
(1996) 04 MAD CK 0099

In the Madras High Court

Case No : Tax Case No"s. 831 and 832 of 1984

Commissioner of Income Tax

APPELLANT

Vs

M.K. Chandrakanth

RESPONDENT

Date of Decision : 15-04-1996

Acts Referred:

Income Tax Act, 1961 — Section 263, 28, 60, 61, 62

Citation : (1997) 225 ITR 101

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 question for the opinion of this Court, for the asst. yr. 1977-78 and 1978-79 under s. 256(1) of IT Act, 1961 :

"Whether, on the facts and in the circumstances of the case, and having regard to the provisions of s. 63(a) of the IT Act, 1961, and s. 83 of the Indian Trust Act, the Tribunal was right in holding that the irrevocability of trusts created by the assessee on 1st October, 1969 for the benefit of his prospective son-in-law and daughter-in-law respectively was not affected by cl. 22 of the settlement deed and that the income of the trusts was not includible in the hands of the assessee ?"

2. For the asst. yrs. 1977-78 and 1978-79, the relevant previous years ended on 12th April, 1977 and 12th April, 1978 respectively. The assessee is an individual deriving income from property, business and share income from a firm called M/ s. M. K. Krishna Chetty. On 1st October, 1969, the assessee settled upon trust for the benefit of his prospective son-in-law and prospective daughter-in-law a sum of Rs. 15,000 each. In the deeds of settlement executed for this purpose, there was a direction that the amount has to be invested in the discretion of the trustees so as to produce good income and that income so earned should be

accumulated till such time as the daughter and son got married. At the time the daughter was a minor aged about 6 years. In cl. 19 of the trust deed it was declared that the trust is "irrevocable". Clause 22 of the trust deed provided that "If the said intended marriage is not solemnised for any unforeseen reason within a period of 20 years from the date of the trust deed, the deed of trust would become void and the trust fund shall become reinvested in the settlor as a beneficial owner thereof, subject to as aforesaid, the settlor shall have no manner of right, title or interest in the said money or its accumulations or accretions thereof". By a supplementary deed executed on 26th October, 1979, the said cl. 22 had been amended to read :

"If the said intended marriage were not to be solemnised for any unforeseen reason or reasons within a period of 25 (twenty five) years from the date of this deed, this deed of trust shall become invested with "University of Madras" which is an educational institution. The settlor or his legal heirs shall have no right, title or interest whatsoever in the said trust property or its accumulations or accretions thereof."

Thus, in the supplementary deed also it was reiterated that the trust is an irrevocable trust.

3. For the asst. yr. 1977-78, the assessee filed a return admitting the total income of Rs. 1,52,580 in which neither the income from these trusts were shown nor included. The CIT under s. 263 of the IT Act, 1961 held that since cl. 22 of the trust deed indicated that the settlor would become entitled to the trust property along with the accumulated income in the event of the intended marriage not coming of, the trust had conferred a benefit on the settlor, consequently the income arising out of the trust should have been held as income arising under a revocable trust and should have been assessed in the hands of the assessee under the provisions of s. 61 r/w s. 63(1)(ii) of the IT Act. Therefore, the CIT was of the opinion that the action of the ITO in not including the income of the trust was erroneous and prejudicial to the interest of the Revenue. After hearing the objections raised by the assessee, the CIT directed the ITO to include in the assessment of the assessee the income from the said trusts, viz., M. C. Shyamala Marriage Benefit Trust and M. S. Sowmiyaram Marriage Benefit Trust. Similarly, for the asst. yr. 1978-79 also the CIT exercised his jurisdiction under s. 263 of the IT Act and after hearing the assessee, he directed the ITO to include in the assessment of the assessee the income from the said two trusts.

4. Aggrieved by the order passed by the CIT in both the assessment years under consideration, the assessee filed appeals before the Tribunal. The Tribunal after hearing the learned counsel appearing for the assessee as well as the learned Departmental Representative ultimately held that the CIT was not justified in directing the ITO to include in the assessment of the assessee the income arising out of the trusts referred to above.

5. Before us, learned senior standing counsel appearing for the Department submitted that the Tribunal was not correct in holding that both the abovesaid trusts are irrevocable trusts. It was further submitted that cl. 19 and cl. 22 in the trust deed dt. 6th December, 1971 are contradictory and in view of cl. 22, since there is retransfer of the corpus of the trusts in favour of the donor or transferor, the trusts should be considered as revocable trusts. Learned senior standing counsel further submitted that the second deed executed on 26th October, 1979 stating that the corpus is on the interest of the trusts, if the trusts fail would go to the University of Madras would virtually amount to application of income. Further, according to the learned senior standing counsel, the second deed executed on 26th October, 1979 would not be capable of giving retrospective effect to what is stated in the second deed from the execution of the first deed. According to the learned senior standing counsel, what we are concerned in the assessment years under consideration is the first trust deed executed on 6th December, 1971 and the second deed executed on 26th October, 1979 has no relevance for this period. In support of his contention reliance was placed upon a decision of this Court in the case of Sakthi Charities Vs. Commissioner of Income Tax, Madras, . Learned senior standing counsel further submitted that even if cl. 22 was incorporated in accordance with s. 83 of the Indian Trusts Act, still the fact remains that when the trusts fail, the corpus on the interest of the trust would go back to the donor or the transferor. In such case also s. 63 would apply and the trusts would become revocable trusts and in such a case the income of the trusts is assessable in the hands of the assessee. It was further submitted the Tribunal was not correct in holding that the trusts are revocable trusts and, therefore, income from the trusts cannot be assessed in the hands of the assessee.

6. On the other hand, learned counsel appearing for the assessee while supporting the order passed by the Tribunal submitted that cl. 22 of the trust deed dt. 6th December, 1971 would come into operation only after 20 years as per the first deed and after 25 years as per the second deed dt. 26th October, 1979. Therefore, during the assessment years under consideration, only the first deed dt. 6th December, 1971 was in force and cl. 22 would not be applicable for the period relating to the assessment years under consideration. Learned counsel appearing for the assessee also submitted that the marriage of both the minors takes place within the period stipulated in the trust deeds and therefore, there is no question of the trusts being incapable of execution without exhausting trust property. Therefore, learned counsel appearing for the assessee submitted that inasmuch as cl. 22 in the trust deed dt. 26th October, 1979 was introduced in compliance with s. 83 of the Indian Trusts Act and which would come into force only after 20 years according to the first trust deed and after 25 years according to the second trust deed, during the assessment years under consideration, cl. 22 has got no relevance and therefore, it need not be looked into. According to the learned counsel, even if cl. 22 is not incorporated by act of law, s. 83 of the Indian Trust Act would come into operation. For these reasons, according to

learned counsel for the assessee, inasmuch as no income was transferred to the donor from the trust during the assessment years under consideration, no assessment can be made in his hands inasmuch as the above said trusts are not revocable trusts.

7. We have heard learned senior standing counsel for the Department as well as learned counsel appearing for the assessee. We have already set out the facts in detail. We have also incorporated the relevant clauses in both the trust deeds for the sake of convenience in the foregoing paragraphs. Secs. 61 to 63 of the IT Act, 1961 state as under :

"61. Revocable transfer of assets. - All income arising to any person by virtue of a revocable transfer of assets shall be chargeable to Income Tax as the income of the transferor and shall be included in his total income.

"62. Transfer irrevocable for a specified period". - (1) The provisions of s. 61 shall not apply to any income arising to any person by virtue of a transfer ...

(i) by way of trust which is not revocable during the lifetime of the beneficiary, and, in the case of any other transfer, which is not revocable during the lifetime of the transferee; or

(ii) made before the 1st day of April, 1961, which is not revocable for a period exceeding six years.

Provided that the transferor derives no direct or indirect benefit from such income in either case.

(2) Notwithstanding anything contained in sub-s. (1), all income arising to any person by virtue of any such transfer shall be chargeable to Income Tax as the income of the transferor as and when the power to revoke the transfer arises, and shall then be included in his total income.

63. "Transfer" and "revocable transfer" defined". -

for the purposes of ss. 60, 61 and 62 and of this section - (1) a transfer shall be deemed to be revocable if ...

(i) it contains any provision for the retransfer directly or indirectly of the whole or any part of the income or assets to the transferor, or

(ii) it, in any way, gives the transferor a right to reassume power directly or indirectly over the whole or any part of the income or assets;

(b) "transfer" include any settlement, trust, covenant, agreement or arrangement".

8. The fact remains that the assessee created two trusts known as M. C. Shyamala Marriage Benefit Trust and M. S. Sowmiyaram Marriage Benefit Trust. The trusts were created under two settlement deeds dt. 6th December, 1971 and 26th October, 1979. On 1st October, 1979, the assessee settled upon trust for

the benefit of his prospective son-in-law and prospective daughter-in-law a sum of Rs. 15,000 each. At the time of settlement, the daughter was a minor aged about six year and the son was aged about three years. There was a direction in the trust deeds that the amounts have to be invested in the discretion of the trustees so as to produce good income and that the income so earned should be accumulated till such time as the daughter and son got married. Clause 19 of the trust deeds states that the trusts are irrevocable. Clause 22 of the trust deeds states that if the said intended marriage is not solemnised for any unforeseen reasons within a period of 20 years from the date of the trust deed, the deed of trust would become void and the trust's funds shall become reinvested in the settlor as a beneficial owner thereof, subject to as aforesaid, the settlor shall have no manner of right, title or interest in the said money or its accumulations or accretions thereof. The second deed was executed on 1st October, 1979. This second deed, which is a supplementary deed, was executed for clarifying what is stated in cl. 22 of the first deed dt. 6th December, 1971. In the supplementary deed it was stated that the period of 20 years as stated in cl. 22 of the first deed would be substituted for 25 years. So also in the first deed what is stated is as if the trust fails, the trust fund shall become reinvested in the settlor as the beneficial owner thereof, and was changed into in case the trust fails, the trust fund shall come to the University of Madras. For the assessment years under consideration, the assessee filed a return not showing the income from these trusts.

9. According to the Department, in view of the provisions contained in s. 61 r/w s. 63(i) and (ii) of the IT Act, 1961 r/w cl. 22 of the trust deed dt. 6th December, 1971 which alone is applicable for the assessment years under consideration, since the supplementary deed executed on 1st October, 1979 would not be applicable during the assessment years under consideration, inasmuch as the trust fund was retransferred for the benefit of the settlor in case the trust fails, the trust would become a revocable trust. In such a case, the income from the trusts would be assessable in the hands of the assessee.

10. According to the assessee, the result of the trusts would be mentioned in the trust deeds. If the result is not mentioned, the, provisions of s. 83 of the Indian Trust Act would come into operation. Therefore, in order to comply with the provisions of s. 83 of the Indian Trust Act, cl. 22 was incorporated. It was further submitted that cl. 22 in the first deed would take into effect only after 20 years as per the first deed and 25 years after the supplementary deed, provided no marriage took place to the minors. Therefore, according to the assessee, during the assessment years under consideration, this cl. 22 would not have any application at all. According to the assessee, the marriages of the minors took place within the period stipulated in first deed dt. 6th December, 1971. Hence, the contingency as provided under the cl. 22 of the first deed has not taken place in the present case. Even according to the assessee, the supplementary deed executed on 26th October, 1979 which states that the clarification contained therein would take effect from the date of the execution of the first trust deed,

cannot be taken into consideration in the assessment years under consideration because during that time the supplementary deed was not in existence inasmuch as it was written on 1st October, 1979.

11. Therefore, the point for consideration is, whether, in the asst. yrs. 1977-78 and 1978-79, the income arising out of the trust can be included in the hands of the assessee, who is the donor/transferor in view of that is contained in cl. 22 of the trust deed dt. 26th December, 1971. As already stated, the supplementary deed dt. 26th October, 1979 would not be applicable for the assessment years under consideration in view of the decision of this Court rendered in *Sakthi Charities vs. CIT* cited supra. Now, we are left with only one trust deed that is the first deed executed on 6th December, 1971.

12. Sec. 63 of the IT Act, 1961 lays down that a transfer shall be deemed to be revocable if it contains any provision for the retransfer directly or indirectly of the whole or any part of the income or assets to the transferor or it, in any way, gives the transferor a right to reassume power directly or indirectly over the whole or any part of the income or assets. For the transfer to be deemed revocable, the trust deed must contain a provision for retransfer directly or indirectly of the whole or any part of the income or assets to the transferor. According to the Department, cl. 22 contemplates retransfer when the trust fails. Therefore, a combined reading of s. 63 with cl. 22 would postulate that the trusts in question are revocable trusts. We have already seen that cl. 22 was incorporated for the purpose of application of income of the trust in case the object of the trust fails. This cl. 22 was incorporated in accordance with the provisions contained in s. 83 of the Indian Trust Act. Clause 22 would take effect after 20 years if the marriages of the minors did not take place. But during the asst. yrs. 1977-78 and 1978-79 cl. 22 would have no application. Therefore, in order to understand whether the trusts in question are revocable or not, we have to read the trust deed dt. 6th December, 1971 minus cl. 22. Thus, the provisions of cl. 22 would operate only on the failure of the operation of the settlement and not till then. During the operation of the settlement that clause will not come into force and during the operation of the settlement the properties stand completely in the hands of the trustees and during that period the settlor, the assessee, cannot either directly or indirectly enjoy either the whole or any part of the income or exercise any right of resumption of power over the income or assets. Therefore, a plain reading of s. 63 along with trust deed dt. 6th December, 1971 would go to show that the trusts in question are not revocable trusts. Therefore, the Tribunal was correct in holding that the CIT was not justified in directing ITO to include in the assessment of the assessee the income arising to the trusts of M. C. Shyamala Marriage Benefit Trust and M. S. Sowmiyaram Marriage Benefit Trust. Accordingly, we answer the question referred to us in the affirmative and against the Department. No costs.