

Amarchand Jalan Vs. Commissioner of Income-tax, Central, Bombay.

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Court : Mumbai

Decided On : Mar-20-1964

Reported in : [1964]54ITR18(Bom)

Appeal No. : Income-tax Applications Nos. 25, 26 and 27 of 1963

Appellant : Amarchand Jalan

Respondent : Commissioner of Income-tax, Central, Bombay.

Judgement :

Ordinarily we would not have written a judgment in dealing with these applications, but as a question has been raised on behalf of the Revenue that if there be a decision on a question of law by the Supreme Court of India then no more that question of law could be said to arise under sub-section (2) of section 66 of the Indian Income-tax Act, 1922 (11 of 1922), hereinafter called the Act, we think it will be better to write a judgment.

The question arises thus : The assessee before us is one Amarchand Jalan and the three applications relate to three different assessment years. The assessee is a member of a family known as Jalan family and the family owns a firm. Lokenath, Tolaram, Champalal, Dharamchand and Amarchand, the assesseees before us, are brothers. In the books of account of the firm belonging to the Jalan family the following entries about gifts are made :

Name of Donee

Amount

Date

Name of Donor

Rs.

1. Rajendra Kumar, s/o Lokenath

50,000

3-2-1951

Amarchand

2. Krishna Kumar, s/o Amarchand

50,000

3-2-1951

Champalal

3. Krishna Kumar, s/o Amarchand

50,000

3-2/1951

Tolaram

4. Dilip Kumar, s/o Champalal

50,000

3-2-1951

Tolaram

5. Pradeep Kumar, s/o Champalal

50,000

3-2-1951

Amarchand

6. Anil Kumar, s/o Tolaram

50,000

14-3-1951

Champalal

7. Ashok Kumar, s/o Tolaram

50,000

3-2-1951

Lokenath

The books of account also disclose a second chain of gifts in the year 1953 as follows :

Name of Donee

Amount

Name of Donor

Rs.

1. Ravindra Kumar, s/o Lokenath

50,000

Tolaram

2. Bharat Kumar, s/o Dharmchand

50,000

Lokenath

3. Vishnu Kumar, s/o Tolaram

50,000

Dharamchnad

From these entries it will be seen that each child of each brother gets Rs. 50,000 by way of gift and no brother pays a larger amount than Rs. 50,000 for each child of his by way of gift according to the number of children he has.

The question that arose before the income-tax authorities was whether the interest income of amounts of gifts accruing to Amarchand Jalans sons was liable to be included in the income of the assessee, Amarchand, within the meanings of section 16(3)(a)(iv) of the Act. The Tribunal, after considering the evidence on record, held that the income arising by way of interest on the aforesaid amounts of gifts to the sons of Amarchand was interest liable to be included in the income of the assessee, Amarchand, as the income arose from the assets indirectly transferred by him to his minor children. On applications made by the assessee under sub-section (1) of section 66 of the Act the Tribunal held that no question of law arose from the appellate order of the Tribunal and in this view of the matter dismissed the applications. On applications made by the assessee under sub-section (2) of section 66 a rule nisi was issued to the Commissioner of Income-tax to show cause why the Tribunal should not be directed to submit to this court a statement of case for the determination of the following question of law in respect of the assessment of each year :

'Whether the Tribunal erred in holding that the gifts made by the applicant (assessee) to his two nephews amounted to an indirect transfer of assets by the applicant to his minor children within the meaning of section 16(3)(a)(iv) of the Indian Income-tax Act, 1922.'

The applications have now come up for hearing.

Mr. Joshi, the learned counsel for the revenue, contends that the entire argument on behalf of the assessee advanced before the Tribunal was founded on a decision in *C. M. Kothari v. Commissioner of Income-tax*. That decision has been overruled by the Supreme Court in *Commissioner of Income-tax v. C. M. Kothari*. There being thus an authoritative decision by the Supreme Court on the question of law said to arising in that case, now no more the same question of law could be said to arise in this case within the meaning of sub-section (2) of section 66 of the Act. It is the argument of Mr. Joshi that once a particular question of law has been decided by the Supreme Court, then no more thereafter that question of law could be said to arise within the meaning of sub-section (2) of section 66 of the Act. He has referred us to the decision of their Lordships of the Supreme Court in Criminal Appeal No. 82 of 1962 and in *State of Jammu and Kashmir v. Ganga Singh*. He has also referred us to a decision of this court, *Mangaldas N. Verma v. Commissioner of Income-tax*, and a decision of the Nagpur High Court, *Mathuraprasad v. Commissioner of Income-tax*.

Mr. Palkhivala, the learned counsel for the assessee-applicant, on the other hand contends that a distinction has to be drawn between a question of law and a substantial question of law. When a particular question of law is decided by the Supreme Court, then though it could be said that that particular question of law no more remains a substantial question of law, none the less it still remains a questions of law. Therefore, even when a particular question of law has been decided by the Supreme Court and the same question of law thereafter arises out of another order of the Revenue Tribunal, a reference is required to be made or required to be called for under sub-section (1) or (2) of section 66 of the Act. It is not possible for us to accept the contentions so broadly stated by counsel for both the parties. It is common knowledge and general experience that the facts of different cases are rarely identical though they may give rise to an identical question of law. Even when a question of law has been decided by the Supreme Court, the application of the principles laid down by their Lordships in that case to the facts of a particular case before the High Court may still remain and in that sense it has to be held that a question of law would still remain to be considered.

But then again, there might be cases where hardly there is any material distinction or difference between the facts of the case decided by their Lordships and the facts of another case decided by the Appellate Tribunal. In such a case there is hardly any consideration of the question as to the applicability of the Supreme Court decision to the facts of that case. What remains then is a mere formality of answering the obvious. It is difficult to assume, much less it is possible to hold, that the intention of the legislature is that a High Court should call for a reference even in a case where the matter is one of mere formality, the answer to the question of law said to be arising out of the order of the Tribunal being self-evident or obvious in view of the decision of the Supreme Court. Article 141 of the Constitution provides that the law declared by the Supreme Court shall be binding on all courts within the territory of India. In other words, the law declared by the Supreme Court is the law of the land.

If sub-sections (1) and (2) of sections 66 are read by themselves, it is possible to argue that when the order of the Tribunal gives rise to a question of law, reference has to be called for from the Tribunal, whether the same question has been decided by the Supreme Court or not or answer to the question is obvious and self-evident or not. But then the provisions of these two sub-sections have to be read together with the provisions of the other sub-sections of that section and when we turn to sub-sections (5) of section 66, it indicates that the object of enacting sub-sections (1) and (2) is that the questions of law arising out of the Tribunal should be considered and decided by the High Court. The sections further directs that after the question of law has been decided and answered by the High Court, the Appellate Tribunal shall pass such orders as are necessary to dispose of the case conformably to the judgment of the High Court deciding the question of law. These provisions postulate that the question of law arising out of the appellate order of the Tribunal requires to be considered by the High Court. It follows that the High Court would call for a reference when on the facts found in a particular case the question of law arising out of the order of the Appellate Tribunal requires consideration or scrutiny at the hands of the High Court and its decision thereon. If the decision of the question of law is obvious or self-evident in view of the decision of the Supreme Court and the view taken by the Tribunal is in conformity with that decision, then it hardly can be said that the question of law arising is such as

require a decision as such at the hands of High Court.

In *Mangaldas N. Verma v. Commissioner of Income-tax* the question that fell for consideration was whether it was incumbent on this court to call for a reference on a question of law arising out of an order of the authorities under sub-section (5) of section 8 of the Taxation on Income (Investigation Commission) Act, 1947, the provisions of which are in substance identical with the provisions of sub-section (2) of section 66 of the Act. An argument was advanced on behalf of the assessee that whatever be the view of the High Court on the question of law, a question of law does arise and the High Court should ask the Commissioner to refer this question to the High Court. Repelling this argument, the learned Chief Justice observed :

'Now, when section 8(5) refers to a question of law it does not mean that any question of law, however frivolous, however insupportable, however inarguable, must be referred by the Commissioner because the assessee suggests that such a question of law arises. If the court finds that the question of law answers itself or that it is patently inarguable, there is no reason why the time of the Commissioner or of the court should be wasted in asking the Commissioner to refer to us questions of law. Ingenuity of lawyers will always suggest questions of law arising out of the findings of the Commission. It is only when the court is satisfied that a question of law arises and that it requires consideration by the court that the court would direct the Commissioner to raise a question of law.'

In *Mathuraprasad v. Commissioner of Income-tax* it has been held that even though the question raised in an application for reference is a question of law the High Court is not bound to require the Tribunal to state the case if the answer to the question is evident and free from doubt.

Mr. Palkhivala referred us to two decisions, one in *R. B. L Banarsi Dass & Co. Ltd, v. Income-tax Appellate Tribunal* and he read to us the following observations at page 628 of the judgment :

'If the question is one of law and arises out of an order of the Appellate Tribunal under section 33(4), and the other requirements of the section are satisfied, the

case has to be stated and the questions referred. Under sub-section (2) of section 66, the High Court may, if it is not satisfied of the correctness of the order of the Tribunal under sub-section (1) of the section, require the Appellate Tribunal to state the case and to refer it.'

These observations have to be read in its context. The question that was debated was whether reference should be called for on a question of law arising out of the order of the Tribunal and that question of law was 'whether, under the facts and circumstances of the case, the appeal before the Appellate Tribunal was filed by the proper person ?' and that was question No. 1. The following observations precede the observations on which Mr. Palkhivala had placed reliance :

'As regards question No. 1, it is not disputed before us that it does raise a point of law and that it is not so frivolous as needs no consideration. At this stage we are not concerned with the merits or the ultimate decision of the objection, whether it would be in favour of or against the petitioner. What has to be seen is whether there is a point of law upon which a case should have been stated. The question is not one of an academic nature, it relates to the proper presentation of the appeal decided by the Tribunal and goes to the very root of the case. The question cannot also be said to be so simple that the answer to it is self-evident.'

From these observations which immediately precede the observations on which h reliance was placed, it would be seen that the view taken by us does not run counter to the decision of the Punjab High Court in this case.

The other decision referred to by Mr. Palkhivala is Central Talkies Circuit v. Commissioner of Income-tax. The observations of the learned Chief Justice on which reliance was placed by Mr. Palkhivala run as follows :

'The ultimate decision upon the point of law, whether for or against the Commissioner, can have no bearings on the question whether there was a point of law upon which a case should have been stated.'

Again these observations have to be read in the context of the facts of the case. The question which the learned Chief Justice was considering was the question of

practice relating to costs. The facts in brief were : The assessee asked the Commissioner of Income-tax to state a case under section 66(2) of the Income-tax Act as it then stood. The Commissioner took the view that no point of law arose and refused to state a case. The assessee applied to this court under sub-section (3) of section 66 (as it then stood) asking the court to direct the Commissioner to state a case. This court took the view that the order of the Tribunal did give rise to a question of law and, therefore, the Tribunal should be called upon to state a case. The question arose whether in these circumstances the Commissioner should be asked to pay the costs of the application. The learned Chief Justice held that the Commissioner should be asked to pay the costs irrespective of the decision of this court in the reference and it is in this context that these observations are made. It is clear that the observations could have hardly any bearing on the question which have to consider.

The two decisions to which our attention has been drawn by Mr. Joshi, i.e., Criminal Appeal No. 82 of 1962, decided by their Lordships of the Supreme Court on March 18, 1963, and the decision in state of Jammu and Kashmir v. Thakur Ganga Singh, in our opinion, have hardly any application to this case. In these two cases it has been held, that the question of law which has been decided by the Supreme Court, if arises again in another case, can hardly be said to be a substantial question of law. Both these decisions do not take us to the extent Mr. Joshi wants us to go and hold that a question of law once decided by the Supreme Court no more remains a questions of law. In conclusion, considering the provisions of section 66 and the decisions cited before us, in our opinion, the position that emerges is, merely because there is a Supreme Court decision having a bearing on the facts of the case before the court, it cannot, as a rule, be said that no question of law arises therein within the meanings of sub-section (2) of section 66 of the Act. There may be cases where a debate may reasonably be possible as to the applicability of the ratio of the Supreme Court decision to the facts found by the Tribunal in the case before the High Court. In such cases the High Court is bound to direct the Tribunal to state the case on the question of law arising out of its order. There may be cases where, though there is hardly any responsible possibility of any such debate, the view taken by the Tribunal is contrary to the law laid down by the Supreme Court. The High Court would be

bound to direct the Tribunal to make a reference in such cases. But in cases in which neither such a debate is reasonably possible nor the view taken by the Tribunal requires to be corrected by the High Court, in our opinion, the High Court is not bound to call for a reference under section 66(2). Whether the Tribunal should be directed to state a case and refer the question of law of this court would depend on the facts of each case. The judgment in appeal of the Appellate Tribunal shows that reliance on Kothari case was placed by the assessee in support of his contention. That decision has been overruled by their Lordships of the Supreme Court in Commissioner of Income-tax v. C. M. Kothari. The facts of that case in brief are : C and his two sons, D and H, were the three partners of a firm. On October 7, 1947, the firm entered into an agreement for the purchase of a house and paid an advance of Rs. 5,000. This sum was debited in its books to the personal accounts of the partners, C being debited with Rs. 1,800 and D and H each being debited with Rs. 1,600. The transaction was completed on October 24, 1947, and the sale deed was taken in the names of Mrs. C and Mrs. D and H. The balance of the consideration, viz, Rs. 85,000, was paid by the firm to the vendors and to make up this amount H was debited with a sum of Rs. 28,333-5-4 in the firms books and Mrs. C and Mrs. D each paid to the firm by cheque the sum of Rs. 28,333-5-4. Mrs. C further paid a cheque for Rs. 1,800 and Mrs. D another cheque for Rs. 1,600 to the firm which were the amounts debited to the accounts respectively of C and D out of the advance of Rs. 5,000. The firm paid into Mrs. Cs bank account two cheques, one on October 24, 1947, for the sum of Rs. 27,000 which was stated to be a birthday gift by D to his mother and another on November 13, 1947, for Rs. 3,000 as a gift by D to his mother for Divali. Both these sums were debited in the firms accounts to D. Similarly, on November 13, 1947, Mrs. Ds bank account was credited with a sum of Rs. 30,000 by a cheque issued by the firm. This amount was debited to C in the firms account and was shown as a gift by him to his daughter-in-law. The question that arose was whether the income arising to Mrs. C and Mrs. D from the house arose out of assets transferred indirectly to them by C and D respectively and could therefore be included in the total incomes of C and D under section 16(3)(a)(iii) of the Indian Income-tax Act, 1922. It may be stated that the provisions of section 16(3)(a)(iii) and section 16(3)(a)(iv) are in identical words save and except that sub-clause (iii)

deals with transfers to wife and sub-clause (iv) deals with transfers to minor children. The Madras High Court in Kothari case held that transfers do not fall under the aforesaid sub-clause (iii). Their Lordships reversed the decision. Their Lordships, inter alia, held that if two transfers were inter-connected and were parts of the same transaction in such a way that they could be said to have been adopted as a device to avoid the implications of section 16(3)(a)(iii) the case would fall within the section even though one was not the consideration for the other in the technical sense. To bring the case under section 16(3)(a)(iii) it was not necessary that the same assets belonging to the husband should have reached the wife. The assets might, in the course of being transferred, be changed deliberately into assets of a like of another person. A chain of transfers such as those in that case was comprehended by the word 'indirectly' in section 16(3)(a)(iii). The aforesaid principles, having regard to the identical language of section 16(3)(a)(iv), will with equal force apply to a case falling under section 16(3)(a)(iv).

Now, turning to the facts of the present case, the Tribunal has found as a fact that all the transaction, namely, the transfers of Rs. 50,000 by these brothers to their nephews, constituted a single transaction and in fact was an indirect gift by a father to his children. The material finding of the Tribunal is in the following words :

'We have little difficulty in holding that all the gifts constitute a single transaction, resulting in each appeal in an indirect gift by a father to his children.'

These findings of facts by the Tribunal are binding on us in dealing with the reference. On these facts the answer to the question before us is self-evident. The view taken by the Tribunal is obviously a correct one.

In the result, the applications are liable to be dismissed and they are hereby dismissed. The rule is discharged with costs. One set of costs allowed.

Applications dismissed.