C.I.T., ANDHRA PRADESH

v.

TRUSTEES OF H.E.H., THE NIZAM'S FAMILY TRUST

SEPTEMBER 30, 1986

[R.S. PATHAK AND SABYASACHI MUKHARJI, JJ.]

Indian Income Tax Act, 1922, s. 147—Nizam's Family Trust Deed—Income arising from Reserve Fund and Expenses Account—Whether can be aggregated in one single assessment—Settlor—Whether has a right to create separate and distinct trusts by a single document.

By a Deed of Trust dated May 10, 1950, the Nizam of Hyderabad created a Family Trust. A corpus of nine crores in Government securities was transferred to the trustees under that Deed, which was notionally divided into 175 equal units, 5 units to constitute a fund called the 'Reserve Fund', 3½ units to constitute the 'Family Trust Expenses Account' and the remaining 166½ units were allotted to the relatives mentioned in the Schedule in the manner provided therein. The Trust Deed provided: (1) that the income or corpus of the Reserve Fund shall be applied for any special, unusual, unforeseen or emergency expenses for the benefit of the members of the settlor's family specified in the Schedule; (2) that if there was a deficit in the Family Trust Expenses Account, a definite proportion of the income or corpus of the Reserve Fund had to be transferred to the Family Trust Expenses Account; (3) that the net income of the Family Trust Expenses Account shall be applied to the charges for the collection of the income of the Trust Fund and the remuneration of the trustees and of the members of the Committee of Management and to other costs, charges, expenses and outgoings relating to the members, (4) that on the death of any of the settlor's, relatives, a proportionate share of the corpus of the Reserve Fund must be added to the unit or units of the corpus of the Trust Fund allocated to such member, and the amounts so amalgamated are to be applied in accordance with the terms of the trust deed; and (5) that the corpus of the Family Trust Expenses Account has to be ultimately handed over to the Settlor's successor to the dignity of Nizam and falling him to his eldest male descendant in the direct male line of succession in accordance with the rule of primogeniture.

A The income of the two Funds were separately assessed for the assessment years 1960-61 and 1961-62. Subsequently, the Income-tax Officer, being of opinion that there was only one settlement under the Trust Deed, reopened the assessments for the assessment years 1960-61 and 1961-62 under clause(a) of s. 147 of the Income Tax Act, 1961 and B assessed the trustees for each of the assessment years on the combined income of the Reserve Fund and the Family Trust Expenses Account. Following the same line, separate original assessments for the assessment years 1962-63 to 1965-66 were also made. On appeal by the assessee, the Appellate Assistant Commissioner cancelled the assessments for all the years. The Income Tax Appellate Tribunal and the High Court confirmed the order of the Appellate Assistant Commissioner.

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In the appeals by the Revenue to this Court, on the question whether the incomes arising from the Reserve Fund and the Expenses Account of the Nizam's Family Trust Deed can be aggregated in a single assessment for each of the assessment years 1960-61 to 1965-66.

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HELD: 1. The High Court was right that the Settlor intended to create separate Trusts in respect of the Reserve Fund and the Family Trust Expenses Account, and that the respective incomes arising from the corpus of those Trusts cannot be aggregated in one single assessment but must be assessed separately. [979A-B]

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2. It is open to a Settlor to constitute two or more distinct trusts by a single document. [978C]

In the instant case, there is no doubt that separate funds were created, even though the division of the original Trust Fund may have F been notional. The objects for which the trustees held the Reserve Fund and the Family Trust Expenses Account are clearly demarcated and there is no overlapping or duplication. There is also no intermingling of the Funds. The transfer of a portion from one to the other cannot lead to a confusion in the separate identity of the two Trusts. [978B-E]

G 3. Although the corpus of the Trust Fund vested in the same trustees, the trustees nonetheless held distinct and severable portions of the corpus of the Trust Fund under those separate trusts. That this construction of the document accords with the intention of the Settlor is borne out by the provisions of sub-clause (4) of clause 3 of the Trust Deed, which specifically provides that on the death of the Settlor the H corpus of the Trust Fund was to be divided or to be created as notionally

divided into the 175 equal units mentioned therein for being allocated to the Settlor's relatives specified in the Schedule. [977G-H; 978A-B]

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 1856-61 of 1974 etc.

From the Judgment and Order dated 16.1.1974 of the Andhra Pradesh High Court in Case Referred No. 2 of 1972.

V.S. Desai, Ms. A. Subhashini and B.B. Ahuja for the Appellant.

Y. Ratnakar and D.N. Misra for the Respondent.

The Judgment of the Court was delivered by-

PATHAK, J. These appeals have been preferred by the Revenue against the common judgment of the High Court of Andhra Pradesh answering the following questions in favour of the assessee:

> "(1) Whether, on the facts and in the circumstances of the case, the incomes arising from the Reserve Fund and the Expenses Account of the Nizam's Family Trust Deed dated 10.5.1950 can be aggregated in a single assessment for each of the assessment years 1960-61 to 1965-66?
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> (2) If the answer to the above question is in the affirmative, whether the assessments made under section 148 of the Act for the assessment years 1960-61 and 1961-62 were legal and valid?"

By a Deed of Trust dated May 10, 1950 the Nizam of Hyderabad created a Family Trust. A corpus of nine crores in Government securities was transferred to the trustees under that Deed. The corpus was notionally divided into 175 equal units. Five units were to constitute a fund called the 'Reserve Fund', and 3½ units were to constitute the 'Family Trust Expenses Account". The remaining 166½ units were allotted to the relatives mentioned in the Schedule in the manner provided therein, the number of units allocated to each individual relative being specified there.

Two clauses of the Trust Deed hold the centre of the stage in

these appeals. Clause 6 creates a Reserve Fund comprising five equal units of the corpus of the Trust Fund. The trustees hold the Reserve Fund upon trust to apply the income or corpus thereof for any special, unusual, unforeseen or emergency expenses for the benefit of the members of the Settlor's family specified in the Schedule. Additionally, if the income of the Family Trust Expenses Account is insufficient to meet the charges of collection of the income of the Trust Fund and the remuneration of the trustees and of the Committee of Management and the other costs, charged, expenses and outgoings relating to the Trust, the trustees are enjoined to make good such deficit out of the income or corpus of the Reserve Fund, and for that purpose they may transfer to the Family Trust Expenses Account such sums as may be required. It is further provided that on the death of any of the Settlor's relatives specified in the Schedule the trustees must set apart out of the Reserve Fund a certain portion calculated in accordance with the directions contained in the clause and to add such portion to the units of the corpus of the Trust Fund allocated to the member specified in the Schedule and to amalgamate the same, and to hold it upon the same trusts 'as those hereinafter declared and contained of and concerning the unit or units of the corpus of the Trust Fund allocated to such relative of the settlor as aforesaid.'

Clause 7 directs the trustees to hold 3½ equal units of the corpus of the Trust Fund allocated to the Family Trust Expenses Account, and to apply the net income of that Fund to the charges for the collection of the income of the Trust Fund and the remuneration of the trustees and of the members of the Committee of Management and to other costs, charges, expenses and outgoings relating to the Trust. There is a further provision. After all the other Trusts constituted under the Deed have been fully administered and carried out and the corpuses of all such units have been handed over and transferred to the ultimate respective beneficiaries the trustees are enjoined to transfer and hand over the 3½ units comprising the Family Trust Expenses Account to the Settlor's successor who may be described as the Nizam of by any other title or rank or designation, and failing such person, to the eldest male descendant in the direct male line of succession of the Settlor according to the rule of primogeniture.

For the assessment year 1959-60 and the assessment years prior thereto the incomes accruing to the Reserve Fund and the Family Trust Expenses Account were aggregated in a single assessment made on the trustees of the Nizam's Family Trust. But thereafter the asses-

see's appeals having been allowed by the Appellate Assistant Commissioner of Income-tax against the assessments for the years 1955-56 to 1959-60, the incomes of the two Funds were separately assessed for the assessment years 1960-61 and 1961-62, the assessee being described in the one case as the trustees of the Nizam's Family Trust Reserve Fund, and in the other as the trustees of the Nizam's Family Trust Expenses Account. Subsequently, the Income-tax Officer being of opinion that there was only one settlement under the Trust Deed, reopened the assessments for the assessment years 1960-61 and 1961-62 under clause (a) of s. 147 of the Income Tax Act, 1961 in order to assess the trustees on the combined income of the Reserve Fund and the Family Trust Expenses Account. Following the same line, he made separate original assessments for the assessment years 1962-63 to 1965-66. On appeal by the assessee, the Appellate Assistant Commissioner relied on an order of the Appellate Tribunal in the Wealth Tax Appeals pertaining to the same trust arrangements and cancelled the assessments for all the years. The Revenue appealed to the Income Tax Appellate Tribunal, but the view taken by the Appellate Assistant Commissioner was upheld by the Appellate Tribunal and the appeals were dismissed. Upon that, the Revenue obtained a reference to the High Court of Andhra Pradesh on the two questions of law set forth earlier for the assessment years 1960-61 to 1965-66. By its judgment dated January 16, 1974 the High Court answered both the questions in the negative. And hence these appeals.

For the subsequent assessment years 1967-68 to 1970-71 the High Court adopted the same view in regard to the first question. The second question did not arise for those assessment years. Special Leave Petition Nos. 4171 to 4174 of 1978 have been filed against the judgment of the High Court in those cases. We grant special leave, and the consequent appeals are also being disposed of by this judgment.

The primary question in these appeals is whether the incomes arising from the Reserve Fund and the Family Trust Expenses Account of the Nizam's Family Trust can be assessed separately or must be aggregated in a single assessment.

It seems to us clear that by the Deed of Trust dated May 10, 1950 the Nizam created a number of separate and distinct Trusts. They were created for specific and distinct purposes, and although the corpus of the Trust Fund vested in the same trustees, the trustees nonetheless held distinct and severable portions of the corpus of the Trust Fund

A under those separate trusts. That this construction of the document accords with the intention of the Settlor is borne out by the provisions of sub-clause (4) of clause 3 of the Trust Deed, which specifically provides that on the death of the Settlor the corpus of the Trust Fund was to be divided or to be treated as notionally divided into the 175 equal units mentioned therein for being allocated to the Settlor's rela-
B tives specified in the Schedule, 166½ units being apportioned between the relatives in the proportion set out, five equal units to constitute the Reserve Fund and the last 3½ equal units to constitute the Family Trust Expenses Account. There is no doubt that separate funds were thus created, even though the division of the original Trust Fund may have been notional. There is also no denying that it is open to a Settlor
C to constitute two or more distinct trusts by a single document. See *Commissioner of Income-tax, Bombay* v. *Manilal Dhanji,* [1962] 44 I.T.R. 876, 886. The entire position becomes absolutely clear if regard is had to clause 10 of the Trust Deed which permits the trustees to have separate Trust Deeds made and executed in respect of the different funds carved out of the 175 equal units of the corpus of the Trust Fund.
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It is also apparent that the objects for which the trustees held the Reserve Fund and the Family Trust Expenses Account are clearly demarcated and there is no overlapping or duplication. There is also no intermingling of the Funds. It is true that if there is a deficit in the Family Trust Expenses Account, a definite portion of the income or
E corpus of the Reserve Fund has to be transferred to the Family Trust Expenses Account. But the two Funds, remain distinct from each other at all times, The transfer of a portion from one to the other cannot lead to a confusion in the separate identity of the two Trusts.

F A further indication evidencing the creation of two distinct Trusts is the completely different manner of disposal of the corpus of the two Funds. As regards the Reserve Fund we have seen that on the death of any of the Settlor's relatives a proportionate share of the corpus of the Reserve Fund must be added to the unit or units of the corpus of the Trust Fund allocated to such members, and the amounts
G so amalgamated are to be applied in accordance with the terms of the Trust Deed mentioned earlier. In the case of the Family Trust Expenses Account, the corpus of that Fund has to be ultimately handed over to the Settlor's successor to the dignity of Nizam and failing him to his eldest male descendant in the direct male line of succession in accordance with the rule of primogeniture.

H We agree with the High Court that the Settlor intended to create

separate Trusts in respect of the Reserve Fund and the Family Trust Expenses Account, and that the respective incomes arising from the corpus of those Trusts cannot be aggregated in one single assessment but must be assessed separately. The first question in these Appeals is therefore answered in the negative, in favour of the assessee and against the Revenue.

Inasmuch as the answer to the first question is in the negative, the second question does not arise and we need not consider that question in these Appeals.

The Appeals are dismissed with costs.

M.L.A. Appeals dismissed.