
(2002) 09 MAD CK 0253
In the Madras High Court
Case No : T.C. No. 514 of 1994

Commissioner of Income Tax

APPELLANT

Vs

Muthukrishnan

RESPONDENT

Date of Decision : 12-09-2002

Acts Referred:

Income Tax Act, 1961 — Section 160(1), 161, 161(1), 161(1A), 164

Citation : (2003) 181 CTR 129 : (2003) 260 ITR 526

Hon'ble Judges : R. Jayasimha Babu, J;K. Raviraja Pandian, J

Bench : Division Bench

Advocate : T.C.A. Ramanujam, for the Appellant; G. Sarangan, for R. Janakiraman, for the Respondent

Final Decision : Dismissed

Judgement

R. Jayasimha Babu, J.—This reference is at the instance of the Revenue. The assessment year is 1983-84. The questions referred are :

"1. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the assessment of the assessee's case was misconceived and setting it aside with a direction to the Income Tax Officer to frame fresh assessment in accordance with law ?

2. Whether, the Appellate Tribunal's view that the share of the beneficiaries are clearly known and determinate is reasonable, supported by valid material and sustainable in law ?

3. Whether the Appellate Tribunal's view that the lottery prize money and 2/3rds of the income did not accrue to the trust/beneficiaries and could not be considered for assessment is reasonable, supported by valid materials and sustainable in law ?

4. Whether the Appellate Tribunal's view that it is not possible to make an assessment in the status of association of persons/body of individuals is

reasonable, supported by valid materials and sustainable in law ?"

2. One L. Narayana Iyer created a trust on May 27, 1982, by contributing a sum of Rs. 1,500 for the benefit of L. Muthukrishnan, Smt. M. Thrayambika Devi, minor M. Sathishkumar and Shri K. Kuppusamy, the first three to have 1/15th share and the last 12/15ths share. Muthukrishnan, Balasubramanian and K. Kuppusamy were appointed as trustees. The instrument directed the trustees to augment the corpus with all gifts, donations, etc., received and any prize money received on lottery tickets as well as 2/3rds share of the net interest earned from investments made by the trustee. The trust deed also provided that the corpus of the trust shall not be divided or distributed among the beneficiaries until the duration of the trust which was to be for a period of fifteen years, or sooner, if all the beneficiaries unanimously agreed to terminate the trust even before the expiry of fifteen years. Out of the interest income of the trust, the beneficiaries were to receive only one-third and the balance was to be accumulated. The trustees were also empowered to carry on business and invest the funds of the trust and loss, if any, was to be deducted from the corpus.

3. For the assessment year 1983-84, the trustees filed a return of income on November 22, 1985, showing an income of Rs. 780 under the head "Other sources" and wanted to be assessed in the status of representative assessee u/s 160(1)(iv) of the Income Tax Act, 1961 ("the Act"). The assessee also claimed a refund of tax deducted at source amounting to Rs. 3,75,000 out of a sum of Rs. 15,00,000 which had been received by them as a lottery prize under the U. P. State Lottery Scheme in January, 1983. The Income Tax Officer rejected the claim for refund and held that the entire amount received should be treated as income in the hands of the trustees who were to be taxed in the status of association of persons. On appeal, the Commissioner affirmed that view of the Income Tax Officer. The Commissioner also held that Section 164 of the Act was not applicable to the facts of the case.

4. The assessee, thereafter, appealed to the Tribunal which accepted the assessee's case. It set aside the assessment that had been made and directed that a fresh assessment be framed in accordance with law.

5. Section 5 of the Act deals with the scope of the "total income" of residents and non-residents. Section 4 levies the charge of Income Tax in respect of the total income of the previous year of every person "subject to the provisions of this Act". Chapter XV of the Act deals with liability in special cases. "Representative assessee" are dealt with in Section 160 of the Act. Section 160(1)(iv) of the Act provides that in respect of income which a trustee appointed under a trust declared by a duly executed instrument in writing whether testamentary or otherwise including any wakf deed which is valid under the Mussalman Wakf Validating Act, 1913, receives or is entitled to receive on behalf, or for the benefit, of any person, such trustee or trustees will be the representative assessee. Section 161 of the Act sets out the extent of liability of the representative assessee. Section 161(1) of the Act provides that,

"Every representative assessee, as regards the income in respect of which he is a representative assessee, shall be subject to the same duties, responsibilities and liabilities as if the income were income received by or accruing to or in favour of him beneficially, and shall be liable to assessment in his own name in respect of that income ; but any such assessment shall be deemed to be made upon him in his representative capacity only, and the tax shall, subject to the other provisions contained in this Chapter, be levied upon and recovered from him in like manner and to the same extent as it would be leviable upon and recoverable from the person represented by him."

6. Section 41 of the Indian Income Tax Act, 1922, which is similar to Section 160 of the Income Tax Act, 1961, was considered by the Bombay High Court in the case of Commissioner of Income Tax, Ahmedabad Vs. Balwantrao Jethalal Vaidya and Others, . Chagla C. J., speaking for the court, observed in that case thus (page 197) :

"Whether the assessee carries on business or is the owner of a property or owns shares and receives dividend, if he is a trustee and if he is being assessed as a trustee then Section 41 must come into play and his liability to pay tax must be determined according to the provisions of Section 41. The sole question, which should be easy to answer, would be : Is the assessment being made upon a trustee or not ? If the assessment is made upon a trustee, whatever the nature of the property, whatever the nature of the income, whatever the mode of computation, his liability to pay tax must be determined in accordance with Section 41."

7. In the case of C.R. Nagappa Vs. Commissioner of Income Tax, , a decision rendered by a three-judge Bench, the apex court considered Section 64(v), Section 161(1) and (2), as also Section 166 of the Income Tax Act, 1961. The court quoted with approval the observations made by Chagla C. J., in the case of Commissioner of Income Tax, Ahmedabad Vs. Balwantrao Jethalal Vaidya and Others, , that (page 632) :

"The basic idea underlying Section 41, and which is in conformity with principle, is that the liability of the trustees should be co-extensive with that of the beneficiaries and in no sense a wider or a larger liability. Therefore, it is clear that every case of an assessment against a trustee must fall u/s 41, and it is equally clear that, even though a trustee is being assessed, the assessment must proceed in the manner laid down in Chapter III."

8. The apex court in the case of C.R. Nagappa Vs. Commissioner of Income Tax, observed that (page 632) :

"The Legislature, while enacting the new Act, to avoid doubts has given effect to the observations made by Chagla C. J. in Commissioner of Income Tax, Ahmedabad Vs. Balwantrao Jethalal Vaidya and Others, and has enacted that where the income is assessable under Chapter XV in the hands of a person in the capacity of a representative assessee it is not liable to be assessed under any

other provision of the Act, that is, the tax is not liable to be levied under any other provision of the Act."

9. In the case of Commissioner of Income Tax, Assam Vs. Nandlal Aggarwal and Another, , a case arising under the old Act, the Supreme Court, while considering the manner in which the guardian, who carries on business on behalf of minors and receives income on that behalf should be assessed, held that assessment on the guardian should be made only u/s 40 of the 1922 Act.

10. More recently, the apex court in the case of Commissioner of Income Tax, Gujarat, Ahmedabad Vs. Kamalini Khatau (Smt), , a decision rendered by a three-judge Bench of the court, after reviewing the earlier decision of the court, as also the decision of the High Court in the case of Commissioner of Income Tax, Ahmedabad Vs. Balwantrai Jethalal Vaidya and Others, , summarised the law with regard to the assessment of a representative assessee thus (page 118) :

"As the judgments of this court referred to above lay down, a representative assessee may be assessed in respect of income received by him as such and tax recovered from him thereon only under and in the manner provided by the provisions in the statute dealing with representative assessees. A trustee may, therefore, be assessed in respect of the income of the trust and tax recovered from him thereon only under and in the manner provided by Sections 160 to 166 of the Act."

11. Thus, though Section 5 of the Act refers to the total income of the person whose income is being assessed and the charge of Income Tax u/s 4 of the Act is on the total income, what can be taxed in the hands of a representative assessee is only the income which the beneficiary can be said to have received, or be deemed to have received in India or in whose favour income has accrued or arisen or deemed to have accrued or arisen outside India during the relevant year. Though the trust may receive the income, the extent to which the same can be taxed is the extent to which tax would be leviable and recoverable from the beneficiary. Section 161(1) of the Act specifically provides that the tax to be levied upon the representative assessee and to be recovered from him is to be "in like manner and to the same extent as it would be leviable upon and recoverable from the person represented by him."

12. The argument submitted for the Revenue by its learned counsel that the Assessing Officer had not referred to Sections 160 and 161 of the Act and, therefore, the assessment should be regarded as having been made with reference to the total income in the hands of the trustee irrespective of the amount being taxable in the hands of the beneficiary despite the fact that the shares of the beneficiary are determinate and their identities also known thereby excluding the application of Section 164, cannot be accepted. The trustee is not to be assessed for all the income which the trustee receives where the beneficiaries are known and their shares are determinate. His liability cannot be higher than that of the beneficiary. It is only in cases where the beneficiaries are

not known, or their shares are not determinate, that assessment can be made on the trustee in respect of the whole of the income received by the trustees at the maximum marginal rate, u/s 164 of the Act. On and after April 1, 1985, trustees are also liable to pay tax on the whole of the profits and gains of the business, if any carried on by them, subject to the proviso to Sub-section (1A) of Section 161 of the Act.

13. In the assessment year with which we are concerned, having regard to the terms of the trust, the beneficiaries had no right to receive any part of the corpus of the trust to which the income received by the trustees by way of prize money on the lottery ticket was required to be credited. The right to the beneficiary was only to share in the division of that corpus at the end of the fifteen year period or sooner, if all the beneficiaries unanimously agreed to terminate the trust. The beneficiaries could not have been assessed to tax in respect of any part of this prize money in the year in which that money was received by the trust.

14. The prize money received by the trustees on the lottery tickets not being an amount in which the beneficiaries, whose identities are known and whose shares are determinate, could claim a share in the year of account and which amount could not have been assessed in their hands as their income in whole or in part, therefore, was not assessable in the hands of the trustees who only represented the beneficiaries for the purposes of assessment and who could only be assessed in the same manner and to the same extent as the beneficiaries could have been assessed. The trustees assumed no higher liability than the beneficiaries themselves were required to bear under the law. If the beneficiary was not to be taxed, that tax could not be levied on the trustee who only represented the beneficiary and no more, in cases where the identity of the beneficiary was known and the share of the beneficiary was determinate. The questions referred to us are, therefore, answered in favour of the assessee, and against the Revenue with the clarification with regard to question No. 3 that the accrual was to the trust though not to the beneficiary in that year.