PATNA HIGH COURT

Kali Prasad Singh

Vs

Commissioner of Income Tax

Misc. Judicial Case No.310 of 1953

(Ramaswami and Misra, JJ.)

09.12.1954

JUDGMENT

Ramaswami, J.

1. In this case the assessee is Shri Kali Prasad Singh who is the holder of an impartible estate called Jharia Raj. On 21-8-1947 the assessee created a permanent mokarari lease in favor of his wife Rani Usha Debi, with regard to a property called Jharia hat. The fixed annual rental was Rs.101/- and the Rani was given the right to enjoy the usufruct of the Hat and to sell and make a gift of the land upon which the Hat was located. The question in this case refers to the income received by the Rani from Jharia Hat for the accounting years 1354 and 1355 Bengali Samvat. For these two accounting years the net amounts of income received by the Rani were Rs.7,728 and Rs.15,889. The Income-tax Officer took the view that these amounts were taxable in the hands of the assessee under the provisions of Section 16(3)(a)(iii), Income-tax Act. The Income-tax Officer was of the opinion that the Raja had made transfer of assets in favor of his wife and there was no adequate consideration within the meaning of Section 16(3)(a)(iii). An appeal was taken on behalf of the assessee to the Appellate Assistant Commissioner who held that the transanction came within the ambit of Section 16(1)(c) of the Act. But the Appellate Assistant Commissioner rejected the claim of the assessee for exemption on the ground that the assessee "derived direct and indirect benefit from the income of the settlement" and that inspite of the settlement "the assessee had full control over the management of the property and the enjoyment of its income." The Appellate Assistant Commissioner also remarked that "the assessee's wife was joint with the assessee and was completely subservient to him." The matter eventually came before the Appellate Tribunal who expressed the view that the transaction was hit by Section 16(3)(a)(iii) of the Act and there was no adequate consideration and the income was rightly included in the total income of the assessee for being taxed.

2. In this state of facts the Tribunal has submitted the following question of law for the opinion of the High Court:

> "whether the respective net amounts of Rs.7,728 and Rs.15,889/- being the income from fharia hat for the assessment years 1948-49 and 1949-50, could be added to the income of

the assessee under the provisions of Section 16(3)(a)(iii), Income-tax Act".

3. On behalf of the assessee Mr. Dutt put forward the argument that the view taken by the Tribunal was wrong and that the transaction of the mokarari lease was not a transfer of assets within the meaning of Section 16(3)(a)(iii) of the Act. The contention of the learned counsel was that the assessee had made a transfer to Rani Usha Debi of the right of collecting rent from the Jharia Hat on a permanent basis. It was contended by the learned counsel that the Rani was not granted any right in the property apart from the right of collecting rent and the mokarari lease executed by the assessee was not tantamount to a transfer of assets within the meaning of Section 16(3)(a)(iii). In my opinion the argument advanced by Mr. Dutt cannot be accepted as correct. The question turns upon the legal effect of the mokarari lease executed by the assessee on 21-8-1947 in favor of Rani Usha Debi. The operative part of this document is in the following terms:

> "And Whereas after the first party succeeded to the Jharia Estate the second party expressed her desire for taking settlement of some property yielding income and has so expressed her desireto the first party.....Now this deed witnesseth that the second party out of natural love and affection for the first party without any salami and on an annual fixed rent of Rs.101/- and cess at the rate of anna one per rupee amounting to Rs.6-5-0 in all Rs.107-5-0 the first party settled the lands described in the schedule below on the terms and conditions noted below and the second party accepted the said settlement now the parties have executed this document on the following terms and conditions.....".

Clause (1) proceeds to state:

> "The second party shall possess and enjoy the usufruct of the demised premises either in khas or through temporary settlement and shall realize the income and profits of the said demised property from generation to generation and is also entitled to sell and make a gift of the said lands and the first party or his heirs and assigns shall not be entitled to make any objection."

The Schedule to the document describes the area granted in the mokarari lease to be "plots 2452, 2453, 2454, 2455, 2185 and 2174 total area 6.22 acres". It is clear upon a perusal of the terms of this document that the Raja had transferred not merely the right of collecting rent but the Raja had created a leasehold interest of a permanent character in favor of the Rani. Clause (1) of the document is significant for the Rani is granted the right to possess and enjoy the usufruct of the demised premises and also to realise the income and profits of the demised property from generation to generation and she is further given the right to sell and make a gift of the lands upon which the Hat was located. In the course of his argument Mr. Dutt referred to Section 105, Transfer of Property Act which states:

> "A lease of immoveable property is a transfer of a right to enjoy such property made for a certain time, express, or implied, or in perpetuity, in consideration of a price and.....".

It was argued by the learned counsel that the mokarari lease was only a transfer of interest in the

immoveable properties and there was no complete transfer of title. It was contended that a transaction of this nature would not fall within the ambit of Section 16(3)(a)(iii). I am unable to accept this argument as a valid argument. Section 16(3)(a)(iii) deals with transfer of assets directly or indirectly by the assessee to his wife otherwise than for adequate consideration or in connection with an agreement to live apart.It is a well-established principle that a lease of land is a transfer of interest in the land and creates a right 'in rem' and not merely a contractual right. In other words, there is transfer of title in favor of the lessee and I am clearly of opinion that a mokarari lease of a nature in question in the present case is a transfer of assets within the meaning of Section 16(3)(a)(iii), Iacome-tax Act. This view is borne out by the decision of a Bench of this Court in - *'Traders and Miners Ltd. v. Commissioner of Income Tax'*[1], (A). The question at issue in that case related to the correct interpretation to be placed upon Section 12B(1), Income-tax Act. It was contended in that case on behalf of the assessee that the transfer of a capital asset referred to in Section 12B should be interpreted to mean a permanent and out and out transfer of title and that a lease of mineral asset even for a period of 99 years would not come within the mischief of Section 12B. The argument was rejected by the Division Bench and it was held that the lease of mineral asset was a transfer of a capital asset within the meaning of Section 12B and the gains arising to the assessee on account of this transfer of the capital asset was taxable by the Income-tax authorities. The principle laid down in that case supports the view, which I have expressed, that the mokarari lease executed by the assessee Raja Kali Prasad Singh is tantamount to a transfer of asset in favor of Rani Usha Debi within the meaning of Section 16(3)(a)(iii) of the Act. I should add that Mr. Dutt conceded in the course of his argument that the transaction of the mokarari lease was not supported by adequate consideration within the meaning of Section 16(3)(a)(iii) of the Act. For these reasons I think that the Tribunal was right in expressing the view that the net amounts of Rs.7,728 and Rs.15,889 being the income from Jharia hat for the assessment years 1948-49 and 1949-50 should be taxable in the hands of the assessee under the provisions of Section 16(3)(a)(iii) of the Act.

4. I would accordingly answer the question referred to the High Court in favor of the Income-tax Department and against the assessee. The assessee must pay the cost of the reference; hearing-fee Rs.250/-.

Misra, J.

5. I agree.

Answer in the affirmative.

Cases Referred.

[1] AIR 1955 Pat 113