
(1993) 03 BOM CK 0055

In the Bombay High Court

Case No : Income-tax Reference No. 299 of 1978

S.S. Barodawala

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 17-03-1993

Acts Referred:

Income Tax Act, 1961 — Section 2(31), 28, 64, 64(1)

Citation : (1994) 205 ITR 495

Hon'ble Judges : U.T. Shah, J;B.P. Saraf, J

Bench : Division Bench

Advocate : Deokinandan, K.M.L. Majele, for the Appellant;

Judgement

Dr. B.P. Saraf, J.—By this reference u/s 256(1) of the Income Tax Act, 1961, made at the instance of the assessee, the Income Tax Appellate Tribunal ("the Tribunal"), has referred the following question of law to this court for opinion :

"Whether, on facts and circumstances of the case, the sums of Rs. 56,236 and Rs. 53,834 have been rightly included u/s 64(1)(v) of the Income Tax Act, 1961, in the total income of the assessee for the assessment years 1971-72 and 1972-73 ?"

2. This reference relates to two assessment years, viz., 1971-72 and 1972-73, the relevant previous years being the financial years 1970-71 and 1971-72, respectively. In making the assessment of the income of the assessee, the Income Tax Officer included in his income for the two assessment years sums of Rs. 56,236 and Rs. 53,834, respectively, u/s 64(1)(v) of the Income Tax Act, 1961 ("the Act"), being the shares of the two minors sons of the assessee from a family trust known as the Shaikhali Family Trust. The Income Tax Officer did so as he found that the assessee and two others had settled a sum of Rs. 1 lakh each in the said trust for the benefit of their respective children numbering six as mentioned in the trust deed and a property had been constructed with the said funds and other borrowed funds for Rs. 5,90,000. Income arose from the said

property and the addition mentioned above to the income of the assessee u/s 64(1)(v) represents the shares of the two minor sons of the assessee in the income from the said property.

3. The assessee preferred an appeal before the Appellate Assistant Commissioner of the Income Tax against the order of the Income Tax Officer in so far as it related to the inclusion of the income of the minors from the said property u/s 64(1)(v) of the Act. It was contended before the Appellate Assistant Commissioner that the assessee and two others had settled a sum of Rs. 1 lakh each with the trust for the benefit of their respective children numbering six as mentioned in the trust deed and thereafter a property was constructed with the said fund and other borrowed funds for Rs. 5,90,000 out of which the settled amount was only Rs. 3,00,000 and hence only the income attributable to the above amount transferred by the father could be included u/s 64 of the Act; that the income in question arose from the property and not from Rs. 1 lakh settled by the father; that at best income calculated at 12 per cent. annum being the fair from the yield of Rs. 1 lakh settled by the father could be considered for inclusion. The Appellate Assistant Commissioner accepted the contention of the assessee and held that the income includible u/s 64 should be pro rata, the property being constructed by using borrowed capital which was almost equal to the settled amount of Rs. 3 lakhs. The Appellate Assistant Commissioner, therefore, held that the income includible u/s 64(1)(v) in respect of the two minor sons should be taken at the fair return yield of 12 per cent. on the said amount of Rs. 1 lakh, namely, Rs. 12,000 each year.

4. Aggrieved by the orders of the Appellate Assistant Commissioner, the Revenue preferred appeals before the Tribunal. The contention of the Revenue was that, in view of the clear language of section 64(1)(v) of the Act which provides for inclusion of income arising "directly or indirectly" from the transferred assets the income of the transferor, the Appellate Assistant Commissioner was not justified in restricting the inclusion to notional income which might have arisen directly on investment of the transferred asset. It was pointed out to the Tribunal by the Departmental representative that there was a marked difference in the language of existing section 64(1)(v) and the corresponding provision contained in section 16(3) (b) of the 1922 Act as a result of which the decisions rendered by the courts in cases under the old Act were no more relevant. The contention of the Revenue was accepted by the Tribunal and it was held that the entire income arising from the property was assessable in the hands of the assessee for both the years. In that view of the matter, the Tribunal allowed the appeals of the Revenue and set aside the order of the Appellate Assistant Commissioner and restored the order of the Income Tax Officer for both the years. Hence, this reference at the instance of the assessee.

5. Learned counsel for the assessee submits that the Tribunal was not correct in upholding the action of the Income Tax Officer because section 64(1)(v) as it stood at the material time, only provided for inclusion of income from assets

transferred by the assessee and not income from assets transferred indirectly by the assessee. That was done only in 1976 by the amendment of section 64 of the Act by the Taxation Laws (Amendment) Act of 1975, with effect from April 1, 1976, whereby sub-section (1) of section 64 was substituted and in clause (vii) which was the corresponding provision for the old clause (v), the words "from assets transferred" were substituted by the words "from assets transferred directly or indirectly". This submission of the assessee, according to learned counsel for the Revenue, is misconceived and is based on a wrong reading of section 64(1)(v) of the Act. It was contended that the inclusion of the words "directly or indirectly" in the new clause (vii) referred to transfer of assets and not to arising of income. In respect of income, this expression was very much there in section 64 of the Act from the very inception. In this connection, learned counsel referred to sub-section (1) of section 64, as it stood originally, which clearly provides for inclusion of all such income "arising directly or indirectly" from any of the assets transferred to any of the persons in the modes mentioned in the different clauses thereof.

6. We have considered the rival submissions of learned counsel for the parties. We have carefully perused the provisions of sub-section (1) of section 64 as it stood at the material time and as amended with effect from April 1, 1976. We find that the object of insertion of the words "directly or indirectly" in clause (vii) was to widen the scope of "transfers" to specifically include the income arising from "assets transferred indirectly". But there is no such controversy in this case. The transfer of assets was admittedly made directly for the benefit of the minor children. The dispute relates to inclusion of income arising "indirectly" from the assets transferred directly. Section 64(1)(v), as it stood at the material time, read as follows :

"64. Income of individual to include income of spouse, minor child, etc. - (1) In computing the total income of any individual, there shall be included all such income as arises directly or indirectly -

(v) to any person or association of persons from assets transferred otherwise than for adequate consideration to the person or association of persons by such individual, to the extent to which the income from such assets is for the immediate or deferred benefit of his or her spouse or minor child (not being a married daughter) or both."

7. The corresponding provision of sub-section (1), as substituted with effect from April 1, 1976, reads :

"64. (1). . . .

(vii) to any person or association of persons from assets transferred directly or indirectly otherwise than for adequate consideration to the person or association of persons by such individual, to the extent to which the income from such assets is for the immediate or deferred benefit of his or her spouse or minor child (not being a married daughter) or both."

8. A plain reading of the above provisions makes it clear that, under clause (v) of section 64(1), all such income as "arises directly or indirectly" to any person or association of persons from assets transferred otherwise than for adequate consideration by the assessee for the benefit of his minor child is to be included in his income. This position remained unchanged even under clause (vii) as substituted with effect from April 1, 1976. This is in contrast to the position u/s 64(1)(v) of the 1922 Act, which provided :

"16(3). In computing the total income of any individual for the purpose of assessment, there shall be included -

(b) so much of the income of any person or association of persons as arises from assets transferred otherwise than for adequate consideration to the person or association by such individual for the benefit of his wife or a minor child or both."

9. In the instant case, the facts are clear. The sum of Rs. 1 lakh was transferred by the assessee directly to the trust which is admittedly a "person" within the meaning of section 2(31) of the Act. It is also not disputed that the transfer was otherwise than for adequate consideration and that it was for the benefit of the two minor sons of the assessee. That being so, the requirements of clause (v) are fully satisfied. The question of indirect transfer does not arise in this case and, as such, the amendment made with effect from April 1, 1976, and the effect thereof are academic. The only controversy that arises for consideration pertains to the amount of income which should be included in the income of the assessee. There is no dispute that, with the money settled by the three persons in favour of their six minor children, a property was purchased and it is the income that arose from the property which was taken into consideration for inclusion u/s 64(1)(v) of the Act by the Income Tax Officer. The contribution of the assessee being one-third of the total contribution, the benefit accruing to his minor sons was also one-third of the total income, the Income Tax Officer took into account only one-third of the income of the trust and included the same in the income of the assessee. It is this action of the Income Tax Officer which was approved by the Tribunal. On a perusal of the language of section 64(1)(v) of the Act, we do not find any infirmity in the above action.

10. Learned counsel for the assessee submits that the inclusion under sub-section (1) of section 64 of the Act should be confined to the income arising from the assets which were transferred by the assessee and not from the converted assets as has been done by the Income Tax Officer in the instant case. It is in that context that it is submitted on behalf of the assessee that interest calculated at the rate of 12 per cent. per annum on the amount transferred by the assessee only be included in his income under this provision. We find it difficult to accept this submission because this goes counter to the express language of section 64(1)(v) of the Act which provides for the inclusion of income from the assets referred to in the different clauses "as arises directly or indirectly" from such assets. If we accept the contention of the assessee, the word "indirectly" would become redundant. Such an interpretation will defeat the very object of insertion

of the word "indirectly" with the accrual or arising of income. The only requirement is that the income should arise as a result of the transfer and there should be a proximate connection between the transfer of the assets by the assessee and the income. If that is so, then section 64(1)(v) will be attracted even if the original asset is converted into some other asset and the income arises not from the original asset but the converted asset. The word "indirectly" will take care of such a situation. If such a meaning is not given to the word "indirectly", then as observed by the Supreme Court in Commissioner of Income Tax, Madras Vs. C.M. Kothari, Madras (Dead), and after him his Legal Representative, , the very purpose of using this expression in sub-section (1) of section 64 will be defeated. The word "indirectly" is meant to cover cases of the present type where the income arises not from the assets transferred directly but indirectly.

11. In view of the foregoing discussion, we are of the clear opinion that the sums of Rs. 56,236 and Rs. 53,834 had been rightly included u/s 64(1)(v) of the Income Tax Act, 1961, in the total income of the assessee for the assessment years 1971-72 and 1972-73.

12. The question referred to us is, therefore, answered in the affirmative, i.e., in favour of the Revenue and against the assessee. Under the facts and circumstances of the case, we make no order as to costs.