

(1996) 04 MAD CK 0023

In the Madras High Court

Case No : Tax Case No"s. 482 and 486 of 1984

Commissioner of Income Tax

APPELLANT

Vs

M.C. Sathiyavathi

RESPONDENT

Date of Decision : 15-04-1996

Acts Referred:

Income Tax Act, 1961 — Section 28, 61, 64

Citation : (1998) 148 CTR 280 : (1997) 225 ITR 109 : (1997) 90 TAXMAN 280

Hon'ble Judges : N.V. Balasubramanian, J;K.A. Thanikkachalam, J

Bench : Division Bench

Advocate : Deokinandan, for the Appellant; K.M.L. Majele, for the Respondent

Judgement

Thanikkachalam, J.—At the instance of the Department, the Tribunal referred the following two questions for the opinion of this Court under

s. 256(1) of the IT Act, 1961 :

1. Whether, on the facts in the circumstances of the case, the Tribunal was right in holding and had valid materials to hold that the interest income

attributable to the contributions made by the assessee to the revocable trust created by her husband for the benefit of his would be son-in-

law/daughter-in-law cannot be assessed to tax in her hands in terms of s. 61 of the IT Act, 1961 ?

2. Whether the impugned interest income is taxable under s. 64(v)/(vi) of the IT Act, 1961 ?

2. The husband of the assessee created two trusts for the benefit of the would be daughter-in-law and would be son-in-law. Clause 19 of the trust

deed declared that the trusts shall be irrevocable. However, in cl. 22 of the said deed it has been stipulated that if the intended marriage did not

take place within a period of 20 years from the date of creation of the trusts, the said trusts would become void and the trust properties would

become reinvested in the settlor as the beneficial owner. The assessee, who is the mother of the minor children, made contributions to the trusts.

The ITO held that in view of cl. 22 of the trust deeds, the trusts could not be treated as irrevocable trusts. Since the trusts were not irrevocable, the

ITO quantified the interest income attributable to the contributions made by this assessee to the said trusts and brought the same to tax under s. 61

of the IT Act, 1961. This was objected to by the assessee. On appeal, the AAC held that the assessee was not the author of the trusts and that the

assessee had no power of revocation of the transfers or contributions and hence the inclusion of interest income in the assessee's total income was

not justified. According to him, it can be so done only in the assessment of the author of the trust, and not in the case of the assessee. He,

therefore, deleted the interest income added to the assessee's income.

3. Aggrieved, the Department filed a second appeal before the Tribunal. The Tribunal held that the revocation contemplated in cl. 22 of the trust

deed was with reference to the trust property and such reinvestiture of the trust estate was only in the settlor of the trusts. It therefore, held that the

assessee herein who contributed funds has no power of revocation of the gifts made by her. The Tribunal further held that, if at all there was any

revocation of the trust funds, it was only in the case of the author of the trusts. It, therefore, concluded that the income arising from the transferred

assets cannot be assessed to tax in the hands of the assessee.

4. In so far as the question of the nature of the trusts whether it is revocable or irrevocable is concerned, the arguments advanced by learned senior

standing counsel for the Department, as well as by learned counsel appearing for the assessee are similar and identical to the arguments advanced

in TC Nos. 831 and 832 of 1984. In TC Nos. 831 and 832/84 [reported as CIT vs. M. K. Chandra Kanth for the reasons stated therein, we

held that the above said two trusts are not revocable trusts but irrevocable trusts. The said finding rendered in TC Nos. 831 and 832 of 1984

would hold good in TC Nos. 482 to 486 of 1984 also. Accordingly, in TC Nos. 482 to 486 of 1984 also we hold that the trusts in question are

irrevocable trusts.

5. What remains to be considered in these tax cases is, whether the assessee who is the mother of the minor children and who is not the author of the trusts, contributed certain amounts to the trusts. The Department sought to include the income of the trusts in the hands of the assessee. The point for consideration is, whether the Department is correct in including the income of the trusts in the hands of the assessee in so far as her contribution is concerned. It remains to be seen that she is not the author of the trusts and, therefore, she is not the transferor. Under s. 61 of the IT Act, 1961 only if the transferor transfers assets to the trusts and later on makes any provision in the trust deeds for retransfer of the trust funds in favour of the transferor, then only the trusts would be called as revocable trusts and the income arising out of the trust funds is assessable in the hands of the transferor. In the present case, the assessee, who is the mother of the minor children is not the transferor of the said two trusts. In case the trusts fail, the funds of the trusts would not revert back to the hands of the transferor. According to the trust deeds, the trustees were appointed and they were looking after the administration of the trusts during the assessment years under consideration. We have already held that cl. 22 of the above said two trusts would not come into operation during the assessment years under consideration, but the said clause would come into force only after 20 years as stated therein. In view of the abovesaid factual position, the contribution made by the mother of the minor children to the trusts would be considered as gift made by her to the trusts with no power of revocation. Therefore, we consider that the Tribunal was correct in holding that the income arising from the transferred assets in favour of the trusts cannot be assessed to tax in the hands of the assessee.

6. In that view of the matter, we answer the first question referred to us in the affirmative and against the Department. In so far as question No. 2 is concerned, it does not arise out of the order of the Tribunal. Accordingly, no answer is provided. No costs.