
(1980) 09 KL CK 0025

In the High Court Of Kerala

Case No : Income-tax Reference No's. 122, 123 and 124 of 1978

P.M. Paily Pillai

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 16-09-1980

Acts Referred:

Kerala Agricultural Income Tax Act, 1950 — Section 9(2)

Citation : (1981) 22 CTR 99 : (1981) 129 ITR 197

Hon'ble Judges : V. Balakrishna Eradi, C.J.;K. Bhaskaran, J

Bench : Division Bench

Advocate : T.K.M. Unnithan, for the Appellant; Government Pleader, for the Respondent

Judgement

Balakrishna Eradi, C.J.—Three questions of law extracted below have been referred to this court by the Kerala Agrl. I.T. Appellate Tribunal, Trivandrum (hereinafter called "the Tribunal"), u/s 60(1) of the Kerala Agrl. I.T. Act (for short "the Act") as arising out of the common order passed by it in three connected appeals--AITA Nos. 218 to 220 of 1975--relating to the assessment of agricultural Income Tax made against the respondent-assessee for the years 1970-71, 1971-72 and 1972-73 :

" 1. Whether, on the facts and in the circumstances of the case, the Tribunal is justified in holding that Section 9(2) of the Agrl. Income Tax Act is applicable to the facts of the case ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal is justified in holding that difference in price obtained by the applicant from the sale of the estate in the name of the minor at Nilambur is not an accretion and that the income from the estate subsequently purchased at Vellayur village with the consideration of the sale of the minor's estate at Nilambur is the income assessable at the hands of the applicant u/s 9(2) of the Agrl. Income Tax Act ?

3. Whether, on the facts and in the circumstances of the case, the Tribunal is

justified in holding that the entire income from the estate purchased at Vellayur is assessable as the income of the applicant when he has advanced only Rs. 28,000 for the purchase of the estate at Nilambur and whether only proportionate income on the investment of Rs. 28,000 is liable to be assessed u/s 9(2) of the Act at the hands of the applicant ? "

2. The respondent is an assessee on the file of the Addl. Agrl. ITO, Alwaye. On June 5, 1967, he had purchased an area of 40 acres of rubber estate at Nilambur in Ernad Taluk in the name of his minor son, Babu Paul, for a consideration of Rs. 28,000. The income from this estate had been assessed in the hands of the respondent by the assessing authority u/s 9(2) of the Act for the assessment years commencing with April 1, 1968, onwards on the ground that the consideration for the purchase of the estate in the name of the minor had proceeded from the assessee. In 1969, the aforesaid rubber estate to the extent of 40 acres situated in Nilambur was sold for a consideration of Rs. 95,000 and another estate having an area of 44.11 acres was purchased immediately thereafter by the assessee in the name of the minor in Vellayur village for a consideration of Rs. 89,800. While completing the assessments of the assessee to agrl. Income Tax for the years 1970-71, 1971-72 and 1972-73 the income derived from the estate in Vellayur village which was purchased from out of the sale proceeds of the original estate situated in Nilambur was included in the assessable income of the assessee u/s 9(2) of the Act. The assessee had contended before the assessing authority that the asset transferred by him to the minor either directly or indirectly was only the sum of Rs. 28,000 which was utilised for the purchase of the first estate situated in Nilambur and that neither the second estate in Vellayur village nor the income derived therefrom could be regarded as having any proximate nexus with the assets transferred with the asset of Rs. 28,000 originally transferred by the assessee in favour of the minor son. This contention was rejected by the Agrl. ITO and his conclusion was upheld by the AAC as well as by the Tribunal before which a second appeal was filed by the assessee. Thereafter, this reference has been made to this court by the Tribunal at the instance of the assessee.

3. Section 9(2)(a)(iv) of the Act lays down that in computing the total agricultural income of any individual for the purpose of assessment there shall be included so much of the agricultural income of a minor child of such individual as arises directly or indirectly from assets transferred directly or indirectly to the minor child not being a married daughter by such individual otherwise than for adequate consideration. This provision is almost identical in terms with the one contained in Section 16(3)(a)(iv) of the Indian I.T. Act, 1922. In *Balaji Vs. Income Tax Officer, Special Investigation Circle*, the Supreme Court while dealing with the question of constitutionality of Section 16(3)(a) of the 1922 Act, which substantially corresponds to Section 9(2)(a)(iv) of the 1961 Act has explained that the object underlying the enactment of that section is to prevent evasion of tax and in enacting the provisions wherein the net has been cast wide, the Legislature must be assumed to have been fully aware of the conditions of

the people and the widespread nature of the fraudulent device commonly adopted in the matter of the evasion of tax and thought it necessary to enact such a provision for counteracting such evasive tactics. u/s 9(2) what is relevant is to find out whether the income in question, whose liability to be taxed in the hands of the assessee is in dispute, has arisen directly or indirectly from an asset transferred by the assessee directly or indirectly to the minor son. There must be a proximate connection between the income derived and the transfer of the asset effected by the assessee and it is only if such connection is established that the provisions of Section 9(2)(a)(iv) will get attracted. This position is now well established by the pronouncement of the Supreme Court in Commissioner of Income Tax, West Bengal, Calcutta Vs. Prem Bhai Parekh and Others, .

4. It was strenuously argued before us by the learned advocate appearing for the assessee that what was transferred by the assessee in favour of the son of the assessee was only a sum of Rs. 28,000 and that hence the Tribunal was in error in holding that the purchase of the estate in Vellayur village made for a consideration of Rs. 89,800 is liable to be regarded as one made out of assets transferred directly or indirectly by the assessee. We do not find it possible to accept this contention. What the assessee had done was not to make a gift of Rs. 28,000 to the minor as contended by the counsel. What was done by the assessee was to purchase in the name of his minor son the rubber plantation in Nilambur having an extent of 40 acres. The said rubber estate was the asset transferred directly by the assessee to the minor child. Subsequently, the assessee, acting as guardian of the minor, sold that asset for a sum of Rs. 95,000 and thereby converted the original asset to the said sum on money. That money, in the hands of the minor, has, in our opinion, to be regarded as partaking of the character of an asset transferred by the assessee since it was only the original asset, namely, the rubber estate converted into the form of cash as a result of the transaction of sale effected by the assessee as guardian. Similar is the position that was brought about when the assessee utilised the said sale proceeds and purchased the second rubber estate in Vellayur village in the minor's name. It was only a substitution of the second estate for the first estate by reconverting the cash into landed property, the character of the original asset, namely, of its being an asset transferred directly to the minor child, being fully retained. Such being the legal position obtaining in regard to the character of the second estate purchased in Vellayur village in relation to the applicability of s. 9(2) of the Act, we do not find it possible to accede to the contention put forward by the assessee's counsel that the income from the said estate cannot be brought to tax in the hands of the assessee by applying the provisions of Clause (iv) of Sub-section (2) of Section 9 of the Act. Strong reliance was placed by the learned advocate for the assessee on certain observations contained in the decision of the Bombay High Court in Sevantilal Maneklal Sheth Vs. Commissioner of Income Tax (Central), Bombay, . In that case a person had made a gift to his wife of some shares in a limited company which were worth Rs. 79,730 at the time of the gift. The wife sold the shares subsequently for Rs.

1,54,800 making a profit of Rs. 70,860. The whole sale proceeds were invested by her and she obtained annually by way of interest from such investment a sum of Rs. 9,288. Two questions arose for decision before the Bombay High Court. The first was whether the profit of Rs. 70,860 resulting from the transaction of sale of shares could be included in the total income of the husband under the head "Capital gains" on the ground that it was income that arose from assets transferred by him to his wife so as to attract the provisions contained in Section 16(3)(a)(iii) of the Indian I.T. Act, 1922. The second question was whether the interest of Rs. 9,288 received annually by the wife from out of the investment of sale proceeds in a company by name M/s. Bhivandiwala and Co. also could be included in the taxable income of the husband u/s 16(3)(a) of the said Act. On the first question the Bombay High Court held that the amount of Rs. 70,860 which was the profit resulting from the sale of the shares effected by the wife was liable to be included in the total income of the husband as income derived by way of capital gains from assets transferred by him to the wife. In other words the High Court treated the entirety of the sale proceeds realised by the sale of the shares effected by the wife as representing assets in her hands received by transfer effected directly or indirectly by the husband and it was on that basis that the profit was regarded as capital gain includible in the taxable income of the husband, u/s 16(3)(a)(iii) of the Indian I.T. Act, 1922.

5. On the further question as to whether the husband was liable to be assessed in respect of the income derived by way of interest from the investment of the sale proceeds, the High Court based its conclusion on the fact that the department while making the assessment for the year 1957-58 had chosen to regard the sale proceeds which the wife realised by the sale of the shares as having resulted in her getting back the original value of the shares amounting to Rs. 69,730 as well as an additional gain over that value to the extent of Rs. 70,860, thereby treating the surplus of Rs. 70,860 as income arising from assets transferred. Since the said assessment had become final, the High Court took the view that for the subsequent years it was not open to the department to treat the entirety of the sale consideration of Rs. 1,54,800 received by the wife as representing the asset transferred to her by the husband, and assess the income derived by way of interest realised by the investment of her income in the hands of the husband u/s 16(3)(a)(iii). In this view the High Court held that out of the interest received by the wife for the subsequent years commencing from 1958-59 only such portion thereof as would be attributable to the value of the transferred assets, namely, Rs. 69,730, was total income of the husband and not the rest. Against the aforesaid decision of the Bombay High Court the assessee filed an appeal before the Supreme Court challenging the adverse finding entered against him by the High Court on the first point relating to the includibility of capital gains in his total income u/s 16(3)(a)(iii). The department did not file any appeal against the decision of the High Court on the question of the assessability of the interest income u/s 16(3)(a)(iii). Hence, the Supreme Court did not have any occasion to examine the correctness or otherwise of the view taken by the

Bombay High Court on the second aspect aforementioned. The appeal filed by the assessee was dismissed by the Supreme Court as per the judgment in *Sevantilal Maneklal Sheth Vs. Commissioner of Income Tax (Central), Bombay*, . The following passage occurring at page 507 of that report is of particular assistance in the present context :

" It was argued, in the first place, that what comes within the ambit of Section 16(3)(a)(iii) was " the income from the assets ", i. e., the income which the asset produces while it continues to remain in the hands of the assessee and does not include the gain which the assessee makes by selling the asset and parting with possession of it. We see no justification for this argument. In our opinion, there is no logical distinction between income arising from the asset transferred to the wife and arising from the sale of the assets so transferred. The profits or gains which arise from the sale of the asset would arise or spring from the asset, although the operation by which the profits or gains is made to arise out of the asset is the operation of the sale. If the asset is employed, say by way of investment and produces income, the income arises or springs from the asset; the operation, which causes the income to spring from the asset, is the operation of the investment. In the operation of the investment, income is produced while the asset continues to belong to the assessee, while in the operation of a sale, gain is produced, which is still income, but in the process the title to the asset is parted with. Although the processes involved in the two cases are different, the gain which has resulted to the owner of the asset, in each case, is the gain which has sprung up or arisen from the asset."

6. In our opinion this pronouncement by the Supreme Court is clear authority for the position that merely by reason of the fact that the original asset transferred to the minor had been sold, the character of the asset will not got altered and when the sale proceeds are again reconverted into the shape of immovable property by utilising it for the purchase of such property, the property so purchased will continue to have the character of an asset transferred to the minor child by the assessee. This is all the more so in a case like the present one where the transaction of sale of the first asset and the purchase of the second asset had been entered into by the assessee himself for and on behalf of the minor. What was in substance and truth done by the assessee was to substitute in the place of the first asset another property which he purchased by converting the first asset into cash and utilising the said cash for the purchase of the second asset. We have, therefore, no hesitation to uphold as correct the view taken by the Tribunal that the provisions of Section 9(2)(a)(iv) are fully attracted to the present case and that the income derived from the estate purchased in Vellayur village is liable to be included in the taxable income of the assessee under the terms of the aforesaid provisions. We accordingly answer all the three questions in the affirmative, i.e., against the assessee and in favour of the department. The parties will bear their respective costs.

7. A copy of this judgment under the seal of the court and the signature of the

Registrar will be forwarded to the Tribunal as required by law.