

In Re: Dr. T.M.A. Pai

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Court : Chennai

Decided On : Oct-19-1953

Reported in : AIR1954Mad927; [1954]25ITR75(Mad)

Judge : Satyanarayana Rao and ;Rajagopalan, JJ.

Acts : [Income Tax Act, 1922](#) - Sections 16, 16(1) and 16(3)

Appeal No. : Case referred No. 54 of 1951

Appellant : In Re: Dr. T.M.A. Pai

Advocate for Def. : C.S. Rama Rao Sahib, Adv.

Advocate for Pet/Ap. : A. Narayana Pai, Adv.

Judgement :

1. We are asked to give opinion under S. 66 of the Act on the following question of law, viz., whether the income arising from the properties held on trust under the trust deed dated 21-11-1944 is liable to be included in computing the total income of the assessee.

2. On the 21st November 1944, the assessee and his wife executed a document styled a deed of trust, whereunder they constituted the Canara Industrial and Banking Syndicate Ltd., as trustees, and the property described in the schedule attached to the deed was vested in them subject to certain trusts which are specified in the deed. The substantial benefit under this document is for the benefit

of their minor children. The settlors divested themselves of all the right and interest in the properties, and the trust was made absolute and irrevocable. In computing the total income of the assessee for the purpose of income-tax assessment, the income of the properties covered by the trust deed was included by the Department under Section 16(3) (b) and Section 16(3) (c)(iv) of the Act.

This opinion of the department was upheld by "the Appellate Assistant Commissioner and also by the Tribunal. The assessee's contention was that the matter was within the purview of the third proviso to Section 16(1) (c) of the Act, and that therefore the income from the trust properties should not have been included in computing the total income of the assessee. This contention was rejected. The question for consideration therefore is whether the contention of the assessee is correct or, whether the assessment was rightly made by the department.

3. The trust is undoubtedly for the benefit of the minor children of the assessee. It was an absolute trust and was also irrevocable. No proprietary interest was reserved by the assessee and his wife for themselves. In order to bring the transaction under the third proviso to Section 16 (1)(c) of the Act, it has to be considered whether it falls, in the first place, within the main clause (c). Clause (c) consists of two parts: The first part relates to income which accrues to a person under a settlement, whether it is revocable or not, but the assets from which the income arises remain the property of the settlor. In other words, the settlement or the covenant, relates only to the income of the property, the settlor all along continuing to be the owner of the property or the assets from which the income accrues.

The second part relates to transfer of the assets from which the income arises under a revocable transfer. In Pithers event the income is treated as the income of the settlor. The exception created by the third proviso relates to settlement or disposition which is not revocable for a period exceeding six years or during the lifetime of the donee. There is also a further qualification that from the income of such property the settlor should derive no benefit, directly or indirectly. In the present case the trust is absolute and Irrevocable. The settlor does not retain in

himself the ownership of the assets or the property. Clause (c) therefore has no application and the third proviso to that clause cannot be invoked by the assessee. As pointed out in one of the decisions cited, the proviso may be relied on whether the transaction in question falls under the first part of clause (c) or the second part. Vide 'D. R. Shahapure v. Commr, of Income-tax, Bombay, 1946-14 ITR 781 (Bom) (A).

If Section 16(1) (c) is ruled out, there remain Section 18 (3)(a)(iv) and Section 16(3)(b). The Appellate Tribunal held that either or both of the clauses would apply to the situation. We think that Section 16(3) (b) would undoubtedly apply to the facts of the present case, as the Income arises from assets which have been transferred to the Syndicate and the transfer was not for any consideration. The trust is for the benefit of the minor children of the assessee. It is unnecessary to consider in this view whether Section 16(3) (a) (iv) also applies. In our opinion, the question referred to us must be answered in the affirmative and against the assessee. As the assessee has failed, he must pay the costs of this reference, Rs. 250 to the Commissioner of Income-tax.

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