

(1992) 10 BOM CK 0057

Bombay High Court

Case No: Income-tax Reference No. 136 of 1977

Commissioner of
Income Tax

APPELLANT

Vs

Dr. Rodhan H. Shroff

RESPONDENT

Date of Decision: Oct. 9, 1992

Acts Referred:

- Income Tax Act, 1961 - Section 2(24), 280, 280A, 280B(6), 280C

Citation: (1994) 207 ITR 957

Hon'ble Judges: Sujata V. Manohar, J; B.N. Srikrishna, J

Bench: Division Bench

Advocate: Mrs. Arti Vissanji, G.S. Jetley, for the Appellant;

Judgement

Mrs. Sujata Manohar, J.

This is a reference u/s 256(1) of the Income Tax Act, 1961. It pertains to the assessment years 1971-72 and 1972-73. The assessee's father had paid during his lifetime certain annuity deposits under Chapter XXII-A of the Income Tax Act, 1961, as then in force. The father of the assessee died in February, 1970. The father of the assessee had nominated the assessee under the Annuity Deposit Scheme for the purpose of receipt of the instalments of annuity in the event of his death. He also left a will under which the assessee was the sole executor and sole beneficiary.

2. For the assessment years 1971-72 and 1972-73, the assessee received repayment of an instalment of annuity deposit of Rs. 9,905 and interest of Rs. 2,476 in respect of the deposits made by his deceased father. There is no dispute that the interest of Rs. 2,476 received for both the years is taxable income in the hands of the assessee. The dispute, however, relates to the receipt of the annuity deposit repayment of Rs. 9,905 in the hands of the assessee. The Tribunal has held that the assessee, not being the depositor of the annuity deposit, the provisions of section 2(24)(viii) would not be attracted and the amounts so received would not be income in the hands of

the assessee. At the instance of the Revenue, therefore, the following two questions have been referred to us as arising for both the assessment years :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that there was no provision in the Income Tax Act whereby the repayment of annuity deposit made to a legal heir could be deemed to be the income in the hands of the legal heir ?

2. Whether, on the facts and in the circumstances of the case, the repayment of annuity deposits can properly be taxed in the hands of the assessee, who is a nominee of the depositor, under the provisions of section 2(24)(viii) read with section 280D of the Income Tax Act, 1961, since the repayment of annuity deposit is actually received by the Assessee ?

3. u/s 2(24)(viii) of the Income Tax Act, 1961, "income includes any annuity due, or commuted value of any annuity paid, under the provisions of section 280D".

Section 280D forms part of Chapter XXII-A which deals with annuity deposits. This Chapter was in force at the relevant time. Sections 280A to 280X constitute Chapter XXII-A.

4. u/s 280B(6), "depositor" means a person to whom the provisions of this Chapter apply.

Section 280A describes the persons to whom the provisions of this Chapter apply. These include an individual, a Hindu undivided family and an unregistered firm, etc., as set out in that section.

5. u/s 280C,

"any person to whom the provisions of this Chapter apply shall make for any assessment year an annuity deposit with the Central Government..."

6. Thus, under the provisions of Chapter XXII-A, a depositor means a person who is required to make a deposit u/s 280C. Such a person should be a person described in section 280A. The term "depositor" therefore refers to the persons who makes the deposit. Section 280D deals with repayment. It states,

"Subject to the provisions of this Chapter and any scheme framed thereunder, the Central Government shall repay to the depositor the annuity deposit made or recovered in any year in ten annual equated instalments of principal and interest at such rate as may be notified by the Central Government in the Official Gazette :...."

7. u/s 2(24)(viii), therefore, what is included in the definition of income is the annuity due or the commuted value of any annuity paid to a depositor u/s 280C. Section 280D does not deal with repayment to any person other than a depositor. There are, however, other provisions in Chapter XXII-A dealing with repayment to a person other than a depositor. u/s 280W, there is a provision for the Central Government

notifying a scheme known as Annuity Deposit Scheme to be framed in respect of deposits under this Chapter. u/s 280W(2) (f), such a scheme may provide for the nomination of any person to receive the annuity or any other sum due under this Chapter to any depositor in the event of his death, and the cancellation or change of such nomination. Accordingly, the Annuity Deposit Scheme contains a provision for nomination, and it provides that in the case of death of a depositor, the amount could be paid under the Scheme to his nominee.

8. The annuity deposit or any amount under the Annuity Deposit Scheme which is so paid to a nominee on the death of the depositor is, however, not covered in the definition of income u/s 2(24)(viii). This section includes in the definition of income only the amount paid u/s 280D to a depositor. Hence we do not see how a payment which is made to a nominee upon the death of a depositor, in respect of the annuity deposits made by the depositor, would fall within the definition of income u/s 2(24)(viii) of the Income Tax Act, 1961.

9. It was next submitted on behalf of the Department that u/s 280-O, the annuity deposit required to be made under this Chapter shall be allowed as a deduction in computing the total income assessable for the assessment year in respect of which the annuity deposit is required to be made. It was submitted that therefore, when the annuity deposit is repaid, it is required to be added back to the income. This is undoubtedly so in the case of a depositor, because, by virtue of section 2(24)(viii), any repayment of an annuity deposit instalment to the depositor is included in the definition of "income" and thus forms a part of his income. There is, however, no corresponding provision under which the amount received by a nominee in respect of an annuity deposit made by a deceased depositor can be treated as income of the nominee.

10. In this connection, our attention was drawn to a decision of the Madras High Court in the case of [Commissioner of Income Tax Vs. M.M. Muthiah](#), . An identical question had arisen before the Madras High Court. The court held that the instalments of annuity deposit received by the nominee of the depositor would not be income of the nominee liable to tax within the meaning of section 2(24)(viii) of the Income Tax Act, 1961, as there is no charging section which would bring to tax such instalment received by the nominee. The Madras High Court said that there is a fictional inclusion of the annuity referred to in section 280D in the income of the depositor. It is only in the circumstances set out in section 280D and by a statutory fiction that the annuity repaid in instalments can be income in the hands of the depositor. There is no such statutory provision which would cover the receipt of such an instalment in the hands of the nominee, as income of the nominee. The Madras High Court said that unless the charging section is expressive and clear, it is not possible to include all amounts received by the assessee as his income only on the contention that it would be equitable to do so.

11. The Madras High Court relied upon the ratio of the Supreme Court judgment in the case of [Commissioner of Income Tax, Madhya Pradesh Vs. Hukumchand Mohanlal](#) . The Supreme Court in that case said that if the Income Tax Act did not contain any provision making a successor in business or the legal representative of an assessee liable to pay tax on the deemed profits of the original assessee, the legal representative could not be so taxed. Applying the same analogy, the Madras High Court said that the nominee of the deceased depositor could not be made liable to pay Income Tax on the instalment of annuity deposit received by him in the absence of a statutory provision to that effect. This reasoning has been followed by the Madras High Court in a subsequent case of [Commissioner of Income Tax, Tamil Nadu III Vs. S.M. Ebrahim](#) . We respectfully agree with the reasoning and conclusion of the Madras High Court.

12. There is, however, a judgment of the Gujarat High Court which has taken a contrary view. In the case of [Commissioner of Income Tax, Gujarat-III Vs. Narottamdas K. Nawab](#) , the Gujarat High Court said that when on the death of the depositor instalments of annuity deposit were received by the nominee, the receipt is liable to Income Tax in the hands of the nominee. The Gujarat High Court held that the right of a nominee to receive the annuity due under Chapter XXII-A, conferred by any depositor in the event of his death, was a right which was conferred by Chapter XXII-A, because u/s 280W of Chapter XXII-A, the Central Government was entitled to frame a scheme providing for such payment to a nominee, and the scheme has in fact been so framed.

13. The Gujarat High Court seems to have held that since the annuity repayment would be income in the hands of the depositor, it would be income even in the hands of the nominee. This view fails to take into account the express provisions of section 2(24)(viii) whereunder only the repayments received by the depositor are deemed to be his income. The Gujarat High Court seems to have based its reasoning on "equitable" considerations, namely, that having deposited the annuity amount, the depositor got a deduction for the amount in his own Income Tax assessment for that assessment year. Hence when the repayment was made, the amount was to be included in the income of the depositor. By a parity of reasoning, the repayment should be so included as income in the hands of the depositor or his nominee, as the case may be. This reasoning is not supported by the relevant provisions of the Income Tax Act. The repayment to the depositor is included in his income because section 2(24)(viii) of the Income Tax Act, so provides. There is no such provision in the case of a nominee. The provisions of section 2(24)(viii) cannot be extended to cover the nominee of a depositor who is dead, when section 2(24)(viii) does not so provide.

14. In this connection Mrs. Vissanji, learned advocate for the assessee, drew our attention to section 80CCA, which was subsequently introduced in the Income Tax Act, 1961, which contained a scheme known as the National Savings Scheme. Under

this section also, where any amount standing to the credit of an assessee under the National Savings Scheme in respect of which a deduction has been allowed from the income of the assessee, is withdrawn in whole or in part in any previous year, the amount withdrawn is deemed to be the income of the assessee of that previous year. But the amount received under the National Savings Scheme by the legal heirs of the assessee after death has been considered as not forming part of the income of the legal heirs u/s 80CCA(2). She drew our attention to a circular of the Central Board of Direct Taxes bearing No. 532, dated March 17, 1989, in this connection. 176 ITR 327. She submitted that a deemed provision which is made in respect of an assessee, therefore, does not ipso facto extend to the legal heirs or nominee of the assessee. We are inclined to accept this submission.

15. The decision of the Gujarat High Court has not been followed by the Madras High Court in the case of [Commissioner of Income Tax Vs. M.M. Muthiah](#), . We also respectfully differ from the view taken by the Gujarat High Court.

16. In the case of [Commissioner of Income Tax, Delhi-II Vs. O.N. Talwar](#), , the assessee was the karta of a Hindu undivided family. Prior to partition of this Hindu undivided family, the assessee had made certain annuity deposits on behalf of the Hindu undivided family as karta. After partition, the assessee received his share of the repayment of annuity deposits. The Delhi High Court held that the assessee was the depositor to whom the annuity was due to be repaid. It said (headnote) : "But vis-a-vis the deposit officer, he was the depositor to whom the amount was repayable by name. Therefore, the receipt of annuity by a person, as the karta of an erstwhile family, was a receipt by a "depositor" within the meaning of section 280D". This decision of the Delhi High Court has no application to a case like the present one where the deposit is not received by the depositor in any sense of the term at all.

17. The Department, however, relied upon certain observations made by the Delhi High Court in the above judgment. The Delhi High Court, while considering the term "depositor", has observed that although under the provisions of section 280D, the repayments are normally to be made to the depositor, this is subject to the provisions of Chapter XXIIA and the provisions of the Scheme to be framed thereunder. Therefore, a payment to a nominee and a payment to the legal representative of a deceased depositor would all be payments under the provisions of section 280D.

18. We respectfully disagree with these observations of the Delhi High Court. Section 280D in terms refers only to repayment to the depositor. All that it says is that such repayment to a depositor will be subject to other provisions of the Chapter and the Scheme. Section 280D does not cover any payment to either a nominee or to a legal representative of a deceased depositor. These are covered by other provisions of Chapter XXII-A and the Scheme framed under that Chapter. Therefore, the definition of income u/s 2(24) does not cover a repayment of annuity deposit

received by a nominee or a legal representative.

19. In the premises, the questions referred to us are answered as follows :

Question No. 1 is answered in the affirmative and in favour of the assessee.

Question No. 2 is answered in the negative and in favour of the assessee.