
(1951) 03 BOM CK 0011
In the Bombay High Court
Case No : Income-tax Ref. No. 30 of 1950

Ratilal Nathalal

APPELLANT

Vs

Commissioner of Bombay

RESPONDENT

Date of Decision : 29-03-1951

Acts Referred:

Income Tax Act, 1922 — Section 16(1)

Citation : AIR 1952 Bom 201 : (1951) 53 BOMLR 595 : (1954) 25 ITR 426

Hon'ble Judges : Chagla, C.J.;Tendolkar, J

Bench : Division Bench

Advocate : Jamshedji Kanga and M.M. Javeri, for the Appellant; C.K. Daphtary, General and G.N. Joshi, for the Respondent

Judgement

Chagla, C.J.

[1] A rather interesting question, arises on this reference as to the correct interpretation of Section 16(l)(c) and provisos 1 and 2 to that clause. There was a, joint and undivided Hindu family consisting of one Ramjibhai, his son Ratilal, his daughter Pushpa and his wife Kamlawanti. On 27th July 1933, a trust-deed was executed with regard to a property belonging to the joint family which was executed by Ramjibhai and Ratilal. The effect of this trust deed, was that the income of this property was to be enjoyed by Ramjibhai during his lifetime; after his death, the income was to be enjoyed by Ratilal and certain right of residence was given to Kamlawanti. After the death of Ratilal the income was to be enjoyed by his widow and the sons of Ratilal who were in existence at the time of the death of the survivor of Ramjibhai and Ratilal. There was a power of revocation given, to Ramjibhai. Ramjibhai died on 23-7-1940 After his death Ratilal enjoyed the income of his property. The joint family continues to enjoy the same status and the assessee before us is this joint Hindu family, and the question that arises is whether the in come received by Ratilal out of this property can be considered to be the income-of the joint family for the purposes of taxation:

In other words whether the family is liable to pay tax on the income of the

property which is enjoyed by Ratilal under the provisions of the trust-deed which is referred to above.

[2] Now Section 16 (1) (c) provides to the extent it is material for the purposes of this reference that all income arising to any person by virtue of a revocable transfer of assets shall be deemed to be the income of the transferor. The power of revocation which Ramjibhai had and which might have possibly attracted the application of this clause came to an end on his death on 23.7.1940. Therefore, when we are dealing with the assessment years 1942-43, 1943-44, 1944-45 and 1945-46 there is no power of revocation vested in Katilal or any one else under the that deed. Therefore the income which Katilal receives is not by virtue of a revocable transfer. Then we come to the first proviso which provides that for the purposes of this clause a settlement, disposition or transfer shall be deemed to be revocable if it contains any provisions for the retransfer directly or indirectly of the income or assets to the settlor. Therefore, the proviso deals with a case where though the transfer is not revocable it is deemed to be revocable by reason of this proviso and every transfer is deemed to be revocable if it contains any provision for the retransfer of the income or assets to the settlor. Then we come to the second proviso which provides inter alia that the expression "settlor or disponent" in relation to a settlement or disposition shall include any person by whom the settlement or disposition was made. Therefore the effect of this second proviso is that although a settlement might be made by two or three persons, if there is a provision for retransfer directly or indirectly of the income or assets to any one of the settlors, the first proviso is satisfied and it is not necessary that all the settlors making the transfer should obtain a benefit under the deed of transfer; it is sufficient if any one of them receives any benefit. In view of this position in law, we must consider what is the true position under the deed of trust which was executed on 27-7-1933.

[3] The first question that arises is as to who is the settlor or transferor of this trust deed. It is contended by Sir Jamshedji that it is not the undivided Hindu family which is the settlor at all, and as we are dealing with the assessment of the Joint family, no further question arises u/s 16 (1) (e). Sir Jamshedji Bays that this transfer, as the recitals point out, is by the two male members of the joint family, viz., Ramjibhai and Eatilal, and he rightly says that in Hindu law there is a clear distinction between coparceners and members of the joint family. He says that the joint family consisted not only of Ramjibhai and Ratilal but also of their respective wives and a daughter, Pushpa, whereas the transfer is only by the two male members of the joint family, who were the sole coparceners. Now in Hindu law it is open to all the adult coparceners to alienate any or all the property belonging to the joint family, and we must look upon this trust deed as an alienation by the only two male members of the joint family of a certain property belonging to the family. The recitals make it clear that these two coparceners were acting on behalf of the family and in law the only way that a joint family can alienate property belonging to the family would be through their male coparceners. If Sir Jamshedji's contention were correct a joint Hindu family

could never transfer or all any property. That would be obviously an untenable proposition. The correct proposition of law is that when a joint family wants to act and alienate its property, it is entitled under the Hindu law to act brought all its coparceners who are entitled to alienate property belonging to the joint family. Therefore, in this case, there can be no doubt that the settlor or the transferor is the joint Hindu family and not merely the two members of that family.

[4] However, the difficulty still remains in the way of the Advocate -General who appears on behalf of the Commissioner, and the difficulty is this. Can it be said on a perusal of the provisions of this trust deed that there is a provision for retransfer directly or indirectly of the income or assets to the settlor ? Now the Advocate-General contends that the settlement having been made by Ramjibhai and Ratilal there is a provision for re transfer of the income to one of the settlors, via. Ratilal, and inasmuch as there is such a provision by reason of the second proviso to which reference has been made earlier, there is in law a retransfer to the settlor. Now the settlement of this property was made by Ramjibhai and Ratilal not in their individual capacity but as members of the joint family and as representing that family. It is clear on this trust deed that the income which Ratilal receives after the death of Ramjibhai is received by him act on behalf of the joint family but in his own individual Capacity. Ratilal alienated the property in one capacity and he receives the benefit under the trust deed in an altogether different capacity. Therefore it cannot be stated that this trust deed in any way benefits the joint family. The Advocate General has attempted to argue that looking at the trust deed as a whole it is really a device to benefit the joint family. That again is not so, because in the income which accrues to Katilal his sons would have no interest by birth. Daughters of Ratilal also would have no interest either in the income or in the corpus of the property. Ramjibhai's daughter Pushpa has also no interest in the income or the corpus of the property. It may also be noticed that while a joint family in Hindu law can go on existing in perpetuity by this trust deed even grandsons of Ramjibhai who were not in existence at the time of the death of the survivor of Ramjibhai and Ratilal would have no interest in tibia property by birth at all. Therefore, looking at the provisions of this trust deed as a whole it is clear that the intention of the settlors by executing this trust deed was not to benefit the joint family but only to benefit one or two members of the family but on their own behalf and in their individual capacity. Therefore, although it is true that there is a provision with regard to a retransfer of income to one of the persons executing the trust deed that provision is not in favour of the settlor in the same capacity in which he alienated the-property but in his favour in an altogether different capacity.

[5] It is pointed out by the Advocate General that if we were to put such a construction on the second proviso to Section 16 (I) (e), it may easily result in the coparceners of joint Hindu families executing similar trust deeds in order to avoid taxation. But when we consider the object underlying Section 16 (I) (c) we do not think that we should be deterred from putting this interpretation by

reason of the consequences that may follow from it. The clear object underlying Section 16 (I) (c) is that assesses should not be allowed to avoid taxation by entering into colourable trust deeds by which in reality the income remains their own although in name or on paper the income may be shown to be some one else's. But if our interpretation of this trust deed is correct, then the property does not remain the property of the joint family. By this trust deed Ramjibhai and Ratilal put the trust property out of the possession of the joint family and it ceased to be the property of the joint family and the income derived from that property which went to Ratilal did not go to him as a member of the family but in his individual capacity and other members of that family ceased to have any interest in that property as members of the joint family. Frankly I must confess the interpretation of this section is not free from doubt. Perhaps it is possible to take the view for which the Advocate General contends, in which case it may be unnecessary to consider in what capacity any one of the settlors receives the benefit contemplated by the first proviso, but if the interpretation of this proviso is not free from doubt, the benefit of that doubt must go to the subject rather than to the taxing authority. The result therefore is that we hold that the income in question is not the income of the joint Hindu family and the question referred to us will be answered in the negative. The Commissioner to pay the costs of the reference.

[6] Answer accordingly.