
(1970) 08 AHC CK 0018
In the Allahabad High Court
Case No : Income-tax Reference No. 252 of 1964

Rajendra Lal

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 20-08-1970

Acts Referred:

Income Tax Act, 1922 — Section 16(3)

Citation : (1970) 78 ITR 803

Hon'ble Judges : V.G. Oak, C.J;H.N. Seth, J

Bench : Division Bench

Advocate : S.B.L. Gupta and Ashok Gupta, for the Appellant; R.R. Misra, for the Respondent

Judgement

V.G. Oak C.J.

1. This is a reference u/s 66 of the Indian Income Tax Act, 1922. Rajendra Lal is the assessee. He has been assessed as an individual. He is the son of Sir Shadi Lal. The assessment year is 1961-62. The relevant accounting period ended on March 31, 1961.

2. Certain shares worth Rs. 2,20,000 belonged to the joint Hindu family consisting of Sir Shadi Lal and his sons. There was a partial partition in the family on August 18, 1959. The shares worth Rs. 2,20,000 were divided among the different members of the family as follows :

Rs.

Sri Rajendra Lal, son of Shadi Lal

10,000

Smt. Sushila Devi, wife of Rajendra Lal

1,00,000

Narendra Lal, son of Shadi Lal

10,000

Smt. Kamla Devi, wife of Narendra Lal

10,000

Km. Rupa Rani (minor)

45,000

Km. Manjula Rani (daughter)

45,000

3. At the time of assessment for 1961-62, the Income Tax Officer noticed certain income received by Smt. Sushila Devi towards interest or dividend on Rs. 1,00,000, The Income Tax Officer included this income in the assessment of Rajendra Lal on the footing that the sum of Rs. 1,00,000 had been transferred in 1959 by Rajendra Lal in favour of his wife, Smt. Sushila Devi. Her income was included in Rajendra Lal's assessment u/s 16 (3)(a) of the Act. This decision was upheld in appeal by the Appellate Assistant Commissioner and by the Appellate Tribunal. At the request of the assessee, the Tribunal has referred the following question of law to this court.

""Whether, in the facts and circumstances of the case, the provisions of Section 16(3)(a) are applicable ?

The question for consideration is whether the present case falls under Sub-section (3) of Section 16 of the Act. Sub-section (3) of Section 16 of the Act stated;

"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 a 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 ;...."

4. The question for consideration is whether the present case is covered by Sub-clause (iii) of Clause (a) of sub-section (3) of Section 16. It is true that Rajendra Lal did not make a transfer in favour of his wife directly. But Sub-clause (iii) covers cases of indirect transfer also. We have, therefore, to consider whether there is a case of indirect transfer of assets by Rajendra Lal in favour of his wife.

5. In 1959 Rajendra Lal and Narendra Lal were, the two coparceners, who were entitled to receive shares in the property worth Rs. 2,20,000. Each of the two brothers was entitled to a share worth Rs. 1,10,000. But the two brothers decided to allot certain shares to other members of the family. According to that

plan, a sum of Rs, 1,00,000 was allotted to Smt. Sushila Devi from the total share of Rs. 1,10,000, to which Rajendra Lal was entitled under the partition. This was an indirect transfer by Rajendra Lal in favour of his wife of assets worth Rs. 1,00,000.

6. The main contention of the learned counsel for the assessee is that the sum of Rs. 1,10,000 did not belong to Rajendra Lal in his individual capacity, but as karta of the smaller joint family consisting of himself and his wife. Reliance was placed upon a decision of this court in COMMISSIONER OF Income Tax, U.P. Vs. BENI PRASAD TANDON., . It was held by this court that a share of family property received by the member of a Hindu undivided family who has no male issue but only a wife and daughters on partition of the undivided family should be treated as property belonging to the Hindu undivided family consisting of the assessee, his wife and minor daughters, and not property exclusively belonging to the assessee.

7. Similarly, in N.V. Narendranath Vs. Commissioner of Wealth-tax, Andhra Pradesh, it was held by the Supreme Court that, when a coparcener having a wife and two minor daughters, and no son, receives his share of joint family properties on partition, such property in the hands of the coparceners belong to the Hindu undivided family of himself, his wife and minor daughters, and cannot be assessed as his individual property for the purposes of wealth- tax.

8. These decisions do not directly assist the assessee, because in the present case we are not concerned with the question whether the sum of Rs. 1,00,000 was assessable in Rajenda Lal's hands as an individual or as representative of the undivided Hindu family. The question which directly arises for consideration is whether there was a transfer by the husband-in favour of the wife as contemplated by Section 16 (3) a of the Act.

9. The learned counsel suggested, that at the time of the partition in 1959, Smt. Sushila Devi was entitled to a certain share in the joint family property. In Malta's Hindu Law, thirteenth edition, it is stated at page 365 u/s 315 that;

"A wife cannot herself demand a partition, but if a partition does take place between her husband and his sons, she is entitled to receive a share equal to that of a son and to hold and enjoy that share separately even from her husband."

10. That passage does not support the contention that a coparcener's wife is entitled to a separate share in the joint family property even if that coparcener has no son. This is not a case where Smt. Sushila Devi was entitled to a share in the property as a matter of right. It was as a result of a special arrangement in the family that a share of Rs. 1,00,000 was allotted to her.

11. There was some discussion whether there was any transfer at all within the meaning of Sub-clause (iii) of Clause (a) of Section 16(3). But the point was not seriously pressed. This is a clear case of transfer in favour of Smt. Sushila Devi.

12. It was, however, contended that the transferor was not Rajendra Lal but the undivided Hindu family. It is true that originally the entire property belonged to the undivided Hindu family consisting of Sir Shadi Lal and his sons. But it is not correct to say that the sum of Rs. 1,10,000 was transferred by the joint family. This sum was transferred by Rajendra Lal alone from the share to which he was entitled under the partition. This is a case of a transfer by a husband in favour of the wife.

13. The learned counsel further contended that, since the property received by Rajendra Lal upon partition had the character of joint family property, he was not competent to transfer it in favour of his wife. This contention does not appear to be correct. We must bear in mind that Rajendra Lal was the sole coparcener in the joint family consisting of himself and his wife. In Narendra Nath's case referred to above, their Lordships of the Supreme Court observed at page 197, that in the absence of male issue the dividing coparcener may be properly described in a sense as the owner of the property. It, therefore, appears that Rajendra Lal was fully competent to allot to his wife a share worth Rs. 1,00,000 from the total share of Rs. 1,10,000 to which he was entitled under the partition.

14. Section 64 of the Indian Income Tax Act, 1961, corresponds to Section 16, of the Indian Income Tax Act, 1922. In the Law and Practice of Income Tax by Kanga and Palkhivala, sixth edition, volume 1, the learned authors have observed at page 530 that Section 64 of the 1961 Act applies only to the computation of the total income of any individual. The section does not cover the case of the karta of a joint family gifting coparcenary property to his wife or minor son.

15. The learned authors have relied upon two decisions of the Allahabad High Court and the Patna High Court. The decision of the Allahabad; High Court is L. HARDAY NARAIN Vs. COMMISSIONER OF Income Tax, U.P., . In that case the assessee was a Hindu undivided family. It was, therefore, held that Section 16(3) (a)(iv) of the 1922 Act was not applicable. In the present case the assessee is an individual. This important circumstance distinguishes the present case from Hirday Narain's case.

16. In MAHARAJ KUMAR KAMAL SINGH Vs. COMMISSIONER OF Income Tax, BIHAR AND ORISSA., it was held by the Patna High Court that where income from assets transferred to a wife are sought to be included in the total income of the husband under the provisions of Section 16(3), it would necessarily mean that the transferor-husband was himself the owner of the assets before they were transferred. Since the properties comprised in an impartible estate belong to the Hindu undivided family of which the holder of the asset is a member, income from house property transferred by the holder of an impartible estate to his wife cannot be included in his total income u/s 16(3)(a)(iii) of the Indian Income Tax Act, 1922.

17. We have explained above that Rajendra Lal was fully competent to allot a share worth Rs. 1,00,000 to his wife from the total share of Rs. 1,10,000 to

which he was entitled. There is, therefore, no difficulty in bringing the instant case within the four corners of Sub-clause (iii) of Clause (a) of Sub-section (3) of Section 16 of the 1922 Act.

18. Another condition mentioned in Clause (iii) is that the transfer should be otherwise than for adequate consideration. We have, therefore, to consider whether the transfer in question by Rajendra Lal in favour of his wife was for adequate consideration. Details of the relevant entries relating to the partition have been quoted in the statement of the case. Against the share of Rs. 1,00,000 allotted to Smt. Sushila Devi in the partition, there was a note that this sum was the capitalised consideration for her maintenance finally. If the sum of Rs. 1,00,000 represented a genuine consideration towards Smt. Sushila Devi's claim for maintenance, it could probably be said that the consideration was inadequate. But there is no indication on the record that relations between Rajendra Lal and his wife were strained in 1959. There is no suggestion that she had filed any suit for maintenance against her husband. There are similar notes against the shares allotted to Smt. Kamla Devi, Kumari Manjula Rani and Kumari Rupa Rani, minor. It is impassible to accept the suggestion that this was a genuine settlement of claims of the women and the children. Thus, the entries relating to maintenance appear to be fictitious. It must, therefore, be held that the transfer in question was otherwise than for adequate consideration.

19. The sum of Rs. 1,00,000 was transferred by Rajendra Lal in favour of his wife indirectly at the time of the partition in 1959. There was no adequate consideration to support the transfer. The assessee is an individual. Thus, all the conditions set forth in Sub-clause (iii) of Clause (a) of Sub-section (3) of Section 16 of the Act are fulfilled in the instant case. The Tribunal was right in holding that the case is covered by section 16(3)(a) of the Act.

20. We answer the question referred to this court in the affirmative, and against the assessee. The assessee shall pay the Commissioner of Income Tax, U.P., Rs. 200 as costs of this reference.