Commissioner of Income Tax, Ernakulam Vs P.P. Hassan Koya

Court: High Court Of Kerala

Date of Decision: July 27, 1966

Acts Referred: Income Tax Act, 1961 â€" Section 16(3)(b), 41, 66, 66(1)
Wealth Tax Act, 1957 â€" Section 21(1)

Citation: (1966) KLJ 788

Hon'ble Judges: M.S. Menon, C.J; P. Govindan Nair, J

Bench: Division Bench

Advocate: C.T. Peter, for the Appellant; T.L. Viswanatha Iyer, for the Respondent

Judgement

M.S. Menon, C.J.
This is a reference at the instance of the Commissioner of income tax, Kerala, Ernakulam, by the income tax Appellate

Tribunal, Madras Bench u/s 66(1) of the Indian Income tax Act, 1922. The assessment year concerned is 1961-62; and the question referred is:

Whether the income arising from the properties transferred to the Wakf by the assessee is liable to be included in the income of the assessee under

Sec. 16 (3) (b) of the income tax Act, 1922?

The assessee executed the deed of wakf on 5-11-1960. The deed is reproduced as Appendix A to the Statement of the Case.

2. In Abdul Fata Mahomed Ishak v. Russomoy Dhur Chowdhry, (1894) 22 I.A. 76, the Judicial Committee held that when the gifts to charity

were substantial, not illusory, then alone a wakf will be valid, and that where a wakf was founded for the aggrandizement of a family, or where the

gifts to charity were illusory or merely nominal, the wakf will be void. The decision created a storm in this country, opposition from jurists like

Ameer Ali, and eventually resulted in the passing of the Mussalman Wakf Validating Act, 1913. It is common ground that the beneficiaries under

the wakf with which we are concerned are the wife and minor children of the assessee, and that it is a wakf that is valid under the Mussalman

Wakf Validating Act, 1913.

3. It is interesting to note that the Judicial Committee chose to follow the above decision in 1952, in Patama Binti Mohmmed v. Mohamed Bin

Salim, (1952) A.C.I. an appeal from the Court of Appeal for Eastern Africa. In that case Lord Simonds said that the earlier decision was binding

as a precedent, unless it has been altered by statute as has been done in this country.

4. The sole question for determination is whether the wakf with which we are concerned attracts section 16 (3) (b) of the Indian income tax Act,

1922. Under that provision, in computing the total income of any individual for the purpose of assessment, there shall be included so much of the

income of any person or association of persons as arises from assets transferred otherwise than for adequate consideration to the person or

association by such individual for the benefit of his wife or a minor child or both. It is agreed that the transfer of assets embodied in the wakf was

not for adequate consideration, and that the said transfer cannot but be considered as a transfer to the Almighty.

5. In Commissioner of Wealth-tax v. Puthiya Ponnanichintakam Wakf, 1965 K.L.T.997, this court has held that the Almighty is a juristic person,

that the assets of a wakf vest not in the mutawalli but in the Almighty, and that the mutawalli functions as a mere procurator, manager or

superintendent. Such being the case we do not see why it should not be held that all the elements required for attracting section 16(3)(b) of the

Indian income tax Act, 1922, exist in this case. The assessee is an individual: he has transferred assets otherwise than for adequate consideration to

the Almighty who is a juristic person; and the transfer is for the benefit of his wife and minor children.

6. It is submitted on behalf of the assessee, however, that the decision of the Supreme Court in Commissioner of Income Tax, Kerala and

Coimbatore Vs. Puthiya Ponmanichintakam Wakf Manager P.P. Ayesha Bi Bi, , precludes a conclusion in favour of the Department. The case

before the Supreme Court was a case under sub-section (1) of Section 41 of the Indian income tax Act, 1922. Under that sub-section, in the case

of income, profits or gains chargeable under the Act which the mutawalli of any wakf which is valid under the Mussalman Wakf Validating Act,

1913, is entitled to receive on behalf of any person, the tax shall be levied upon and recoverable from such mutawalli ""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.

7. The contention of counsel for the assessee is that the Supreme Court has held that the income, profits or gains of a wakf are receivable on behalf

of the beneficiaries and not on behalf of the Almighty, that as a result it cannot be said that the income, profits or gains arise to the Almighty, that is,

the transferee under the deed of wakf, and that consequently one of the conditions necessary, for attracting section 16(3)(b) of he Act--that the

income arises to the transferee--does not obtain in this case. The submission is not borne out by the judgment of the Supreme Court.

8. The following extract from the judgment of the Supreme Court will clearly show what has been held by that Court:

Though under the Mahomedan law the properties dedicated under a wakf deed belong to the Almighty, it is only in the ideal sense, for the

muthawalli in the name of the Almighty utilises the income for the purposes and for the benefit of the beneficiaries mentioned therein. Under the

Mahomedan law, the moment a wakf is created all rights of property pass out of the wakf and vest in the Almighty. The property does not vest in

the muthawalli for he is merely a manager and not a trustee in the technical sense.

and:

it is manifest that under the Mahomedan law, the property vests only is the Almighty but the muthawalli, acting in His name utilises the income for

the advantage of the beneficiaries. Therefore, the words on behalf of any "person" in section 41 of the Act can only mean on behalf of the

beneficiaries and not on behalf of the Almighty.

9. It is the last sentence of the second extract that is apparently the foundation of the submission of counsel for the assessee. We think that all that

the Supreme Court has really said is that the expression ""on whose behalf such income, profits or gains are receivable"" is synonymous with the

expression ""for whose benefit such income, profits or gains are receivable"".

10. Sub-section (1) of section 21 of the Wealth-tax Act, 1957, corresponds to sub-section(1)of section 41 of the Indian income tax Act, 1922.

Under sub-section (1) of section 21, in the case of assets chargeable under that Act which are held by a mutawalli under a valid deed of wakf, the

wealth-tax shall be levied upon and recoverable from the mutawalli ""in the like manner and to the same extent as it would be leviable upon and

recoverable from the person on whose behalf the assets are held"". In Suhashini Karuri and Another Vs. Wealth Tax Officer, "D" Ward and

Another, , Sinha J. after a detailed discussion of the points involved held that the words ""on behalf of"" are synonymous with the expression ""for the

benefit of"". We understand the Supreme Court as saying the same thing as regarding sub-section (1) of section 41 and nothing more or less than

that.

11. If the expression ""on behalf of"" is synonymous with the expression ""for the benefit of"", as we think it is, there can be no further controversy in

this case. The fact that the income is received by the mutawalli for the benefit of the beneficiaries does not mean that the income did not arise to the

Almighty in whom and in whom alone the assets vested on the creation of the Wakf. The Supreme Court makes this clear when it says in the first

extract in paragraph 9 that ""The mutawalli in the name of the Almighty utilises the income for the purposes and for the benefit of the beneficiaries

and adds in the second extract in the said paragraph that ""the mutawalli, acting in His name, utilises the income for the advantage of the

beneficiaries.

12. It follows that all the elements required to attract section 16(3)(b) of the Indian income tax Act, 1922, obtain in this case, and that the question

referred has to be answered in the affirmative, that is, against the assessee and in favour of the Department. We do so, but in the circumstances of

the case without any order as to costs. A copy of this Judgment under the seal of the High Court and the signature of the Registrar will be sent to

the Appellate Tribunal as required by sub section (5) of section 66 of the Indian Incometax Act, 1922.