
(1979) 01 PAT CK 0003

In the Patna High Court

Case No : Taxation Case No's. 23 to 25 of 1972

Sayed Sadat Abdul Masud

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 17-01-1979

Acts Referred:

Income Tax Act, 1961 — Section 256(1)

Citation : (1979) 9 CTR 316 : (1979) 118 ITR 939

Hon'ble Judges : Shiveshwar Prasad Sinha, J; S. Sarwar Ali, J

Bench : Division Bench

Advocate : S.N. Jha, K.N. Jain, R.W. Banerjee and Sardanand Jha, for the Appellant; B.P. Rajgarhia and S.K. Sharma, for the Respondent

Judgement

S.P. Sinha, J.—These, references u/s 256(1) of the I.T. Act are in respect of assessment years 1959-60, 1960-61 and 1961-62. The questions of law referred by the Tribunal for the opinion of this court as also the facts on which such questions have arisen being common for all the three assessment years, this judgment will govern all the three references.

2. The questions of law are:

"(1) Whether the perpetual annuity received as compensation from the State Government is nothing but income ?"

3. If the answer to the above question is in the affirmative, then-

"(2) Whether, on the facts and circumstances of the case, inclusion of 15% of the net income from the trust properties as the assessee's income by way of remuneration was justified ?"

4. The two questions, as the facts indicate, do not relate to the same assessee, inasmuch as question No. 1 refers to the income arising to the trust and question No. 2 is concerned with the trustee. For the purpose of income tax each assessee is a unit by itself and consequently the reference of the two questions together

creates some confusion. Since, however, all the facts necessary for answering the two questions are stated in the statement of the case, it may not be proper to refuse to answer either of the two questions.

5. The relevant facts are that the late Maharajadhiraja was the holder of the impartible estate, generally called Darbhanga Rai. The estate was an impartible estate. The Maharaja was assessed to Income Tax in the status of "individual" for the relevant assessment years. The Maharaja created a public religious trust under a deed dated 16th March, 1949, known as the "Kameshwar Religious Trust, Darbhanga" in favour of certain deities, endowing properties having gross total income of Rs. 3,76,773-15-6, making himself the sole trustee. Paragraph 7 of the trust deed was to the following effect :

"The declarant declares that henceforth he holds and will hold the properties detailed at the foot hereof in schedule "A" in Trust for religious purposes of maintaining the religious institutions more fully described in schedule "B" annexed hereto."

6. In schedule "A", besides describing the properties given in trust, the gross income of each of the properties were also worked out which came to the aforesaid figure of Rs. 3,76,773-15-6. After making deductions towards Government revenue and cess, collection charges and agricultural Income Tax, the net estimated income worked out to Rs. 1,81,717. A sum of Rs. 10,208 was added as income from rental from khas cultivation of lands which were described in a separate schedule. Thus, the total net income after adding the rental from khas cultivation of lands worked out to Rs. 1,91,925. The most important declaration with which these references are concerned, as mentioned in schedule "A", is to the following effect :

"Deduct trustee's remuneration at the rate of

15 p.c. for which trust is declared Rs. 28,788-12-0".

7. Question No. 1 referred for the opinion of this court is in relation to the income of the trust and question No. 2 is in relation to the remuneration of the trustee at 15% of the net income. For the assessment year 1959-60, the net income of the trust has been held to be Rs. 3,36,942 and the assessee's remuneration at 15% has been worked out to Rs. 50,541. For the assessment year 1960-61, the trust's net income has been worked out to Rs. 2,65,813 and the assessee's remuneration has been worked out to Rs. 39,871. For the assessment year 1961-62, the trust's net income has been worked out to Rs. 1,74,952 and the assessee's remuneration has been worked out to Rs. 26,242.

8. It may be stated that by virtue of the Bihar Land Reforms Act, 1950, hereinafter referred to as "the Act", the trust properties vested in the State with effect from 3rd November, 1959, and the assessee as the sole trustee received the aforesaid net amounts as income of the trust. Before the ITO, the assessee objected to the inclusion of the remuneration payable to the trustee on two

grounds j firstly, that he had relinquished his right to receive the remuneration by executing a relinquishment deed on 5th October, 1950, and, secondly, that after the vesting of the properties of the trust in the State, the annuity which was paid by the State was only the net income of the trust, which could not admit of further deduction towards trustee's remuneration. The ITO negated both the contentions, relying upon the decision of the Tribunal in the assessee's case for the assessment year 1957-58, in which the Tribunal had held that unless the terms of the trust deed were modified, the remuneration which accrued to the assessee remained available to him. The ITO further observed that since the decision of the Tribunal had been made for the assessment year 1957-58, necessarily, the effect of the Bihar Land Reforms Act on the annuity had been taken into consideration by the Tribunal while passing such order. The assessee failed in his appeals against the assessments before the AAC. The AAC, while disposing of the assessee's contention, relating to the remuneration issue, observed that there was no statutory bar under the Act to the payment of such remuneration to a trustee.

9. The assessee's further appeal to the Tribunal also failed.

10. The Tribunal, while dealing with the appeals, observed that:

".....The Bihar Land Reforms Act is no bar for payment of such remuneration. In fact, it provides for payment of remuneration not exceeding 15% of the net income from, the trust properties. In the circumstances, the inclusion of 15% of the net income from the trust properties as the appellant's income by way of remuneration from trust is, therefore, upheld. "

11. These are the relevant facts on which the aforesaid questions of law have been referred to this court for opinion.

12. On the question as to whether the perpetual annuity received from the State Government was income, it has been urged on behalf of the assessee that the annuity was being paid by way of compensation for the loss of asset, namely, the trust properties, which had been taken away and got vested in the State of Bihar. It was, therefore, a capital payment. In support of this contention reference has been made to a decision of the Supreme Court in the case of *Senairam Doongarmall Vs. Commissioner of Income Tax, Assam*, . This was a case in which, as a result of the requisitioning of the factory and other buildings for defence purposes by the military authorities, the assessee's business in tea got completely stopped. The compensation received, which was calculated on the basis of the out-turn of tea that would have been manufactured by the assessee during the assessment years, was taxed as revenue receipts. The question arose as to whether it could be taxed as a revenue receipt. Their Lordships held that it could not be a revenue receipt, because the payment was not by way of adjustment towards the business receipt but was payment for stoppage of business. Their Lordships observed that (p. 408) :

"Where an assessee does not carry on business at all, the section cannot be

made applicable, and the compensation that he receives cannot bear the character of profits of a business."

13. Relying upon this decision, it has been urged that the payment received each year being a compensation for loss of the assets which yielded the revenue, the annuity cannot be treated as an income.

14. It is difficult to accept this contention. The decision relied upon by learned counsel for the assessee has no application to the facts of the instant case. Here the trust was receiving income out of certain assets which had been endowed to the deities, for whom the trust had been created. The assets have no doubt vested in the State of Bihar, but the income from the assets has continued to flow for the purposes of the trust. It is not a case in which the capital value of the assets is being paid in annual instalments, rather, it is a case in which the income out of the trust properties, which had now vested in the State of Bihar, continued to flow, not in the shape of the instalments paid towards the capital value of the assets, but as income from the assets. Section 24(1) of the Act prescribes the rate of compensation payable to the ex-landlords for the vesting of their rights in the State. Sub-section (3) of Section 24 of the Act prescribes the mode of payment to public religious charitable trusts which are held to be genuine. According to this provision, "the net income or any portion of the net income in respect of any estate or tenure held under the trust has been dedicated exclusively to charitable or religious purposes without any reservation of pecuniary benefit to any individual, the compensation payable in respect of such income or such portion thereof shall, instead of being assessed under Clause (1), be assessed as perpetual annuity equal to such net income or such portion thereof, as the case may be".

15. It obviously means that the income arising from the trust properties shall continue to be paid to the trust, with only this difference that after the vesting of the estate, now it shall be paid by the State. The annuity received shall, therefore, continue to bear the same character as it had when the assets, out of which the income arose, were held in private hands. In other words, the annuity shall continue to bear the character of income. Question No. 1 has, therefore, to be answered in the affirmative, that is to say, that the perpetual annuity received by the trust is nothing but income.

16. Now, so far as question No. 2 is concerned, it relates to the remuneration payable to the assessee as trustee. In regard to this question, learned counsel for the assessee has made two-fold arguments : firstly, it has been submitted that since the assessee's method of accounting for the purpose of this income has been held to be on cash basis, the mere right to receive the income without its actual receipt will not entitle the revenue authorities to bring it to tax. Secondly, the alternative argument is that no income arises to him because (a) he had relinquished his right to receive the same by a deed of relinquishment dated 5th October, 1950, and (b) the annuity received by the trust being the net income of the trust property, it did not admit of a payment of 15% out of the

same as trustee's remuneration.

17. The first part of the argument of the learned counsel for the assessee, namely, that the method of accounting being cash basis, the mere accrual of income did not entitle the Income Tax authorities to bring the remuneration to tax, though in principle correct, cannot be answered in this reference, because such a stand has been taken for the first time before this court. Moreover, the question, as to whether the remuneration had been actually received or not, is a question of fact, which has neither been pleaded by the assessee nor has been dealt with by the revenue authorities or the Tribunal, The first part of the argument made on behalf of the assessee cannot, therefore, be considered by this court.

18. Coming now to the next part of the argument, namely, that the right to receive had been relinquished under a deed of relinquishment dated 5th October, 1950, it will be proper to quote the relevant portion of the said relinquishment deed. Such portions read as under :

" ...I have constituted myself as the Trustee in respect of these Trusts. In the Deed of Trust Rs. 28,788-12-0 has been provided for the Trustee's remuneration as allowed under the Bihar Land Reforms Act. In the actual working of the Trusts, however, it appears that after meeting the cost of management and other charges the balance left is not sufficient for Pooja Path, Bhog Rag of the Deities and for proper repairs to the Temples. As I am anxious that these Deities and the Temples being the old institutions in the Raj should be properly maintained I desire that the amount of Rs. 28,788-12-0 reserved in the Trust as my remuneration should be distributed proportionately amongst the Deities which are beneficiaries of the Trusts so that their Pooja Path and Bhog Rag may be properly made and the Temples properly maintained which is the sole object of this Trust."

19. According to learned counsel for the assessee, properly read, these narrations clearly meant that the assessee was relinquishing his right to receive the trustee's remuneration. According to him, therefore, it was a case in which the income ceased to be his income at its very inception.

20. Had there been an ambiguity in the idea expressed under the said deed of relinquishment, the benefit of the ambiguity should have gone to the assessee. It is true that the trustee has expressed his desire that the amount payable to him as remuneration should go towards the Pooja Path and Bhog Rag of the deities, but the fact remains that he still treats the said amount as his remuneration which should go from him to the deities. In other words, the idea expressed in the deed of relinquishment clearly is that the remuneration payable to the assessee shall, instead of being paid to him, be used in a particular manner as per the directions contained in the said deed. It then clearly becomes a mere diversion of the income after it accrued to the assessee.

21. In my opinion, therefore, upon the terms of the deed of relinquishment, the

arguments made on behalf of the assessee, that he had divested himself of the income at its very source, does not follow.

22. Similarly, the argument that since the annuity which was being received from the State was the net amount, the question of payment of 15% out of it to the trustee, did not arise, is also not correct. The Bihar Land Reforms Act does not bar such payment out of the annuity paid. The Expln. to Sub-section (3) of Section 24 of the Act is clear in this respect. It says that :

"The salary, remuneration or any allowance payable to a mutawalli in the case of a waqf or to a trustee in any other case including a shebait of a Hindu religious trust not exceeding fifteen per centum of the net income dedicated, exclusively to charitable or religious purposes shall not be deemed to be a reservation of pecuniary benefit within the meaning of this clause."

23. In other words, out of the perpetual annuity payable to a public religious trust a sum equal to 15% of the net income dedicated, could be paid to a shebait or a trustee.

24. Thus, the second part of the argument made on behalf of the assessee is also not valid.

25. In the result, both the questions are answered in the affirmative and against the assessee. There will be no order as to costs.

Sarwar Ali, J.

26. I agree.