

**Commissioner of Income Tax, Kerala and Coimbatore Vs Puthiya
Ponmanichintakam Wakf Manager P.P. Ayesha Bi Bi**

Appeal (civil) 397 of 1960

Court: Supreme Court of India

Date of Decision: Aug. 14, 1961

Acts Referred:

Income Tax Act, 1961 " Section 41, 41(1)#Mussalman Wakf Validating Act, 1913 " Section 3, 4

Citation: AIR 1962 SC 163 : (1962) 44 ITR 172 : (1962) 1 KLJ 130 : (1962) 3 SCR 137

Hon'ble Judges: P. B. Gajendragadkar, J; M. Hidayatullah, J; K. Subba Rao, J

Bench: Full Bench

Final Decision: Allowed

Judgement

Subba Rao, J.

This appeal by certificate granted by the High Court of Kerala raises the question of the application of section 41(1) of the

Indian income tax Act (hereinafter called the Act) to the facts of the case.

2. One P. B. Umbichi and his wife executed a deed dated December 20, 1915, creating thereunder a wakf of their properties. It was provided

therein, inter alia, that the income from the properties mentioned therein should be utilised for the maintenance of their two daughters and their

children on the female side. For 40 years up to and inclusive of the assessment year 1954-55, the income tax assessments were made on the wakf

through its manager u/s 41 of the Act in the status of an individual. But, for the assessment year 1955-56, the income tax Officer treated the

assessee as an association of persons, and, on the ground that the shares of the beneficiaries are indeterminate, levied tax at the maximum rate

under the first proviso to section 41 of the Act. On appeal, the Appellate Assistant Commissioner of income tax held that the income tax Officer

was not right in holding that the members of the family were indeterminate, but he confirmed the assessment for the reason that, as the shares were

not specified among the individual members of the family and also between the members of the family on the one hand and the charitable and

religious purposes on the other, the first proviso to section 41 would be applicable to the assessee. On further appeal, the income tax Appellate

Tribunal took the view that the proprietary rights in the property in question vested in the Almighty and that the Mutawalli was only to look after

and administer the properties as a manager and, therefore, the proper person in whose hands the income from the properties should be assessed

was the Mutawalli in his status as an "individual" at the rates applicable to an individual. In that view, the appeal was allowed. At the instance of the

Commissioner of income tax, the Appellate Tribunal referred to the High Court of Kerala the following question for its determination :

Whether in the facts and circumstances of the case, the first proviso to section 41 is applicable.

3. The High Court held that the said proviso was not applicable, as under the wakf deed the beneficiaries and their shares were ascertainable.

Aggrieved by the said order, the Commissioner of income tax has preferred the present appeal.

4. Mr. Rajagopala Sastri, learned counsel for the Commissioner of income tax, contended that on a fair reading of the terms of the wakf deed it

would be clear that the Mutawalli was only directed to maintain the members of the family, that none of the members of the family had any

ascertainable share in the income, and that, therefore, the case squarely fell within the first proviso to section 41 of the Act.

5. Mr. Viswanatha Sastri, learned counsel for the respondent, in addition to his attempt to sustain the construction put upon the wakf deed by the

High Court, contended that the instant case fell outside the scope of section 41(1) of the Act, as the Mutawalli was only receiving the income on

behalf of the Almighty, that the Almighty was not a "person", and that, therefore, as the main section did not apply, the proviso also would not be

attracted, with the result that the Mutawalli would have to be assessed as an "individual".

6. As the argument turns upon the construction of section 41 of the Act, it will be convenient at the outset to read the relevant parts thereof.

Section 41(1) : In the case of income, profits or gains chargeable under this Act which..... any trustee or trustees appointed under a trust

declared by a duly executed instrument in writing whether testamentary or otherwise, including the trustee or trustees under any Wakf deed which

is valid under the Mussalman Wakf Validating Act, 1913, are entitled to receive on behalf of any person, the tax shall be levied upon and

recoverable from such..... trustee or trustees, 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, and all the provisions of this Act shall apply accordingly :

Provided that where any such income, profits or gains or any part thereof are not specifically receivable on behalf of any one person, or where the

individual shares of the persons on whose behalf they are receivable are indeterminate or unknown, the tax shall be levied and recoverable at the

maximum rate, but, where such persons have no other personal income chargeable under this Act and none of them is an artificial juridical person,

as if such income, profits or gains or such part thereof were the total income of an association of persons.

7. This section in terms applies to a trustee under wakf deed which is valid under the Mussalman Wakf Validating Act, 1913. Under the

substantive part of the section, tax is leviable on the trustee of the wakf in the like manner and to the same amount as it would be leviable upon and

recoverable from the beneficiary, that is, the assessment would be at the individual rates of tax applicable to the beneficiary. But, under the first

proviso to that section, there are two exceptions to the general rule, viz., (i) where the income is not specifically receivable on behalf of any one

person; and (ii) where the individual shares of the persons on whose behalf the income is receivable are indeterminate or unknown. In those two

circumstances, tax shall be levied and recoverable at the maximum rate. It is agreed that the first exception does not apply to the instant case. But

the question that falls to be decided is whether the individual shares of the persons on whose behalf the income is receivable are indeterminate or

unknown. The answer to the question depends upon the construction of the provisions of the Wakf deed. The Wakf deed was executed on

December 20, 1950 by Umbichi and his wife dedicating their entire property, moveable and immovable, of total value of rupees one lakh for the

objects mentioned therein. The Mutawalli appointed thereunder was directed to manage the properties in such a way as ""to do acts necessary for

charitable purposes and to meet the maintenance expenses of their children and grand-children and the female children that might be born to them

in future, and to the male children born to the said female children"". The document proceeded to give further specific directions in the management

of the properties. After payment of taxes and meeting the expenses incurred for repairs and maintenance of the properties, the balance of the

income should be utilised for the ""daily necessary expenses of the house and food expenses as we are doing now"", and for purchasing ""dresses and

other necessities for the then male and female members of the tarwad"" and for conducting ""nerchas (ceremonies) such as Yasin, Moulooth, etc.,

charitable ceremonies for feeding the poor and such other necessary expenses"", and out of the balance, if any, the Mutawalli was directed to

acquire properties yielding good income. The rest of the recitals in the document are not relevant for the present purpose.

8. Can it be said that, under the document, the individual shares of the beneficiaries are specified? The document does not expressly specify the

shares of the beneficiaries; nor does it do so by necessary implication. Indeed, the individual shares of the beneficiaries are not germane to the

objects of the document. The Mutawalli was directed to bear, out of the income, the expenses necessary for maintaining the members of the

tarwad and to conduct the necessary religious ceremonies. The distribution of the family income and family expenses was left to the discretion of

the Mutawalli, the document also further contemplated that the Mutawalli by his prudent and efficient management would save sufficient amounts

for purchasing properties. The directions indicate beyond any reasonable doubt that no specified share of the income was given to any of the

beneficiaries, and their right was nothing more than to be maintained, having regard to their reasonable requirements which were left to the

discretion of Mutawalli. While it is true that the number of beneficiaries would be ascertainable at any given point of time, it is not possible to hold,

as the High Court held, that under the document the beneficiaries had equal shares in the income. The beneficiaries had no specified share in the

income, but only had the right to be maintained. The construction put upon the document by the High Court cannot, therefore, be sustained on the

plain wording of the document. We, therefore, hold that under the terms of the document the individual shares of the beneficiaries are indeterminate

within the meaning of the first proviso to section 41(1) of the Act. If so, under the said proviso, the assessee is liable to pay income tax at the

maximum rate.

9. The alternative contention of learned counsel for the respondent remains to be considered. The argument is that under the Wakf deed the

properties vest in the Almighty and, therefore, the Mutawalli receives the income only on behalf of the Almighty and not on behalf of any person

within the meaning of section 41(1) of the Act, with the result that section 41(1) is not applicable to the assessment in question. The argument is

rather subtle, but it has no force. There are three effective answers to this contention :

10. Firstly, it was not raised before the High Court - the only question argued before the High Court was whether the beneficiaries of the trust and

their individual shares of the income of the trust were ascertainable.

11. Secondly, 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 Mutawalli 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 wakif and vest in the Almighty. The property does not

vest in the Mutawalli, for he is merely a manager and not a trustee in the technical sense. Though Wakf property belongs to the Almighty, the

practical significance of that concept is explained in *Jewun Doss Sahoo v. Shah Kubeer-ood-deen* (1840) 2 M.I.A. 390, thus :

..... Wakf signifies the appropriation of a particular article in such a manner as subjects it to the rules of divine property, whence the

appropriator's right in it is extinguished, and it becomes a property of God, by the advantage of it resulting to his creatures.

12. That is, though in an ideal sense the property vests in the Almighty, the property is held for the benefit of His creatures, that is, the beneficiaries.

Though at one time it was considered that to constitute a valid Wakf there must be dedication of property solely to the worship of God or for

religious or charitable purposes, the Wakf Validating Act, 1913, discarded that view and enacted by section 3 that a Mussalman can create a wakf

for the maintenance and support, wholly or partially, of his family, children or descendants provided the ultimate benefit is expressly or impliedly

reserved for the poor or for any other purpose recognized by the Mussalman law as a religious, pious or charitable purpose of a permanent

character. Section 4 of the said Act, goes further and says that a wakf shall not be invalid by the mere circumstance that the benefit reserved for

the poor or for religious purposes is postponed until the extinction of the family. It is, therefore, manifest that under the Mahomedan Law, the

property vests only in the Almighty, but the Mutawalli, 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.

13. The third and more effective answer to the argument is that section 41(1) of the Act provides for a vicarious assessment in order to facilitate

the levy and collection of income tax from a trustee in respect of income of the beneficiaries. In express terms it equates the Mutawalli of a wakf to

a trustee. For the purpose of section 41 the Mutawalli is treated as a trustee and, on the analogy of a trustee, he holds the property for the benefit

of the beneficiaries. There is no scope for importing the Mahomedan Law of Wakf in section 41 when the section in express terms treats the

Mutawalli as a trustee, though he is not one in the technical sense under the Mahomedan Law. If the argument of learned counsel for the

respondent be accepted, it would make section 41 of the Act otiose so far as wakfs are concerned, for in every case of wakf the property would

be held for the Almighty and not for any person. We, therefore, reject this contention and answer the question in the affirmative.

14. In the result, we set aside the order of the High Court and hold that the respondent was rightly assessed by the income tax Officer at the

maximum rate. The appeal is allowed with costs.

15. Appeal Allowed.