

BOMBAY HIGH COURT

Sitaldas Tirathdas

Vs

Commissioner of Income-Tax

(S Desai, C.J. Tendolkar, J.)

20 .09.1957

JUDGMENT

Tendolkar, J.

1. The assessee in this case is assessed in the status of an individual and the relevant assessment years are 1953-54 and 1954-55. In these two years the assessee paid Rs. 1,350 and Rs. 18,000 respectively as maintenance to his wife and children. This maintenance was payable under a decree of court in Suit No. 102 of 1951 but the decree had not made the payment of this maintenance a charge on the property. The Tribunal held that this was a mere case of the assessee being compelled to apply a portion of his income for the maintenance of a person whom he was under a personal and legal obligation to maintain and since there was no charge created on the property these amounts could not be deducted from the income of the assessee. The question of law that arises from the order of the Tribunal, and which has been referred to us is :

"Whether the assessee is entitled to a deduction of Rs. 1,350 and Rs. 18,000 from his total income of the previous year relevant to the assessment year 1953-54/1954-55 ?"

2. Now, Mr. Kolah says that the Tribunal erred in giving under importance to the question as to whether or not the amount of maintenance was charged on the property of the individual, and he says that a recent decision of this court, to which I was a party, has laid down that if there is a legally enforceable right against the individual, then the individual is entitled to have the amount deducted from his income irrespective of whether there is a charge. The case on which Mr. Kolah relies is the case of set Motilal Manekchand v. Commissioner of Income-tax. It is necessary to look closely at the facts of this case for under standing the passage on which Mr. Kolah relies. A managing agency belonged to a Hindu joint family consisting of a father, a mother and a son. Upon a partition between the members of the family, the managing agency was divided and by the partition deed it was provided that the father and the son shall have equal shares in the managing agency and each of them shall pay to the mother 2 annas 8 pies out his respective share. The father and son constituted a registered firm and carried on the managing agency. Both

in the assessment of the firm and of the individual partners it was claimed that 2 annas 8 pies paid to mother should be deducted before ascertaining the taxable income. We held that the amount was not deductible in the assessment of the firm, but it was deductible in the assessment of the partners. On a true interpretation of the deed itself and having looked at its provisions, we came to the conclusion that to the extent of 2 annas 8 pies of the share of each partner, the income had been diverted from him to the mother and never formed part of his income at all. In this connection, however, an argument was advanced by Mr. Kolah for the assessee in support of the claim for exemption that the payment to the mother was a charge on the income of the managing agency. We were inclined to accept the submission, as we have specifically stated in the judgment, but we considered it unnecessary to do so, and what we stated is at page 741 :

"We are inclined to accept the submission of Mr. Kolah that it does constitute a charge, but in our opinion it is unnecessary to decide this question because this question can only have relevance and significance if we were considering a claim made for deduction under section 9(1)(iv) of the Income-tax Act, where a claim is made in respect of immovable property where the immovable property is charged or mortgaged to pay a certain amount. It is sufficient for the purpose of this reference if we come to the conclusion that Bhagirathibai had a legal enforceable right against the partner in respect of her 2 annas and 8 pies share and that the partner was under a legal obligation to pay the amount."

3. It is the last sentence in this passage on which Mr. Kolah relies, and we have reaffirmed this passage in the judgment in a subsequent passage where we referred to the case of Prince Khanderao Gaekwar v. Commissioner of Income-tax 4 in which we had applied the principle of the case of Raja Bejoy Singh Dudhuria v. Commissioner of Income-tax to a voluntary settlement made by two sons in favour of their mother for additional maintains and we had in that case, however, stated that the test was whether the property was subject to a valid and legal charge which could be enforced in a court of law. In connection with the reference to this case, we observed in this judgment :

"In our opinion the test would be the same even though there may not be a specific charge so long as there was an obligation upon the assessee to pay which could be enforced in a court of law."

4. In this judgment we have considered all the decisions relating to this branch of the law of income-tax beginning from the case of Dudhuria, which I have just referred to, and having taken into account all those decisions we had in this judgment deliberately made the two observations that we have set out above, which do appear to be an extension of the right of exemption of the right of exemption as it was understood in prior decisions. It may be that in so stating the law the ratio had been put in a somewhat wide form; but there can be little doubt that we have, in terms,

laid down that it is not essential that there should be a charge, it is quite sufficient if there is a legally enforceable claim. If that test is to be applied to the facts of the present case, the decree undoubtedly constitutes a legally enforceable claim.

5. Mr. Amin has attempted to argue that this is not the real ratio of our decision and that we decided the case on a finding of fact that on a true interpretation of the document there was an overriding title in Bhagirathibai by which the income was diverted. No doubt, it is true that we held that as a fact; but it appears to me to be equally true that we specifically considered the question as to whether the existence or non-existence of a charge was a relevant consideration in this context and expressed the views that we have set out above. Since in any event this a judgment of a Division Bench which binds this Bench, following that decision the answer to the question referred to us can only be that the assessee is entitled to the deduction. But then Mr. Amin has drawn our attention to one or two cases which, he says, directly determine the question that we have here to consider and it is necessary to refer to them.

6. The first case on which Mr. Amin relies is a decision of the Madras High Court in Raghavulu Naidu & Sons v. Commissioner of Income-tax. In this case the assesseees were the executors of a deceased person and the testator by his will had directed that the executor should continue the business and pay maintenance allowance to his mother and widow; and what was held by the Madras High Court was that the maintenance allowance was not an allowable deduction under the Income-tax Act. In our opinion, this case has no relevance to the case before us. The ratio of this case is quite simple, because what was being subjected to tax was no the income of the executors, but was the income of the deceased testator, and in a separate judgment Viswanatha Sastri, J., points out at page 811 :

7. The executors merely stand in the shoes of the testator and, having received the income of the estate and applied it according to the directions in the will, they cannot deduct such expenses in computing their income, for such expenses represent merely the application or distribution of income after it has been realised".

8. In our opinion, this case has no relevance to the issue that we have been called upon to determine.

9. Mr. Amin also relies on a case reported in commissioner of Income-tax v. Makanji Lalji, where the head-note states that in computing the income of a Hindu undivided family monies paid to the widow of a deceased coparcener of the family as maintenance cannot be deducted even if the maintenance has been fixed by decree of a court and has been made a charge on the properties belonging to the family. The head-note may appear to support the argument of Mr. Amin; but, obviously, this case was decided on an entirely different ratio. The ratio is stated by

Beaumont, C.J., very tersely in his judgment at page 543 as follows :

"But in this case the assessment being on a Hindu undivided family the whole of the income of the A Hindu undivided family is liable to assessment, and it is impossible to deduct this sum payable to the widow of a deceased brother, who gets it in her capacity ultimately as a member of the joint family."

10. It is clear law that any amount which an assessee receives as a member of a Hindu undivided family is no taxable in his hands by reason of section (1) of the Income-tax Act, and the whole of the income of the joint family, howsoever distributed amongst the members, is taxable in the hands of the Hindu undivided family. It is to this principle that this High Court gave effect in deciding this case and the case does not help in determining the question that has been referred to us.

11. In our opinion, therefore, the answer to the question referred to us will be in the affirmative.

12. Commissioner of Income-tax to pay costs.

13. Question answered in the affirmative.

