

(1971) 04 CAL CK 0012

In the Calcutta High Court

Case No : Income-tax Reference No. 65 of 1969

B.K. Guha, I.C.S. (Retd.)

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 27-04-1971

Acts Referred:

Income Tax Act, 1961 — Section 27, 64

Citation : (1972) 2 ILR (Cal) 1 : (1972) 84 ITR 592

Hon'ble Judges : Sankar Prasad Mitra, J;A.N. Sen, J

Bench : Division Bench

Advocate : Nirmal Ch. Mukherjee, Chunilal Goswami and Tapas Ganguly, for the Appellant;B.L. Pal and Ajit Kr. Sen Gupta, for the Respondent

Judgement

Sankar Prasad Mitra, J.—In 1941 the assessee's wife entered into a contract with the Hindusthan Co-operative Insurance Society for purchase of a plot of land in New Alipore. She made a deposit of Rs. 2,000 in part payment of the price of the land which was obtained by raising a loan against the assessee's insurance policy. Before the land could be purchased, however, the Government requisitioned it. In or about June, 1950, the land was de-requisitioned. Thereafter, it was sold and a sum of Rs. 20,081 came to the assessee's wife's share.

2. With Rs. 20,000 out of the aforesaid amount and with loan taken from insurance companies against the assessee's insurance policies and with a further small sum given by the assessee, a plot of land on Gariahat Road was purchased on November 28, 1950, from the Government of West Bengal for the sum of Rs. 29,292.

3. A building was constructed on the land at a cost of approximately Rs. 57,500. This construction was financed by the assessee by withdrawals from his provident fund and the proceeds of his insurance policies. The construction was started in or about April, 1955. The ground floor was completed by the end of 1955 and the first and second floors by July, 1957.

4. The income from this property was returned by and assessed in the assessee's hands for the first few years. In the original returns for the assessment years 1963-64 and 1964-65 the assessee included the incomes from this property. But subsequently he filed revised returns in which these incomes were not shown.

5. At this stage we may conveniently set out the relevant provisions of Sections 22, 27 and 64(iii) of the Income Tax Act, 1961. These provisions are as follows:

Section 22:

"The annual value of property consisting of any buildings or lands appurtenant thereto of which the assessee is the owner, other than such portions of such property as he may occupy for the purposes of any business or profession carried on by him the profits of which are chargeable to Income Tax, shall be chargeable to Income Tax under the head "Income from house property" ".

Section 27 :

"For the purposes of Sections 22 to 26-

(i) an individual who transfers otherwise than for adequate consideration any house property to his or her spouse, not being a transfer in connection with an agreement to live apart, or to a minor child not being a married daughter, shall be deemed to be the owner of the house property so transferred;....."

Section 64:

"In computing the total income of any individual, there shall be included all such income as arises directly or indirectly--.....

(iii) Subject to the provisions of Clause (i) of Section 27, to the spouse of such individual from assets transferred directly or indirectly to the spouse by such individual otherwise than for adequate consideration or in connection with an agreement to live apart;....."

6. In this case counsel representing the assessee argued before the Income Tax Officer that u/s 64(iii) the income arising to the assessee's wife in respect of the said property was nil inasmuch as the property was used as a dwelling house. The Income Tax Officer held that this was not a case of transfer of house property or asset by the assessee to his wife, that the house property was constructed out of the assessee's own money in the name of his wife, that the assessee was the real owner of the property and that his wife was merely a name-lender. The Income Tax Officer included the income from this property in the assessee's assessment for the assessment years 1963-64 and 1964-65.

7. The Appellate Assistant Commissioner held that Section 27(i) and Section 64(iii) did not apply to this case. He agreed with the Income Tax Officer that the assessee's wife was the assessee's benamidar and that the income had been rightly included in computing the assessee's total income.

8. Before the Tribunal the following contentions were urged on behalf of the assessee :

1. u/s 22 of the Income Tax Act, 1961, in order to charge the income from the property, it is the owner who is to be assessed and unless the house itself was transferred by the assessee to his wife, Section 27(i) would not apply to make the assessee the owner so as to be assessed.

2. If Section 27 did not apply, Section 64(iii) also had no application.

3. Section 64 contemplates real and sub-stantative income and not notional income.

4. If the subject-matter of the assessment is income from the immovable property then the person in whose name the title deeds stand is the owner thereof and until the title is transferred, no one else could be taken as the owner as there is no power under the Income Tax Act to dislodge the title of the ostensible owner.

5. The Income Tax Officer himself had treated the assessee's wife as the owner of the property in the earlier assessment. The department did not discharge the onus of proving that the assessee's wife was a mere benamidar. There was no evidence otherwise available to support it. The Income Tax Officer was, therefore, wrong in going back from the position he had taken earlier.

9. The department submitted, (a) that the assessee obtained the plot of land on Gariahat Road because of his high position under the West Bengal Government; (b) that practically the whole of the consideration was provided by the assessee or obtained from resources traceable to the assessee; (c) that in a case like this where the parties are husband and wife, there could be no independent proof of benami except by reference to the use and occupation of the premises by both parties and the enjoyment of the income therefrom for the maintenance of the husband also who had really contributed the resources for the purchase and construction of the property; and (d) that the assessment, as made, was proper. The departmental representative also relied on Section 27 in support of his contention.

10. The Tribunal went into the question whether the assessee's wife was the benamidar. The Tribunal found that there was no material to show that the assessee ever intended that his wife should not be the owner of his property and the allegation of benami had not been proved. The Tribunal then considered whether Section 27 was applicable and found that it did not apply. Thereafter, the Tribunal considered the applicability of Section 64(iii) and held that the property was assessable in the assessee's hands by reason of the fiction therein enacted.

11. The following question of law has been referred to this court u/s 256(1) of the Income Tax Act, 1961 :

"Whether, on the facts and in the circumstances of the case, the Tribunal was

right in holding that the income from property bearing No. P-15, Gariahat Road, was assessable in the hands of the assessee u/s 64(iii) of the Income Tax Act, 1961 ?"

12. Mr. Nirmal Mukherjee, learned counsel for the assessee, has submitted to us that a proper appreciation of the facts of this case reveals that the assessee's wife purchased the land at Gariahat Road, (a) with moneys borrowed against the assessee's insurance policy; (b) with small sums derived from the assessee; and (c) with moneys belonging to her. According to Mr. Mukherjee, the profit that was earned by sale of the land at New Alipore was money belonging to the assessee's wife. Mr. Mukherjee then says that the building on the Gariahat Road land was, no doubt, constructed with moneys given by the assessee. But only after completion of the building the assessee started residing in a portion of the house and utilising the rent received from tenants in the other portions for his domestic expenses. On these facts, according to Mr. Mukherjee, it cannot be said that there was any transfer of any assets by the assessee to his wife.

13. Developing his point further, Mr. Mukherjee says that it is true that the assessee financed the construction of the building from his provident fund dues and from moneys received by him under the insurance policies ; but this building was constructed on the land owned by the assessee's wife. And payments of moneys by the assessee for the building did not create any interest in favour of the assessee either in the land or in the building. In these premises, argues Mr. Mukherjee, the assessee did not own any house property or have any interest in house property which he could transfer to his spouse within the meaning of Section 27 of the Act. Mr. Mukherjee submits that unless Section 64(iii) can be brought within the ambit of Section 22 through Section 27(i), chargeability is not possible. It must be remembered, according to Mr. Mukherjee, that Section 27(i) creates a fiction. And it is well-settled that a legal fiction is limited to the purpose for which it is created and should not be extended beyond its legitimate field. Section 64(iii), therefore, should be construed, says Mr. Mukherjee, in a manner which carries out the intention of the legislature. And that intention has to be gathered from the language of the statute.

14. Counsel for the assessee has relied on a number of authorities in support of his arguments aforesaid. There is no dispute as to his general propositions on legal fictions. The application of such fictions, it is well-settled, is limited to their purposes or intentions and the words used to express them. We intend, therefore, to refer to the authorities he had cited on the other points raised by him.

15. In *R. K. Murthi v. Commissioner of Income Tax*, [1961] 42 ITR 379 (Mad.), the assessee was a director in a company. On the 21st March, 1947, another director, J., sold 2,098 shares in the company to the assessee's wife for Rs. 24,000. She paid immediately Rs. 4,000 and executed a promissory note in favour of J. for the balance of Rs. 20,000. She undertook to pay this amount without interest by the end of 1949. She paid Rs. 6,000 on September 26, 1947;

Rs. 10,000 on December 18, 1947; and Rs. 4,000 on April 7, 1949. The assessee's wife received cheques towards dividends for Rs. 4,406 on September 25, 1947 ; for Rs. 7,762 on June 25, 1948; for Rs. 7,543 on June 15, 1949; and for Rs. 5,245 on May 17, 1950. These cheques were endorsed by her in favour of the assessee and he realised the amounts of the cheques and set off the amounts against payments which he made to J. J., however, acknowledged receipt of the sum of Rs. 20,000 in respect of the promissory note by issuing receipts as follows :

16. For Rs. 4,500 on September 26, 1947 ; for Rs. 8,000 on June 26, 1948 ; and for Rs. 7,500, on June 20, 1949 ; which corresponded not to the dates on which he actually received payments from the assessee but to the dates on which dividends nearly equal to the amounts covered by the receipts were received by the assessee's wife.

17. The department sought to include the dividend income of the assessee's wife in the assessee's total income. The Tribunal held that, since at least Rs. 20,000 should be held to have come out of the assessee's funds in the first instance for the purchase of shares, 5/6th of the dividend income should be included in the assessee's total income. The Madras High Court had held that, in order to find out whether there had been a transfer of assets by the assessee to his wife directly or indirectly within the meaning of Section 16(3)(a)(iii) of the Indian Income Tax Act, 1922, the crucial date on which the intention of the parties was to be ascertained was the date of purchase. If, on that date, the husband had furnished or at least intended to furnish the entire consideration for the purchase, and subsequently, so furnished it, it could be said that there was a transfer of the asset by the husband to the wife. In the present case, there was, however, no such intention on the part of the assessee on that date, but on the contrary the wife furnished a portion of the purchase money herself, and intended to pay the balance out of her own income. In these premises no question of a transfer of the husband's assets, direct or indirect, could arise. The subsequent advance of moneys by the assessee for discharging his wife's obligation did not, according to the Madras High Court, convert the shares which vested in the wife into assets indirectly transferred by the husband, as the moneys were ultimately repaid. Secondly, the Madras High Court says, it could not be held that the assessee has purchased the shares in his wife's benami and the beneficial interest vested in him. The reasons are that, on the date of purchase of the shares the assessee did not pay, no presumption could be raised in his favour and no kind of beneficial interest could vest in him. The title that vested in the wife stood and was not divested merely because the assessee subsequently paid the balance of the purchase money. The Madras High Court was of opinion that no part of the dividend income from the shares could, therefore, be included in the assessee's total income under the provisions of Section 16(3)(a)(iii) of the Income Tax Act. The Madras High Court has observed that the mere fact that a property stands in the name of the wife cannot in the absence of evidence and proof show that she holds it benami for her husband.

The question whether a purchase in the name of the wife by the husband out of money provided by the husband is benami for his own benefit would depend on the intention of the parties at the time of purchase. For example, a husband may out of affection intend that the real title should be with the wife. The source of purchase money is not always decisive of the real ownership of the property, though it may, *prima facie*, show that he who provides the money does not intend to part with the beneficial interest in the property. Payment of consideration for the purchase of property by one person would invest him with the beneficial interest only if there is no proof of an intention on his part to pay it for the benefit of the person in whose name the property was purchased.

18. Mr. Mukherjee invited us to apply the principles which the Madras High Court laid down in that case to the facts in the present reference and to hold that there also no beneficial interest in the property vested in the assessee. In the Madras case there was a specific finding that the husband provided for a temporary accommodation to his wife (vide pages 388 to 389). In other words, the husband merely played the role of a financier for the time being. There is no such finding in the instant reference.

19. The next case of the assessee's counsel is the Supreme Court's decision in *Commissioner of Income Tax, Gujarat Vs. Keshavlal Lallubhai Patel*, . The respondent, in this case, threw all his self-acquired property into the common hotchpot of the Hindu undivided family consisting of himself, his wife a major son and a minor son. Some time later an oral partition was effected and, thereafter, properties were transferred in accordance with the arrangement in the partition to the names of the several members. The question was whether there was an indirect transfer of the properties allotted to the wife and minor son in the partition within the meaning of Section 16(3) (a)(iii) and (iv) of the Indian Income Tax Act, 1922. It was held : (1) that Section 16(3) created an artificial income and had to be construed strictly; (2) that the word "transfer" was used in Section 16(3)(a)(iii) and (iv) in the strict sense and not in the sense of including every means by which property may be passed from one to another; (3) that the word "indirectly" did not destroy the significance of the word "transfer"; (4) that partition of a joint Hindu family property was not "transfer" in the strict sense; and (5) that there was no transfer of assets, direct or indirect, within the meaning of Section 16(3)(a)(iii) or (iv) to the respondent's wife or minor son. The Supreme Court was of opinion that a court is not entitled to say that for the purpose of taxation the actual transaction is to be disregarded as a "machinery" and that the substance or equivalent financial results are the relevant considerations.

20. Mr. Nirmal Mukherjee pleads in the context of the facts in the instant reference that the word "transfer" is to be strictly construed. And since the house property itself was not transferred by the assessee to the assessee's wife, Section 64(iii) was not attracted. To us it seems that, so far as the present reference is concerned, this decision of the Supreme Court is an authority,

principally, for two propositions. Firstly, the word "transfer" is to be given a strict construction. And, secondly, a "partition" is not a transfer. As the instant case is not a case of "partition", this decision does not assist the assessee in avoiding the provisions of Section 64(iii).

21. Mr. Mukherjee then relied on the Supreme Court's judgment in Commissioner of Income Tax, West Bengal, Calcutta Vs. Prem Bhai Parekh and Others, .. The assessee was a partner in a firm and had seven annas share therein. He retired on July 1, 1954. Thereafter, he gifted Rs. 75,000 to each of his four sons, three of whom were minors. There was a reconstitution of the firm with effect from July 2, 1954, as a result of this reconstitution the assessee's major son became a partner and the minor sons were admitted to the benefits of partnership in the firm. The question was whether the income arising to the minors by reason of their admission to the benefits of partnership in the firm could be included in the total income of the assessee u/s 16(3)(a)(iv). The Tribunal found that the capital invested by the minors in the firm came from the gift made in their favour by their father, the assessee. The Supreme Court has held that the connection between the assessee's gifts and the minors' income was remote and it could not be said that the income arose directly or indirectly from the transfer of the assets. According to the Supreme Court, the income arising to the minor sons by virtue of their admission to the benefits of partnership could not be included in the assessee's total income. The Supreme Court has said that Section 16(3) creates an artificial income and must receive a strict construction. The Supreme Court is of the view that before an income can be held to come within the ambit of Section 16(3)(a)(iii) or (iv), it must be proved to have arisen directly or indirectly from a transfer of assets made by the assessee in favour of his wife or minor children. The connection between the transfer of assets and the income must be proximate. The income in question must arise as a result of the transfer and not in some manner connected with it.

22. It is to be appreciated that in this case the Supreme Court found no nexus between the transfer of the assets and the income in question. There was no evidence that the gift was made for a specific purpose. In our case there is evidence that moneys were paid by the husband to the wife for the specific purposes of purchasing the land and constructing the building thereon.

23. Learned counsel for the assessee also relied on the Supreme Court's decision in Philip John Plasket Thomas v. Commissioner of Income Tax [1963] 49 ITR (S.C.). 97. T, the assessee, held 750 "A" shares in a company. He was engaged to be married to Mrs. J. K., a divorcee. The engagement was announced on September 3, 1947. The assessee and Mrs. J. K. presented an application to the company for transfer of the shares on December 10, 1947. The deed of transfer ran as follows :

"I, T,...in consideration of my forthcoming marriage with J. K. (hereinafter called the "said transferee") do hereby transfer the 750 "A" shares.....standing in my name in the books of (the company).....to the said transferee.....subject to the

several conditions on which I held the same at the time of the execution thereof. And I, the said transferee, do hereby agree to take the said shares subject to the same conditions."

24. The company transferred the shares to Mrs. J. K. and registered her as the owner of the shares on December 15, 1947. The marriage was solemnized on December 18, 1947, and the fact of the marriage was communicated, to the company on January 26, 1948, and the name of the shareholder was changed in the company's books to Mrs. J. K. The question was whether the income from the shares so transferred which arose to the assessee's wife could be included in the assessee's total income u/s 16(3)(a)(iii) of the Indian Income Tax Act, 1922.

25. The Supreme Court has held that, as the deed of transfer did not contain any words of postponement, whether the shares were transferred in consideration of a promise to marry or by way of gift subject to the subsequent condition of marriage, the transfer took effect immediately and was not postponed to the date of the marriage. And Section 16(3)(a)(iii) was not attracted to this case on the ground that the transfer of the shares was made at a time when the transferee was not the assessee's wife. The Supreme Court in this case was dealing with a taxing statute which had to be construed in a manner consistent with the intentions of the legislature. Here was a case of transfer before marriage and it could not be urged that it was a transfer by a husband to his wife. This case, in our opinion, does not, therefore, help the assessee before us.

26. Mr. Mukherjee placed before us a few other authorities to show that in a taxing statute one has to go by the words used in the statute itself and a taxpayer has the right to take his stand on the language of the statute whatever might be the consequences involved. These propositions have not been disputed by counsel for the department.

27. Mr. Mukherjee also objected to the Tribunal's reference to paragraph 7.81(7) at page 183 of the report of the Direct Taxes Administration Enquiry Committee presided over by Shri Mahavir Tyagi. The relevant paragraph runs thus:

"It has come to our notice that in certain instances after transferring the ownership of a residential property to his wife or minor child, without adequate consideration, the transferor continues to reside in it along with the transferee. As u/s 9(2) of the Income Tax Act the assessable income of a owner-occupied residential property is limited to 10 per cent, of the total income of the owner, viz., the wife or the minor child who usually has much less income, there is an escapement of proper tax liability. This situation should be remedied by suitable amendment in Section 9(2) of the Income Tax Act."

28. The Tribunal has quoted this passage from the Committee's Report while considering the provisions of Section 27(i) of the Income Tax Act, 1961. Mr. Mukherjee contends that the Tribunal should not have been influenced by this report as there was no ambiguity in the provisions the Tribunal was construing. He relied on several authorities in support of this proposition. It might have been

relevant for us to discuss this point further, if the Tribunal had, in fact, based its conclusions on this report. But we find that after quoting the passage set out above the Tribunal itself has said :

"We are referring to this passage not for interpreting the provision but to find out what was the mischief that was sought to be remedied by the introduction of the new provision....."

29. We find also that before referring to this passage the Tribunal has observed:

"The provision is clearly, on its language, applicable only where there is a transfer of a house as such by the assessee to his wife. Where the assessee has transferred only the money for purchasing or constructing a house on the property, Section 27 is not attracted as its language is inapplicable to such a case....."

30. In these premises, we are unable to uphold Mr. Mukherjee's objections to the Tribunal's reference to the Mahavir Tyagi Report.

31. Now, Section 64(iii) contemplates, (a) that income arises directly or indirectly; and (b) that it arises from assets transferred directly or indirectly. In the instant case, there is no doubt that income arose at any rate indirectly from assets transferred directly by the assessee to his wife. The finding of the Tribunal is that the assessee transferred his money to his wife both for purchasing the land and for constructing a house on the land.

32. It is true that Section 64(iii) opens with the words "subject to clause (i) of Section 27". But that, to our mind, does not create any difficulty. Section 27 is applicable only to the case of a transfer by an individual otherwise than for adequate consideration of a house property to his or her spouse. It has no application, therefore, where no house property, as such, has been transferred by the husband to the wife. In our view, the words "subject to" occurring in Section 64(iii) merely gives a priority to Section 27(i) if and when it applies. But, when Section 27(i) is not attracted but the other provisions of Section 64(iii) which are independent of Section 27(i) apply, the assessee cannot escape the liability of taxation. The Tribunal, it seems to us, is right in holding in this case, (a) that there has been a transfer of asset by the assessee to his wife otherwise than for adequate consideration; and (b) that the income arising from the asset transferred is liable to be brought into the assessment of the assessee by reference to Section 64(iii).

33. We may now refer to a few authorities which lend support to the propositions we have discussed. In *Webb v. Sadler*, [1873] 8 Ch. App. 419 (C.A.), Lord Selborne L.C. was construing a deed of settlement. At page 426, the Lord Chancellor observes :

"If it had been intended to create a charge, and the gift made to the son were "subject to the charge", then, if the charge did not arise, the son would have taken it free from that charge."

34. We are seeking to construe the expression "subject to the provisions of Clause (i) of Section 27" in Section 64(iii) in a similar manner.

35. The dictum of Lord Selborne was applied to Edwards' Will Trusts, In re: Dalglish v. Leighton [1948] 1 All E.R. 821 .. In this case the Court of Appeal was construing a deed of settlement and a will. Clause 3 of the deed of settlement opened with the words "subject to the provisions of the preceding clause the trust fund and the income thereof shall be held upon trust." The Court of Appeal held that the word "subject to the provisions of the preceding clause" in Clause 3 were apt to meet an attempt to deal with the property under Clause 2 which failed, not from any lack of intention on the part of the testator or any insufficiency of the language, but because some rule of law made it incapable of achievement, and, consequently, Clause 3 operated on the whole of the residuary estate. In our case also Section 64(iii) means that in a case to which Section 27(i) is not attracted the other provisions of Section 64(iii) would apply if the facts came within the purview of those provisions.

36. We may usefully refer to the decision of the Madras High Court in R. Ganesan Vs. Commissioner of Income Tax, Madras, .. In this case the assessee transferred an amount to his wife for construction of a house otherwise than for adequate consideration or otherwise than in connection with an, agreement to live apart. The Madras High Court has held that the income from the house property could be included in the assessee's total income but has pointed out that the measure of the income to be so included would be subject to the first proviso to Section 9(2) of the Act. This proviso prescribes that where property is in the occupation of the owner for the purposes of his own residence, the annual value thereof shall first be determined in the same manner as if the property had been let to a tenant and the amount so determined shall be reduced by one-half of it or eighteen hundred rupees, whichever is less, so however, that where the sum so reduced exceeds 10% of the total income of the owner the annual value of the property shall be deemed to be 10% of such total income. (Incidentally, the Mahavir Tyagi Committee's report noticed the loopholes in this proviso and recommended suitable amendments and we now have the provisions of Section 27(2) of the Income Tax Act, 1961). The Madras High Court has held further that Section 9 does not create an artificial income. And in the case of a person occupying the property the income arising therefrom is notional but nonetheless real and is liable to tax. According to the Madras High Court, the use of the expression "indirectly" in Section 16(3) is broad enough to include an income which is not received in specie but represents such advantages as the enjoyment of property might secure, which enjoyment could be translated in terms of money.

37. Mr. Mukherjee submits that, as the asset transferred in the Madras case was not the house property itself, the Madras High Court's view as to the applicability of Section 16(3) to the facts before that court should not be followed in this case. Mr. Mukherjee also contends that the Madras High Court has not strictly

construed Section 16(3) in accordance with the canons of construction of taxing statutes. We do not agree with the counsel for the assessee. We are of the opinion that the language of Section 16(3) was wide enough to cover the Madras case.

38. Incidentally, under the English Income Tax Act, 1918, tax under Schedule A was chargeable in respect of the property in all lands, tenements, hereditaments, and heritages in the United Kingdom, for every twenty shillings of the annual value thereof. Then, rule No. 1 said :

"In the case of all lands, tenements, hereditaments or heritages capable of actual occupation, of whatever nature, and for whatever purpose occupied or enjoyed, and of whatever value.....the annual value shall be understood to be . . ."

39. And Section 1 of the Income Tax Act of 1918 said :

"Where any Act enacts that Income Tax shall be charged for any year at any rate, the tax at that rate shall be charged for that year in respect of all property, profits, or gains respectively, described or comprised in the Schedules marked A . . . , contained in the First Schedule to this Act....."

40. Construing these provisions in *Shanks v. Commissioners of Inland Revenue* [1928] 14 T.C. 249 (C.A.). Greer L. J. at page 268 says:

"An argument has been founded on the use in some of the Sections of the Act of the word "property" to the effect that a person is not liable to tax under Schedule A unless he takes the property in the land. I think the answer to that argument is that the Act of Parliament as a whole uses the word "property", not in any technical sense, but as including any right of occupation which gives the occupier the benefit of the annual value."

41. The House of Lords gave its approval to this decision in *Lady Miller v. Commissioners of Inland Revenue* [1929] 15 T.C. 25 ..

42. It seems to us that in construing the relevant provisions of Section 9 read with Section 16(3) of the Indian Income Tax Act, 1922 (as well as the corresponding provisions in the 1961 Act), a similar view has to be adopted. And the Madras High Court has tried to do that in the case cited above.

43. We are, therefore, of opinion that the Tribunal in the instant reference has correctly held that the income from the house property of the applicant's wife was assessable in the hands of the applicant u/s 64(iii) of the Income Tax Act, 1961, Our answer to the question referred to us is in the affirmative and against the assessee. Each party will bear and pay its own costs.

A.N. Sen, J.

44. I agree.