

BOMBAY HIGH COURT

Paliram Mathuradas

Vs

Commissioner of Income-Tax

(V Desai, C.J. Y.S Tambe, J.)

22.09.1961

JUDGMENT

Y.S. Tambe, J.

1. This is a reference under section 66(1) of the Indian Income-tax Act. The assessee was one Paliram Mathuradas, now represented by his legal heir and son, Madanlal. We are concerned with the assessment years 1951-52 and 1952-53, the relevant accounting years being Samvat years, one commencing from 22nd October, 1949, and ending with 8th November, 1950, and the other commencing from 9th November, 1950, and ending with 1st October, 1951. Prior to these accounting years, the assessee was a partner in a firm consisting of himself and his sons, carrying on business under the name and style "Messrs. Paliram Mathuradas & Sons". On the retirement of the assessee from the partnership, it was found that a sum amounting to Rs. 1,13,000 was due from the firm to the assessee, and at the beginning of the year, i.e., on 22nd October, 1949, that amount was credited in the name of the assessee. That account of the assessee was debited with a sum of Rs. 50,000 and the accounts of two grandsons of the assessee, Doongersey and Rajkumar, were credited with a sum of Rs. 25,000. Doongersey was a major, and there was already an account in the partnership firm in the name of Doongersey. Rajkumar, however, was at the material time a minor and a new account was opened in his name and the said sum was credited to his account. Nobody, however, was shown as his guardian. At the end of both these accounting years, interest on the said amount of Rs. 25,000 was credited in the accounts of these two grandsons, Doongersey and Rajkumar. The Income-tax Officer, negating the contention of the assessee that he had transferred Rs. 25,000, by way of gift to each of his grandsons, held that the interest credited in the accounts of these two grandsons really was the interest earned by the assessee, and should be added to the income of the assessee. After adding these interest amounts to the assessee's income, he assessed the total income of the assessee, and has taxed the assessee thereon. The assessee took an appeal to the Appellate Assistant Commissioner. The Appellate Assistant Commissioner held that mere entries in the account books were not sufficient to his grandsons. He further held that the amount due by the partnership to the assessee was a debt, and, therefore, an actionable claim; no valid transfer could have been effected of that actionable claim

without executing proper document as acquired by section 130 of the Transfer of Property Act; and there being no such document, no valid gift in law came into existence. In this view of the matter, the Appellate Assistant Commissioner dismissed the appeal. A second appeal was taken to the Tribunal. It was contended before the Tribunal that the gift was made by the assessee in favour of his two grandsons at the commencement of the year, commencing from 22nd October, 1949, and ending on 8th November, 1950, and the entries in the books of the account would establish that fact. The Tribunal held that the entries were in nakalbahi. The entries were not made in the beginning of the year, but they were made at the end of the year. The entries, therefore, did not corroborate the story put forwarded by the assessee. The Tribunal rejected the story put forwarded by the assessee before it. It further held that this fact itself showed that the entries therefore had no evidentiary value. It was, however, argued on behalf of the assessee that, even assuming that the entries not sufficient to establish that any valid gift was made by the assessee to his grandsons in the year commencing from 22nd October, 1949, and ending on 8th November, 1950, the entries having been made at the end of that year would, at any rate, establish that a valid gift of the second year commencing from 9th November, 1950, and ending with 1st October, 1951, and relief should have been granted to the assessee in respect of that year at least. This contention also was not accepted by the Tribunal, holding that the entries, on which reliance was placed, were not made in regular course of business, and therefore, did not afford any reliable evidence. It came to the conclusion that mere entries in the account books were not sufficient to constitute a valid gift. The Tribunal further agreed with the Appellate Assistant Commissioner that the amount owed by the partnership to the assessee was a debt and was therefore an actionable claim. The assessee could validly transfer a portion of this debt only by an instrument in writing, as required by section 130 of the Transfer of Property Act. There being no instrument, there was no valid transfer in favor of the two grandsons. In this view of the matter, the Tribunal dismissed the appeal of the assessee.

2. The Tribunal in its order has also recorded that before it the assessee had tried to put in an affidavit of one of the grandsons, namely, Doongersey, that he had accepted the gift. The Tribunal did not allow the assessee to lead further evidence. On an application made by the assessee under section 66(1) of the Income-tax Act, the Tribunal has referred the following two questions to this court :

"(1) Whether, on the facts and in the circumstances of this case mere book entries transferring the amount of Rs. 50,000 from the account of the assessee to the accounts of his two grandsons in the books of Messrs. Paliram Mathuradas & Sons constituted a valid gift in law ?

(2) Whether the transfer of the above amount of Rs. 50,000 from the account of the assessee to the accounts of his two grandsons was not a transfer of an actionable claim and if it were mere book entries did not constitute a valid assignment in respect thereof?"

3. Mr. Mehta, learned counsel for the assessee, contends that the entries in the books of account

are sufficient evidence to establish a valid gift by the assessee to the two grandsons. According to him, the assessee had given instructions on 21st October, 1949, and in pursuance of those instructions, the entries were made. A new account in the name of the minor grandson was opened by his father Madanlal. Madanlal was his natural guardian. The entries would therefore show that Madanlal had accepted the gift on the major grandson Doongersey. The Tribunal should have accepted that evidence about the acceptance of gift. It is difficult for us to accept the contentions of Mr. Mehta. Now, at no stage of the case any contentions was raised that instructions were given by the assessee to the partnership firm to give amount to the grandsons. On the other hand, the only evidence in the case to prove the gift were the entries. Whether instructions were given by the assessee or not would purely be a question of fact, and if the assessee wanted to raise such a contention, he should have raised it at a proper stage. The affidavit of Doongersey, in the circumstances, was property rejected by the Tribunal.

4. In the alternative Mr. Mehta argues that the Tribunal has found that the entries were, in fact, made at the end of the year commencing from 22nd October, 1949, and ending with 8th November, 1950. That being the fact found, and there being no finding by the Tribunal that these entries were made without any instructions, the Tribunal should have held that, at any rate, a valid gift came into being at the end of that year. It is difficult to accept this contention also. It would not be correct reading of the order of the Tribunal to say that the Tribunal has found or accepted the entries made at the end of the year as valid entries. On the other hand, if the Tribunal's order is read as a whole, it is clear that in the opinion of the Tribunal the entry not having been made in the regular course of business is not a bona fide entry. In other words, the entry could have no evidentiary value. That being the position, no inference could be drawn on the basis of these entries. Apart from it, there is the view taken by the Tribunal and in our opinion rightly, on the material record, that the amount owed by the partnership firm to the assessee was a debt and was therefore an actionable claim. The assessee, therefore, if he wanted to transfer by a deed in writing as required by section 130 of the Transfer of Property Act, and there being no deed, no valid transfer of this amount, should have effected the transfer by a deed in writing as required by section 130 of the Transfer of Property Act, and there being no deed, no valid transfer of these amount has come into being. Mr. Mehta did not dispute that the amount due by the partnership firm to the assessee was a debt and was therefore an actionable claim. It is, however, his contention that an actionable claim can be transferred in more than one way; one of them is by an instrument in writing as required by section 130 of the Transfer Property Act. His argument is that that is not that only way in which an actionable claim can be transferred by the owner of the claim. There can be a tripartite agreement between the creditor and the debtor and the person to whom the creditor wants the amount to be paid, and as a result of such agreement a new valid agreement may come into being, whereunder, the debt of the creditor is paid by the debtor making payment to the third party. Now, in our opinion, there is no foundation for such an argument in this case. At no time it had been stated that the assessee, the partners of the partnership firm and the two grandsons came together and agreed that the debt due by the partnership paid Rs. 50,000 to his two grandsons, Rs. 25,000 each. This contention is founded on

assumption of facts which have not been established in this case. It has therefore to be rejected on the material of the record.

5. In the result, the answer to the first question will have to be in the negative, and the answer to the second question will have to be that the transfer of the amount of Rs. 50,000 from the account of the assessee to the accounts of his two grandsons amounts to transfer of an actionable claim, and therefore mere book entries not constitute a valid assignment in respect thereof. We answer accordingly. The assessee shall pay the costs of the department. No order on the notice of the motion.

