

(1987) 11 KL CK 0031

In the High Court Of Kerala

Case No : Income Tax R. No's. 2 to 4 of 1982

Commissioner of Income Tax

APPELLANT

Vs

Junus Haji Ummer Sait

RESPONDENT

Date of Decision : 30-11-1987

Acts Referred:

Income Tax Act, 1961 — Section 22, 23, 24, 25, 26

Citation : (1988) 67 CTR 275 : (1988) 2 ILR (Ker) 175 : (1988) 173 ITR 3

Hon'ble Judges : T. Kochu Thommen, J; K.P. Radhakrishna Menon, J

Bench : Division Bench

Advocate : P.K.R. Menon, for the Appellant; P. Balachandran, for the Respondent

Judgement

T. Kochu Thommen, J.—The following question has been, at the instance of the Revenue, referred to us by the Income Tax Appellate Tribunal, Cochin Bench :

" Whether, on the facts and in the circumstances of the case, the Tribunal is right in law in holding that only 50% of the income from the property transferred is includible in the hands of the assessee u/s 64(I)(iii) of the Income Tax Act ? "

2. During the years relevant to the assessment years 1972-73 to 1974-75, the Income Tax Officer included in the total income of the assessee the income derived from house property which had been transferred by him to his wife for inadequate consideration. In doing so, the Officer relied on Section 64(1)(iii) of the Income Tax Act, 1961 (the " Act"), as it stood at the relevant time. The section, in so far as it was material, read :

"64. (1) 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....."

3. The Officer rejected the contention of the assessee that what was includible as

his income, in the case of assets transferred directly or indirectly to his spouse otherwise than for adequate consideration, was only such portion of the income derived from such assets as was in proportion to the inadequacy of the consideration. This order was confirmed by the Appellate Assistant Commissioner. However, the Tribunal, reversing the findings of the authorities below, held that what was includible under the relevant provision was income "in the proportion of the inadequacy of the consideration". In reaching that conclusion, the Tribunal followed the decisions in *H.N. Patwardhan Vs. Commissioner of Income Tax, Poona*, and *Smt. V. Amirtham Ammal Vs. Commissioner of Income Tax*, . The reasoning of the Bombay High Court in the aforesaid decision, which related to Section 16(3)(a)(iii) and (iv) of the Indian Income Tax Act, 1922, was (p. 287):

" ..., the purpose of the Sub-clause (iii) was to include the income of the transferred assets in the computation of the total income of the husband and/or father only to the extent that the consideration was found inadequate. The purpose of the sub-clause would be satisfied totally by including in the income of the husband and/or the father the income from the transferred assets to the extent only that the consideration is found to be inadequate."

4. This reasoning was followed by the Madras High Court in the decision referred to above.

5. With respect, we do not agree that the reasoning adopted by the Bombay High Court is warranted by the construction of Section 64(1)(iii) of the Act. What the sub-clause in effect says, in so far as it is material, is that, subject to the computation mentioned in sections 22 - 26, as stated in Section 27, in regard to a house property, all income arising from the assets transferred directly or indirectly by an individual to his or her spouse otherwise than for adequate consideration should be, despite the transfer, included in the income of such individual. In other words, where the circumstances described in the sub-clause are warranted, the transfer of the assets, though valid in law relating to transfer of property, should be disregarded for the purpose of computation of the income of the transferor. The entirety of the income arising from such property is included in the income of the transferor as if, for the purpose of assessment, no transfer had taken place. The section does not postulate the principle of proportionality determined by the inadequacy of consideration. Reference to Section 27(i) in Section 64(1)(iii) is only to provide that in the computation of the income attracted by that provision, regard must be had to the special provisions referred to in Section 27, namely, sections 22 - 26. That, however, does not affect the object of Section 64(1)(iii), namely, the inclusion of the entirety of the income derived from the assets mentioned in that provision. This is the construction that was placed upon the provision by the Gauhati High Court in *ASHUTOSH BANIK Vs. COMMISSIONER OF Income Tax, N.E. REGION, SHILLONG.*, and the Calcutta High Court in *B.K. Guha, I.C.S. (Retd.) Vs. Commissioner of Income Tax*, . With respect, we adopt the reasoning of the

Gauhati and the Calcutta High Courts.

6. Accordingly, we answer the question referred to us in the negative, that is, in favour of the Revenue and against the assessee.

7. We direct the parties to bear their respective costs in these tax referred cases.

8. A copy of this judgment under the seal of the High Court and the signature of the Registrar shall be forwarded to the Income Tax Appellate Tribunal, Cochin Bench.