

COMMISSIONER OF INCOME-TAX, CALCUTTA

v.

KOKILA DEBI

April 20, 1970

[J. C. SHAH, K. S. HEGDE AND A. N. GROVER, JJ.]

Indian Income-tax Act, 1922—S. 41(1) Proviso—Scope of.

B, a Hindu governed by Mitakshara School of Hindu Law dedicated certain self-acquired properties in favour of the deity Sri Sri Iswar Gopal Jew. He executed a deed of trust and supplemented it by two subsequent deeds. Two-thirds of the income of the trust properties was under the said deeds to be utilised for the seva of the deity and the remaining one-third was to be retained in the hands of the trustees to meet the collection charges, taxes and other incidental expenses relating to the trust properties. Under the trust-deeds the first trustee was to be B's third wife, and each of his sons on attaining majority was to become a trustee automatically. In proceedings for the assessment of income-tax, the Income-tax Officer assessed the income from all the properties in the hands of the trustees at the maximum rate in accordance with the provision contained in the first proviso to section 41(1) of the Indian Income-tax Act, 1922. The order was confirmed by the Appellate Assistant Commissioner. In further appeal the Tribunal held that the sole beneficiary under the deeds was the deity Sri Sri Iswar Gopal Jew. Hence according to the Tribunal, the first proviso to s. 41(1) was not applicable to the facts of the case and the trustees were to be assessed in the status of individual in respect of the income received by them on behalf of the deity. The High Court in reference took the same view as the Tribunal. The Commissioner of Income-tax appealed to this court. The appellant placed reliance on the fact that in one of the deeds executed by B, the trustees were referred to as beneficiaries. As no argument had been canvassed before the High Court or the tribunals below that a deity could not be considered a 'person' within the meaning of s. 2(9) of the Act, the Court proceeded on the basis that a deity is a 'person' within the meaning of the said section.

HELD: In one of the trust-deeds the trustees were no doubt referred to as beneficiaries but on a reading of the entire deed it was clear that reference to them as beneficiaries was a misnomer and that they were not entitled to any benefit under any of the deeds. Therefore, the finding of the Tribunal that the sole beneficiary under the deeds was the deity was not open to challenge, and that being so, the case clearly fell within the main section 41(1), and the first proviso to that section was not applicable to the facts of the case. On the facts found by the Tribunal it could not be said that the income or profits in question were "not specifically receivable by the trustees on behalf of any one person". [315 H—316 B]

The fact that for certain purposes a trusteeship is considered as "property" and that the trustees have an interest in the trust was irrelevant in the present context. In considering the scope of s. 41(1) the only thing that had to be seen was whether the income in question was received by the trustees on behalf of any person. [316 B-C]

Accordingly the appeal must be dismissed. [316 C]

A CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 220 to 230 of 1967.

Appeals from the judgment and order dated March 18, 1966 of the Calcutta High Court in Income-tax Reference No. 103 of 1964.

B *S. K. Aiyar* and *B. D. Sharma*, for the appellant (in all the appeals).

The respondent did not appear.

The Judgment of the Court was delivered by

C *Hegde, J.* These appeals were brought on the strength of the certificates granted by the High Court of Calcutta against its judgment in references under s. 66(1) of the Indian Income Tax Act, 1922 (hereinafter called the Act).

The questions referred to the High Court are :

D “(1) Whether on the facts and in the circumstances of the case and on a proper construction of three deeds executed on the 3rd November, 1944, the 25th September 1947 and the 17th March, 1951, referred to in the order, the Tribunal was right in holding that there was only one beneficiary viz. Sri Sri Iswar Gopal Jew, under the trust ?

E (2) If the answer to the question (1) be in the negative, then whether the income of the Trust was to be assessed at the maximum rate by virtue of the first proviso to s. 41(1) of the Income-Tax Act, 1922 ?”

F The High Court answered the first question in the affirmative and in view of that answer, it did not find it necessary to answer the second question.

G The facts found by the tribunal, as could be gathered from the statement of the case submitted by it are as follows :

H Shri Badriprasad Agarwalla, a Hindu governed by Mitakshra School of Hindu law, had three wives, (1) Sukti Devi, (2) Krishna Devi and (3) Kokila Debi. From the second wife, Krishna Devi, he had a son named Fulchand born in March 1929. After the death of the second wife, Badri Prasad Agarwalla took Kokila Debi as his third wife. From her he had six sons, the eldest of whom is Nirmal Kumar born in 1942. On November 3, 1944, he executed a deed of trust by which he transferred to the trustees

two of his self-acquired properties situate at 41/16-A, Russa Road and 21, Paika Para Row for the benefit of the deity Sri Sri Iswar Gopal Jew whom he had consecrated at his ancestral house at 1/2, Krishnaram Bose Street, Calcutta. The intended purposes of the said trust were set out in the deed itself. Under that deed Kokila Debi was appointed as a trustee. It was provided in that deed that each of the sons of Badri Prasad on attaining majority would automatically become a trustee of that trust. It may be mentioned here that in accordance with this provision, Fulchand became a trustee on attaining majority in March, 1947 and Nirmal Kumar, the eldest son of Kokila Debi also became a trustee in the year 1960. Under the said deed, Kokila Debi was appointed as the sole Shebait of the idol until the sons of Badri Prasad became majors. But as soon as they became majors they were to be joint Shebait of the idol along with Kokila Debi. 2/3rd of the rent realised from the trust properties was to be utilised towards seva of the deity and the balance 1/3rd was to be retained in the hands of the trustees to meet the collection charges, taxes and other incidental expenses relating to the said properties.

On September 25, 1947, Badri Prasad executed another deed to which he, Kokila Debi and Fulchand were parties. The deed was admittedly a supplement to the earlier deed dated November 3, 1944.

On March 17, 1951, Badri Prasad executed a third deed. To that deed Badri Prasad, Kokila Debi and Fulchand were parties. This deed was also expressly made as a supplement to the deed of November 3, 1944. The avowed object in executing this deed was to clarify the status, rights and liabilities of the trustees and the shebait in office for the benefit of and in the interest of the deity and to avoid future litigation. Under this deed, it is mentioned that the properties covered by the first two deeds were given in absolute dedication to the deity established by the settlor at 1/2, Krishnaram Bose Road, Calcutta and the trustees and shebait, held their offices as such for carrying on daily and periodical sevas and worship of the deity and they were to hold the properties for and on behalf of the deity. Therein provision was made for the management of the property, for conducting the sevas and pujas of the deity and for maintenance of proper and necessary accounts.

The Income-tax Officer assessed the income from all the properties in the hands of the trustees at the maximum rate in accordance with the provision contained in the 1st proviso to s. 41(1) of the Act. In appeal, the Appellate Assistant Commissioner confirmed the order of the Income-tax Officer but on a further appeal taken to the Income Tax Appellate Tribunal, the Tribunal

A held that the sole beneficiary under the three deeds was the deity Sri Sri Ishwar Gopal Jew. Hence the 1st proviso to s. 41(1) is not applicable to the facts of the case and the trustees should be assessed in the status of an individual in respect of the income received by them on behalf of the deity. The relevant portions of s. 41(1) and the 1st proviso thereto read :

B "In the case of income, profits or gains chargeable under this Act any trustee or trustees appointed under a trust declared by a duly executed instrument in writing whether testamentary or otherwise are entitled to receive on behalf of any person, the tax shall be levied upon and recover-
C able from such 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

D Provided that where 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
E 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....."

As seen earlier, the finding of the Appellate Tribunal is that
F the trustees had no beneficial interest in the income of the properties included in the trust deeds and that the sole beneficiary under those deeds is the deity. The question whether a deity can be considered as a 'person' within the meaning of s. 2(9) of the Act had not been canvassed before the High Court or the tribunals below nor was that question raised before us. Therefore we shall not go into that question. For the purpose of this case we shall
G proceed on the basis that it is 'a person' within the meaning of s. 2(9) of the Act. Now coming to the deeds, all that the learned Counsel for the revenue was able to show us is that in one of the trust deeds, the trustees were referred to as beneficiaries but on a reading of the entire deed, it is clear that reference to them as beneficiaries is a misnomer and that they are not entitled to any
H benefit under any of those deeds. Therefore the finding of the tribunal that the sole beneficiary under those deeds is the deity is not open to challenge. If that is so, the case clearly falls within the main section 41(1) and the 1st proviso to that section is

inapplicable to the facts of the case. On the facts found by the tribunal, it cannot be said that the income or profits in question are "not specifically receivable by the trustees on behalf of any one person"

The fact that for certain purposes, a trusteeship is considered as 'property' and that the trustees have an interest in the trust is irrelevant for our present purpose. In considering the scope of s. 41(1), the only thing that we have to see is whether the income in question was received by the trustees on behalf of any person. If the deity is considered as a 'person' then quite clearly the case does not come within the 1st proviso to s. 41(1) and it has to be dealt with under s. 41(1).

For the reasons mentioned above, these appeals fail and they are dismissed. The respondents are ex-parte in this Court. Hence there will be no order as to costs in these appeals.

G.C.

Appeals dismissed.