

(1962) 09 CAL CK 0011
In the Calcutta High Court

SRI SRI SRIDHAR JIEW

APPELLANT

Vs

Income Tax OFFICER.Matter

RESPONDENT

Date of Decision : 13-09-1962

Acts Referred:

Income Tax Act, 1922 — Section 34, 41

Citation : (1963) 50 ITR 480

Judgement

The idols of the names of Sri Sri Sridhar Jiew and Sri Sri Radharaman Jiew, represented by their shebait, Pulin Chandra Daw, are the petitioners in this rule. To the said idols were dedicated considerable properties, which are commonly known Shiva Krishna Debuttar. For the assessment year 1952-53, the respondent Income Tax Officer assessed the income arising from the said debuttar estate in the hands of Pulin Chandra Daw, as shebait. The assessment was challenged by the assessee and ultimately the Income Tax Appellate Tribunal, Calcutta Bench "A", held that the legal owner of the debuttar properties was not Pulin Chandra Daw but the idols themselves and that the status of Pulin Chandra Daw was that of a shebait or manager, having no beneficial interest in the said properties. Pulin Chandra Daw was, therefore, held not liable to taxation as owner of the properties.

Thereafter, a notice, said to be u/s 34 of the Indian Income Tax Act and addressed to the petitioners-idols, represented by their shebait above-named, for the assessment year 1952-53, was served upon the said shebait. It was stated in the said notice that the income of the two idols above-named had escaped assessment and the idols were called upon to file a return in accordance with the said notice.

The petitioners challenged the said notice on several grounds but only two were selected at the time of hearing of the rule, namely :

"1. For that the Indian Income Tax Act does not contemplate nor does it provide for assessment of the income of debuttar properties.

2. For that having regard to the specific rule having the force of law that in the case of individuals the Income Tax return has to be signed by the individual himself it should be held that these individuals such as deities who can never sign have been left out of the purview of taxation under the Indian Income Tax Act."

Mr. Jyotish Chandra Pal, learned advocate for the petitioners-idols, invited my attention to the language of section 3 of the Indian Income Tax Act, 1922, which reads as follows :

"3. Where any Central Act enacts that Income Tax shall be charged for any year at any rate or rates, tax at that rate or those rates shall be charged for that year in accordance with, and subject to the provisions of, this Act in respect of the total income of the previous year of every individual, Hindu undivided family, company and local authority, and of every firm and other association of persons or the partners of the firm or the members of the association individually;"

and contended that an idol did not fit in with any of the units of assessment described in section 3 of the Income Tax Act of 1922, and particularly contended that the expression "individual" was not wide enough to embrace the conception of a deity or an idol, which was only a juridical person. He argued that this lacuna in the Income Tax Act of 1922 had to be removed by substituting a new definition for the word "person" in section 2(31) of the Income Tax Act of 1961 to the following effect :

"2. (31) person includes -

- (i) an individual,
- (ii) a Hindu undivided family,
- (iii) a company,
- (iv) a firm,
- (v) an association of persons or a body of individuals, whether incorporated or not,
- (vi) a local authority, and
- (vii) every artificial juridical person, not falling within any of the proceeding sub-clauses";

and by changing the language of the charging section in the said Act in the following manner :

"4. (1) Where any Central Act enacts that Income Tax shall be charged for any assessment year at any rate or rates, Income Tax at that rate or those rates shall be charged for that year in accordance with, and subject to the provisions of, this Act in respect of the total income of the previous year or previous years, as the case may be, of every person."

He contended that the Act of 1961 made express provision for assessment of the income of a juridical person like a deity, but such express provision was absent in the Act of 1922 and this was enough indication that it was not within the contemplation of the Income Tax Act of 1922 to tax the income of a debuttar estate or of a deity.

In my opinion this argument is not very well conceived. In the case of Commissioner of Income Tax v. Sodra Devi, it was pointed out by the Supreme Court that :

"... the word individual has not been defined in the Act and there is authority for the proposition that the word individual does not mean only a human being but is wide enough to include a group of persons forming a unit. It has been held that the word individual includes a corporation created by a statute, e.g., a university or a bar council, or the trustees of a baronetcy trust incorporated by a Baronetcy Act. It would also include a minor or a person of unsound mind."

To the list appearing in the quotation above, an idol or a deity may not be an unreasonable addition. "According to Hindu notions when an idol has been consecrated by the appropriate ceremonies performed and mantras pronounced, the deity of which the idol is the visible image resides in it and not in a substituted image and the idol so spiritualised becomes what has been termed a juridical person" (vide P. Doorga Proshad v. Sheo Proshad). The mere fact that an idol has been established does not by itself create a debuttar. A religious trust by way of debuttar comes into existence only when property is dedicated for worship or service of the idol and it is the spiritual object which is embodied in the image and not the image itself that is regarded as the holder of the property. Now, if a baronetcy trust can be an individual, there is no reason why a religious trust, namely, estate dedicated to an idol and the spiritual object which is the holder of the property, may not be an "individual".

Faced with this difficulty, Mr. Pal relied on the requirements of the form of the return, which provides that the declaration in the return shall be signed, in cases of an individual, by the individual himself. He contended that even if the idol be treated as an individual an idol cannot himself sign and can never file a return. This he contended was another indication that the income from debuttar property cannot be taxed. In support of his argument he relied upon the following observations by the Supreme Court in Commissioner of Agricultural Income Tax v. Keshab Chandra Mandal :

"On a consideration of the provisions of the Act and of the Rules and the Forms and for reasons stated above there appears to be many clear indications of an intention on the part of the legislature to insist on the personal signature of the assessee, appellant or applicant whenever his signature is required by the Act or the Rules and the common law rule qui facit per alium facit per se is excluded by necessary implication or intendment of the Act and the Rules.

The Appellate Tribunal and the High Court have referred to certain difficulties in

arriving at this conclusion which may now be considered. It is pointed out that to insist on the personal signature of an individual assessee will result in the anomaly that persons authorised to sign for the assessee of other categories will be free to get the returns signed by their own agents. This argument really begs the question. For reasons stated above none of the persons designated in the foot-note to Form 5 are authorised to employ an agent to sign for him and, therefore, no anomaly can arise. If anything, the use of the word himself with reference to an individual makes the position clearer so far as such individual is concerned. There is an argument based on hardship or inconvenience. Hardship or inconvenience cannot alter the meaning of the language employed by the legislature if such meaning is clear on the face of the statute or the rules. Further, there is no hardship or inconvenience. In the case of an illiterate person, he can put his mark which, by the Bengal General Clauses Act, is included in the definition of "sign". If claim Form 20 for refund of tax u/s 48(2) can be sent to a claimant abroad for his signature before certain public officer for authentication, there can be no hardship or inconvenience in sending to him abroad the return in Form 5 for his signature without the necessity of any authentication thereof. It is said that such a construction will prevent a leper who, by reason of the loss of his fingers, cannot even put his mark. Such cases will indeed be rare and in any event it will be for the legislature to rectify this defect. Not to insist on personal signature on returns or appeals or applications will let in signature by agent not duly authorised in writing and without production of such writing. In that case the provisions for penalty for filing false returns may quite conceivably be difficult of application. The omission of a definition of the expression sign so as to include the signature of an agent, the presence of the provisions permitting only certain specified acts, other than signing, to be done by or through an authorised agent are significant and indicate that the intention of the legislature is not to permit signature by an agent so as to exclude the common law rule referred to above."

The case before the Supreme Court was no doubt under the Bengal Agricultural Income Tax Act, but Mr. Pal contended that the requirements under the Indian Income Tax Act, 1922, were identical and, therefore, the decision was an authority for the Indian Income Tax Act as well. I am unable to accept this branch of the argument of Mr. Pal. The position of a shebait is peculiar under the Hindu law. "It is in an ideal sense that the dedicated property vests in an idol, and in the nature of things the possession and management of it must be entrusted to some person as shebait or manager. It would seem to follow, as the Judicial Committee observed in *Prosunno Kumari Debya v. Golob Chand Baboo*, that the person so entrusted must of necessity be empowered to do whatever may be required for the service of the idol and for the benefit and preservation of its property, at least to as great a degree as the manager of an infant heir. If this were not so, the estate of the idol might be destroyed or wasted and its worship discontinued for want of necessary funds to preserve and maintain them. This human ministrant of the deity who is its manager and legal representative is known by the name of shebait in Bengal and Northern India. He is called the

dharmakarta in the Tamil and Telugu districts, panchayetdar in places like Tanjore and urallen in Malabar. He is the person entitled to speak on behalf of the deity on earth and holds authority to deal with all its temporal affairs." (Mukherjee on the Hindu Law of Religious and Charitable Trust - Tagore Law Lectures, 1936.) That being so, there is no reason why a shebait, as the human ministrant to the deity, cannot sign the declaration, file the return and look after the interest of the idols in matters of assessment. His peculiar position in relation to the idol empowers a shebait to perform all worldly duties on behalf of the idol. The Supreme Court decision in Commissioner of Agricultural Income Tax v. Keshab Chandra Mandal was not concerned in deciding this aspect of the matter and is, therefore, distinguishable. Even if a shebait cannot sign the declaration in the return on behalf of an idol, (which of course I do not hold) that does not lead to the consequence that the income of a debuttar estate becomes immune from assessment to Income Tax. In Civil Revision Case No. 358 of 1955, Haripada Roy v. Union of India (unreported), the question arose whether the assessment on a lunatic - unrepresented by a guardian - was a nullity. Das Gupta and Guha JJ., while holding that a lunatic was an "individual" and as such liable to assessment, observed :

"That an assessment can be made on a person who is not able to look after himself, cannot but shock our sense of fairness; that should not, however, blind us to the fact that the legislature in its wisdom has not made any provision for representation of a lunatic in Income Tax assessment proceedings. Special provision has been made in section 40(1) as regards the assessment in respect of income of a lunatic as also of a minor or an idiot which a guardian for such person receives or is entitled to receive on his behalf, but no provision has been made that where assessment is made on the lunatic himself, a guardian need be appointed.

It is reasonable to think that the omission is deliberate and based on the special nature of Income Tax proceedings. The fact remains that the legislature, though dealing specially with the matter of assessment of the income received by the guardian of a lunatic on his behalf, has left the Income Tax Officer free to assess the lunatic himself without the requirement of the lunatic being represented by a guardian. In these circumstances, there is, I think, no justification for allowing our own sense of fairness which might have been proper to interfere with the appreciation of the legal position."

Even if I accept the contention of Mr. Pal that an idol is under a disability, not being able to sign the declaration under an Income Tax return (which, of course, I do not hold, being of the opinion that a shebait, his human ministrant, may do so), even then the income of idols from debuttar estate does not become immune from assessment because of the special nature of Income Tax proceedings. The analogy of the reasonings in the judgment in Haripada Roys case, apply with equal force in the case of an idol, who, in my opinion, is also an "individual".

Lastly, it appears from the language of section 41 of the Income Tax Act, 1922, that taxation of income of artificial juridical persons was not wholly outside the contemplation of the Act. The material portion of section 41 is set out below :

"41. (1) In the case of income, profits or gains chargeable under this Act which the Courts of Wards, the Administrators-General, the Official Trustees or any receiver or manager (including any person whatever his designation who in fact manages property on behalf of another) appointed by or under any order of a court, or any trustee or trustees appointed under a trust declared by a duly executed instrument in writing whether testamentary or otherwise including the trustee or trustees under any wakf deed which is valid under the Mussalman Wakf Validating Act (1913) are entitled to receive on behalf of any person, the tax shall be levied upon and recoverable from such Court of Wards, Administrator-General, Official Trustee, receiver or manager or trustee or trustees, in the like manner and to the same amount as it would be leviable upon and recoverable from the person on whose behalf such income, profits or gains are receivable, and all the provisions of this Act shall apply accordingly :

Provided that where any such income, profits or gains or any part thereof are not specifically receivable on behalf of any one person, or where the individual shares of the persons on whose behalf they are receivable are indeterminate or unknown, the tax shall be levied and recoverable at the maximum rate, but, where such persons have no other personal income chargeable under this Act and none of them is an artificial juridical person, as if such income, profits or gains or such part thereof were the total income of an association of persons :

Provided further that when part only of the income, profits and gains of a trust is chargeable under this Act, that proportion only of the income, profits and gains receivable by a beneficiary from the trust which the part so chargeable bears to the whole income, profits and gains of the trust shall be deemed to have been derived from that part."

For the reasons given above I discharge the rule but make no order as to costs. Interim orders stand vacated.

Matters Nos. 94 to 97 of 1961.

The same order will govern the above matters, the points involved being identical as in Matter No. 93 of 1961.

Interim orders stand vacated.