DAMODAR K. SHAH Vs Commissioner of Income Tax

Court: Gujarat High Court

Date of Decision: Nov. 10, 2000

Acts Referred: Income Tax Act, 1961 â€" Section 16(3)(a), 16(3)(a)(iii), 2(24), 27, 64
Married Womens Property Act, 1874 â€" Section 6

Citation: (2001) 166 CTR 429

Hon'ble Judges: D.M. Dharmadhikari, C.J; A.R. Dave, J

Bench: Full Bench

Advocate: K.H. Kaji, for the Assessee, Akil Qureshi, with M.R. Bhatt, for the Revenue, for the Appellant;

Judgement

D.M. Dharmadhikari, C.J.

For the assessment years 1979-80 and 1980-81, at the instance of the assessee, the following three questions of law based on interpretation of

section 64(1)(iv) of the Income Tax Act, 1961, have been referred and all the three questions deserve a common answer :

(1) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that there was any transfer directly or

indirectly by the assessee to his wife within the meaning of section 64, Income Tax Act, 1961, when the assessee took out a policy of insurance u/s

6 of the Married Womens Property Act, 1874 ?

(2) If question no. 1 is answered in the affirmative, whether on the facts and in the circumstances of the case, the Tribunal was justified in law in

holding that there was consideration for the said transfer within the meaning of section 64, Income Tax Act, 1961 ?

(3) Whether, on the facts and in the circumstances of the case, the interest earned by the wife of the assessee on the amount received on maturity

of the insurance policy taken by the assessee under the Married Womens Property Act, 1874 was includible in the income of the assessee u/s 64

of the Income Tax Act, 1961 ?

2. All the three questions mould down to one common question as stated by the Tribunal, as to whether there was any transfer of asset by the

assessee as the husband to his wife and whether it was without any consideration and interest income derived by the wife on the maturity value of

the insurance policy can be taxed as income of the husband by recourse to section 64(1)(iv) of the Act.

Provisions of section 64(1)(iv) of the Act read :

64(1) In computing the total income of any individual, there shall be included all such income as arises directly or indirectly

(i) x x x x

(ii) x x x x

(iii) x x x x

(iv) subject to the provisions of clause (i) of section 27, to the spouse of such individual from assets transferred directly or indirectly to the spouse

by such individual otherwise than for adequate consideration or in connection with an agreement to live apart.

3. Now, the facts leading to the reference of the above questions be stated. The assessee had taken out a policy on his life for the benefit of his

wife. It is purported to have been issued under the provisions of Married Womens Property Act, 1874, the provisions of which, are not directly

relevant for deciding the questions of Income Tax liability of the husband on the interest income from the maturity value of the policy. It may merely

be mentioned that the aforesaid Act of 1874 was enacted with an object that insurance policy taken by the husband for the benefit of his wife

should be treated as separate property for the wife and kept protected by exempting it from attachment for recovery of any dues against the

husband.

Under the aforesaid insurance policy for which premium was paid by the husband, the wife received certain amounts and earned interest of Rs.

2,250 thereon. The Income Tax Officer added the interest amount to the income of the husband u/s 64(1)(iv) of the Act.

The Commissioner (Appeals) allowed the appeal of the assessee and took the following view which stated in his own words. is as under :

The obligation to pay the premium is under the contract; it cannot, therefore, be said that the premia amounts are the assets transferred by the

assessee for the immediate or deferred benefit of his wife.

The Commissioner (Appeals) also referred to section 6 of the Married Womens Property Act and observed :

The policy of insurance effected by husband in favour of his wife enures for her benefits. It is deemed to be a trust and the policy amount is never

considered as property of the husband. The said amount cannot be held as property transferred by the husband to the wife directly or indirectly.

The premia paid are also under the bilateral agreement or contract between the husband and the insurance company. The payments are by way of

satisfaction of contractual liability. They cannot, therefore, be construed to be transfer of money by the husband to the wife with or without

consideration. Accordingly, it cannot be said that either the policy amount becoming payable on the maturity of the policy or the amount of premia

paid was an asset transferred directly or indirectly to the wife. The interest income is, therefore, not liable to be charged to tax in the hands of the

appellant u/s 64 of the Act.

The Tribunal, however, reversed the view of the Commissioner (Appeals) and agreeing with the opinion of the Income Tax Officer held that

interest earned on the maturity value of the policy was income from the asset transferred indirectly by the husband to the wife within the meaning of

section 64(1)(iv) of the Act. The Tribunal placed reliance on the decision of the Delhi High Court in the case of A. C. KHANNA Vs.

COMMISSIONER OF Income Tax, DELHI., in the case of D.M. Netarwala Vs. Commissioner of Income Tax, Bombay City-I, and R

DALMIA (DECD.) (THROUGH EXECUtorS AND L. RS.) Vs. COMMISSIONER OF Income Tax, NEW DELHI., .

4. Mr. K.H. Kaji appearing for the assessee in assailing the conclusion of the Tribunal in its order submits that premium amount for the policy was

paid under contract of insurance. Under the contract of insurance, full agreed sum was payable in the event of premature death of the husband

during the currency of the policy and maturity value of the amount of insurance was payable on payment of entire amount of premium. The

premium amount paid for the insurance policy, according to his argument, is not an asset transferred directly or indirectly to the wife. The interest

income earned on the amount received on the maturity value of the policy was not includible in the income of the husband u/s 64(i)(iv) of the Act.

Very strong reliance has been placed on two decisions of the Supreme Court in the case of Commissioner of Income Tax, Gujarat Vs. Keshavlal

Lallubhai Patel, . By relying on the aforesaid decision, it is submitted that the word ""transfer"" used in section 16(3)(a) has to be strictly construed to

include within the word transfer only transfers in the strict sense.

5. On the facts found in the case of Keshavlal Lallubhai (supra) it was held by the Supreme Court to be a case of non-transfer. There, the assessee

had thrown all his self-acquired property in the common hotchpotch of the property of HUF consisting of his wife and sons. Some time later, an

oral partition was effected and properties were transferred in accordance with the arrangement in the partition between the members of the family.

The question was whether this amounted to indirect transfer; of the property allotted to the wife. The Supreme Court held that partition of the joint

family property was not a transfer in the strict sense. The above decision in Keshavlal Lallubhai (supra) is not helpful in the present case on facts

here which are totally different. That was a case of partition of joint family property which included the property thrown by the assessee in the

common hotchpotch. The Supreme Court took the view that partition of the joint family property does not involve transfer. Partition is really a

process in and by which a joint enjoyment is transformed into an enjoyment in severality.

6. On behalf of the assessee, second case relied of the Supreme Court in Commissioner of Income Tax, West Bengal, Calcutta Vs. Prem Bhai

Parekh and Others, . Relying on the said decision, the contention advanced on behalf of the assessee is that there is no direct or proximate

connection between the transfer of asset and the income derived. The income in question does not arise directly as a result of transfer nor does in

any manner connect with it. In the case of Prembhai Parekh (supra), the assessee was a partner in a firm having 7 annas share therein. He retired

from the partnership. Thereafter, he gifted certain amounts to each of his four sons. The firm was reconstituted. The question was-whether income

arising to his minor sons by virtue of their admission to the benefit of the partnership firm could be included in the income of the assessee. It is on

those facts that the Supreme Court took the view that income earned by the minor sons as members of the partnership firm cannot be held to have

proximity or direct connection with the gifts made by the assessee to his sons. The Supreme Court found that there was no nexus between the

transfer of asset and income in question. The proximity between transfer of asset and income is not on the basis of time or period. The aforesaid

decision of the Supreme Court in the case of Prembhai Parekh (supra) came up for consideration in the later decision of the Supreme Court in

Commissioner of Income Tax Vs. Smt. Pelleti Srideramma, and Prembai Parekh case (supra) was explained thus :

The proximity referred to is the proximity between the assets transferred and the income in question. The time lag, if any, is of no significance u/s

64 of the Act.

It was in this manner that this decision was understood and distinguished in the subsequent, decision of the Supreme Court in Smt. Mohini Thapar

(Dead) by Lrs. Vs. Commissioner of Income Tax , (Central) Calcutta and Others, . In the decision of Smt Pelleti (supra), the facts on which the

income was included in the income of the husband deserve to be noted for answering the questions posed before us. In the case of Smt. Pelleti

(supra), the assessee as an individual was carrying on business in mica mining. She made cash gift of Rs. 90,000 to her minor son. The amount was

utilised for purchasing house property. The house property was utilised for assessees business. After eight years, the house property was sold on

which capital gain was derived as income. The question was whether this capital gain could be included in the income of the assessee. The

Supreme Court held :

What was gifted by the assessee to her minor son was cash of rupees ninety thousand but it could not be forgotten that that money was utilised for

purchasing the said house property. It was only a case of substitution of one form of property by another form of property. When the said house

property was sold, a capital gain of rupees fifty-eight thousand was made. Capital gain is undoubtedly a type of income. The definition of income in

section 2(24) includes capital gains. It was, therefore, liable to be included in the income of the assessee.

7. Proximity between asset and income has to be considered irrespective of time lag between transfer of asset and actual income derived. The

decisions of the Supreme Court in Prembhai Parekh (supra) as explained in Smt. Pelleti (supra) were considered by the Division Bench of this

court in Commissioner of Income Tax Vs. Mehmoodmian A. Topiwala, . The decision in Prembhai Parekh (supra) is explained and later decision

was taken note of. In the Division Bench case of this court in Topiwala (supra), the facts were that the assessee and his two brothers were joint

owners of piece of land. The assessee gifted his one third share in the land to his brothers sons. The assessees brother, on the same day,

transferred one-third share to the assessees wife. The assessees wife sold the land received by her. The amounts received by the wife of the

assessee were invested by her with the assessee on which she had earned interest- Income Tax Officer included the interest in the total income of

the assessee and the Division Bench upheld such inclusion by observing :

Here, we are dealing with income which has a proximate connection with the transfer of the asset made by the assessee. On a plain reading of

section 64(1)(iv), it is evident that the income arising to the wife has to be included in the total income of her husband.

8. Learned counsel Mr. Akil Qureshi appearing for the revenue submits that the facts of this case clearly show that assets in the share of amounts

of premia were transferred by the husband in favour of his wife through the insurance policy and the interest amount derived from the maturity value

of policy was clearly an income which arose indirectly from the asset transferred to the wife. Provisions of section 64(1)(iv) are clearly satisfied in

the present case. On behalf of the revenue , apart from the decisions of the Supreme Court referred above, strong reliance has been placed on the

decision of the Supreme Court in Commissioner of Income Tax, Bombay City II Vs. Keshavji Morarji and Another, . In the case of Keshavji

Morarji (supra), the assessee had a son and three daughters. Keshavji Morarji transferred a sum of Rs. 5,00,000 to his son. Later, by a deed, he

settled Rs. 4,41,000 in favour of his minor grandchildren and on the same day, his son settled a sum of Rs. 1,54,000 upon his three sisters. Income

Tax Officer held that settlement indirectly transferred the asset belonging to his minor daughters. His son had transferred, the asset belonging to the

assessee to his own minor children. Accordingly to the assessing officer, the income attributable to his daughters is liable to be assessed in the

hands of the assessee Keshavji Morarji. It is on these facts that the Supreme Court held against the assessee by treating the income of his minor

daughters to be his income from the asset indirectly transferred. The Supreme Court relied on its earlier decision in Commissioner of Income Tax,

Madras Vs. C.M. Kothari, Madras (Dead), and after him his Legal Representative, . The observations and relevant provisions of the Act in the

case of Kothari (supra) were quoted which read as under :

It is true that the section says that the assets must be those of the husband, but it does not mean that the same assets should reach the wife. It may

be that the assets, in the course of being transferred, may be changed deliberately into assets of a like value of another person.

A chain of transfer, if not comprehended by the word indirectly, would easily defeat the object of the law which is to tax the income of the wife in

the hands of the husband, if the income of the wife arises to her from assets transferred by the husband.

9. In the above factual and legal background, the questions posed before us have to be answered. For the purpose of application of section 64(1)

(iv) of the Act, the following conditions should be satisfied :

(1) There must be transfer of asset by the assessee to his wife;

(2) the transfer in favour of wife by the assessee must be otherwise than for adequate consideration; and

(3) the income in question should have arisen or accrued to the wife directly or indirectly from the asset transferred to her by her husband.

So far as condition No. (1) is concerned, it is, according to us, satisfied. The amount of premia paid by the husband for the benefit of wife to the

insurance company under the insurance policy has to be held to be transfer of cash asset by the husband to the wife. We are not prepared to

accept the submission made on behalf of the assessee that the amounts of premia were paid under the contract of insurance and to discharge

contractual obligations under the insurance policy. What is to be noted in the opening part as also in clause (iv) of section 64 is that there is use of

expressions directly or indirectly at two places. If the income arises indirectly from the asset transferred by the assessee indirectly to his spouse, the

income is includible in the income of the assessee. The provision has to be construed in a manner so as to fulfil the object of the Act which, as held

by the Supreme Court in Keshavji Morarji (supra) is to tax the income of wife in the hands of the husband, if the income of the wife arises to her

from the asset transferred by the husband. Merely because the policy of insurance by its terms requires payment of premia by the husband during

his lifetime, does not mean that premia were not cash amounts transferred to the benefit of the wife through the insurance policy. The provisions of

the Married Women, Property Act, 1874 to which reference has been made by the Commissioner (Appeals), are totally irrelevant. The said Act is

intended only for the purpose of making the insurance amount as separate property of the wife and to make it exempt from attachment for

recovery of dues against the husband. The amount of policy is the property of the wife under the said Act, but the income derived by way of

interest on investment of maturity amount of the life insurance policy can be held to be income indirectly arising to the husband from the cash

amounts paid as premia by him under the policy for the benefit of the wife. The maturity value of policy along with interest would be the exclusive

property of the wife in accordance with the Act of 1874, but the interest amount is liable to be taxed as income of the husband in his hand.

So far as condition no. (2) is concerned, it is undoubtedly transfer of cash by the husband in favour of the wife otherwise than for any consideration

condition no. (2) is also satisfied.

So far as condition no. (3) is concerned, what is required in be fulfilled is that the income should accrue indirectly or directly to the husband through

the asset transferred. As discussed above, the amounts of cash premia paid under the insurance policy for the benefit of the wife resulted into

payment of maturity value of the policy to the wife. The wife invested that amount and earned interest. This interest income, as observed above,

arises as indirect income to the husband from the cash money transferred in the shape of premia towards the insurance policy for the benefit of the

wife, Condition no. (3) is also fulfilled.

We are fortified in our conclusion by the decision of the Supreme Court in the case of Keshavji Morarji (supra) and the Division Bench decision of

this court in the case of Topiwala (supra) which has considered all the decisions of the Supreme Court on which reliance has been placed on behalf

of the assessee. We are also fortified in our view by the decision of the Bombay High Court in the case of Sevantilal Maneklal Sheth Vs.

Commissioner of Income Tax (Central), Bombay, . The facts of that case are nearer to the facts of the present case. Therefore, the assessee made

a gift to his wife of shares in a limited company. The wife sold the shares and made capital gain. The wholesale proceeds were invested and

fetched annual interest. The question was whether capital gain realised and the interest received annually were income arising from the shares

transferred to the wife and can be included in the income of the husband. The Division Bench of the Bombay High Court came to the following

conclusion against the assessee :

The transferred asset in the new form i.e., transformed into cash being only of the value of Rs. 69,730, the interest attributable to that amount

would be the income from the transferred assets arising directly or indirectly from the transferred assets to the wife otherwise than for adequate

consideration or in connection with an agreement to live apart within the meaning of section 16(3)(a)(iii) and the rest of it would undoubtedly be the

income of the wife but it was not the income from the transferred assets but it was the income from the income, which she had received during the

previous year.

In our opinion, therefore, out of the interest received by Rai Laxmibai for the subsequent years 1958-59 and 1959-60 only such interest as would

be attributable to the value of the transferred assets viz. the amount of Rs. 69,730 would be liable to be included in the total income of Maneklal

and not the rest.

Applying the ratio of the decision of the Bombay High Court to the facts of the present case, it is to be found that the maturity value of the policy

was the amount of premia paid inclusive of other money like bonus or interest payable under the policy. This maturity value of the policy was

invested by the wife to earn interest income. The interest income earned by the wife by deposit/investment of the maturity value of the insurance

policy was income which arose indirectly from the cash asset transferred by the husband in the shape of premia to the wife under the terms of the

policy. In the present case, therefore, full amount of interest derived in respect of the amount of maturity value of the policy was liable to be

included as income of the husband u/s 64(1)(iv) of the Act.

10. As a result of the detailed discussion aforesaid, three questions which have been considered as one common question are answered in favour

of the revenue and against, the assessee. Reference thus stands disposed of in favour of the revenue , but without any order as to costs.