HAZARIMAL HIRALAL Vs COMMISSIONER OF Income Tax.

Court: Calcutta High Court

Date of Decision: May 12, 1950

Citation: (1952) 21 ITR 113

Hon'ble Judges: Harries, C.J; Sinha, J

Bench: Full Bench

Judgement

The Judgment of the Court was delivered by

HARRIES, C.J. - This is a reference made u/s 66 of the Indian Income Tax Act by the Income Tax Appellate Tribunal at the instance of the

assessees. The question formulated for the opinion of the Court is as follows :-

Whether the Tribunal was right in holding that the interest credited to Mst. Jabbars account since her death was not an allowable deduction under

the provisions of the Indian Income Tax Act.

The assessee were a firm, Hazarimal Hiralal. It is a registered partnership consisting of three partners carrying on an extensive business as

importers of piece-goods. One of the partners, Bhudarmal, died and as usual in Marwari partnership, he was succeeded by his son, Hulaschand,

who, being a minor, was admitted to the benefits of partnership in place of his father. Later Hulaschand was married and in 1932 he had one

daughter of the name of Kamala Bai, his wifes name being Mst. Jabbar. It was found that in the year 1935 Hulaschands capital account with the

firm stood at about rupees twenty lacs.

In the months of September, 1935, Hulaschands wife, Mst. Jabbar who was expecting a child became seriously ill and on her recovery she

apparently requested her husband to give her some money as a gift so that she could spend the money on charity and make provisions for her

child, on September 18, 1935, Hulaschand withdrew a sum of Rs. 4,80,000 from the firm and made a gift of Rs. 4,80,000 in cash and Rs. 20,000

worth debentures to his wife. This gift was made in the presence of two employees named Chaganlal Kochar and Ratanlal Kochar. The entries in

the books of the firm show that the withdrawal was made from the funds of the firm for the purposes of this gift.

On September 24, 1935, a sum of Rs. 4,50,000 was deposited with the firm of Hazarimal Hiralal in the name of the donee Mst. Jabbar and the

remaining Rs. 30,000 out of the gift of Rs. 4,80,000 was deposited with the firm known as Mulchand Jeskaran. Apparently there is nothing on the

record to show what happened to the debentures.

On the day which the money was deposited with the firm in the name of Mst. Jabbar, namely, September 24, 1935, the latter made a will which is

typewritten in English and purports to be signed by Mst. Jabbar in the presence of two attesting witness. By the terms of the will Hulaschand, her

husband, was appointed executor and she directed that her debts and funeral and testamentary expenses should be paid and that the balance

should be dealt with as follows :-

(i) A sum of Rs. 1,25,000 was given to her daughter, Kamala Bai, upon such terms as the executor should think fit.

(ii) A sum of Rs. 60,000 was to be utilised for such charitable objects in the testatrixs name or such charitable institutions as the executor should

think fit.

(iii) The rest and residue of her estate was given to her son, if any, and in default of her sons, to her daughter.

On December 12, 1935, a son was born to Mst. Jabbar, but she died on December 20, 1935, as a result of child-birth. Probate of the will has not

been taken out, but in May, 1936, an entry was made in the ledger account of Mst. Jabbar showing that a sum of Rs. 1,25,000 was debited to

that account and the said amount credited to an account styled as Kamala Trust Account. On October 6, 1936, there was a declaration of trust by

Hulaschand as executor of the will of his wife in respect of Rs. 1,25,000 in favour of Kamala Bai for her life and after her death for her heirs and

legatees and in their absence certain charitable objects. The sum of Rs. 30,000 which was deposited in the name of Mst. Jabbar with the firm of

Mulchand Jeskaran was withdrawn by Hulaschand on August 3, 1936, and this amount together with the proceeds of the debentures worth Rs.

20,000 was credited in the books of the firm Hazarimal Hiralal in a separate account. The total amount came to Rs. 60,000 which was to be held

in trust for charities. The deed for this charitable trust was registered in Bikaner State on March 13, 1943. The remainder of the deposit with the

applicant made by Mst. Jabbar Trust Account.

The firm claimed that interest payable on the money due from the firm to the Trust of Mst. Jabbar had to be allowed in arriving at the profits of this

business for the purposes of Income Tax.

The authorities however contended that no gift was made to Mst. Jabbar and that it was either a fictitious or a colourable transaction. In any event

it was contended that it was only a gift for her life at most and that after her death her husband became entitled to the property.

The Appellate Tribunal came to the conclusion that a gift was actually made. The Tribunal was satisfied that Mst. Jabbar who was ill and afraid of

what might happen in her confinement, was anxious to make some provision for her child. It appears that Mst. Jabbars mot her had died in her

second confinement. The Tribunal appears to have been of opinion that Mst. Jabbar was naturally anxious to make some provision for her children

as she feared that her husband might remarry after her death. The Tribunal thought that this was a very natural fear on the part of Mst. Jabbar and

that as her husband was a good and kindly man and wanted to please his wife he gave her the money she wanted as he, in the words of the

Tribunal, ""was pretty sure that she would not waste it or alienate it against his wishes.

The Tribunal then added :-

We quite understand that she would be anxious to get the money in cash and would not be satisfied by just book entries and since Hulaschand

was willing to accede to her wishes, it did not matter to him whether there were book entries or the money was paid in cash. Therefore we believe

that the money was brought and given to Mst. Jabbar.

There is therefore a distinct finding that a gift was made to Mst. Jabbar and it was made because Mst. Jabbar was afraid that she might not survive

child-birth and wanted to make provision for her children in the event of her husband remarrying. The Tribunal accepted that version and found

that to please his wife Hulaschand made the gift.

It appears to me that that findings disposes of the matter entirely. It Mst. Jabbar wanted the money to make provision for her children quite

obviously she wanted more than a limited interest and if the money was given to her by her kind and accommodating husband so that Mst. Jabbar

could benefit her children, quite obviously an absolute gift was made and not a gift of a limited nature.

The Tribunal however came to the conclusion that the gift made to Mst. Jabbar was merely a gift of a limited interest such as is held by a Hindu

female. The Tribunal stated that the presumption in Hindu law was that gifts made by a husband to his wife, whether of immovable property or of

movables, are of a limited nature. But the Tribunal overlooked the fact that this gift was not made by a deed or by a deed or by a will. It was an

out and out gift by handing over cash. The law is stated in paragraph 126 at page 125 of Mullas Hindu Law, 10th Ed., in these words :-

Property given or bequeathed to a Hindu female, whether during maidenhood, coverture, or widowhood, by her parents and their relations, or by

her husband and his relations, is stridhana according to all the schools except that the Dayabhaga does not recognize immovable property given or

bequeathed by a husband to his wife as stridhana.

The parties here are governed by the Mitakshara School of Hindu law and it is clear that a gift of this kind would be stridhana unless a contrary

intention appeared.

The Appellate Tribunal relied upon the principle applied when property is given to a female by a deed or a will. In Mohammed Shumsool v.

Shewukram, it was held that whether a gift passes an absolute or a limited interest appears on the terms of the grant in each case. This is not only

under Hindu law, but under all other systems of law enforced in British India. In the case however of a gift or devise made to a Hindu female by

her relations, it was laid down that in construing a deed of gift or a will made by a Hindu in favour of female relations, the Court is entitled to

assume that the donor intended the donee to take a limited estate only, unless the contrary appears from the deed or will. The basis of this rule is

that females as a rule take a limited estate only in property inherited by them from male relations, and the donor must be presumed to have made

the gift with that fact present to his mind. However the rule does not apply if the gift is not by deed or by will, but the presumption is to the contrary

as stated by Mulla in the paragraph which I have already cited.

I have no doubt that the Tribunal was influenced by this wrong view of the law and the nature of the presumption. In any event there is no ground

whatsoever for the finding of the Tribunal that only a limited estate was intended. Their earlier finding makes it clear that an absolute interest must

have been intended, otherwise the wish of Mst. Jabbar to make provision for her children could not have been fulfilled. The Tribunal however

seems to have though that the terms of the will made it clear that Mst. Jabbar only had a life interest. At most the terms of the will would only show

what Mst. Jabbars opinion was and the very fact that she made a will strongly suggests that she thought that she had something to leave. Further,

she appoints her husband executor. Would she have done that if she was trying to dispose of property in which she knew she only had a life

interest ?

Further, she gives a sum to her daughter and to charity. It is true that the husband has some control over the terms of these gifts. But the residue is

given to her son or sons or failing son or sons to her daughter unconditionally. I cannot conceive how the Tribunal could have inferred from this will

that Mst. Jabbar only received a limited estate.

Dr. Gupta has found it quite impossible to support the view of the Tribunal and that view is clearly untenable. There was no evidence of any kind

upon which the Tribunal could have held that the gift was of a limited nature. Its earlier finding that a gift was made and that the motive of the gift

was to allow the wife to make provision for her children concludes the matter and I do not think it was open to the Tribunal to find as it did. It is

not a case of the finding being against the weight of evidence. There is no evidence upon which the Tribunal could have held that the gift was a

limited one. Further the Tribunal was wrong in its view of the law that there was a presumption in favour of a limited gift. The presumption was the

other way and the onus was on the taxing authorities to rebut the presumption. There is no evidence whatsoever to rebut the presumption. But the

case does not rest on a presumption. The earlier findings of the Tribunal amount to finding that there was a genuine valid gift of an absolute interest.

That being so the authorities were bound to allow the interest credited to Mst. Jabbars account as a deduction in ascertaining the profits of the firm.

I would therefore answer the question submitted in the negative.

The assessees are entitled to the costs of these proceedings, Certified for two counsel.

SINHA, J. - I agree.

Reference answered in the negative.