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Court : Chennai

Decided On : Aug-06-1968

Reported in : AIR1970Mad43; [1970]78ITR541(Mad)

Judge : K. Veeraswami and ;Ramaprasada Rao, JJ.

Acts : Expenditure Tax Act, 1957 - Sections 2 and 4; Expenditure Tax (Amendment) Act, 1959; Finance Act, 1959

Appeal No. : Tax Case No. 20 of 1965 (Reference No. 10 of 1965)

Appellant : Commissioner of Expenditure Tax, Madras

Respondent : T.S. Krishna C/O T.V.S. and Sons (P.) Ltd., Madurai

Advocate for Def. : S. Swaminathan and ;K. Ramagopal, Advs.

Advocate for Pet/Ap. : V. Balasubramanian and ;J. Jayaraman, Advs.

Judgement :

Veeraswami, J.

1. This reference involves assessment years 1960-61 and 1961-62, and arises under Section 25(1) of the Expenditure Tax Act, 1957. The assessee, who is an

individual, was charged to tax on his expenditure for the periods ended March 31, 1960 and 1961, which included the expenditure incurred by his wife and minor son during the years. For the first year, the expenditure of the wife was Rs. 10,324 and of the minor son Rs. 3,944 and for the next year it was Rs. 2002 for the wife and Rs. 29,439 for the minor son. It is common ground that the wife and the minor each had during the year her or his own properties and derived income there from. The Expenditure Tax Officer considered that both of them were dependents of the assessee within the meaning of Section 2 (g) (i) and that as such Section. 4 (i) would apply. On appeals, the view taken was that neither Section 4 (i) nor Section 4 (ii) would be applicable, and that being the case, the question whether they were dependents within the meaning of Section 2 (g) (i) need not be considered. The Tribunal substantially concurred and the reference comes before us at the Instance of the Commissioner of Expenditure Tax. The question for consideration is:

'Whether on the facts and in the circumstances of the case, the inclusion of the expenditure incurred by the assessee's wife and minor son with that of the assessee was justified under Section 4 (ii) of the Expenditure Tax Act?'

Though the frame of the question is rested on Section 4 (ii), eventually, the answer will have to depend on the view taken as to the scope of Section 2 (g) (i). Our first impression on a consideration of Section 2 (g) (i) in the context of the other relevant provisions is that the Tribunal's view is correct. But there has been an elaborate argument before us which does show that the question is not entirely free from difficulty. Eventually, we have, however, decided to stick to our first impression.

2. The Expenditure Tax Act provides for levy of tax on expenditure. Nothing seems to turn on the history of this Act and no reference need be made to it. The charge is in respect of the expenditure incurred by any individual or Hindu undivided family in the previous year. Although the charge is in respect of the expenditure incurred by the assessee, expenditure has been defined to include any amount which under the provisions of the Act is required to be included in the taxable expenditure. The last phraseology, viz., 'taxable expenditure' means for the

purpose of the Act 'total expenditure of the assessee liable to tax under the Act.' We are not on the broader question whether the charge will properly lie on the expenditure not incurred by the assessee, but required to be included in the taxable expenditure. The charging section itself is subject to the other provisions contained in the Act. Section 4 requires, in the contingencies mentioned, inclusion of certain taxable expenditure in the expenditure of the assessee. Sections 5 and 6 provide for exemptions and deductions. The only two kinds of assessee comprehended by the Act are the individual and the Hindu undivided family. But, in each of these cases, a dependent plays a part, and for purposes of assessment to expenditure tax. the individual or the Hindu undivided family, along with the dependent concerned, is taken as a unit in giving effect to the principle of aggregation.

A dependent in the case of an individual was originally defined to mean his or her spouse or child wholly or mainly dependent on the assessee for support and maintenance, Act 12 of 1959 amended this provision by inserting the words 'and includes any person' between 'child' and 'wholly' and prefixing the word 'minor' to the word 'child', which is punctuated at the end by a comma. The second part of Section 2 fg) has two limbs, both of which relate to a Hindu undivided family. In that case, a dependent means every coparcener other than the Kartha and also any other member of the family, who under any law or order or decree of a Court is entitled to maintenance from the joint family property. This was left intact by Act 12 of 1959. Section 4, which is subject to the other provisions of the Act, stated, as it stood originally, that to the expenditure of an assessee liable to tax under the Act shall be included (i) any expenditure incurred, whether directly or indirectly, by any person other than the assessee in respect of any obligation or personal requirement of the assessee or any of his dependents, which, but for the expenditure having been incurred by that other person, would have been incurred by the assessee, to the extent to which the amount of all such expenditure in the aggregate exceeds Rs. 5,000 in a year; and (ii) any expenditure incurred by any dependent of the assessee for the benefit of the assessee or of any of his dependents out of any gift, donation or settlement on trust or out of any other source made or created by the assessee, whether directly or indirectly.

The explanation cleared a doubt and stated that any expenditure incurred by any person other than the assessee for and on his behalf by way of customary hospitality, or which was of a trivial or inconsequential nature, was not required to be included in the assessee's expenditure. Act 12 of 1959 deleted from the first limb the words 'which, but for the expenditure having been incurred by that other person, would have been incurred by the assessee', and recast the second limb to read, 'where the assessee is an individual, any expenditure incurred by any dependent of the assessee, and where the assessee is a Hindu undivided family, any expenditure incurred by any dependent, from or out of any income or property transferred directly or indirectly to the dependent by the assessee'. The Appellate Assistant Commissioner rightly thought that Section 4 (i) was inapplicable and this question does not survive before us. But, he also thought that the second limb, as amended, having regard to its frame, would not apply. This is on the view that even the first part of the second limb of Section 4 would be qualified by the requirement that the expenditure incurred by a dependent should be from or out of any income or property transferred directly or indirectly to the dependent by the assessee. Rajkumar singhji v. Commissioner of Expenditure Tax, : [1970]78ITR405(MP) does lend support to him. In that case, the learned Judges were of opinion:

'The expression 'any expenditure Incurred by any dependent from or out of Income or property transferred directly or indirectly to the dependent by the assessee' occurring in Section 4 (ii) applies not only when the assessee is a Hindu undivided family but also when the assessee is an individual.'

With respect we are not able to share that view and do not think that the word 'assessee' at the end of Section 4 (ii) qualifies a dependent of the individual. The first part of Section 4 (ii) speaks of a dependent of the assessee and there the assessee is clearly an individual and likewise the assessee in the second part of Section 4 (ii) has reference to the Hindu undivided family. This sub-clause has not been happily phrased, but the effect is the same as if it had read, 'where an individual is the assessee, any expenditure incurred by any dependent of such assessee.' We do not see why we should read the second limb of Section 4 (ii) in a different manner. This construction looks to us all the more proper by reference

to the definition of an assessee and of a dependent. An assessee means only an individual or Hindu undivided family, and we have already set out the definition of a dependent. This definition has been framed first with reference to an assessee, who is an individual, and secondly, an assessee which is a Hindu undivided family. It is this scheme that is carried into Section 4 (ii). It seems to us, therefore, that where an assessee is an individual, the inclusion of the dependent's expenditure will not be conditioned by the same having been incurred from and out of any income or property transferred directly or indirectly to such dependent by such Individual

3. That, however, does not conclude the matter. The answer to the question under reference, as we said at the outset, would really depend upon what a dependent means for purposes of the first part of Section 4 (ii). For the Revenue, it has been heavily stressed that in interpreting the provision, we must bear in mind the scheme of the Act, particularly, the fact that the family of an individual is treated as a unit, though the individual is taken for the purposes of the assessment and the application of the principle of aggregation, as for instance, attempted by Section 16 (3) of the Income-tax Act, with a view to check evasion or avoidance of tax liability. Mr. Balasubramanyam contends that by a comparison of Section 2 (g) (i) before and after its amendment, the intention is clear from Act 12 of 1959 that even an independent spouse or a minor child is a dependent of the individual. Learned Counsel in addition to the language of Section 2 (g) (i) as amended in 1959, invited our attention to the Objects and Reasons for amending the Act and stated that although the Objects and Reasons may not be conclusive, it is relevant to take them into account, and in the context of them also, it should be held that Section 2 (g) (i) does not take the actuality into account but by a statutory fiat defines a dependent to mean the spouse or a minor child who in fact does not depend upon the individual for support and maintenance. We have given careful thought to this contention but find ourselves unable to accept It .

In our view : [1970]78ITR405(MP) if we may say so with respect, rightly delimits the scope and effect of Section 2 (g) (i) as amended, and we are in complete agreement with the reasoning in that case. We do not, therefore, think it necessary to cover or reiterate the identical ground. The word 'dependent' is not a term of art

in taxation and should bear its natural meaning, which may not include one who is independent and who does not require and get the assistance of another for support and maintenance. There is nothing in the language of Section 2 (g) (i) which compels us to take a different view. As it originally stood, the expression meant in the case of an assessee who is an individual 'his or her spouse or child wholly or mainly dependent on the assessee for support and maintenance.' Even after the amendment, that substantially remains to be the position in the case of spouse or child except that the child should be a minor and that the expression 'dependent' has been expanded to include, apart from spouse or minor child, any person who factually is a dependent of the individual for support and maintenance. The utmost that can be said in favour of the Revenue's construction is that if the dependent is defined in terms of any person who is factually a dependent, it would have been unnecessary to employ the surplus age 'his or her spouse or minor child'. But we are inclined to think that beyond the peculiarity of the draftsmanship, it has no further significance. The amendment took the particular form because of the then existing structure and the Legislature apparently wanted to retain that structure as much as possible while at the same time it expanded its scope. The word 'includes' would indicate that but for it, the definition may not take in the category of person included. But that to our minds does not necessarily mean or imply that a spouse or minor child factually independent would come within the ambit of dependent. That a dependent also means an independent but includes a dependent looks odd indeed.

It has been strenuously argued by Mr. Balasubramanyam that the very object of the amendment in 1959 was to provide that the husband, wife and minor child should be regarded as one unit for the exemption limit of Rs. 30,000/- in the matter of nontaxable expenditure and not as a separate assessee, if they have income in their own individual rights. We do not think that if that was the object, the amendment, phrased as it was, has carried out the object. As we already mentioned, the individual is always the assessees or the Hindu undivided family, as the case may be. But, in the case of the individual or Hindu undivided family, the dependent's expenditure is in certain circumstances required to be included, and in that sense, the individual with the dependent or the Hindu undivided family with the dependent is taken as a unit. That scheme existed even before the

amendment in 1959. The effect of the amended Section. 2 (g) (i) is only to include or add to the category of dependents with reference to an individual and treat them all as a unit for the purposes of assessment in the sense that the expenditure of such a dependent in computing the taxable expenditure of the individual is liable to be included therein.

4. We also fail to see why the Legislature, if checking evasion was the object, made a distinction between the spouse or the minor child of an individual on the one hand and the spouse or minor child of a coparcener in a Hindu undivided family on the other. In the latter case, the expenditure of a wife or a minor child who would be a member or coparcener as the case may be, can be included in the taxable expenditure of the Hindu undivided family only if they are entitled to maintenance from the joint family property under any law or order or decree of a court. There is no reason why from the standpoint of checking evasion, that qualification is to be ignored in the case of a spouse or minor child of an individual. Section 4 (ii) further lends support to the view we have taken. As we indicated earlier, this provision as amended provides for the addition of the expenditure of a dependent of an individual and a dependent of a Hindu undivided family; but in the latter case, as a requisite for the inclusion, the dependent should have incurred expenditure from the income or property transferred directly or indirectly to him or her by the assessee. In the case of a dependent of an individual, this requisite is not made applicable, because, as we think, the spouse or minor child, as defined by the first part of Section 2 (g) (i) is one who depends on the individual for support or maintenance. If that were not so, one will have to impute to the Legislature an unjustifiable discrimination in the matter of addition of expenditure between a spouse or minor child of an individual and a spouse or minor child of a coparcener in a Hindu undivided family. It seems to us that such a discrimination could not have been intended.

5. Our attention has been invited to a majority decision of the Andhra Pradesh High Court in W. A. No. 67 to 69 of 1964 (AP), which takes a contrary view as to the scope of Section 2 (g) (i). In our opinion, the objects and reasons as given in the Legislature for the amendment cannot be taken as the controlling factor in determining the scope and effect of the amendment. Quite apart from that

consideration, punctuation, which is no part of an enactment, has a limited part to play when the language employed by the Legislature is clear. We are, therefore, with due respect, unable to agree with the view of the Andhra Pradesh High Court.

6. We answer the question referred to us against the Revenue with costs. Counsel's fee Rs. 250/-.

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