate belongs to me and is acquired by me and hence no one has a claim on this estate except me. I have got full right to dispose of this estate or make some arrangement about it as I like."

The assessee then states that his first four wives are dead and that he is to marry again. He states that his age is 61 years. He then continues that at the time he made arrangements with the fifth wifes parents, "I promised that out of my estate I will hand over to you an estate worth Rs. 20,000 for your benefit only up to your death." Then after stating some provision about the brother of his wife, and the marriage expenses, the entry continues as follows :-

"Out of the amount of Rs. 20,000 referred to above you have to give to your brother and for your marriage expenses. The capital supplied to you will remain entirely mine but you will get the income over it up to the end of your life. This capital I will take back up to the end of your life but I will do business for you on this capital and see that you will get Rs. 600 per annum for you. I will pay for any loss in this business. If I become incapable of doing this business, you are free to employ somebody to do business for your sake. But

such a man must give a guarantee that he will give me back the amount after your death or he will give it to anybody whom in my will I will ask to give. The final right on the estate will be mine but you can spend Rs. 600 as you like and if there is any extra income you can utilise it for anything you wish to buy, e.g., household utensils etc. After your death the said capital will be mine or it will be given to whom I may ask in my will to give. You have no right whatsoever to give the amount to anybody not even your heirs. You should act according to my wishes up to the end of my life and you should serve me. If I am displeased with your conduct or actions you have no right to take the matter to any Court for disproving it. I have preserved the right to use the capital as I like by making any arrangement I like. I have not kept with me the right to make any changes in that arrangement or to cancel it."

Now it appears that no specific assets were set aside to meet this sum of Rs. 20,000 and that there are no further entries in the books with regard to it. The first question which we have to consider is, what is the correct construction to be put upon this document ? In my judgment it is clearly irrevocable, i.e., the covenanted sum cannot be revoked by the covenantor at any time. In substance it is a covenant to pay the income of Rs. 20,000 with a guarantee that there shall be Rs. 600 a year, and if there is any additional income that some is also to be paid over. I do not think it is necessary to determine whether if the lady chose she could sue to have a sum of Rs. 20,000 to be set apart or ear-marked to provide the covenanted annual sum. It is now necessary to examine the relevant provisions of the Income-tax Act, which is Section 16(1). The section commences with the governing words : "In computing the total income of an assessee" - we are not concerned with the sub-clauses (a) and (b) but sub-clause (c) is as follows : "All income arising to any person by virtue of a settlement or disposition whether revocable or not, and whether affected before or after the commencement of the Indian Income-tax Act (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 revocable transfer of assets shall be deemed to be income of transferor." Then there follow three provisos to that sub-section, the first of which we are not concerned with as it relates to the transfer of assets. The second is a definition clause and it provides that "the expression settlement or disposition shall for the purposes of this clause include any disposition, trust, covenant, agreement, or arrangement, and the expression settlor or disponent in relation to a settlement or disposition shall include any person by whom the settlement or disposition was made." Now turning back for a moment to the main sub-clause (c) it is to be observed that it applies to all income arising to any person by virtue of a covenant whether revocable or not, from assets remaining the property of settlor or disponent. Now in my judgment that is the position created by this entry in the assessee's books. If that is so then it falls to be considered whether the position is taken out of the main sub-

clause (c) by the third proviso which is as follows : "Provided further that this clause shall not apply to any income arising to any person by virtue of a settlement or disposition which is not revocable for a period exceeding six years or during the life time of the person and from which income the settlor or disponent derives no direct or indirect benefit but that the settlor shall be liable to be assessed on the said income as and when the power to revoke arises to him." As I have stated this entry is an irrevocable covenant and it therefore comes within the third proviso unless it can be said that this is income from which the assessee derives a direct or indirect benefit. It is no doubt true that a husband is under an obligation to maintain his wife but it cannot be suggested that this entry is in fulfilment of any such obligation. By the words used the wife is enabled to do what she likes with the covenanted annual sum of Rs. 600. She can either accumulate the same, or she can hand it over to her own parents. There is no obligation on her either to maintain herself or to spend it in buying necessary utensils for the household. In these circumstances in my opinion this is not a benefit either direct or indirect which the assessee derives from this covenant and in my judgment the position falls within the third proviso the sub-clause (c) of sub-section (1) of Section 16 of the Income-tax Act. Accordingly in my judgment the position falls within the answer to the question submitted to the Court is in the negative. The Commissioner must pay the costs of the reference taxed on the original side scale.

Kania, J.

I agree. The relevant portions of the entry, under which the rights of the parties have to be determined, have been quoted in the judgment of the learned Chief Justice. The question submitted for the Courts opinion is whether the income of Rs. 280 arising from assets, which, on the construction of this entry, are considered to remain the property of the assessee, is liable to be assessed as the income of the assessee. There appears no doubt that the capital amount of Rs. 20,000 mentioned in the entry, at no time, ceased to be property of the assessee. By the entry also he has not transferred a specific amount to himself in another capacity. In law, therefore, it would be proper to state that there is no transfer of assets by the settlor to another party. The question for consideration is whether on the facts found by the Tribunal the income remains the income of the assessee. It is common ground that Section 16(1)(c) of the Act applies. The first part of that clause deals with income arising to any person by virtue of a settlement or disposition, whether revocable or not, from assets remaining the property of the settlor or disponent. According to the first part of that clause such income shall be deemed to be the income of the settlor or disponent. The second part of the clause deals with income arising to any person by virtue of a revocable transfer of assets. The clause provides that such income shall be deemed to be the income of the transferor. This is the substantive part of clause (c). It is followed by the first proviso which extends the meaning of what is a revocable transfer of assets mentioned in the second part of the clause. In this reference we are not concerned with that proviso. The second proviso states that

the expression "settlement or disposition" shall, for the purposes of this clause, include any disposition, trust, covenant, agreement or arrangement. The words "settlement or disposition" used in the first part of clause (c) are thus given an extended meaning. Therefore, although there may be no trust as defined by the Trusts Act, if there is covenant, agreement or arrangement which fulfils the conditions mentioned in the clause, such a covenant, agreement or arrangement is covered by Section 16(1)(c). The question therefore arises whether the third proviso applies to the arrangement contained in the entry in question. On behalf of the Commissioner it was urged that the third proviso is not applicable unless there was a transfer of assets. In support of that contention reliance was placed in particular on the last words of the proviso, viz., "the settlor shall be liable to be assessed on the said income as and when the power to revoke arises to him." From these words it was sought to be argued that the power to revoke must be revocation of the transfer of assets. In my opinion this argument is unsound. The proviso opens with the words "Provided further that this clause shall not apply..." There is no warrant for reading the word "clause" as applicable only to the second half of clause (c), and not the first half also. In my opinion, the last words of the proviso, quoted above, also do not help the Commissioner, because the power to revoke may be equally applicable to the income, which is payable, as to the assets which are transferred. In proviso (1) the transfer of income and assets are treated, so far as this section is concerned, on the same footing. It appears therefore that the third proviso, as worded, can equally well apply to the first part of Section 16(1)(c). It was next argued that having regard to the words "revocable or not" used in the first part of clause (c), the third proviso cannot apply until there was a revocable transfer of assets. No authority is cited to support this construction, which is against the very words of the clause. The words "revocable or not," in my opinion, are used in contradiction to "revocable transfer" used in the second part of that clause. Although the settlement may be revocable, the power may not be capable of being exercised for a period exceeding six years, or for the lifetime of the person for whose benefit the income is settled. The deed may not be revocable and yet the settlor may derive a benefit directly or indirectly from the income. The use of the words "revocable or not" in the first part of Section 16(1)(c) does not therefore necessarily exclude the operation of the third proviso. In my opinion, therefore, the argument that before the third proviso can be considered, the settlement must be revocable, is unsound. The next question for consideration is whether the arrangement contained in the entry satisfied the conditions prescribed in the third proviso. In terms, the entry says that the settlement shall not be revoked or altered. It, therefore, makes the deed irrevocable during the lifetime of the assessee's wife, for whose benefit the arrangement is made. The first condition of the third proviso is thus fulfilled. The second condition is that "from the income (so settled on the wife during her lifetime) the settlor derives no direct or indirect benefit." On a perusal of the entry, which embodies the arrangement, it is clear that the settlor has no power of disposition over the income. The wife is entitled to utilise it as she pleases, irrespective or in total disregard of the

wishes or desires of the assessee. It was contended that the assessee is bound to maintain his wife and this income, which is settled on her, may be taken into consideration if she claimed separate maintenance. The question does not arise on the reference directly. The argument is what a husband being under a legal obligation to maintain his wife, if he settles property for her exclusive and independent maintenance (and although he has no control over it thereafter) it amounts to a receipt of indirect benefit by the husband. This argument was advanced in Income-tax Reference No. 20 of 1943 and rejected by the Court. In my opinion, the assessee derives no direct or indirect benefit under this arrangement, within the meaning of the third proviso. In their judgment the Tribunal has considered that the third proviso does not apply to the first part of Section 16(1)(c) and therefore have not expressed any opinion on that aspect of the case. In my opinion the construction put by them is incorrect and not warranted by the words of this proviso. I therefore agree that the answer to the question, submitted to the Court, should be in the negative. Reference answered in the negative.