

(1973) 07 PAT CK 0005
In the Patna High Court
Case No : Tax Case No. 46 of 1968

Commissioner of Income Tax

APPELLANT

Vs

Dr. B.B.A. Dalal

RESPONDENT

Date of Decision : 05-07-1973

Acts Referred:

Income Tax Act, 1922 — Section 16(3)

Citation : (1974) 96 ITR 408 : (1974) 7 PLJR 77

Hon'ble Judges : Untwalia, C.J;S.K. Jha, J

Bench : Division Bench

Advocate : Shambu Sharan, for the Appellant; None, for the Respondent

Judgement

1. This is a reference u/s 66(1) of the Indian Income Tax Act, 1922, hereinafter called "the Act", by the Income Tax Appellate Tribunal, Patna. The assessee was an employee of the Tata & Steel Co. at Jamshedpur during the relevant assessment year 1960-61, the corresponding accounting year of which had ended on March 31, 1960. The assessee filed a return showing an income of Rs. 28,319 from salary. In the past he had income from dividend and interest on securities which was not included in the return. He claimed that the shares and securities held by him were transferred to a trust for the benefit of his daughter and, as such, the income therefrom formed a part of the trust estate and was not liable to be taxed in his hands. The Income Tax Officer examined the deed of trust and came to the conclusion that the assets had been transferred by the assessee without any consideration and for the benefit of his minor child. Thus, a sum of Rs. 6,768, the income of the trust during the relevant year, was taxable in the hands of the assessee. Accordingly, he included the said sum in the assessee's income.

2. The assessee went up in appeal before the Appellate Assistant Commissioner. He carefully examined the terms of the trust deed and held that no part of the income of the trust could be added to the income of the assessee. Only a sum of Rs. 2,412 which was payable to the minor daughter of the settlor at the rate of

Rs. 201 per month was specifically considered by the Appellate Assistant Commissioner and in regard to that also he held that the minor had not derived any benefit during the accounting year and no sum was paid to her. The assessee, on the other hand, made the monthly payment for maintenance and education of his daughter from out of his own bank account. Undoubtedly, as no other sum out of the sum of Rs. 6,678 could be added to the income of the assessee, the dispute centred round a sum of Rs. 2,412.

3. The Commissioner of Income Tax took the matter in appeal before the Income Tax Appellate Tribunal. The Tribunal also examined the terms of the trust deed, specially Clause 4, and found that the income of the trust fund completely vested in the trustees and it was in their absolute discretion during the minority of the assessee's daughter to pay out of income of the trust fund a sum of Rs. 201 per month for her maintenance, education and advancement of benefit. It was not open to the minor daughter to enforce the obligation. In the year of account no money had been paid and thus no benefit accrued to the beneficiary. That being so, relying upon a decision of the Supreme Court in *The Commissioner of Income Tax Bombay Vs. Manilal Dhanji*, Bombay, they maintained the order of the Appellate Assistant Commissioner in regard to the entire amount of Rs. 6,768 including the amount of Rs. 2,412.

4. On being asked by the Commissioner of Income Tax to make a reference to this court the Tribunal has done it and referred the following question of law :

"Whether, on the facts and in the circumstances of the case, Rs. 2,412 should have been included in the total income of the assessee in the relevant year u/s 16(3)(b) of the Indian Income Tax Act, 1922 ?"

5. u/s 16(3) of the Act certain income of a wife or a minor child of an assessee can be included in the total income under Clause (a). Clause (b) provides :

"In computing the total income of any individual for the purpose of assessment, there shall be included so much of the income of any person or association of persons as arises from assets transferred otherwise than for adequate consideration to the person or association by such individual for the benefit of his wife or a minor child or both."

6. In this case the income was in the hands of the trustees. It had arisen from the assets transferred by the assessee otherwise than for adequate consideration. The transfer was made also for the benefit of his minor child for a certain period. Simpliciter on the language of Clause (b), therefore, the amount of Rs. 201 payable to the child per month at the discretion of the trustees could be added to the income of the assessee. Such a literal argument and in an attractive form was advanced before the Supreme Court in *The Commissioner of Income Tax Bombay Vs. Manilal Dhanji*, Bombay, also. S. K. Das J. characterised the argument that it appeared to be attractive at first sight and supported by the words used in the clause. On a closer scrutiny, Clause (b) was read in the context of the provision contained in Clause (a) and so read according to the decision of

the Supreme Court, "the only reasonable interpretation appears to be the one which the High Court accepted, namely, that the scheme of the section requires that an assessee can only be taxed on the income from a trust fund for the benefit of his minor child, provided that in the year of account the minor child derives some benefit under the trust deed--either he receives the income, or the income accrues to him, or he has a beneficial interest in the income in the relevant year of account. But if no income accrues, or no benefit is derived and there is no income at all (so far as the minor child is concerned), then it is not consistent with the scheme of Section 16 that the income or benefit which is nonexistent so far as the minor child is concerned, will be included in the income of his father". Finally, it was observed at page 884 :

"When, however, the minor child derives no benefit under the trust deed in the year of account, it is not consistent with the scheme of Section 16 to say that even though there is no accrual of any income or benefit in the year of account in favour of the minor child, yet the income must be included in the total income of the individual concerned."

7. On the facts found by the Appellate Assistant Commissioner as affirmed by the Appellate Tribunal, it is clear that although the income was in the hands of the trustees no part of it was either actually received by the minor daughter of the assessee nor did it accrue to her nor she derived any benefit out of the income in the hands of the trustees. We may also add that we do not find any error of law in the interpretation put by the Appellate Assistant Commissioner or the Tribunal to the terms of the trust deed. In the circumstances, therefore, the question of law referred to this court seems to be squarely covered by the decision of the Supreme Court in *The Commissioner of Income Tax Bombay Vs. Manilal Dhanji, Bombay*, .

8. For the reasons stated above, this reference is decided against the Commissioner of income tax/The question of law is answered against him and it is held that on the facts and circumstances of the case a sum of Rs. 2,412 could not be included in the total income of the assessee in the assessment year 1960-61 u/s 16(3)(b) of the Indian income tax Act, 1922. Since the assessee has not appeared in this court, there will be no order for costs.