
(1960) 08 KL CK 0017
In the High Court Of Kerala
Case No : Income Tax R. No. 1 of 1960

Mackar Pillai

APPELLANT

Vs

Commr. of Income Tax

RESPONDENT

Date of Decision : 30-08-1960

Acts Referred:

Income Tax Act, 1922 — Section 16(3)(a)(iii), 16(3)(a)(iv)

Citation : (1960) KLJ 1199

Hon'ble Judges : T.K. Joseph, J; M.S. Menon, J

Bench : Division Bench

Advocate : N.D.P. Namboodiripad, for the Appellant; G. Rama Iyer, for the Respondent

Judgement

M.S. Menon, J.—This is a reference u/s 66(1) of the Indian income tax Act, 1922, by the income tax Appellate Tribunal, Madras. The question referred is:

Whether the aforesaid income of the wife and minor children is assessable in the hands of the assessee u/s 16 (3) (a) (iii) and (iv) ?

The assessment years concerned are 1950-51, 1951-52, and 1952-53. The order from which the reference arises is the consolidated order of the income tax Appellate Tribunal in I.T.A. Nos. 974, 975 and 2653 of 1958-59 dated 18--11--1958.

3. The Tribunal said :

The assessee, Sri M.K. Mackar Pillai, owned house properties and agricultural lands in and around Alwaye and was carrying on business under the name and style of M/s. Mackar Pillai & Sons at Cochin and Alwaye. By a deed of settlement dated 12--11--1116 M.E. he transferred certain agricultural lands to his wife Khader Amina Umma and minor daughters (i) Kadija, (ii) Jameela and (iii) Zulekha. In October, 1941, he converted the business of Mackar Pillai and Sons into a private limited company. It is common ground that Mackar Pillai's wife and three minor children were allotted certain shares (hereinafter referred to as the

company shares) in the said company. Each of them got Rs. 3,000/- as dividends from these shares which together with a sum of Rs. 1,000/- being income from agricultural lands, transferred to them in the manner stated above, was utilised to purchase shares for each of them in the Bank of Alwaye, Ltd., (hereinafter referred to as "the (Bank shares)"). These shares yielded dividend income and the question at issue is whether this income from the shares of Bank of Alwaye Ltd., can be assessed in the hands of the assessee, Sri Mackar Pillai, under the provisions of sec. 16 (3) (a) (iii) & (iv) of the Act.;

and held:

The income in question from the shares held by Mackar Pillai's wife and minor children in Bank of Alwaye, Ltd., is includible in the total income of Mackar Pillai under the provisions of sec. 16 (3) (a) (iii) and (iv) of the Act.

There is an additional contention regarding the inclusion of the interest received by the wife and minor children by depositing in Bank the dividend received by them from Mackar Pillai and Sons Ltd. Our decision on the first question covers this as well.

3. The amounts in controversy will be clear from the following statement.

Name

Year ended 31-3-1950

Year ended 31-3-1951

Year ended 31-3-1952

Dividend Interest Total

Dividend Interest Total

Dividend Interest Total

Khader Ameena Umma: Kadija Jameela Zulekha

480 560 1040 480 564 1044 480 564 1044 480 564 1044

400 732 1132 400 732 1132 400 732 1132 400 732 1132

480 1253 1733 480 1112 1592 480 1112 1592 480 1112 1592

4. The relevant portion of section 16(3) of the Indian income tax Act, 1922, reads as follows:

In computing the total income of any individual for the purpose of assessment, there shall be included--

(a) so much of the income of a wife or minor child of such individual as arises directly or indirectly--

(iii) from assets transferred directly or indirectly to the wife by the husband

otherwise than for adequate consideration or in connection with an agreement to live apart; or

(iv) from assets transferred directly or indirectly to the minor child, not being a married daughter, by such individual otherwise than for adequate consideration;

It is common ground that the agricultural lands and the shares in Mackar Pillai and Co. Ltd. transferred by the assessee to his wife and minor children in

1116 M.E. have to be considered as assets "transferred directly or indirectly" by him to them, that the income derived from those assets has to be included in the computation of his total income. The dispute is only as regards the assessee's liability to tax in respect of the yield from the investment of such income by his wife and minor children.

5. The assessee will be liable to tax in respect of that yield if, and only if it can be considered an income arising "directly or indirectly" from the assets transferred by him. It is clear that the said yield cannot be considered as arising "directly" from the assets transferred by the assessee. We think we will also have to hold that it does not arise "indirectly" from the assets transferred by him. Even the word "indirectly" apparently indicates a nexus between the income assessable and the assets transferred which is more intimate than the one which obtains in a case like the one before us.

6. A similar question arose for consideration before the High Court of Bombay in *Popatlal Bhikamchand Vs. Commissioner of Income Tax, Bombay City*, . In that case the assessee who held 350 shares in a company made a gift of those shares to his minor son. Subsequently the company allotted to the minor son 744 bonus shares in view of the 350 shares held by him. The assessee while conceding that the dividend income from the 350 shares transferred by him to his minor son was liable to be included in computing his total income, contested his liability as regards the dividend income received by his minor son from the 744 bonus shares issued to him by the company. The court said:

In our judgment, the contention of the assessee must be accepted. The assets transferred by the assessee were 350 shares. The bonus shares were in the hands of the assessee's minor son undoubtedly an accretion to the assets transferred, but they could not be regarded as "assets transferred" by the assessee. Mr. Joshi, who appears on behalf of the Department, contends that the dividend income from the bonus shares in the hands of the minor child is income which arose indirectly from assets transferred by the assessee and is liable to be included in computing the total income of the assessee for the purpose of assessment. But, in our judgment, the source of the dividend income from the bonus shares is not the assets transferred but the accretion thereto; and that income cannot be regarded as arising even indirectly from the assets transferred by the assessee. The Legislature has not by enacting section 16 (3) (a) (iv) sought to tax in the hands of the assessee income arising from accretions to the assets transferred by him to his minor children.

We do not think we will be justified in characterising the bank shares and deposits of the assessee's wife and minor children from which the income in controversy arose even as accretions to the assets transferred by him. Accretion is an extraneous addition. They are not additions at all to the assets transferred by the assessee; but independent assets evolved from the income of the assets so transferred.

7. In the light of what is stated above the question referred has to be answered in the negative and we do so, though in the circumstance of the case without any order as to costs. A copy of this judgment under the seal of the High Court and the signature of the Registrar will be forwarded to the Appellate Tribunal as provided by sub-section (5) of Section 66 of the Indian income tax Act, 1922.