

A

MOHINI THAPAR (DEAD) BY L. RS.

v.

C.I.T. (CENTRAL) CALCUTTA & ORS.

September 23, 1971

B

[K. S. HEGDE, A. N. GROVER AND H. R. KHANNA, JJ.]

Income-tax Act, 1922, s. 16(3)(a)(iii)—Scope of.

The assessee made certain cash gifts to his wife. Out of those gifts she purchased shares and made investments. On the question whether the dividends earned and the interests realised were income "from assets transferred directly or indirectly" by the assessee to his wife within the meaning of s. 16(3)(a)(iii) of the Income-tax Act, 1922,

C

HELD : Section 16(3)(a)(iii) includes not merely the income that arises directly from the assets transferred but also the income that arises indirectly from those assets. In the present case the income has a nexus with the assets transferred and they are income indirectly received in respect of the transfer of cash directly made. Therefore the department is entitled to include the dividends and interest in question in computing the taxable income of the assessee. [885 C-D]

D

C.I.T. West Bengal III v. Prem Bhai Parakh & Ors., [1970] 77 I.T.R. 27, held inapplicable.

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 1374 and 2146 to 2149 of 1970.

E Appeals from the judgments and order dated July 30, 1963 and February 11, 1965 of the Calcutta High Court in Income-tax Reference No. 48 of 1959, and 69 of 1961 respectively.

D. Pal, T. A. Ramachandran and *D. N. Gupta*, for the appellants and respondents Nos. 2 to 4 (in all the appeals).

F *S. C. Manchanda, P. L. Juneja, R. N. Sachthey and B. D. Sharma*, for respondent No. 1 (in all the appeals).

The Judgment of the Court was delivered by

G **Hegde, J.** All these appeals by certificate are filed by the legal representatives of Late Karam Chand Thapar who was the assessee in this case. He died after the assessments were made. The assessment years with which we are concerned in these appeals are 1949-50, 1950-51, 1951-52, 1952-53 and 1953-54. The facts of the case lie within a narrow compass. Late Karam Chand Thapar made certain cash gifts to his wife Smt. Mohini Thapar. From out of those gifts, she purchased certain shares and the balance amount she invested. The shares earned dividends and the investments yielded interest. The interest realised and the dividends earned were included in the income of Karam Chand Thapar for the purpose of assessment in

the assessment years mentioned earlier. The assessee objected to the inclusion of that amount in his income. The question is whether the department was entitled to include the dividends and interest in question in computing the taxable income of the assessee. The Income-tax Officer held that they were liable to be included in the income of the assessee. That decision was upheld by the Appellate Assistant Commissioner. On a further appeal, taken by the assessee to the Tribunal the Tribunal upheld the order of the Assistant Commissioner. Thereafter at the instance of the assessee, the question set out below was submitted to the High Court under section 66(1) of the Indian Income-tax Act, 1922, in respect of the assessment year 1949-50 :

“(1) Whether on the facts and on the circumstances of the case, the income of Rs. 21,225 derived from deposits and shares held by the assessee’s wife, Smt. Mohini Devi Thapar was income from assets directly or indirectly transferred by the assessee to his wife within the meaning of Section 16(3) of the Income-tax Act.”

Similar questions were referred in respect of other assessment year. The High Court answered these questions in favour of the revenue. Hence these appeals.

Section 16(3)(a)(iii) of the Act—the provision relevant for the purpose of these appeals reads thus :

(2) “In computing the total income of any individual for the purpose of assessment, there shall be included—

(a) so much of the income of a wife or minor child of such individual as arises directly or indirectly—

(i)

(ii)

(iii) from assets transferred directly or indirectly to the wife by the husband otherwise than for adequate consideration or in connection with an agreement to live apart;”

The assets transferred in this case is the gift of cash amounts made by the assessee to his wife. The transfers in question are direct transfers. But those assets, as mentioned earlier, were invested either in shares or otherwise. Hence it was urged on behalf of the revenue that the incomes realised either as dividends

A from shares or as interest from deposits are income indirectly received in respect of the transfer of cash directly made. This contention of the revenue appears to be sound. That position clearly emerges from the plain language of the section.

B It was urged by Dr. Pal, learned counsel for the assessee that there is no nexus between the income earned and the transfer of the assets. According to him before an income can come within section 16(3)(a)(iii) it must be an income directly arising from the assets transferred. In other words, he urged that only such income which can be said to have directly sprung from the assets transferred can come within the scope of section 16(3)(a)(iii).

C We are unable to accept this contention as sound. Otherwise the expression 'as arises directly or indirectly' in section 16(3)(a) would become redundant. The net cast by section 16(3)(a)(iii) includes not merely the income that arises directly from the assets transferred but also that arises indirectly from the assets transferred. We are in agreement with the contention of Dr. Pal.

D that the income that can be brought to tax under section 16(3)(a)(iii) must have a nexus with the assets transferred directly or indirectly. But in this case the income with which we are concerned has a nexus with the assets transferred.

E In support of his contention Dr. Pal relied on the decision of this Court in *Commissioner of Income-Tax, West Bengal III v. Prem Bhai Parakh and others*⁽¹⁾. The facts of that case are as follows : The assessee, who was a partner in a firm having 7 annas share therein, retired from the firm on July 1, 1954. Thereafter, he gifted Rs. 75,000 to each of his four sons, three of whom were minors. There was a reconstitution of the firm with effect from July 2, 1954, whereby the major son became a partner and the minor sons were admitted to the benefits of partnership in the firm. The question was whether the income arising to the minors by virtue of their admission to the benefits of partnership in the firm could be included in the total income of the assessee under section 16(3)(a)(iv) a provision similar to section 16(3)(a)(iii)—The Tribunal found that the capital invested by the minors in the firm came from the gift made in their favour by their father, the assessee. This Court overruling the contention of the revenue came to the conclusion that the connection between the gifts made by the assessee and the income of the minors from the firm was a remote one and it could not be said that income arose directly or indirectly from the assets transferred. Hence income arising to the three minor sons of the assessee by virtue of their admission to the benefits of partnership in the firm could not

(1) [1970] 77 I.T.R. p. 27.

be included in the total income of the assessee. The ratio of the decision is found at page 30 of the report. This is what the Court observed in that case :

"The connection between the gifts mentioned earlier and the income in question is a remote one. The income of the minors arose as a result of their admission to the benefits of the partnership. It is true that they were admitted to the benefits of the partnership because of the contribution made by them. But there is no nexus between the transfer of the assets and the income in question. It cannot be said that that income arose directly or indirectly from the transfer of the assets referred to earlier. Section 16(3) of the Act created an artificial income. That section must receive strict construction as observed by this court in *Commissioner of Income-tax v. Keshavlal Lallubhai Patel*—(1965) 55 I.T.R. p. 637. In our judgment before an income can be held to come within the ambit of section 16(3), it must be proved to have arisen—directly or indirectly—from a transfer of assets made by the assessee in favour of his wife or minor children. The connection between the transfer of assets and the income must be proximate. The income in question must arise as a result of the transfer and not in some manner connected with it."

The ratio of that decision is inapplicable to the facts of the present case.

Here we are dealing with an income which has proximate connection with the transfer of the assets made by the assessee.

In the result, these appeals fail and they are dismissed with costs. Costs one set.

K.B.N.

Appeals dismissed.