

# **BOMBAY HIGH COURT**

Commissioner of Income-Tax

Vs

Pushpaben Family Trust

(B Srikrishna, C.J. S.V Manohar , J.)

02.11.1992

## **JUDGMENT**

### **B.N. Srikrishna J.**

1. Filing of paper books dispensed with.

2. The Department has sought and obtained reference under section 256(1) of the Income-tax Act, 1961, of the following three questions which relate to the assessment year 1972-73 :

"1. Whether, in relation to the previous year ended March 31, 1972, the beneficiaries of the income under the trust were the settlor's grand-daughters, Chhaya and Sangeeta, or also Pushpaben, the wife of the settlor's son, Gunvantrai 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 year 1972-73 as if the relevant income were the total income of an association of persons ?"

3. In CIT v. B. A. Sanghrajka Trust [1990] 181 ITR 484 (Bom), another family trust of the assessee, containing similar provisions to the effect that the trustees were entitled, in their absolute discretion, to utilise some part of the trust income for the benefit of the two grand-daughters and the corpus of the trust, including the accumulation, had to be distributed among the grand-daughters and the daughter-in-law at any time after the expiry of a stipulated period, the Revenue had taken the view that the daughter-in-law was also one of the beneficiaries under the trust, and since she had income chargeable to tax, the trust could not avail of the exception clause under section 164 of the Income-tax Act, 1961. This court, after analysing the provisions of the trust deed, took the view that the daughter-in-law had no right or interest in the income of

the trust from any year, and that she had only an interest in the trust, in so far as she was entitled to get such portion, if any, as the trustees might, in their absolute discretion, think fit to give her out of the corpus of the trust, when it was distributed. In the case of the assessee before us also, the terms of the trust are similar. The daughter-in-law, Pushpaben Gunvantrai, has no right under the trust deed, except to receive such portion as may be distributed by the trustees at their discretion, upon the completion of the terms of the trust. Following the reasoning adopted by this court in CIT v. B. A. Sanghrajka Trust [1990] 181 ITR 484, the questions referred for the opinion of this court are answered as under :

Question No. 1 : In relation to the previous year ended March 31, 1972, the beneficiaries of the income under the trust were the settlor's grand-daughters, Chhaya and Sangeeta, Pushpaben, the wife of the settlor's son, was not a beneficiary.

Question No. 2 is answered in the affirmative and in favour of the assessee.

Question No. 3 is answered in the affirmative and in favour of the assessee.

4. There shall be no order as to costs.