

(1982) 137 ITR 151 : (1982) 9 TAXMAN 241

Madhya Pradesh High Court (Indore Bench)

Case No: Miscellaneous Civil Case No. 231 of 1979

Maharaja Gajendrapal
Singh of Jhabua

APPELLANT

Vs

Commissioner of
Income Tax

RESPONDENT

Date of Decision: April 6, 1981

Acts Referred:

- Madhya Bharat Abolition of Jagirs Act, 1951 - Section 9

Citation: (1982) 137 ITR 151 : (1982) 9 TAXMAN 241

Hon'ble Judges: S.S. Sharma, J; K.N. Shukla, J

Bench: Division Bench

Advocate: Mahajan, for the Appellant; Bagadiya, for the Respondent

Judgement

1. Income Tax Appellate Tribunal, Indore Bench, has stated the case and referred the following question for decision :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the amount of maintenance paid to the two adoptive mothers by the assessee amounting to Rs. 3,300 per annum as a result of the judgment of the Additional District Judge, Jhabua, dated October 1, 1966, in Civil Suit No. 1-A of 1965 was only an application of income and not diversion thereof by overriding title under a legal obligation?."

2. The assessee is an individual and derives income from salary, house property, interest, deposits, etc. Assessment years under reference are 1971-72 to 1975-76. For all the assessment years in question the assessee claimed deduction of Rs. 3,300 which he had paid to his adoptive mothers, Smt. Solankiriji and Smt. Dodnaiji. The ITO disallowed the claim. The matter was taken in appeal by the assessee before the AAC. It was contended by him before the AAC that there was a legal obligation on his part to pay maintenance

out of his jagir property to his adoptive mothers who were widows and, therefore, he was entitled to claim deduction of this amount from his property income. The appeal was dismissed and the assessee's claim was rejected. The assessee in second appeal raised the same point and relied on the judgment of the Additional District Judge, Jhabua, in Civil Suit No. 1-A of 1965. The Appellate Tribunal held that the assessee's liability for the payment of maintenance to his adoptive mothers was his personal liability and it was not a charge upon the property from which the assessee derived income. According to the Appellate Tribunal there was no overriding title in the adoptive mothers of the assessee and, therefore, the amount of maintenance paid by the assessee to them was only an application of income and not diversion thereof under a legal obligation.

3. The basis for answering the question referred to us is the judgment of the Additional District Judge, Jhabua, in Civil Suit No. 1-A of 1965. It will, therefore, be useful to deal with the nature of the assessee's claim in the light of the aforesaid judgment. Copy of the judgment is annex. 1) to the reference. Perusal of this judgment shows that Thakur Narayansinghji, adoptive father of the assessee, was the Thikandar of Thannawada. Narayansinghji expired in the year 1945. The assessee was the adoptive son of late Thakur Narayansinghji. During the minority of the assessee the jagir property was managed by the court of wards. In the year 1952 the jagir was resumed by the State of Madhya Bharat under the Madhya Bharat Abolition of Jagirs Act (Act No. 23 of 1951). The judgment further shows that compensation amounting to Rs. 1,84,723 was determined as payable to the assessee and the Jagir Commissioner acting u/s 9 of the Abolition of Jagirs Act fixed the amount of maintenance payable to the widows of late Thakur Narayansinghji (adoptive mothers of the assessee).

4. The suit was instituted by one of the adoptive mothers of the assessee against the assessee and the other adoptive mother, i. e., the co-widow, claiming partition and, in the alternative, maintenance. The Additional District Judge dismissed the claim for partition but held that the plaintiff's claim for maintenance was based on her right u/s 9 of the Abolition of Jagirs Act. He, however, enhanced the compensation from the year 1964 onwards to Rs. 150 per month instead of Rs. 882 per year. The maintenance for the year 1963 was fixed in accordance with the order of the Jagir Commissioner u/s 9 of the Act at Rs. 882 per annum. The resume of the facts about which there is no dispute now will clearly show that the adoptive mothers of the assessee had been granted maintenance. firstly, under the statute (s. 9 of the Abolition of Jagirs Act) and, secondly, by the decree of the court which upheld the overriding title of the plaintiff, i. e., one of the adoptive mothers, to claim maintenance out of the property of her late husband. This was not a personal liability of the assessee but a legal obligation arising out of the right of the adoptive mothers to claim maintenance out of their late husband's property. In this way it was not an application of income but diversion thereof by an overriding title under a legal obligation.

5. In [The Commissioner of Income Tax, Bombay City II Vs. Shri Sitaldas Tirathdas](#), their Lordships of the Supreme Court laid down the test for the determination of the question. It

was observed that (pp. 374, 375):

"Where by the obligation income is diverted before it reaches the assessee, it is deductible ; but where the income is required to be applied to discharge an obligation after such income reaches the assessee, the same consequence, in law, does not follow."

6. In the cited case it was held that a maintenance paid to the wife and children under a decree of the court is not deductible from the income. We have already stated the facts to show that the maintenance was payable in view of the statutory obligation which entitled the widow of a jagirdar to claim maintenance at the time of determination of the amount of compensation payable to the jagirdar whose jagir was resumed.

7. In [Bai Vajia \(Dead\) by Lrs. Vs. Thakorbhai Chelabhai and Others](#) , their Lordships observed thus (headnote) :

"A widow"s right to maintenance, though not an indefeasible right to property, is undoubtedly a pre-existing right..... The claim to maintenance, as also the right to claim property in order to maintain herself, is an inherent right conferred by the Hindu law and, therefore, any property given to her in lieu of maintenance is merely in recognition of the claim or right which the widow possessed from before."

8. In view of these observations it is clear that in the instant case the adoptive mothers had a right of maintenance out of the property of their late husband not only under the Hindu law but also under the Abolition of Jagirs Act and the assessee was statutorily bound to pay the amount of maintenance under the Jagir Commissioner"s order and also under the decree of the court. The decree of the court did not create a right of maintenance but only recognised the pre-existing right and, therefore, it was an overriding legal obligation.

9. In ITAT v. Sardar Virendrasingh [1978] 113 ITR 120 a similar question was considered by this court. In that case also an order for maintenance had been passed u/s 9 of the Madhya Bharat Abolition of Jagirs Act and it was held thus (headnote) :

"As the maintenance allowance was paid under a legal obligation, it was diverted by overriding title and did not form part of the assessee"s income."

10. In [Addl. Commissioner of Income Tax Vs. Rani Pritam Kunwar](#) , their Lordships held that maintenance paid by the assessee under the Hindu law to her husband"s mother, sister, daughter and co-widow was a liability on the estate. It was observed thus (headnote) :

"The assessee had a legal obligation to provide maintenance, from the estate inherited by her from her husband, to her husband"s mother and her own co-widow. The source of the right of these two ladies to receive maintenance was attached to the property. It would

amount to an overriding charge inasmuch as this obligation had for its basis the personal law governing these persons, the statutory provisions contained in Section 13 read with Schedule II of the U.P. Estates Act, 1920, and Section 71 of the U.P. Zamindari Abolition and Land Reforms Act, 1951. It was also based on the special custom obtaining in the family."

11. The above cited case is more or less identical with the facts of the present case and we follow the statement of law made therein.

12. For the aforesaid reasons we answer the question referred to us as follows:

13. On the facts and in the circumstances of the case, the Tribunal was not right in holding that the amount of maintenance paid to the two adoptive mothers by the assessee amounting to Rs. 3,300 per annum consequent to the judgment of the Additional District Judge, Jhabua, dated October 1, 1966, in Civil Suit No. 1-A of 1965, was only the application of income and not diversion thereof by any overriding title under a legal obligation.

14. The answer is in the negative, in favour of the assessee and against the department. There shall be no order as to costs of this reference.