
(1978) 04 AHC CK 0042

In the Allahabad High Court

Case No : Income-tax Reference No. 380 of 1974

Addl. Commissioner of Income Tax

APPELLANT

Vs

Ram Krishna Gupta

RESPONDENT

Date of Decision : 04-04-1978

Acts Referred:

Citation : (1979) 117 ITR 218

Hon'ble Judges : Satish Chandra, C.J.; Kailash Nath Goyal, J

Bench : Division Bench

Advocate : A. Gupta, for the Appellant; R.K. Gulati, for the Respondent

Judgement

Satish Chandra, C.J.—On August 26, 1966, Ram Krishna Gupta executed a deed of trust endowing a sum of Rs. 1,000 to the trust after divesting himself of its ownership. He appointed himself as the sole trustee during his lifetime and his son after his death. The income of the trust was to be spent on various charitable purposes mentioned in the deed. On the same day, Ram Kumar Gupta, the brother of Ram Krishna Gupta, executed a similar deed of trust. He also endowed a sum of Rs. 1,000 to the trust and appointed himself as the sole trustee of the trust during his lifetime and his son after his death. The objects and purposes on which the income of the trusts was to be spent were almost similar.

2. On October 15, 1966, these two gentlemen executed a deed of partnership. In that they stated that the capital of the partnership will be Rs. 2,000, Rs. 1,000 having been contributed by each. The document specifically stated that Ram Krishna Gupta and Ram Kumar Gupta were partners in this firm in their capacities as trustees of the charitable trusts. They had an equal share in the profits of the firm.

3. For the assessment year 1968-69 the firm applied for registration. The ITO held that though the firm was genuine, the partners of the firm were Ram Krishna Gupta and Ram Kumar Gupta in their individual capacities. He came to this conclusion after holding that the trusts were invalid. The income of the

partnership firm was assessed and brought to tax in the hands of the two partners as individuals.

4. The two individuals went in appeal but failed. The AAC upheld the findings and the order of the ITO.

5. The two partners then filed an appeal before the Tribunal. The Tribunal held that it was settled law that a trustee can be a partner in a firm. On facts, it held that the partnership was a genuine one and the partners represented their respective trusts in the firm. In other words, they were partners in, their capacity as trustees of the two charitable trusts and not in their individual capacities. It was also observed that the ITO was not justified in going into the validity of the trusts whose trustees were the partners. All that he could examine was whether the partnership firm was a genuine one. The Tribunal further observed that the volume of the business of the partnership firm was not such as to raise any suspicion or doubt as to its genuineness. The firm had taken loans from certain persons. It had also raised donations. Therefore, there was nothing surprising at the volume of the income which the firm had during this assessment year. The Tribunal went on to hold that the beneficiaries of the trusts were the schools, hospitals and various other charitable institutions. It was settled law that an unborn person could be a beneficiary under a trust. The trusts were hence valid. On these findings, the appeal was allowed and the additions were deleted.

6. At the instance of the Commissioner, the Tribunal has referred the following questions of law for our opinion :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was correct in holding that the assessee was a partner in the firm, Messrs. R. K. Industries, as trustee for and on behalf of a trust under the style "Ram Krishna Gupta Charitable Trust" and, therefore, the share income from the said firm was not includible in the computation of the assessee's income ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was correct in holding that Messrs. R. K. Charitable Trust was a valid trust and the assessee was a partner in the firm of Messrs. R. K. Industries on behalf of the said trust as a trustee ?"

7. We have heard learned counsel for the parties but we did not hear learned counsel appearing for the department to question the finding that a trustee may, in law, enter into a partnership on behalf of the trust or the other finding that an unborn person can validly be a beneficiary under a trust. In view of these two principles of law being well-settled, the rest of the question revolves round a point of fact. The Tribunal has given various reasons detailed above in coming to the conclusion that in fact the two partners were representing their respective charitable trusts. In other words, they were partners in their capacity as trustees. The partnership firm was genuine. Its partners were not acting as partners in their individual capacities. Hence, the share income from this firm could not be included in the individual assessments of the partners. On the

admitted and found facts, the conclusion drawn by the Tribunal that the two persons were partners in their capacity as trustees and, as such, the share income could not be included in the computation of their income, seems proper, fair and reasonable.

8. We, therefore, answer both the questions in the affirmative, in favour of the assessee and against the department. The assessee will be entitled to costs which are assessed at Rs. 200.