

(1982) 09 MAD CK 0053

In the Madras High Court

Case No : Tax Case No"s. 1019, 1020 and 1045 of 1977 (Reference No"s. 699, 700 and 724 of 1977)

Commissioner of Income Tax

APPELLANT

Vs

P. Bhandari

RESPONDENT

Date of Decision : 21-09-1982

Acts Referred:

Transfer of Property Act, 1882 — Section 13

Citation : (1984) 147 ITR 500

Hon'ble Judges : Ratnam, J;Ramanujam, J

Bench : Division Bench

Advocate : A.N. Rangaswamy, for the Appellant; V. Ramachandran, for the Respondent

Judgement

Ramanujam, J.—As all the three tax cases relate to the same assessee for different years and as the issues involved are also the same, they are dealt with together.

2. The assessee created a trust called "Dileep Kumar Marriage Trust" by a deed dated January 22, 1969, for the benefit of the prospective wife of his minor son, Dileep Kumar. On the same day the assessee's wife created a trust called "Pradeep Kumar Marriage Trust" for the benefit of the prospective wife of another minor son, Pradeep Kumar. After creating the two trusts, the assessee made cash gifts on various dates to the extent of Rs. 17,500 to the "Dileep Kumar Marriage Trust" and the assessee's wife made cash gifts on various dates to the extent of Rs. 37,500 to "Pradeep Kumar Marriage Trust", the assessee made cash gift of Rs. 22,500 and his wife made cash gift of Rs. 32,500. In the original assessment of the assessee for the year 1970-71. the income accruing to the trust was not taken note of. After completion of the original assessment, the ITO reopened the assessments of the assessee u/s 147(b) of the I.T. Act, 1961, hereinafter referred to as the Act and included the proportionate share income of the trust as the income of the assessee on the ground that the trusts created by the

assessee and his wife are invalid.

3. On appeal by the assessee, the AAC held that the reopening of the assessments is based on a mere change of opinion and as such invalid in law, that the trusts in favour of the prospective daughters-in-law of the assessee are not invalid as the transfer in favour of the trust did not violate the rule against perpetuities. On a further appeal by the Revenue, the Tribunal held that the reopening of the assessment u/s 147(b) is proper and justified, that the trusts created by the assessee and his wife are valid, and that they did not offend the rule against perpetuities.

4. Aggrieved by the order of the Tribunal in so far as it held that the trust deeds are valid in law and that they did not offend the rule against perpetuities, the Revenue sought and obtained a reference to this court on the following two questions, of law :

(1) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the trusts created by the two deeds dated January 22, 1969, are valid and proper ?

2. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the beneficiary of each of the Trusts is not indeterminate and uncertain ?

5. Though before the Tribunal the question as to the Validity of the reassessments made u/s 147(b) of the Act was raised by the parties, that question does not arise for consideration before us. Though two questions have been referred, the first question itself comprehends the second question. Thus the only question that has to be considered by this court is whether the trusts created by the two deeds dated January 22, 1969, by the assessee and his wife are valid in law.

6. Before the Tribunal, the ground of attack against the trust deeds by the Revenue was two-fold. (1) The trust deeds are invalid as offending the rule against perpetuity, and (2) the beneficiaries in each of the trust deeds are indeterminate and uncertain and as such the trust deeds fail for uncertainty of the beneficiary. Before us, apart from the above two contentions, the Revenue has chosen to raise another legal contention that the objects of the trust are also uncertain and indeterminate and that, therefore, the trusts must fail on that ground also.

7. To appreciate the contentions urged by the Revenue before us, we have to refer to the terms of the trust deeds. The terms of the trust deeds executed by the assessee and his wife are practically the same and it will suffice if we refer to the terms of the trust deed dated January 22, 1969, executed by the assessee. The preamble to the trust deed makes it clear that the assessee intended to make a provision for the prospective wife of his minor son, Dileep Kumar and with that intent the trust deed dated January 22, 1969, known as " Dileep Kumar

Marriage Trust" was created. He settled on the trust Rs. 1,000 and made the following gifts to the trust later :

Date	Amount
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Rs.	
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22-1-1969	1,000
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3-3-1969	10,000
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10-3-1969	1,500
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12-3-1969	5,000
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	17,500
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8. The trust deed provides that the income of the trust and accumulations thereof together with the accretions thereto shall be held and administered for the benefit of the beneficiary. Under Clause 2, the assessee and his wife are constituted trustees for the trust. Clauses 4 and 6 provided that the income from the trust property after meeting all the expenses, shall be added to and form part of the trust property and the trustees shall hand over the trust property to the beneficiary absolutely within one year from the date of marriage of the assessee's son, Dileep Kumar. Clause 9 says that in the event of Dileep Kumar not marrying before the age of 21, the trustees shall hand over the trust property to the said Dileep Kumar for holding and administering it as sole trustee in accordance with the terms and conditions in the trust deed, provided that in the event the said Dileep Kumar dying before marrying or before handing over the trust property to the beneficiary, the founder and his wife or the survivor of them shall resume functioning as trustees. Clause 11 provides that if Dileep Kumar dies unmarried and if Pradip Kumar, the first son of the assessee is unmarried, the trustees will hold and administer the trust properties as if the words " Pradip Kumar " were substituted for the words " Dileep Kumar " in the trust deed and if Pradip Kumar has married before the day of Dileep Kumar's death and his wife is living on the day, the trustees shall hand over the trust property to the wife of the said Pradeep Kumar absolutely. If Pradip Kumar dies without having married before the death of Dileep Kumar or in the event the said Pradip Kumar has married but his wife died before the death of Dileep Kumar, the trustees will hold and administer and utilise the trust property for public charitable purposes only.

9. The contention of the Revenue is that since the minor son of the assessee attaining majority and marrying are events which cannot be predicted with any certainty, the beneficiary is indeterminate and uncertain and hence there is no valid trust. It is well-settled that to constitute a valid trust the author of the trust must indicate with reasonable certainty (a) the intention on his part to create a trust, (b) the purpose of the trust, (c) the beneficiary, (d) the trust property, and (e) transfer of property to the trust. The contention of the Revenue is that, in

this case, the purpose of the trust as well as the beneficiary are uncertain and, therefore, the trust should be taken to be invalid apart from the fact that the trust is also void as offending the rule of perpetuity. We do not see how the rule of perpetuity is offended. The trust is for the benefit of the prospective wife of Dileep Kumar and if Dileep Kumar does not marry during his lifetime, the benefit will have to go to the wife of Pradeep Kumar and if he does not marry, the benefit will go to charitable purposes. Section 14 of the Transfer of Property Act, 1882, which lays down the rule against perpetuity is as follows :

" No transfer of property can operate to create an interest which is to take effect after the lifetime of one or more persons living at the date of such transfer, and the minority of some person who shall be in existence at the expiration of that period, and to whom, if he attains full age, the interest created is to belong. "

10. Here the trust operates to create an interest which is to take effect within the lifetime of Dileep Kumar and Pradeep Kumar who have been living at the time of the execution of the trust deed and the operation is not postponed thereafter, beyond their lifetime. Therefore, the rule against perpetuity cannot be said to have been offended in this case as contended by the Revenue. Both the AAC and the Tribunal are, therefore, right in holding that the trust deed does not offend the rule against perpetuity.

11. Coming to the contention of the Revenue that the purpose of the trust and also the beneficiary are vague and indeterminate, we find that the intention of the testator cannot be said to be uncertain. The object of creating the trust is to benefit the prospective wife of Dileep Kumar and if that clause fails, the benefit will have to go to the prospective wife of Pradeep Kumar and if that object also fails, it will go to public charitable purposes. The properties which were originally those of the assessee are vested with the trustees for administering the same for the benefit of the beneficiaries. It is no doubt true that it is not possible to say at the stage of the execution of the trust deed as to who is the actual person to be benefited by the trust. But so long as the trust deed gives the description of the person who is to be benefited, the beneficiary cannot be said to be uncertain merely because the actual beneficiary cannot be known until the marriage of Dileep Kumar or Pradeep Kumar takes place. It is also said that since there is a possibility of both of them not marrying, the beneficiary should be taken to be uncertain. It is well established that a trust may be created in favour of an unborn person provided it satisfies the conditions laid down in Section 13 of the Transfer of Property Act, even though the coming into existence of such a beneficiary is uncertain. It is no doubt true the trust deed provides that in the event of death of his sons without marrying, the property will go to charitable purposes. But what are the charitable objects to be performed by the trustees have not been clearly and specifically set out. But we are of the view that once a trust is created for charitable purposes, even if the details of the charitable purpose are not mentioned, the trust will have to be taken as valid. Though the author of the trust does not clearly say as to what are the charitable objects

which he intended to be carried out, if any purpose which can be taken as a charitable purpose is carried out, then the objects of the trust should be taken to have been achieved. Therefore, merely because a trust deed says that the properties of the trust will ultimately go to charitable purposes without any specification, the purpose cannot be said to be indefinite.

12. The learned counsel, appearing for the Revenue, refers to the following decisions in support of his plea that the trust in this case will have to fail for want of certainty of the beneficiary. In *Shyma Charan Bhattacharya v. Naba Chandra Chakravarti* [1911] 11 1C 634, a Division Bench of the Calcutta High Court has ruled that a bequest to a grand-daughter's husband when the grand-daughter was not married at the testator's death was void for uncertainty. The reasoning given by the court in that case was that the gift by way of bequest to the testator's grand-daughter's husband having been made to an unknown person, it should be taken to be void. In *Rajender Dutt v. Sham Chund Miner* ILR[1880] Cal 106, in a suit for partition the validity of an arrangement entered into amongst five brothers, who formed a Hindu joint family, settling some family properties upon trust for the maintenance of the members of the family born or to be born came up for consideration and the court held that the object of the arrangement was to settle family properties upon trust for the maintenance of the members of the family born or to be born and this could not be done by a gift and that what cannot be done by a gift cannot be done by the intervention of a trust. In *Allahabad Bank Ltd. Vs. Commissioner of Income Tax, West Bengal*, , the Supreme Court, while dealing with a trust created for payment of pensions to retired employees, held that as there is uncertainty as regards the beneficiaries in the trust deed, no legal and effective trust could be taken to have been created. The reason for holding the trust to be illegal and ineffective is that there was uncertainty as regards the persons entitled to claim the benefit under the trust as it depends on the "discretion of the trustee, and there was also the absence of any obligation to grant any pension with the result that no legal and effective trust can be said to have been created as the trust deed does not create any obligation on the trustees to grant any pension to any of the employees.

13. The Revenue also refers to the decision in AIR 1948 49 (P & H.) , in support of its contention that the ultimate charitable purpose is vague and indefinite and, therefore, the trust deed should be taken to be invalid. In that case, the object of the trust was stated to be " advancement of medical aid to human beings or for other charitable purpose in accordance with the absolute discretion of the trustees ". The trust was held to be void for uncertainty and vagueness. The court has held that if the trust deed had simply provided for the trust property being used for the advancement of medical aid to human beings, the object of the trust could not be held to be either vague or uncertain, but that having regard to the fact that the author of the trust had distinctly provided that the trust property could be used either for the advancement of medical aid to human beings or for any other charitable purposes according to the discretion of the trustees, the trust cannot be said to be created for a specified object, for the

trustees may not use any part of the trust property for the advancement of medical aid to human beings and could use the whole of it for charitable purposes which they can select. Thus, the court took note of the fact of the absolute discretion given to the trustees to select the charitable purposes for which the trust properties are to be utilised and held that the trust deed suffered from the defect of vagueness and uncertainty and, therefore, void. In that case, the court had made a distinction between English law and the law in India in this regard and stated that while a trust expressed to be created for charity in England will be regarded as a trust created for one of the purposes falling within the technical meaning of charity as understood in English law and will be administered and supervised by the Charity Commissioners appointed under the law for that purpose, a trust made by a Hindu expressed to have been created for charitable purpose without any further attempt to specifically define the purpose or object of the trust cannot but be regarded as vague and uncertain; the reason being that amongst Hindus, the words " charitable purpose " have such a diversity and variety of connotations that what one set of persons may regard as a charitable purpose may not be regarded as such by another set and may even be regarded as sinful by a third set. Relying on the said decision, the Revenue contends that the ultimate object mentioned in the trust deed is uncertain and vague, for the trust deed merely refers to charitable purposes without any further attempt to define specifically the purpose or object of the trust.

14. However, in this case, the initial object of the trust deed is to benefit the would be daughter-in-law through the second son, Dileep Kumar, and if that clause fails for the reason that Dileep Kumar does not marry during his lifetime, the second beneficiary is the prospective daughter-in-law of the author's first son and only if these clauses fail, the question will arise whether the ultimate object mentioned is vague and indefinite. But the trust deed cannot be said to be invalid, so far as the above beneficiaries are concerned. Therefore, without expressing any opinion as to whether the clause stating that the ultimate benefit of the trust will go to a charitable purpose in the event of the beneficiaries referred to earlier not coming into existence will make the trust deed invalid for want of uncertainty, we hold that the trust deed is valid so far as the other beneficiaries are concerned in view of the fact that if the earlier clauses in the trust deed come into operation, there is no room for the properties being utilised for the benefit of charitable purposes.

15. The learned counsel for the assessee would refer to the first illustration in Section 13 of the Transfer of Property Act in support of his submission that the trust in this case will be valid in law. Section 13, along with the illustration, is extracted below:

" 13. Where, on a transfer of property, an interest therein is created for the benefit of a person not in existence at the date of the transfer, subject to a prior interest created by the same transfer, the interest created for the benefit of such

person shall not take effect, unless it extends to the whole of the remaining interest of the transferor in the property.

Illustration.

A transfers property of which he is the owner to B in trust for A and his intended wife successively for their lives, and, after the death of the survivor, for the eldest son of the intended marriage for life, and after his death for A's second son. The interest so created for the benefit of the eldest son does not take effect, because it does not extend to the whole of A's remaining interest in the property. "

16. As per the illustration above, where A transfers his property to B in trust for A and his prospective wife successively for their lives and, after the death of the survivor, for the eldest son of the intended marriage for life, and, after his death for A's second son, the interest created for the benefit of the eldest son is said to be bad for the reason that it does not extend to the whole of A's remaining interest in the property, as he is given only a life interest. In this case, the entire interest in the property goes to the benefit of the prospective daughter-in-law through the second son and if that fails, the entire benefit goes to the benefit of the daughter-in-law by the first son. Thus, the trust deed in this case cannot be held to be bad for uncertainty or vagueness (1) as regards the object, and (2) as regards the beneficiaries; nor does it offend the rule against perpetuity. We have to, therefore, hold that the trust deed is legally valid.

17. The result is that both the questions are answered in the affirmative and against the Revenue. The assessee will have his costs from the Revenue. Counsel's fee Rs. 500 (one set).