

C.I.T. BIHAR & ORISSA, PATNA

v.

MAHARAJ KUMAR KAML SINGH

February 13, 1973

[K. S. HEGDE, P. JAGANMOHAN REDDY AND H. R. KHANNA, JJ.]

Indian Income-Tax Act, 1922, ss. 16(3)(a) (a) (iii), 9(4)(a)—Holder of impartible estate, transferring properties of estate to his wife—Income from properties whether liable to be included in income of assessee—Fiction created by s. 9(4)(a) renders assessee liable under s. 16(3)(a) (iii).

The assessee-respondent is the holder of an impartible estate. By an indenture dated 23rd November, 1963, he granted to his wife two premises for life by way of supplementary maintenance grant. It was a direct transfer which was admittedly not effected for any consideration or in connection with the agreement to live apart. During the assessment years 1957-58 to 1960-61, the income from these house properties was included in the total income of the assessee under section 16(3)(a) (iii) of the Act. At the instance of the assessee the matter was referred to the High Court. Two questions fell for consideration before the High Court, namely, (i) whether the Tribunal was justified in holding that the provisions of s. 16(3)(1) (iii) applied to the income arising from the property; and (ii) whether the Tribunal was right in holding that the income under the said provisions was to be included in the total income for the purpose of computing the net annual value of the residential house, under the first proviso of s. 9(2). The High Court answered the first of the two questions in favour of the assessee and, therefore, did not think it necessary to go into the other question. On appeal by certificate to this Court, the material question was whether the income from the house properties transferred by the assessee was liable to be included the income of the assessee.

HELD : (i) The incident of impartible estate have been well settled by the decisions of the Courts in this country as well as by the decisions of the judicial committee. The holder of an impartible estate has uncontrolled power of enjoyment and disposal of the impartible estate as well as the income arising therefrom; yet the estate belongs to the Hindu joint family of which the holder is a member. Subject to any custom to the contrary, on the death of the holder of an impartible estate, the estate devolves by survivorship. [524G-H]

Bajjnath Prasad Singh and Ors. v. Tej Bali, L.R. 48 I.A. 195, *Shiba Prasad Singh v. Rani Prayad Kumari Devi & Ors.*, L.R. 59 I.A. 331 and *Commissioner of Income-tax, Punjab, North-West Frontier and Delhi Provinces, Lahore v. Dewan Bahadur Dewan Krishna Kishore, Rais, Lahore*, 68 I.A. 155, referred to.

(ii) After s. 9 was amended by incorporating s. 9(4), the income of house property owned by the holder of an impartible estate has to be considered as his individual income. From this it follows that had the assessee not transferred the premises in question in favour of his wife, the income from those premises would have been considered as his individual income under section 9. The contention that s. 9(4)(a) raises a legal fiction which is limited for the purpose of s. 9 is fallacious. Section 9 deals with only one head of income. Section 9(4)(a) speaks for the purpose of this Section" which really means for the purpose of deter-

- A mining the taxable income of the assessee. An assessee is not separately taxed under each head of income. Hence when a source of income is transferred from assessee to his wife excepting for the two purposes mentioned in s. 16(3)(a)(ii), income from that purpose has to be considered as the income of the assessee because of asset of the assessee stands transferred to his wife. Such a conclusion does not amount to extending the fiction created under s. 9 beyond the purpose for which it is created. It merely gives effect to that fiction. It is true that a legal fiction may not be extended beyond the purpose for which it is created but that does not mean that the Court should not give effect to that fiction. [526H to 527D]
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Section 27(ii) of the Income-tax Act, 1961 which has taken place of s. 9(4) of the Act makes explicit that was implicit in the provision, as it originally stood. [527D-E]

- C (iii) It follows as necessary corollary that the annual value of the assessee's residential house has to be computed at 10% of the total income of the assessee which income includes the income from the house properly transferred to his wife as required by the first proviso to s. 9(2). [527E-G]

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 297 to 300 of 1970.

- D Appeal by Certificate from the Judgment and order dated August 9, 1966 of the Patna High Court in Misc. Judicial Cases Nos. 480 to 483 of 1964.

V. S. Desai, J. R. Murthy, S. P. Nayar and R. N. Sachthy, for the appellant.

- E *N. D. Karkhanis, Santokh Singh and U. P. Singh,* for the respondent.

The Judgment of the Court was delivered by

HEGDE, J. These are appeals by certificate. They arise from a common judgment delivered by the High Court of Patna.

- F The assessee respondent is the holder of an impartible estate. By an indenture dated November 23, 1950, he granted to his wife two premises at Camac Street, Calcutta for life by way of supplementary Khorposh (maintenance) grant. During the assessment years with which we are concerned viz. 1957-58 to 1960-61, the income from those house properties was included in the total income of the assessee under s. 16(3)(a)(iii) of the Indian Income-tax Act, 1922 (to be hereinafter referred to as the Act). The assessee challenged the validity of that inclusion firstly on the ground that s. 16(3)(a)(iii) of the Act is ultra vires Art. 14 of the Constitution and secondly on the ground that the income in question cannot be considered as his income for the purpose of the said section. These objections were overruled by the authorities under the Act. Thereafter at the instance of the assessee, the following three questions were referred to the High Court of Patna under s. 661) of the Act.
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“(1) Whether the provisions of s. 16(3)(a)(iii) of the Indian Income-tax Act, 1922 are ultra vires the Constitution of India ?

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(2) Whether in the facts and circumstances of the case the Tribunal was justified in holding that the provisions of section 16(3)(a)(iii) applied to the income arising from a property transferred by the holder of an impartible estate to his wife for her maintenance ?

B

(3) Whether in the facts and circumstances the Tribunal was right in holding that the income under section 16(3)(a)(iii) was to be included in the total income for the purpose of computing the net annual value of the residential house at 10% of the total income under the 1st Proviso to section 9(2) ?”

C

Before the High Court Counsel for the assessee did not press for any answer on the first question evidently in view of the decision of this Court in *Balaji v. Income-Tax Officer, Special Investigation Circle, Akola and ors.*⁽¹⁾ The second question was answered in favour of the assessee and in view of the decision of the High Court on that question, the High Court did not think it necessary to go into the third question. The answer to the third question necessarily depends on the answer to the second question. If we come to the conclusion that the second question was not correctly answered then it follows that the income from the properties in question has to be included in the total income of the assessee and the income from the residential house of the assessee will have to be computed at 10% of his total income under the 1st proviso to s. 9(2) of the Act. Hence the material question to be decided is whether the income from the properties in Calcutta is liable to be included in the income of the assessee.

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The assessee is assessed as an individual. As mentioned earlier, he is the holder of an impartible estate. The incidents of impartible estate have been well settled by the decisions of courts in this country as well as by the decisions of the Judicial Committee. The holder of an impartible estate has uncontrolled power of enjoyment and disposal over the impartible estate as well as over the income arising therefrom; but, yet the estate belongs to the Hindu joint family of which the holder is a member. Subject to any custom to the contrary, on the death of the holder of an impartible estate, the estate devolves by survivorship—see *Balnath Prasad Singh and ors. v. Tej Bali Singh*⁽²⁾ and *Shilpa Prasad Singh v.*

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(1) 43, I.T.R. 393.

(2) L.R. 48 I.A. 195.

- A *Rani Prayad Kumari Debi and ors.*⁽¹⁾. In *Commissioner of Income-tax, Punjab, North-West Frontier and Delhi Provinces, Lahore v. Dewan Bahadur Dewan Krishna Kishore, Rais, Lahore*⁽²⁾, the Judicial Committee held that the income of a house property which is a part of an impartible estate cannot be considered as the individual income of an assessee under s. 9 of the Act as it stood then. Therein the Judicial Committee observed :

- B “Since the decision of the Board in *Bajjnath Prashad Singh v. Tej Bali Singh* (supra), it has been settled law that property, though impartible, may be the ancestral property of a joint family, and that in such cases the successor falls to be designated according to the ordinary rule of Mitakshra. The concluding words of the judgment, delivered on behalf of the Board by Lord Dunedin in *Bajjnath's case* (supra) are to that effect, and in that case, as well as in *Shiba Prasad Singh v. Prayag Kumari Devi* (supra) which followed it, “the keynote of the whole position” is—not that property which is not joint property devolves by virtue of custom as though it had been joint—but that the general law regulates all beyond the custom, that the custom of impartibility does not touch the succession since the right of survivorship is not inconsistent with the custom; hence the estate retains the character of joint family property and devolves by the general law upon that person who, being in fact and in law joint in respect of the estate, is also the senior member in the senior line.”
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- F On the basis of the above reasoning their Lordships held “for the purpose of section 9 of the Act” the income in question is not the individual income of the holder of the estate. After that decision was rendered s. 9 of the Act was amended by incorporating s. 9(4) which reads :

“For the purpose of this section—

- (a) the holder of an impartible estate shall be deemed to be the individual owner of all the properties comprised in the estate.
- G (b) x x x”.

- H Hence, it is clear that after s. 9 was amended, the income of house property owned by a holder of an impartible estate has to be considered as his individual income. From this it follows that had the assessee not transferred the premises in question in favour of his wife, the income from those premises would have been considered as his individual income under s. 9. Now we have to see whether, because of the transfer of the premises in favour of his

(1) L.R. 59 I.A. 331.

(2) 68 I.A. p. 155.

wife, the said income cannot be considered as the income of the assessee under s. 16(3)(a)(iii). Section 16(3)(a)(iii) reads : A

"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— B

(i) x x x

(ii) x x x

(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; or C

(iv) x x x

(b) x x x

There is no dispute that the transfer with which we are concerned is a direct transfer. Further it is admitted that the transfer in question was not effected for any consideration adequate or otherwise, nor was it effected in connection with an agreement to live apart. But the assessee's contention was, which contention was accepted by the High Court that s. 9(4)(a) only deems the income of a house property included in an impartible estate as the individual income of the holder and that only for the purpose of s. 9 and not for any other purpose. In other words, it was urged that section raises a legal fiction and that legal fiction is limited for the purpose of s. 9. It was further urged that a legal fiction cannot be extended beyond the purpose for it was created. Counsel for the assessee urged that the fiction incorporated in s. 9(4)(a) can be taken into consideration only for the purpose of s. 9 and not for the purpose of s. 16(3). This contention appears to us to be fallacious. D

Section 6 of the Act sets out the various heads of income, profits and gains chargeable to income-tax. They are (i) salaries; (ii) interest on securities; (iii) Income from property; (iv) Profits and Gains of business, profession or vocation; (v) Income from other sources (vi) Capital gains. Section 3 read with s. 4 brings to tax the total income, profits and gains of an assessee from whatever source it might have been received or accrued. The total income is defined in s. 2(xv) as meaning total amount of income, profits and gains referred to in sub-s. (1) of s. 4 computed in the manner laid down in the Act. E

Section 9 deals with only one head of income. Prior to the transfer by the assessee, he, in law would have been considered as the owner of those premises for purposes of ascertaining his income F

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- A from house property and that income would have been taken into account in computing his total income. In other words, in ascertaining the total income of the assessee for the purpose of assessment that income also would have entered into the calculation. Hence when s. 9(4)(a) speaks "for the purpose of this section" it really means for the purpose of determining the taxable income
- B of the assessee. It must be remembered that an assessee is not separately taxed under each head of income. Hence when a source of income is transferred by the assessee to his wife, excepting for the two purposes mentioned in s. 16(3)(a)(iii), income from that source has to be considered as the income of the assessee because an asset of the assessee stands transferred to his wife. Such a conclusion does not amount to extending the fiction created under s.
- C 9 beyond the purpose for which it is created. It merely gives effect to that fiction. It is true that a legal fiction should not be extended beyond the purpose for which it is created; but that does not mean that the court should not give effect to that fiction.

- D Section 27(ii) of the Income-tax Act, 1961 which has taken the place of s. 9(4) of the Act does not begin by saying "for the purpose of this section". On the other hand, it says that "the holder of an impartible estate shall be deemed to be the individual owner of all the properties comprised in the estate". It was contended on behalf of the assessee that this is a change in the law and on that basis we were asked to accept the assessee's construction of s. 9(4)(a). We are unable to accept this contention. We
- E do not think that there is any change in the law. Section 27(ii) of the Income-tax Act, 1961 makes explicit what was implicit in the provision as it originally stood.

- F In view of our conclusion that the income of the house property in question should be included in the total income of the assessee, it follows as a necessary corollary that the annual value of the assessee's residential house has to be computed at 10% of the total income to the assessee which income as already held included the income from the house properties transferred to his wife as required by the 1st proviso to s. 9(2).

- G For the reasons mentioned above, these appeals are allowed; the answer given by the High Court to question No. 2 is vacated and in its place we answer that question in the affirmative and in favour of the Revenue. Our answer to the third question is also in the affirmative and in favour of the Revenue. The assessee shall pay the costs of the Revenue both in this Court and in the High Court.