

BOMBAY HIGH COURT

Commissioner of Income-Tax

Vs

B.A. Sanghrajka

(S.P. Bharucha and T Sugla, JJ.)

22.09.1989

JUDGMENT

S.P. Bharucha, J.

1. The reference is made at the instance of Revenue. Three question are raised which read thus :

"(1) Whether, in relation to the previous years ended March 31, 1971, and March 31, 1972, the beneficiaries of the income under the trust were the settlor's grand-daughters, Chhaya and Sangeeta, or also the wife and children of the settlor's son, Bhupatrai Amratlal Sanghrajka ?

(2) Whether, on the facts and in the circumstances of the case, the case fell within the category specified in clause (i) of the proviso to section 164(1) of the Income-tax Act, 1961 ?

(3) Whether, on the facts and in the circumstances of the case, tax was chargeable on the income of the trust for the assessment years 1971-72 and 1972-73 as if the relevant income were the total income an association of persons or at the rate of 65%, whichever course would be more beneficial to the Revenue ?"

2. The assessment years concerned are the assessment years 1971-72 and 1972-73. The assessee is a trust settled by Mrs. Narmadaben Amratlal Sanghrajka under a trust deed dated December 20, 1968. Clauses 2, 3 and 4 thereof are relevant to the issue before us and read thus :

"2. Until the time of distribution hereinafter mentioned, the trustees may either accumulate the net income or may pay, appropriate or apply the whole or such part of the income from the trust fund as the trustees may, in their absolute discretion, think fit to or for the maintenance, education (including education in foreign countries and expenses of going to such foreign countries and return), medical expenses, marriages and other social functions, insurance premium on the lives of the said beneficiaries, expenses of going to

his stations or places of interest, residence for any purposes of emergency or such necessity or advancement and benefit including setting up of business of all or any of the said beneficiaries in such shares and proportions and generally in such manner as the trustees shall in their absolute discretion think fit and it shall be lawful for the trustees to exclude any of them while dividing the said net income without giving any reasons and shall accumulate the residue, if any, of the income from the trust fund by investing the same and the resulting income thereof in any of the investments hereby authorised with power to vary such investments accordingly and all accumulations so produced and the investments for the time being representing the same shall, for the purposes, be treated as an accretion to the capital of the trust fund and shall be held upon the same trustees and with and subject to the same powers, terms and conditions as are herein declared and contained concerning the trust fund or as near thereto as the circumstances will admit, but so nevertheless that the trustees may at any time until the date of distribution apply such accumulation or any part thereof as if the same were income from the trust fund arising in the then current year.

3. On the expiration of 25 years from the date hereof or at any time before that as the trustees may, in their absolute discretion, think fit to do so (that is the date of distribution), the trustees shall divide the trust fund and all the accumulations of the net income and accretions of the trust fund amongst the children of the said Bhupatrai Amratlal Sanghrajka and the wife of the said Bhupatrai Amratlal Sanghrajka and the wife and/or the children of the male child or children of the said Bhupatrai Amratlal Sanghrajka if he has married before the date of distribution in such proportion or proportions as the trustees may, in their absolute discretion, think fit, and it shall be lawful for the trustees to exclude any of them while dividing the said trust fund without giving any reasons provided that if at the time of distribution, none of the said persons is living, then the said trust fund and all the accumulations of the net income and the accretions to the trust fund shall be distributed equally amongst the persons who would have received the same as the heirs of the said Bhupatrai Amratlal Sanghrajka excluding the settlor as if he had died intestate and possessed of the said trust fund and the accumulations of the net income and the accretions to the trust fund.

4. Notwithstanding anything contained in clause 3 hereof, the trustees shall have absolute discretion to distribute the trust fund including the accumulated income thereof after the expiry of 2 years but prior to the expiry of the said period of 25 years from the date hereof and in the event of the trustees so deciding, the distribution shall be effected in the manner set out in para 3 hereof at such early date."

3. The only income of the trust for the first year under consideration was Rs. 35,259 and for the

second year Rs. 4,010. No part of this income was applied for the benefit of either Chhaya or Sangeeta during the relevant previous years. It was accumulated. The Income-tax Officer held that the wife of Bhupatrai Amratlal Sanghrajka (now referred to as "Mrs. B") was one of the beneficiaries under the trust and that she had income chargeable to tax. Therefore, the trust could not avail of the exception clause to section 164 of the Income-tax Act, 1961, and was liable to tax at the rate of 65% as this was more beneficial to the Revenue. In appeal, the Appellate Assistant Commissioner held that Mrs. B was entitled to a share in the corpus only after the trust came to an end. The only beneficiaries during the previous year concerned were Chhaya and Sangeeta and neither of whom had income chargeable to tax for that year. Therefore, tax was chargeable upon the trust at the rate applicable to its total income. The Tribunal, in the appeal filed by the Revenue, upheld the Appellate Assistant Commissioner's finding.

4. From out of the judgment of the Tribunal arise the questions posed to us.

Section 164, so far as it is relevant, reads thus :

"164. (1) Subject to the provisions of sub-sections (2) and (3), where any income in respect of which the persons mentioned in clauses (iii) and (iv) of sub-section (1) of section 160 are liable as representative assesseees or any part thereof is not specifically receivable on behalf or for the benefit of any one person or where the individual shares of the persons on whose behalf or for whose benefit such income or such part thereof is receivable are indeterminate or unknown (such income, such part of the income and such persons being hereafter in this section referred to as 'relevant income', 'part of relevant income' and 'beneficiaries', respectively), tax shall be charged :-

(i) as if the relevant income or part of relevant income were the total income of an association of persons, or

(ii) at the rate of sixty-five per cent, whichever course would be more beneficial to the revenue :

Provided that in a case where -

(i) none of the beneficiaries has any other income chargeable under this Act; or...

tax shall be charged as if the relevant income or part of relevant income were the total income of an association of persons."

5. Dr. Balasubramanian, learned counsel for the Revenue, raised an argument based upon a reading of the first question which, in our view, is quite mistaken. He read the first question as posing to us the question : (a) whether Chhaya and Sangeeta are the beneficiaries of the income

of the trust ? and (b) Whether Mrs. B is also such beneficiary ? it is plain that the question as it is framed assumes that Chhaya and Sangeeta are beneficiaries of the income of the trust and the question is only whether they are the only beneficiaries or whether they are beneficiaries along with Mrs. B. Indeed, it cannot be otherwise, for, the Income-tax Officer has held that Chhaya and Sangeeta are the beneficiaries of the income of that trust and this has not been brought in question before the Appellate Assistant Commissioner or the Tribunal. It is, therefore, not open to counsel for the Revenue to advance a case that is contrary to the very foundation upon which the Revenue has come to this court under reference.

6. It is plain from a reading of the trust deed, and, particularly, the clauses that we have quoted, that the trustees are entitled, in their absolute direction, to utilise such part of the trust income as they think fit for the benefit of Chhaya and/or Sangeeta or to accumulate the same and to utilise such accumulation in future years as if it were a part of the income and to treat the balance of the accumulation as an accretion to the corpus of the trust. The corpus of the trust may be distributed at any time after the expiry of two years from the date of the trust and before the expiry of 25 years from that date. The corpus which would include the accumulation has to be distributed between the wife (i.e., Mrs. B) and the children of Bhupatrai Amratlal Sanghrajka in such proportion as the trustees think fit.

7. It is clear from the above that Mrs. B has no right or interest in the income of the trust for any year. She has an interest in the trust in so far as she is entitled to get such portion, if any, as the trustees may, in their absolute discretion, think fit to give her out of the corpus of the trust when it is distributed.

8. It must, therefore, be held that, for the years under consideration, the beneficiaries of the income under the trust were only Chhaya and Sangeeta and not Mrs. B. Since Chhaya and Sangeeta had no income chargeable to tax for these years, the trust was entitled to the benefit of clause (i) of the proviso to sub-section (1) of section 164 and was, therefore, not liable to pay tax on its income at the rate of 65%.

9. Consequently, the questions are answered thus :

(1) In relation to the previous years ended on March 31, 1971, and March 31, 1972, the beneficiaries of the income under the trust were only the settlor's grand-daughters, Chhaya and Sangeeta.

(2) In the affirmative and in favour of the assessee.

(3) Tax is chargeable on the income of the trust for the assessment years 1971-72 and 1972-73 as if it were the income of an association of persons.

10. No order as to costs.