

(1943) 09 BOM CK 0023

In the Bombay High Court

Case No : Income-tax References No"s. 8 and 9 of 1943

SETH CHIMANLAL LALBHAI, IN RE.

Date of Decision : 27-09-1943

Acts Referred:

Income Tax Act, 1961 — Section 16(3)

Citation : (1944) 12 ITR 199

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

Bench : Full Bench

Judgement

income tax Reference No. 8.

CHAGLA, J. - This reference raises the question whether the sum of Rs. 15,684 representing the share of Ashokbhai in the profits of the firm of Messrs. Narottam Lalbhai and Company could in law be included in the total income of the assessee for the purposes of the assessment of the assessee for the year 1938-39.

The facts are that Ashokbhai attained majority on the 24th of January 1939. Prior to that he was admitted to the benefits of the partnership. The assessment of the firm which was for the year 1938-39 was completed on the 4th of July 1938. The assessment of the assessee was completed on the 2nd of February 1939 and the assessment of Ashokbhai was also completed on the 2nd of February 1939. The previous year, as far as the assessment of the firm is concerned, was the calendar year 1937, and the previous year as far as the assessment of the assessee is concerned ended on the 3rd of November 1937. The assessee contended that inasmuch as Ashokbhai had attained majority before his assessment had been completed, it was not competent to the Income Tax Officer to include the share of the profits of Ashokbhai in his own assessment and that the share of the profits going to Ashokbhai should be included in his own separate assessment.

The question for determination really turns on the construction of two sections of the Indian Income Tax Act, 1922 : (1) Section 16, sub-section (3); and (2) Section 26, sub-section (1). The relevant portion of Section 16, sub-section (3)

provides that in computing the total income of any individual for the purpose of assessment, there shall be included so much of the income of a minor child as arises directly or indirectly from the admission of the minor to the benefits of partnership in a firm of which such individual is a partner. Now it cannot be disputed that for the purpose of computing the total income the relevant period is the previous year, and the previous year of the assessee was, as I have pointed out, the year ending the 3rd of November 1937, and it is not disputed that Ashokbhai was a minor during the whole of this previous year, and he was only entitled to the benefits of the partnership. Therefore, as far as Section 16, sub-section (3) is concerned, the profits coming the share of Ashokbhai had to be included in the assessment of the assessee. But Sir Jamshedji Kanga for the assessee relies on the provisions of Section 26, sub-section (1). This sub-section provides that where, at the time of making an assessment u/s 23, it is found that a change has occurred in the constitution of a firm or that a firm has been newly constituted, the assessment of the firm and the members thereof subject to the provisions of the Act, shall be made as if the firm had been constituted throughout the previous year at the time of making the assessment and each member had received a share of the profits of the year at the time of making the assessment.

Now shortly Sir Jamshedji Kanga's contention is this. Ashokbhai attained majority on the 24th of January 1939, and, therefore, there was a change in the constitution of the firm and that change had taken place at the time of making the assessment which was the 2nd of February 1939 with regard to the assessment both of the assessee and of Ashokbhai. In putting forward this argument Sir Jamshedji Kanga overlooks the important fact that the assessment of the firm was made on the 4th of July 1938. That was before Ashokbhai attained majority and before there was any change in the constitution of the firm. Therefore, when the firm was assessed, the constitution of the firm was the same as it was during the time when Ashokbhai was a minor and he was only entitled to the benefits of the partnership. It is impossible to hold that although at the time of the assessment of the firm the constitution of the firm was a particular constitution, at the time the assessment of the assessee and Ashokbhai was made, the constitution was a different one. I think that for the purpose of Section 26, sub-section (1) the material time is the time when the assessment of the firm was completed; and in this case, as I have pointed out, that was prior to the change in the constitution of the firm brought about by Ashokbhai attaining majority.

This really disposes of all the questions raised by this particular reference, and, therefore I would propose that the answers to the questions raised in the reference should be as follows :-

Question No. 1 - In the affirmative.

Question No. 2 - In the affirmative.

Question No. 3 - In the affirmative.

income tax Reference No. 9.

As regards Reference No. 9, the same question arises with regard to the assessment for the assessment year 1939-40, and the question presents much less difficulty because, as far as this reference is concerned, the assessment is governed by the amended Act, and Sir Jamshedji Kanga has conceded that under the amended statute he cannot avail himself of the provisions of the amended Section 26, sub-section (1) Therefore as far as Reference No. 9 is concerned, all that we have got to consider is the true construction of sub-section (3) of Section 16; and, as I have already pointed out in dealing with Reference No. 8, there can be no question that, as far as Section 16, sub-section (3), is concerned, the relevant period for computing the total income of any individual is the previous year ending the 23rd of October 1938, Ashokbhai was still a minor, he having attained majority, as I have pointed out, on the 24th of January 1939. Therefore, the Income Tax Officer was right in including the amount coming to the share of Ashokbhai in the previous year in the assessment of the assessee.

Therefore, as regards the questions raised by Reference No. 9, the answers would be as follows :-

Question No. 1 - In the affirmative.

Question No. 2 - In the affirmative.

Question No. 3 - In the affirmative.

The assessee must pay the costs of Reference No. 8 and Reference No. 9.

BEAUMONT, C.J. - I agree.

References answered accordingly.