
(1984) 07 KL CK 0044

In the High Court Of Kerala

Case No : Income-tax Reference No. 83 of 1978

Commissioner of Income Tax

APPELLANT

Vs

Seematti Trust

RESPONDENT

Date of Decision : 23-07-1984

Acts Referred:

Income Tax Act, 1961 — Section 161

Citation : (1985) 46 CTR 356 : (1985) 154 ITR 771 : (1985) 23 TAXMAN 498

Hon'ble Judges : T. Kochu Thommen, J; K.P. Radhakrishna Menon, J

Bench : Division Bench

Advocate : P.K.R. Menon, for the Appellant; G. Sivarajan, for the Respondent

Judgement

Kochu Thommen, J.—The following question has been, at the instance of the Revenue, referred to us by the Income Tax Appellate Tribunal, Cochin Bench :

"Whether, on the facts and in the circumstances of the case, there was a valid trust and, if so, whether the trustees are to be assessed as representative assessee u/s 161 of the Income Tax Act, 1961 ?"

2. The assessment year is 1972-73. Three persons, Shri Veeriah Reddiar, Shri V. Ramachandran and Shri T. Rama Murthy, jointly filed a return of income derived from business claiming that they received it as trustees appointed under a written instrument. Accordingly, they claimed the benefit of Section 161 of the I.T. Act, 1961 (the "Act"), for being assessed as representative assessee. This claim was disallowed by the ITO on the ground that no valid trust existed at the relevant time to justify the claim. On appeal, the contention of the assessee was accepted by the AAC to the extent of a sum of Rs. 70,000 which was held to be the sole trust property. In respect of the other assets claimed to be trust properties, the AAC held that no trust was created in regard to them. This decision was accepted by the assessee, and they, in fact, filed a cross-objection before the Tribunal supporting it. The Revenue appealed to the Tribunal challenging the finding of the AAC as to the existence of the trust. The Tribunal

held that a valid trust had come into existence on the execution of an instrument, but the trust properties consisted of the assets enumerated in the inventories mentioned under the instrument. The Tribunal further held that the sum of Rs. 70,000 found by the AAC to be trust property did not partake of the character of trust property.

3. The only point which arises for consideration is whether or not there was a valid trust, and, if so, whether the trustees were entitled to be assessed as representative assesseees.

4. The purported trust deed is annexure A, dated May 12, 1971. The preamble to this instrument shows that on the previous day, that is, on May 11, 1971, the persons mentioned there as the "beneficiaries" handed over certain "inventories" to Sri S. Veeriah Reddiar, who is described as the founder. The object for which the inventories were so handed over by the beneficiaries is not mentioned in the instrument. The inventories are stated to contain certain furniture, machinery, stock-in-trade and other chattels and book debts. Reddiar acknowledged receipt of the goods in the following words :

"Received delivery of goods and handed over to trustees."

5. The Tribunal found that this acknowledgment was made on May 11, 1971, i.e., a day before the instrument was executed. These inventories relate to the assets of four firms, namely, Gouri Mahal, Alleppey, Seematti Stores, Ernakulam, Seematti Stores, Thiruvalla and Seematti Stores, Pathanamthitta. In respect of each inventory, Reddiar acknowledged receipt in identical terms as stated above.

6. The parties to the instrument are Reddiar of the one part, describing himself as founder, and V. Ramachandran and T. Rama Murthy of the other part, describing themselves as trustees. The preamble mentions the names of thirteen persons as beneficiaries under the trust. Four of them are minors. The preamble, after referring to the names of the thirteen beneficiaries, continues :

"..... (hereinafter referred to as the BENEFICIARIES which expression shall, wherever the context permits means and Includes their legal heirs) have by separate inventories dated the Eleventh day of May, One Thousand Nine hundred and Seventy-one and made between the said respective beneficiaries and the founder-Trustee delivered to the said Trustees certain furniture, machinery, stock-in-trade and other movable chattels and book debts in consideration of the said Trustees agreeing to discharge the liabilities, such assets and liabilities being specifically described in the Schedule thereto were assigned unto the Trustees absolutely.

Whereas all such transfers as aforesaid were made to the Trustees as nominees of the respective beneficiaries and it was agreed prior to the date of such transfers that the Trustees should execute such declarations of trust.

TO HAVE AND TO HOLD THE SAME upon TRUST, subject to the powers declared herein."

7. It is significant that in the preamble of the trust deed, where specific reference is made to the receipt of the inventories by Reddiar, there is no mention of the intention of the beneficiaries in handing over the inventories to Reddiar or the intention of Reddiar in receiving the same. All that the preamble says is that certain inventories containing various assets and book debts had been handed over to Reddiar. For what purpose they were handed over, there is no evidence whatsoever. For what purpose did Reddiar receive these articles from the beneficiaries cannot be understood except by reference to what Reddiar did with them subsequently. What is important to note is that the intention of the beneficiaries in handing over the assets to Reddiar is not discernible from the instrument (annexure A).

8. The beneficiaries are the partners of the four firms, whose assets are listed in the inventories as well as four minors who had been admitted to the benefits of these partnerships. All the beneficiaries, including the minors, as stated in the preamble, together handed over the assets to Reddiar. The last portion of the preamble says that the assets received by Reddiar, as per the inventories, were made over by him to the trustees as "nominees of the respective beneficiaries". What is thus so far clear is that on May 12, 1971, Reddiar purported to create a trust in respect of the assets which he received, and executed an instrument whereunder two persons were appointed as trustees to whom the assets were handed over by him.

9. The instrument does not show in what manner, Reddiar was authorised to deal with the assets. There is no evidence as to whether the assets were delivered to him for safe keeping or for the purpose of delivering them to trustees for the interest of the "beneficiaries". In the absence of any evidence, the character of Reddiar's possession of the assets and subsequent delivery of the same to the trustees is only a matter of conjecture. If Reddiar was only a bailee of the assets he received and was not authorised to create a trust concerning them, he had no right whatever to create a trust in respect of them. There is no case that Reddiar was the owner of these goods or had any interest in them except in his capacity as the person to whom they were delivered. The sole case of the assessee is that the assets belonged to the beneficiaries. In the circumstances, in the absence of any evidence to indicate the intention of the beneficiaries, it is not possible to say that Reddiar was authorised by them to transfer the legal right in these assets to the trustees to hold them for the interest of the beneficiaries. This means that the essential link to connect the instrument with the intention of the authors of the trust, who in the instant case are alleged to be the beneficiaries themselves, is absent. Without such link, the instrument subsequently executed by Reddiar, whatever be its purported object, cannot create a trust with the assets which did not belong to him.

10. There is a dispute as to the identity of the trust assets. The instrument shows that a sum of Rs. 70,000 forms part of the assets as contributed by the various beneficiaries including the minors. Clause 16 mentions the various

amounts against the names of the beneficiaries. These are :

Rs.

1. S. P. Seethalakshmi 2,100

2. P. Subbalakshmi 5,600

3. P. Veeriah 5,600

4. P. Santha alias 3,500

P. Veeralakshmi

5. S. Thankammal 2,800

6. R. Veeralakshmi 4,200

7. R. Rajesh Kumar 7,000

8. T. Seethalakshmi 5,600

9. T. Beena 12,600

10. R. Dhanalakshmi 7,000

11. R. Ananth Kumar 9,800

12. V. Thiruvengatam 1,40.0

13. R. Veeresh Kumar 2,800

70,000

11. The ITO found that, in so far as the minors jointly with the partners handed over the inventory assets and the sum of Rs. 70,000 to Reddiar, assuming that a trust had sprung into existence on the basis of annexure A, as alleged by the assessee, there was no valid trust, as the necessary permission of a principal civil court of original jurisdiction had not been obtained in terms of Section 7(b) of the Indian Trusts Act, 1882 (Act II of 1882). The ITO further found that immovable properties were handed over by two of the four firms to the trust without executing a registered document thereby contravening Section 5 of the Indian Trusts Act, 1882. It must be stated at this stage that on the same day as annexure A was executed, that is, on May 12, 1971, three documents, annexures B, C and D, were executed by the partners of three of the firms assigning the remaining assets of the firms, including the goodwill, to the trust. These firms were subsequently dissolved. Later, by annexure E, dated May 31, 1971, an identical agreement was executed by the fourth firm and it was later dissolved.

12. The AAC, in allowing the assessee's appeal, endeavoured to get over the difficulty pointed out by the ITO in regard to non-compliance of Sections 7(b) and 5 by stating that the trust was created only in respect of Rs. 70,000. This sum, according to him, was contributed by the beneficiaries after the creation of

the trust, thereby not falling under the injunction of Section 7(b). He further stated that, in respect of the immovable properties, no conveyance had taken place, but only agreements for sale were executed, and accordingly the ban u/s 5 had not been attracted. The Tribunal has, however, as stated above, categorically held that the trust properties consisted of only the inventory properties, and the sum of Rs. 70,000 did not form part of the trust properties.

13. In the view we shall take as regards the existence of a trust, it is unnecessary to examine whether the Tribunal rightly held that the sum of Rs. 70,000 did not form part of the trust assets. The fundamental question is, as indicated above, whether or not a trust was validly created under annexure A so as to enable the assessee to claim the benefit of Section 161. Annexure A which is the purported instrument of trust gives no clue as to the intention of the authors of the trust, who in this case are alleged to be the beneficiaries. In the absence of any evidence to support the contention that Reddiar was authorised by the beneficiaries to create a trust in respect of the assets which they handed over to him or that these assets were gifted or sold by them to him absolutely, so as to give him the right to create a trust in respect of them, the mere statement in annex. A to the effect that the inventory properties together with the sum of Rs. 70,000 received by Reddiar from the beneficiaries were handed over to the trustees for the purpose of holding them as "nominees of the respective beneficiaries" or "for and on behalf of the trust" does not connect the instrument with the intention of the authors of the alleged trust, namely, the beneficiaries. Annexure A is thus an imperfect instrument lacking in any foundation in the source of the power enabling Reddiar to create a trust. Accordingly, we are of the view that no trust has sprung into existence on the basis of annexure A.

14. As stated earlier, there is no case that Reddiar was the owner of the goods in question at any material time. In the circumstances, the finding of the Tribunal that under annexure A, trust was created in respect of the assets in question is not only perverse in so far as it is not reasonably founded on any evidence, but is also a clear misdirection in so far as the Tribunal has misinterpreted the document.

15. In the light of what is stated above, we answer the question in the negative, that is, in favour of the Revenue and against the assessees. We direct the parties to bear their respective costs in this tax referred case.

16. A copy of this judgment under the seal of the High Court and the signature of the Registrar shall be forwarded to the Income Tax Appellate Tribunal, Cochin Bench.