
(1958) 03 MAD CK 0013
In the Madras High Court

C.M. Kothari

APPELLANT

Vs

The Commissioner of Income Tax

RESPONDENT

Date of Decision : 25-03-1958

Acts Referred:

Income Tax Act, 1961 — Section 16(3)(a)(iii)

Citation : AIR 1958 Mad 599 : (1958) 71 LW 629 : (1958) 2 MLJ 399

Hon'ble Judges : Rajagopalan, J

Bench : Division Bench

Judgement

Rajagopalan, J.—The two questions that are referred to this Court u/s 66(1) of the Income Tax Act were:

(1) Whether there was material for the Appellate Tribunal to hold that the income arising to Mrs. C.M. Kothari and Mrs. D.C. Kothari from the

property arose indirectly out of the assets transferred indirectly by their husbands so as to attract the provisions of Section 16 (3)(a)(iii)?

(2) Whether the aforesaid dividend income is agricultural income within the meaning of Section 2(1) and consequently. exempt?

2. The expression ""aforesaid"" in question No. 2 has obviously no relation to the income referred to in question No. 1. It may not be necessary to

set out the relevant facts to answer the second of the questions. The law on the subject has been settled by the decision of the Supreme Court in

Bacha F. Guzdar Vs. Commissioner of Income Tax, Bombay, , and the question is answered in the negative and against the assessee.

3. To answer the first question the following relevant facts have been taken from the statement of the case submitted by the Tribunal. C.M. Kothari

and his sons D.C. Kothari and H.C. Kothari were partners, who constituted the firm Kothari and Sons. C.M. Kothari had a six annas share, while

each of the sons had a five annas share. The firm entered into an agreement to purchase a house at Madras, and on 7th October, 1947, it paid the

vendor an advance of Rs. 5,000 from out of the funds of the partnership. This amount was debited to the personal accounts of the three partners.

The father was debited with Rs. 1,800, while each of the sons was debited with Rs. 1,600. The sale, however, on 24th October, 1957, was in

favour of Mrs. G.M. Kothari, Mrs. D.G. Kothari and H.G. Kothari. Each of the three contributed Rs. 28,333-5-4 to make up the consideration

for the sale, Rs. 90,000 plus expenses less Rs. 5,000 already paid as advance to the vendor.

4. To enable the ladies to pay their shares of the purchase price C.M. Kothari paid Rs. 30,000 to his daughter-in-law, Mrs. D.G. Kothari, by a

cheque, dated 13th November, 1947. This amount was paid out of the partnership funds and was duly debited to the personal account of C. M.

Kothari. D.C. Kothari paid to his mother, Mrs. C.M. Kothari, Rs. 30,000 by two cheques, the first, dated 24th October, 1947, for Rs. 27,000

and the second for Rs. 3,000, dated 13th November, 1947. These also came in the first instance from the partnership funds, and the amount was

duly debited to the personal account of D. G. Kothari.

5. Mrs. G.M. Kothari and Mrs. D.G. Kothari paid the vendor by cheques they drew on their respective banking accounts. The sale and payments

were on 24th October, 1947, but Mrs. D.G. Kothari received Rs. 30,000 only by 13th November, 1947, and during that period the bank

allowed her account to be overdrawn. In addition to the payments due to the vendor, the ladies had to reimburse C. M. Kothari and D.G. Kothari

their shares of the advance of Rs. 5,000 that had been paid to the vendor. On 24th October, 1947, the date of the sale, Mrs. G.M. Kothari paid

the firm Rs. 1,800 and Mrs. D.G. Kothari Rs. 1,600 which were credited in due course, Rs. 1,800 to the personal account of G.M. Kothari and

Rs. 1,600 to that of D.C. Kothari. Thus Mrs. G.M. Kothari had to pay Rs. 200 more than the other two purchasers, Mrs. D.G. Kothari and H.

G. Kothari.

6. The rent income from the property was shared equally by the owners, Mrs. CM. Kothari, Mrs. D.G. Kothari and H.C. Kothari, during the

accounting periods of the assesseees, G.M. Kothari and D.G. Kothari,

corresponding to the assessment years 1948-1949 to 1951-1952. The Income Tax Officer included in the assessable income of each of the two assesseees the rent income received by his wife. The Income Tax Officer held that the purchase itself was benami and that the income really accrued to the beneficial owners of the property, G. M. Kothari and D. G. Kothari. As an alternative basis the Income Tax Officer applied the provisions of Section 16(3)(a)(iii) of the Act. The Assistant Commissioner confirmed that decision on appeal. On further appeals to the Tribunal it held that the purchases were not benami from which it should follow that the legal title to the income was that of the two ladies, Mrs. C.M. Kothari and Mrs. D.C. Kothari. The Tribunal however upheld the assessment on the ground, that the provisions of Section 16(3)(a)(iii) applied.

7. The relevant portion of Section 16 runs:

16(3). In computing the total income of any individual for the purpose of assessment, there shall be included-

(a) so much of the income of a wife... of such individual as arises directly or indirectly-

* * *

(iii) from assets transferred directly or indirectly to the wife by the husband otherwise than for adequate consideration or in connection with an agreement to live apart.

Rs. 30,000 constituted the assets transferred to Mrs. C.M. Kothari, but the transfer was not by her husband nor was it from out of his assets.

Similarly the transfer of Mrs. D.C. Kothari was not by her husband but by her father-in-law and from out of his assets. Section 16(3)(a)(iii)

however covers both direct and indirect transfers; but the transfer must be by the husband of a portion of his assets. to his wife.

8. The Tribunal found:

...we have no hesitation in holding that the share in the property presently acquired by Mrs. C.M. Kothari and Mrs. Indira D.C. Kothari represent

clearly assets transferred at least indirectly to them by their respective husbands and without adequate consideration, thus bringing the rental

income therefrom within the mischief of Section 16(3)(a)(iii).

9. Whether there was no material on record to sustain that conclusion is what we

have to determine.

10. The Tribunal recorded in the statement of the case:

...it (the Tribunal) considered that the essence of the transactions nevertheless was that both G.M. Kothari and D.C. Kothari, the assesseees, parted

with Rs. 30,000 each with which, in fact, their wives bought the shares in property in question for a like amount, which was, only, however,

clothed differently in the following manner-

(i) The gifts of equal amounts were made cross-wise, by the father-in-law to his daughter-in-law and by the son to his mother ;

(ii) By narrating in the books a birthday for Mrs. Bama C.M. Kothari in October, 1947, which was untrue as an occasion and an excuse for the

son's gift to the mother .

11. The second of the factors mentioned above would appear to be irrelevant in determining the question at issue, whether there was an indirect

transfer of the assets of C.M. Kothari to his wife and a similar indirect transfer of assets of D. G. Kothari to his wife, quite apart from the question

who effected each of these transfers. The genuineness of the gift of Rs. 30,000 to Mrs. C.M. Kothari was never in doubt, though the Tribunal

found that the explanation for the occasion for the gift was not true.

12. In paragraph 7 of its appellate order the Tribunal stated:

...G.M. Kothari and D.G. Kothari have each parted with Rs. 30,000 and as a result thereof their respective wives have acquired shares in the

property of equal value. In this context, it is not understood why Mrs. C.M. Kothari reimbursed her husband's initial contribution of the option

money of Rs. 1,800 and Mrs. Indira D.C. Kothari, her husband's share of Rs. 1,600 instead of cross-wise as is to be expected if the original

intention is to be kept up; this slip, to a large extent gives the show away.

13. We consider that in the absence of further data, the method adopted to reimburse C.M. Kothari and D.C. Kothari what they had originally

parted with in favour of the vendor may be of no real evidentiary value. The agreement to purchase, to implement which the advance of Rs. 5,000

was paid, was not in writing. The sale-deed itself was not marked in evidence. What is relevant: for the purpose of Section 16(3)(iii) is the source

from which money came for the wife to buy the property. The assignment of the

right to buy that property is obviously a factor different from the provision of funds to effect the purchase. Even, if, despite, the absence of any evidence other than that aforesaid by the payments to G.M. Kothari and D.G. Kothari, it is permissible to infer from these payments themselves that G.M. Kothari assigned his right to buy to his wife, and D.G. Kothari assigned his right to buy to his wife, that did not constitute any transfer of assets. Did each of the assessee transfer indirectly his assets to the extent of Rs. 30,000 to his wife is still the question for consideration.

14. So all that remains to support the conclusion of the Tribunal, that there was an indirect transfer, is what it recorded in paragraph 11 of the statement of the case:

The gifts of equal amounts were made cross-wise by the father-in-law to his daughter-in-law and by the son to his mother.

15. The evidence of cross-gifts with nothing more - there is nothing more in the evidence on record - may not lead to an inference of an indirect transfer of assets by each of the assessee to his wife. There is no dispute about the correctness of the finding of fact, that they were cross-transfers. Nor is there any dispute about the fact, that these transfers were virtually simultaneous in point of time. Whether the inference drawn by the Tribunal from these established facts was correct is the question we have to determine.

16. The relevant facts in the *Commissioners of Inland Revenue v. Clarkson Webb* 17 T.C. 451, were summarised thus by Finlay, J., at page 455:

...there were two brothers with two sons and each brother was, quite properly and naturally, desirous of making provision for his son. That was carried out by two deeds.... The arrangement was carried out by two deeds and the substance of each deed is this : A, the first brother, appoints B, the other brother, a trustee, and covenants to pay to B, for the benefit of B's infant son, a sum of ₹ 350 a year B, by the other deed, enters into precisely the same arrangement turned round ; he makes A the trustee and covenants to pay to A, for the benefit of A's infant son, the sum of ₹ 350 a year. The case has been put throughout with the utmost possible candour, and it is not denied (it very obviously could not be denied) that this was an arrangement entered into in this sense, that each brother was desirous of making provision for the benefit of his own child ; the method

by which it was carried out was that, in consideration of the first brother making the provision for the benefit of his nephew, the second brother

should make precisely the same provision, also for the benefit of his nephew. The result, of course, is precisely the same as if each had covenanted

with any trustee, it matters not whom, to make a payment for the benefit of his own son.

17. In paragraph 6 of the statement submitted in that case by the Special Commissioner it was recorded:

It was admitted by the respondent that the abovementioned deeds had been executed as a result of mutual arrangements between the respondent

and his brother for the protection of their respective infant children against the bankruptcy of their respective fathers, and that the respondent would

not have made the dispositions made by him if his brother had. not made the dispositions made by him for the benefit of the respondent's children.

18. The learned Judges' conclusion was thus recorded:

The substance of my view is this : these were dispositions ; they were made by mutual arrangement ; and, really, I think that they were part of an

arrangement which must be looked at as a whole, with the result that they really, for this purpose constitute one disposition.

19. The relevant statutory provisions which Finlay, J., had to apply ran:

Any income... which by virtue or in consequence of any disposition made, directly or indirectly, by any person... is payable to or applicable for the

benefit of a child of that person . shall subject to the provisions of this Section... be deemed for the purposes of the enactments relating to Income

Tax (including super-tax) to be the income of the person who is or was able to obtain the beneficial enjoyment thereof, or of the person, if living,

by whom the disposition was made....

20. That is certainly not identical with the statutory provision in Section 16(3)(a) (iii) of the Income Tax Act, which it should be remembered, says:

In computing the total income of any individual for the purpose of assessment, there shall be included-

(a) so much of the income of a wife...of such individual as arises directly or in directly-

(iii) from assets transferred directly or indirectly to the wife by the husband

21. In commenting on the scope of the statutory provision in Section 16 (3)(a)

(iii) with specific reference to Clarkson Webb's case 17 T.C. 451, the learned authors stated at-page 622 of ""income tax"" by Kanga and Phalkivala, III Edition:

Having regard to the wording of Clauses (a)(iv) and (b), mutual transfers, i.e., a transfer of assets by A for the benefit of B's child when B

simultaneously transfers assets of equal value for the benefit of A's child, would not, it is submitted, be covered by this sub-section, though such

mutual dispositions may, for the purposes of Sub-section 1(c) be looked at as a whole and as constituting one arrangement.

22. The observation in the foot-note on the decision in Clarkson Webb's case 17 T.C. 451 was:

a case of mutual covenants where the decision to the contrary rested on the different wording of the British Statute.

23. It is not necessary for us to express any concluded opinion of ours on the correctness of the view the learned authors put forward that, even if

the mutuality of the cross-transfers is proved, in the sense that one transfer constituted the consideration for the other, the case would still fall

outside the scope of Section 16(3)(a)(iii), which requires, proof of a transfer direct or indirect by the assessee to his wife. Besides cross-transfers,

the further point established in Clarkson Webb's Case1, it should be remembered, was that the mutual transfers of assets constituted together a

single transaction, evidenced though they were by two separate deeds.

24. In the present case there was no doubt a finding that there were cross-transfers by the assessees C.M. Kothari and D.G. Kothari. Neither that

by itself, nor the addition of the time factor, that the transfers were virtually simultaneous, could prove that each transfer constituted the

consideration for the other, and that the transactions were mutual. Simultaneity in point of time with nothing more cannot always be proof of the

mutuality of those transactions. There was no further evidence in this case that each of the transfers of assets effected by C.M. Kothari and D.C.

Kothari constituted the consideration for the other. There was no investigation on those lines at all at any stage of the assessment proceedings.

There was certainly no finding of the Tribunal, that there was any mutuality about the two transactions. There was no finding that the transfers

together constituted but a single transaction, and there was no evidence either

on which such a finding could be rested.

25. We are clearly of opinion that there was no material on record to justify the conclusion of the Tribunal, that the transfer of assets effected by

G.M. Kothari in favour of his daughter-in-law was an indirect transfer by D.C. Kothari of his assets to his wife, or that the transfer of his assets

effected by D.G. Kothari in favour of his mother constituted an indirect transfer by G.M. Kothari of his assets to his wife.

26. We answer the first question in the negative and in favour of the assesseees.

27. Considering that neither side has wholly succeeded in this reference we direct the parties to bear their respective costs.