

(1967) 08 MP CK 0012

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 32 of 1966

Raj Kumar singhji

APPELLANT

Vs

Commissioner of Expenditure Tax

RESPONDENT

Date of Decision : 17-08-1967

Acts Referred:

Constitution of India, 1950 — Article 14
Expenditure Tax Act, 1957 — Section 2, 3, 4

Citation : AIR 1968 MP 107 : (1971) ILR (MP) 384 : (1970) 78 ITR 405 : (1967) JLJ 878

Hon'ble Judges : P.V. Dixit, C.J.; R.J. Bhavé, J

Bench : Division Bench

Advocate : K.A. Chitale and V.S. Dabir, for the Appellant; M. Adhikari and P.S. Khirwadkar, for the Respondent

Judgement

Bhavé, J.—In the matter of assessment of Shri Rajkumarsinghji of Indore under the Expenditure-Tax Act, 1957. (hereinafter referred to as the Act), for the assessment years 1959-60, 1960-61 and 1961-62 the Appellate Tribunal has made this consolidated reference u/s 25(1) of the Act. The question referred to us for decision is :--

"Whether, on the facts and in the circumstances, the word "dependant" in Section 2(g)(i) of the Expenditure-Tax Act included a wife and a minor child notwithstanding the fact that they incurred their respective expenditure out of their own income and persona] property?"

2. The facts as found by the Tribunal are that the assessee inherited large properties. A partition thereof was effected on 21st August 1957 under which the wife of the assessee and his children, including two minors, were awarded extensive properties. In the assessment period in question, the wife and the two minors incurred certain expenditure out of the property allotted to them; the assessee himself did not incur any expenditure for or on their behalf. The said expenditure was taken to be the expenditure assessable in the hands of the

assessee by the departmental authorities and the Tribunal upheld that decision. The Tribunal has, construing Section 4(ii) and Section 2(g)(i) of the Act, held that expenditure of the wife and minors incurred from whatever source is taxable in the hands of the assessee.

3. Before stating the contentions advanced by learned counsel for the parties it is necessary to refer to the material provisions of the Act. Section 2(c) of the Act defines "assessee" as meaning "an individual or a Hindu undivided family by whom expenditure or any other sum of money is payable" The definition of "dependant" given by Section 2(g), as amended by Act No. 12 of 1959, is thus :-- "dependant" means --

(i) where the assessee is an individual, his or her spouse or minor child, and includes any person wholly or mainly dependant on the assessee for support and maintenance;

(ii) where the assessee is a Hindu undivided family --

(a) every coparcener other than the karta; and

(b) any other member of the family who under any law or order or decree of a court, is entitled to maintenance from the joint family property;"

Section 3 provides that subject to the other provisions contained in the Act, for every financial year commencing on and from the first day of April, 1958, expenditure-tax at the specified rate is payable by an individual or Hindu undivided family on the expenditure incurred in the previous year. Section 4 of the Act, which deals with the amount to be included in taxable expenditure, as amended by Act No. 12 of 1959, stands thus:--

"4. Amount to be included in taxable expenditure:--

Unless otherwise provided in Section 5, the following amounts shall be included in computing the expenditure of an assessee liable to tax under this Act, namely:--

(i) any expenditure incurred, whether directly or indirectly by any person other than the assessee in respect of any obligation or personal requirement of the assessee or any of his dependants to the extent to which the amount of all such expenditure in the aggregate exceeds Rs. 5,000 in any year;

(ii) where the assessee is an individual, any expenditure incurred by any dependant of the assessee, and where the assessee is a Hindu undivided family, any expenditure incurred by any dependant from or out of any income or property transferred directly or indirectly to the dependant by the assessee.

Explanation-- For the removal of doubts it is hereby declared that nothing contained in this section shall be deemed to require the inclusion in the expenditure of the assessee of any expenditure incurred by any other person for or on behalf of the assessee by way of customary hospitality or which is of a

trivial or inconsequential nature."

Sections 2(g) and 4, before they were amended in 1959, ran as follows:--

"2(g) "dependant" means--

(i) where the assessee is an individual, his or her spouse or child wholly or mainly dependant on the assessee for support and maintenance;

(ii) where the assessee is a Hindu undivided family --

(a) every coparcener other than the karta; and

(b) any other member of the family who under any law or order or decree of a court, is entitled to maintenance from the joint family property."

"4. Amounts to be included in taxable expenditure.

Unless otherwise provided in Section 5, the following amounts shall be included in computing the expenditure of an assessee liable to tax under this Act namely:--

(i) any expenditure incurred, whether directly or indirectly by any person other than the assessee in respect of any obligation or personal requirement of the assessee or any of his dependants which, but for the expenditure having been incurred by that other person, would have been incurred by the assessee, to the extent to which the amount of all such expenditure in the aggregate exceeds Rs. 5,000 in any year;

(ii) any expenditure incurred by any dependant of the assessee for the benefit of the assessee or of any of his dependants out of any gift, donation or settlement or trust or out of any other source made or created by the assessee, whether directly or indirectly.

Explanation-- for the removal of doubts it is hereby declared that nothing contained in this section shall be deemed to require the inclusion in the expenditure of the assessee of any expenditure incurred by any other person for or on behalf of the assessee by way of customary hospitality or which is of a trivial or inconsequential nature."

4. Before the Tribunal it was urged on behalf of the assessee that the nexus for the chargeability of the tax was the expenditure of the assessee and that of any person dependant on him and not the expenditure of a person independent of the assessee. If the wife and the minors had resources of their own, the expenditure incurred by them out of their own resources could not be treated as the expenditure of the assessee; the clause "wholly or mainly dependant on the assessee for support and maintenance" in the amended definition of Section 2(g) (i) necessarily governed not only "any other person" but also "his or her spouse or minor child". It was urged that the effect of amendment introduced in 1959 in Section 2(g) was only to add one more category to the list of dependants, but the test that the spouse or the minor child should also be wholly or mainly

dependant on the assessee was not abandoned. This submission did not find favour with the Tribunal. it held:

"Looking into the section as it stood before its amendment in 1959 and comparing it with the provision as it now stands it would be clear that whereas in the earlier provision, for a spouse or child to be classified or held as a dependant, he, she or it must be wholly or mainly dependant on the assessee, the word "minor" before the word "child" and the words "and includes any person" have been incorporated in the new section. That is, whereas under the old section even if the child happened to be a major it would be a dependant if it had wholly or mainly dependant on the assessee for support and maintenance, after the change the child had to be a minor to be classified as dependant. A third category of entities are introduced by including "any person" within the ambit of the word "dependant" For that person to be a dependant he must be wholly or mainly dependant on the assessee for support and maintenance. It may be that even after the amendment even a major child would come under "other person", if it was wholly or mainly dependant on the assessee. There is a comma after spouse or minor child and the plain and natural meaning of the clause would be only that whether a spouse or a minor child is mainly dependant on the assessee for support and maintenance or not, the spouse or minor child would be dependant within the meaning of the section. In other words the test of dependency would not be applicable to the case of a spouse or a minor child."

5. It was argued by Shri Chitale, learned counsel for the assessee, that under the Expenditure-Tax Act an "individual" is an assessee, both the spouses can, therefore, be made assessee and in assessment proceedings initiated against them the expenditure of the one may lawfully be included in the expenditure of the other and thus the same expenditure will be included twice for assessment if the interpretation put by the Tribunal were to be accepted as correct. Learned counsel pointed out that the Legislature left the definition of "assessee" unchanged and even the charging section (Section 3) only referred to an individual as a unit and not the individual together with his or her spouse and minor children as a unit. It was therefore submitted that the contention advanced on behalf of the Revenue that the amendments made in 1958 were for the purpose of making the assessee together with his or her spouse and minor child as the unit for assessment of tax could not be accepted and the interpretation put by the Tribunal on Section 2(g)(i) was not warranted. Learned counsel further urged that, as is obvious from the second part of Clause (ii) of Section 4, that expenditure incurred by the dependants is to be included in computing the expenditure of the individual which comes from or out of any income or property transferred, directly or indirectly, to the dependant by the assessee. In other words, under the Act all expenditure incurred by the individual out of his own resources including the expenditure incurred by him on his dependants together with the expenditure incurred by the dependants out of sources made available to them by the individual is made liable to tax and nothing more; the expenditure incurred by a dependant out of his or her or its

own property cannot be included in computing the expenditure of an assessee. It was said that the reading of the Tribunal of the definition of "dependant" did not in any way alter the construction sought to be put by him on Section 4.

6. Shri Adhikari, learned counsel appearing for the Revenue, commended to us for acceptance the interpretation put on the definition of "dependant" by the Tribunal and contended that the latter part of Clause (ii) of Section 4 applied only to the expenditure incurred by the dependants of the Hindu undivided family and not to the expenditure incurred by dependants of an individual, and therefore the expenditure incurred by a dependant from whatever source would be included in the expenditure of the individual assessee.

7. We do not find ourselves able to accept the construction put by the Tribunal on Section 2(g)(i). The first part of the definition of the word "dependant" confines the natural meaning of the word "dependant" to the spouse or minor child of the individual assessee. By the second part of the definition "any person wholly or mainly dependant on the assessee for support and maintenance" is also regarded as a dependant of the individual assessee. There is no justification for holding that even if the assessee's spouse or minor child is not wholly or mainly dependant on him or her for support and maintenance, still the spouse or the minor child would be a "dependant" within the meaning of the definition. The statement in the definition that dependant "includes any person wholly or mainly dependant on the assessee for a support and maintenance" does not in any way carry the implication that the term "dependant" does not retain its ordinary meaning when the term is defined to mean the spouse or minor child of the individual assessee. In coming to the conclusion that a spouse or minor child not really dependant on the assessee falls within the definition of "dependant" as given in Section 2(g)(i), the Tribunal has attached much weight to the fact that after the words "minor child" there is a comma and then follows the expression "and includes any person wholly or mainly dependant on the assessee for support and maintenance". The Tribunal thought that this comma indicated that the words "wholly or mainly dependant on the assessee for support and maintenance" did not in any way relate to the words "his or her spouse or minor child." Now, it is well settled that punctuation is not part of the statute and cannot, therefore, be regarded as a determining factor in construing the statute. This proposition has been laid down by the Privy Council in the *Maharani of Burdwan v. Krishna Kamini Dasi* (1887) ILR 14 Cal 365. Following this decision of the Privy Council it has been held by many High Courts that punctuation not being a part of the statute to be construed is not a determining factor and the Courts should not take them into consideration in interpreting statutes. (See *Edward Caston v. L.H. Caston*, (1900) ILR 22 All 270, *Niaz Ahmad Khan and Another Vs. Parsottam Chandra and Another*, *Mani Lall Singh v. Trustees for the Improvement of Calcutta* ILR 45 Cal 343 : AIR 1919 Cal 551 *Indian Cotton Co. Ltd. v. Hari Poonjoo*, AIR 1937 Bom 39 and (1944) 12 ITR 393. In the case of (1944) 12 ITR 393 Munir J. observed:--

"In the interpretation of statutes punctuation, not being a part of the statute to be construed, is not the determining factor and if the provision as punctuated leads to an absurd result or conflicts with some other provision of the statute which is unambiguous and free from doubt, the punctuation must yield to an interpretation that is reasonable and makes it consistent with the other provisions of the Act."

As the unit of assessment is the individual and not the individual together with his or her spouse and the minor children, it is easy to see that the construction put by the Tribunal, relying on the placing of comma after the words "minor child" in section 2(g)(i), leads to the absurd result of making the expenditure incurred by the husband and the wife separately from their independent resources subject to double taxation, once with the husband as the assessee and the wife as the dependant and another time with the wife as the assessee and the husband as the dependant. Such a result is clearly not contemplated by the Act. In our judgment, it is only that spouse or minor child who is wholly or mainly dependant on the assessee for support and maintenance that falls within the definition of the term "dependant" given in Section 2(g)(i).

8. Now, u/s 3 of the Act expenditure incurred by an individual assessee in the previous year is liable to tax at the specified rate. If the individual has a spouse or minor children who are wholly or mainly dependant on him for support and maintenance, then the expenditure incurred by the assessee on their account would necessarily be included in his expenditure. But if the spouse or a minor child has independent source of income and is in no way dependent on the assessee for support and maintenance then the expenditure incurred by the spouse or the minor child out of their independent income cannot by any stretch of reasoning be regarded as expenditure incurred by the assessee. What Section 4(ii) of the Act does is to prevent the evasion of expenditure tax by the assessee by adopting the device of transferring any income or property to the dependants and then incurring expenditure out of the income or property so transferred.

9. Section 4(ii) provides that where the assessee is an individual or a Hindu undivided family, any expenditure incurred from or out of any income or property transferred directly or indirectly to the dependant by the assessee shall be included in computing the expenditure of the assessee liable to tax. The expression "any expenditure incurred by any dependant from or out of any income or property transferred directly or indirectly to the dependant by the assessee" occurring in Section 4(ii) applies not only when the assessee is a Hindu undivided family but also when the assessee is an individual. It is noteworthy that Section 4(ii) concludes with the words "by the assessee" and not with the words "Hindu undivided family". If it was intended that where the assessee is an individual, any expenditure incurred by the dependant of the assessee, no matter whether from or out of any income or property transferred to the dependant by the individual assessee or from or out of the dependant's own independent income or property, should be included in computing the expenditure of the

individual assessee and that in the case of a Hindu undivided family only the expenditure incurred by the dependant from or out of any income or property transferred to the dependant by the assessee should be included, then while referring to the transfer of income or property it would have been provided "any income or property transferred directly or indirectly to the dependant by the Hindu undivided family" The use of the general word "assessee" for describing the transferor of income or property shows that the latter part of Section 4(ii) applies equally to both where the assessee is an individual and where the assessee is a Hindu undivided family.

10. Again, there is no valid reason for making a distinction between an individual assessee and a Hindu undivided family assessee so as to include in the case of an individual assessee the expenditure incurred by the dependant no matter whether from or out of any income or property given to him by the assessee or from or out of his own income and to include only the expenditure by the dependant out of the "transferred" property or income in the computation of expenditure of a Hindu undivided family assessee. The object with which the Act was enacted was clearly to curb expenditure and check inflation. This being the object, such a classification cannot be supported by saying that expenditure incurred by any dependant of the individual assessee promotes inflation whereas any expenditure incurred by any dependant of the Hindu undivided family does not. It is thus clear that the construction put by the Tribunal on Section 4(ii) is not in consonance with Article 14 of the Constitution. It must, therefore, be avoided, when it is plainly avoidable on the language of Section 4(ii) reinforced by the construction put by us on the definition of "dependant" given in Section 2(g) of the Act and on the entire scheme of taxability of expenditure. In our judgment, u/s 4(ii) even in the case of dependants of an individual assessee, the expenditure incurred by them can be assessed in the hands of the individual assessee only if the expenditure is incurred from or out of any income or property transferred directly or indirectly to the dependants by the assessee.

11. On behalf of the Revenue, reliance was placed on the decision of the Andhra Pradesh High Court in His Highness Prince Azam Jah Vs. Expenditure Tax Officer Hyderabad, where a contrary view has been taken. In that case after taking into consideration the Budget speech of the Finance Minister for the year 1959-60 as also the Statement of Objects and Reasons attached to the Finance Bill, it was held that the object of the amendments referred to earlier made in the Act was to make the individual together with his or her spouse and the minor child a unit of assessment and further that there was good reason for making a distinction between an individual and a Hindu undivided family for the purpose of Section 4(ii) of the Act. It is well settled that the Statement of Objects and Reasons attached to a Bill is to be excluded while construing the terms of a statute and that the speeches made by Members of Parliament are not admissible as extrinsic aids to the interpretation of statutory provisions. (See *Express Newspapers (Private) Ltd. and Another Vs. The Union of India (UOI) and Others*, and *Aswini Kumar Ghosh and Another Vs. Arabinda Bose and Another*, . In *State*

of West Bengal Vs. Union of India, the Supreme Court has said that a statute as passed by Parliament is the expression of collective intention of the Legislature as a whole and any statement made by a Member albeit a Minister of the intentions and objects of the Act cannot be used to cut down the generality of the words used in the statute. In the Andhra Pradesh Case the learned Judge did not notice the significance of the use of the word "assessee" with which Section 4(ii) concluded. With great respect to the learned Judge, we do not find ourselves in agreement with the view taken by him that after the amendment of 1959 the term "dependant" includes in the case of an individual his wife or husband and the minor child even if they were not dependant on him or her and with the construction he has put on Section 4(ii) of the Act.

12. For the aforesaid reasons, our answer to the question referred to us is in the negative. The reference is answered accordingly. The assessee shall get costs of this reference from the Commissioner of Expenditure-Tax, M.P. and Nagpur. Hearing fee Rs. 200.