
(1971) 06 AP CK 0004

In the Andhra Pradesh High Court

Case No : Case Referred No. 37 of 1969

G. Ethirajulu

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 11-06-1971

Acts Referred:

Income Tax Act, 1961 — Section 147, 64

Citation : (1972) 85 ITR 16

Hon'ble Judges : Sriramulu, J;Kondaiah, J

Bench : Division Bench

Advocate : T. Venkatappa, for the Appellant; T. Anantha Babu, for the Respondent

Judgement

1. At the instance of the assessee the following question of law has been referred to this court, u/s 256(1) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") for our opinion :

"Whether, on the facts and in the circumstances of the case, the share income of the minor son from M/s. Ranganatha Silk House is liable to be included in the assessment of the father, i.e., the assessee, u/s 64(iv) of the Income Tax Act, 1961 ?"

2. The material facts leading to this reference may be stated :

3. For the assessment year 1962-63 the assessee, G. Ethirajulu, was assessed to tax in the status of individual, on a total income of Rs, 56,669. Subsequent to the completion of the assessment, the Income Tax Officer came to know that the assessee's minor son, who received from the assessee assets worth Rs. 12,000 invested the same in M/s. Ranganatha Silk House and was admitted to the benefits of the partnership. The income that fell to the share of the minor in M/s. Ranganatha Silk House for the said assessment year came to Rs. 11,663. As he was of the opinion that the said share income of the minor u/s 64(iv) of the Act was includi-ble in the total income of the assessee for the purpose of assessment

and, as it was not so included, the Income Tax Officer reopened the assessment of the assessee u/s 147, after service of notice as required u/s 148 of the Act and revised the assessment by including the share income of the assessee's minor son of Rs. 11,663 in the total income of the assessee. The inclusion of the share income of the minor son in the total income of the assessee was upheld in the first appeal by the Appellate Assistant Commissioner and, in a second appeal, by the Income Tax Appellate Tribunal. In upholding the addition, the Tribunal found that, (1) the introduction of the assets gifted to the minor by his father, the assessee, was to the advantage of the partnership business, (2) it was the intention of the assessee to provide an income earning business to his minor son and for that purpose gifted those assets to his minor son, and (3) the admission of the minor to the benefits of the partnership was dependent upon the contribution of the capital by the minor in the shape of assets, which were gifted by the assessee to his minor son.

4. Challenging the propriety of the inclusion of the share income of the minor son in the total income of the assessee, the learned counsel, Sri Venkatappa, appearing for the assessee contended that the income that fell to the share of the minor did not directly or indirectly arise to the minor from the assets gifted to him by the assessee and hence it was not includible in the total income of the assessee. In support of the said argument the learned counsel relied upon the decisions of the Supreme Court in *Commissioner of Income Tax, Assam, Tripura and Manipur Vs. Jwalaprasad Agarwala*, and *Commissioner of Income Tax, West Bengal, Calcutta Vs. Prem Bhai Parekh and Others*, . Sri P. Rama Rao, the learned standing counsel for the department, contended to the contra.

5. Omitting the irrelevant portion, Section 64(iv) of the Act reads as follows:

"In computing the total income of any individual, there shall be included all such income as arises directly or indirectly

(iv) subject to the provisions of Clause (i) of Section 27, to a minor child, not being a married daughter of such individual, from assets transferred directly or indirectly to the minor child by such individual otherwise than for adequate consideration ;...."

6. The undisputed facts in the case are that the assessee gifted certain assets to his minor son, who invested the same in the partnership firm of M/s. Ranganatha Silk House. The minor son of the assessee was admitted to the benefits of the partnership. The short question that arises on these admitted facts is whether the income that fell to the share of the minor, who was admitted to the benefits of the partnership in M/s. Ranganatha Silk House, directly or indirectly arose out of the assets transferred to the minor by his father, the assessee. This question was directly in issue in the latter case decided by the Supreme Court in *Commissioner of Income Tax v. Prem Bhai Parekh*.

7. In the case before it, the Tribunal found that the capital invested by the minors in the firm came from the gifts made by their father. In considering

whether the share income of the minors in those circumstances was includible in the total income of their father, u/s 64(iv) of the Act, the learned judge, Hegde J., speaking for the Supreme Court, observed that:

"The connection between the gifts mentioned earlier and the income in question is a remote one. The income of the minors arose as a result of their admission to the benefits of the partnership. It is true that they were admitted to the benefits of the partnership, because of the contribution made by them. But there is no nexus between the transfer of the assets and the income in question. It cannot be said that the income arose directly or Indirectly from the transfer of the assets referred to earlier. Section 16(3) of the Act created an artificial income. That section must receive strict construction as observed by this court in Commissioner of Income Tax, Gujarat Vs. Keshavlal Lallubhai Patel, . In our judgment before an income can be held to come within the ambit of Section 16(3), it must be proved to have arisen--directly or indirectly--from a transfer of assets made by the assessee in favour of his wife or minor children. The connection between the transfer of assets and the income must be proximate. The income in question must arise as a result of the transfer and not in some manner connected with it."

8. With these observations the Supreme Court upheld the judgment of the High Court in excluding the minor's share income from the total income of the assessee.

9. We entirely agree with the argument of the learned counsel, Sri T. Venkatappa, that the aforesaid decision of the Supreme Court is on all fours with this case. Section 16(3) of the Income Tax Act, 1922, is in pari materia with Section 64(iv) of the Income Tax Act, 1961. Hence the decision of the Supreme Court rendered under the Income Tax Act, 1922, is fully applicable to the facts of this case and will cover the position of law under the 1961 Act. Following that decision we answer the question referred to us in the negative and against the department, i.e., the share income of the assessee's minor son from M/s. Ranganatha Silk House is not liable to be included in the total income of the assessee u/s 64(iv) of the Act. Commissioner of Income Tax shall pay the costs of this reference to the assessee. Counsel fee is Rs. 250.