

Cit Vs. Trustees of the Trust of Mrs. Manorama L. Apte Trust for their Relatives and Suneetiraje A. Apte Trust for Relatives

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Court : Mumbai

Decided On : Sep-18-2002

Reported in : (2002)178CTR(Bom)231

Appeal No. : IT Ref. Nos. 572 & 705 of 1987 18 September 2002 A.Y. 1979-80

Appellant : Cit

Respondent : Trustees of the Trust of Mrs. Manorama L. Apte Trust for their Relatives and Suneetiraje A. Apte T

Advocate for Pet/Ap. : R. V. Desai with P.S. Jetley, *for the Revenue* S.M. Inamdar with P. Y. Vaidya, *for the Assessee*

Judgement :

Judgment

S.H. Kapadia, J.

Both the above references raise common question of law. The Tribunal has referred the following question of law for opinion under section 256(1) :

'Whether, on the facts and in the circumstances of the case and having regard to the terms of the trust deed dated 9-5-1973, the Tribunal was right in law in holding

that the assessee-trust is not a discretionary trust and consequently the provisions of section 164(1) are not applicable for the assessment year 1979-80 ?'

2. In this case, we are concerned with assessment year 1979-80. Assessee is a private trust. The trust was created by an indenture dated 9-5-1973. Clause 5(b) of the trust deed reads as follows :

'5(b) Subject to the provisions of sub-clause (a) of this clause the income of the trust shall be held for and distributed as under :

(i) L.V. Apte HUF1/3rd

(ii) M.L. Apte HUF1/3rd

(iii) A.L. Apte HUF1/3rd

(iv) Wife of Shri M.L. Apte and all the children of M.L. Apte who are living at the time of execution of this deednil.

(v) All the children of A.L. Apte who are living at the time of execution of this deednil.

(vi) Shri M. L. Apte & Shri A. L. Aptenil.'

This clause came for interpretation before the Division Bench of this court in the case of CIT v. Trustees of the Trust for Relatives of Suneeti Raje A. Apte Trust . This court took the view that beneficiaries under clause 5(b) were persons who were known and whose shares were specified. Mr. Desai, learned Counsel for the department, fairly stated that the above judgment of the Bombay High Court applies to the facts of this case.

3. In the circumstances, the above question is answered in the affirmative, i.e., in favour of the assessee and against the department.

4. Both the references are accordingly disposed of. No order as to costs.