
(1985) 09 BOM CK 0066

In the Bombay High Court

Case No : Income-tax Reference No. 123 of 1975

Commissioner of Income Tax

APPELLANT

Vs

K.M. Sheth

RESPONDENT

Date of Decision : 11-09-1985

Acts Referred:

Income Tax Act, 1961 — Section 60, 64, 64(1)

Citation : (1986) 50 CTR 210 : (1986) 160 ITR 814

Hon'ble Judges : Kania, J;Bharucha, J

Bench : Division Bench

Judgement

Bharucha, J.—The questions, referred for our consideration at the instance of the Revenue in this reference u/s 256(1) of the Income Tax Act, 1961, read thus :

"(1) Whether, on the facts and in the circumstances of the case, the capital gain of Rs. 44,726 realised on sale of 1,500 shares of Shree Changdeo Sugar Mills Ltd. is includible in the total income of the Assesses-settler for the assessment year 1965-66 in terms of the provisions of section 64(v) of the Income Tax Act, 1961 ?

(2) Whether, on the facts and in the circumstances of the case, 3,000 shares of Great Eastern Shipping Co. Ltd., settled upon trust by the assessee for the benefit of minor son, Ravi, vide deed dated March 13, 1964, could be said to have been transferred by the assessee to the trustees for adequate consideration ?

(3) Whether, on the facts and in the circumstances of the case, the dividend income in respect of the above 3,000 shares of Great Eastern Shipping Co. Ltd. is includible in the total income of the assessee-settler for the assessment year 1965-66 in terms of the provisions of section 64(v) of the Income Tax Act, 1961 ?"

2. Counsel are agreed that the second question must be answered in the negative and in favour of the Revenue in view of the decision of this court in

Shardaben Jayantilal Mulji and Others. Vs. Commissioner of Wealth-tax, Counsel are also agreed that the third question must be answered in the affirmative and in favour of the Revenue in view of the decision of this court in K.M. Sheth Vs. Commissioner of Income Tax/wealth-tax,

3. The facts that we state are relevant to the first question.

4. The assessee is an individual. The assessment year concerned is 1965-66, the relevant year of account having ended on March 31, 1965. By a deed of trust dated March 30, 1960, the assessee settled upon trust 1,500 equity shares of the Shree Changdeo Sugar Mills Ltd. The trust was created for the benefit of the assessee's minor son, Bharat. The deed of trust recorded that the assessee was under a legal obligation to provide for the food, clothing, residence, education, medical treatment and marriage expenses of Bharat; that with a view to absolve himself of his legal obligations, he had requested the trustees to take these obligations upon themselves; and that the trustees having agreed, in consideration of such agreement, the trust was created to provide for the satisfaction of the obligations to Bharat. Upon Bharat attaining the age of 21 years, the trustees were required by the deed to hand over the corpus of the trust to him. The shares were sold during the year of account ended on March 31, 1965, and a capital gain of Rs. 44,726 resulted.

5. The Income Tax Officer brought the capital gain to tax in the hands of the assessee u/s 64(v) of the Income Tax Act, 1961. In appeal, the Appellate Assistant Commissioner confirmed the order. The assessee went in appeal to the Income Tax Appellate Tribunal. The Tribunal, following an earlier precedent, held that the transfer of the shares had been effected for full and adequate consideration so that the condition necessary for the application of section 64(v) was not fulfilled. The Tribunal accordingly deleted the amount of Rs. 44,726 from the assessment made upon the assessee.

6. Mr. Jetly, learned counsel for the Revenue, relied upon the decision of this court in Sevantilal Maneklal Sheth Vs. Commissioner of Income Tax (Central), Bombay, The assessee there made a gift to his wife of shares in a limited company. Subsequently, the wife sold the shares and made a capital gain. The question was whether the capital gain could be included in the income of the assessee. This court concluded that the capital gain on the sale of the transferred assets (the shares) was income arising directly or indirectly from the transferred assets and was, therefore, liable to be included in the income of the assessee.

7. Mr. Jetly submitted that the answer to be given to the first question was squarely covered by this decision; as, indeed, it is.

8. On behalf of the assessee, the only argument advanced by Mr. Mehta was based upon the decision of a Division Bench of the Rajasthan High Court in Commissioner of Income Tax Vs. Mrs. Ayodhyakumari, The assessee there transferred a house property to her minor son in 1956 and some shares to another minor son in 1960. The income from these assets had not been included

in her total income. According to the Income Tax Officer, the income of the minor sons had, by reason of section 64 of the Income Tax Act, 1961, to be included in her total income. Accordingly, he started reassessment proceedings and brought the income from their assets to tax in the hands of the assessee. The Appellate Assistant Commissioner upheld his decision. The Tribunal held that the income from the shares was includible in the assessee's total income but not the income from the house property. A reference was made to the High Court, and dealing with it, the Rajasthan High Court referred to the well-settled rule of interpretation that unless the terms of a statute expressly so provided or necessarily required it, retrospective operation should not be given to it so as to take away or impair an existing right or create a new obligation or impose a new liability. Unlike section 60, the Income Tax Act, 1961, the expression "whether effected before or after the commencement of this Act" did not find mention in section 64. There was nothing in section 64(iv) to show that the provisions were retrospective. All laws were considered to be prospective unless made retrospective by express words or by necessary implication. Section 64(iv) was, therefore, only prospective. The Tribunal was not right in holding that the provisions of section 64(iv) were retrospective in character so as to include the income of the minors, other than that from house property, in respect of transferee effected prior to April 1, 1961.

9. Mr. Mehta submitted that since, in the instant case, the transfer of the shares had been effected before April 1, 1961, and the provisions of section 64 of the Income Tax Act, 1961, were not retrospective in nature, the income arising by way of capital gain could not be taxed in the hands of the assessee.

10. With great respect to the learned judges of the Rajasthan High Court, we are unable to agree with their decision. The question really is; had income by way of capital gain accrued during the previous year relevant to an assessment year, in which the provisions of the Income Tax Act, 1961, apply. If the answer is in the affirmative, as, on the present facts, it must be that the provisions of section 64 of the said Act apply to the assessment and the income by way of capital gain must be brought to tax in the hands of the assessee.

11. We find support for our view in the decision of a Full Bench of the Patna High Court in RAI BAHADUR H. P. BANERJEE Vs. COMMISSIONER OF Income Tax, BHIAR and ORISSA., It was there held that the provisions of section 16(iii)(a) of the Indian Income Tax Act, 1922 (substantially similar to those of section 64 of the Income Tax Act, 1961), inserted by an Amending Act in 1937 applied to assessments made for the years subsequent to April 1, 1937, and that the provisions of section 16 as amended applied to income from assets transferred by a husband to his wife otherwise than for adequate consideration, whether such transfer was made before or after April 1, 1937.

12. The first question must, accordingly, be answered in the affirmative and in favour of the Revenue.

13. The answers to the questions are :

(1) In the affirmative and in favour of the Revenue.

(2) In the negative and in favour of the Revenue.

(3) In the affirmative and in favour of the Revenue.

14. The assessee shall pay to the Revenue the costs of this reference.