

**K.D. Ghosh Vs. Commissioner of Income-tax**

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**SooperKanoon Citation :** [sooperkanoon.com/871895](http://sooperkanoon.com/871895)

**Court :** Kolkata

**Decided On :** Jul-15-1977

**Reported in :** [1978]111ITR502(Cal)

**Judge :** A.N. Sen and ;Bimal Chandra Basak, JJ.

**Acts :** [Income Tax Act, 1961](#) - Section 64

**Appeal No. :** Income-tax Reference No. 271 of 1976

**Appellant :** K.D. Ghosh

**Respondent :** Commissioner of Income-tax

**Advocate for Def. :** A.K. Sen Gupta, Adv.

**Advocate for Pet/Ap. :** Sanjay Bhattacharyya, Adv.

**Judgement :**

A.N. Sen, J.

1. Directed by this court the Tribunal, under Section 256(2) of the Income-tax Act, 1961, has referred the following two questions:

'(1) Whether, on the facts and in the circumstances of the case, the yield from the house property was includible in the income of the assessee under Section 64(iii) of the Income-tax Act, 1961 ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal ought to have limited the applicability of Section 64(iii) of the said Act to the extent of the valuation of the land gifted by the assessee upon which the building has been constructed with the monies taken as advance and borrowed from the National & Grindlays Bank Ltd.'

2. The facts of the case have been set out in the statement of the case. The facts material for the purpose of this reference may be briefly noted. The relevant assessment year is the assessment year 1966-67, the corresponding financial year ending on the 31st March, 1966. The assessee is assessed in the status of an 'individual'. For this year he filed a return admitting an income of Rs. 6,071. The Income-tax Officer determined the assessee's total income at Rs. 28,404 under Section 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act'). The Income-tax Officer found that the assessee had gifted a plot of land to his wife on August 31, 1964, and that a building was constructed on the said plot of land during the year under consideration. The building stands in the name of the lady. The assessee claimed that the building was constructed by his wife by her own efforts with moneys borrowed by her own initiative from M/s. National & Grindlays Bank Ltd., who occupied two floors in the building at a monthly rent of rupees 2,652. The assessee also filed a copy of the lease agreement along with a declaration from his wife to the effect that she was the absolute owner of the building. The Income-tax Officer, however, held that since the land on which the

property was built was transferred by the assessee to his wife without adequate consideration the income from the property was assessable in his hands under Section 64(iii) of the Income-tax Act, 1961. Accordingly, the Income-tax Officer included a sum of Rs. 15,904 in the hands of the assessee under the said provision. Against the said order of the Income-tax Officer the assessee appealed to the Appellate Assistant Commissioner objecting to the inclusion of his wife's income in his hands contending that the said income did not arise directly or indirectly out of the land gifted by him and that there was no direct nexus between the property gifted and the property from which the income was derived. The Appellate Assistant Commissioner found that the building was constructed on the land gifted by the husband with money borrowed by mortgage of the said land from the bank. The Appellate Assistant Commissioner, therefore, held that the income of the assessee had been derived indirectly from the land which was transferred by the assessee to his wife and he dismissed the appeal. Against the said order of the Appellate Assistant Commissioner the assessee preferred a further appeal to the Tribunal. The Appellate Tribunal for reasons recorded in its order dismissed the said appeal.

3. As the Tribunal refused to refer any question to this court on the application of the assessee because the Tribunal was of the opinion that no questions of law were involved, the assessee had applied to this court under Section 256(2) of the Act. Directed by this court the Tribunal has referred to this court the two questions which we have earlier set out.

4. It appears from the order of the Tribunal that various decisions were cited before the Tribunal including the decision of the Supreme Court in the case of Prem Bhai Parekh : [1970]77ITR27(SC) . The Tribunal has carefully considered the various decisions which were cited before the Tribunal. The Tribunal has held that Section 64(iii) which created an artificial income must receive a strict construction and the question to be considered was whether it could be said that the income arose directly or indirectly from the assets transferred by the assessee by way of gift and whether there was a nexus between the transfer of the land and the income in question. The Tribunal, after considering the arguments advanced and the decisions cited, has held in paragraph 4 of its order :

'Admittedly, it is on land gifted by the assessee to his wife that the building which yields the rental income in dispute is constructed. To our query the assessee's learned representative conceded that the assessee's wife has no other source of income. It was also conceded that it was with amounts raised by hypothecating this very property and also taking advance rent from the bank to which it was agreed that the building after construction would be let that the expenses for the building construction were met. Thus, there was no investment by the wife of anything of her own on the building construction. Everything spent on it was money raised on the security of the gifted property and the improvement sought to be constructed thereon. The assessee's learned representative argued that the investment on the construction was with funds raised by the wife on her own initiative and the income thus being the reward of such enterprise of the wife had no proximate connection with the gifted assets and hence the ratio of the Supreme Court decision in Prem Bhai Parekh's case : [1970]77ITR27(SC) was clearly applicable here. We find it difficult to agree. As it was by hypothecating the land and taking advance rent showing the building to be constructed as security that the amounts were raised, we feel that this is a case where the benefits accrued directly from the gifted assets and that to it the ratio of the case in Mohini Thapar's : [1972]83ITR208(SC) was more apposite for application. What now yields as rental income is made out of the land gifted and is thus a proximate accretion to it. We should hence think that the lower authorities were right in applying the provisions of Section 64(iii) to this case. In this view that we take, the additional ground taken by the assessee that in any event the applicability of the section should be restricted to the land and not to the income from the building does not arise for any further consideration.'

5. Mr. Bhattacharyya, learned counsel appearing on behalf of the applicant, has contended before us that in the instant case it cannot be said that the income from the building arose directly or indirectly from the land which was transferred by the assessee to his wife by way of gift and that there was any nexus between the transfer of the land and the income which the wife receives from the said building. He has argued that the

land does not bring the income. It is his argument that there was initiative on the part of the wife, in raising funds for the construction. He contends that the building came to be constructed as a result of the initiative taken by the wife who borrowed money by mortgaging the said land and has constructed the said building with the money borrowed and the advance rent taken for letting out the building. It is his submission that this initiative on the part of the wife in raising funds by mortgaging the land and by collecting advance rent for constructing the building, brings this case within the principles enunciated by the Supreme Court in the case of Prem Bhai Parekh : [1970]77ITR27(SC) . Mr. Bhattacharyya has placed particular reliance on the following observation of the Supreme Court at page 30 :

'Section 16(3) of the Act created an artificial income. That section must receive strict construction as observed by this court in Commissioner of Income-tax v. Keshavlal Lallubhai Patel : [1965]55ITR637(SC) . In our judgment, before an income can be held to come within the ambit of Section 16(3), it must be proved to have arisen--directly or indirectly--from a transfer of assets made by the assessee in favour of his wife or minor children. The connection between the transfer of assets and the income must be proximate. The income in question must arise as a result of the transfer and not in some manner connected with it.'

6. Mr. Bhattacharyya has also referred to the decision of the Bombay High Court in the case of Bhaichand Jivraj Muchhala v. Commissioner of Income-tax : [1976]102ITR385(Bom) and also to the decision of the Andhra Pradesh High Court in the case of Commissioner of Income-tax v. Smt. Pelleti Sridevamma : [1976]105ITR887(AP) . Mr. Bhattacharyya has argued that the decision of this court in the case of B. K. Guha : [1972]84ITR592(Cal) is clearly distinguishable.

7. The principles with regard to the interpretation and application of the provisions of Section 64(iii) are well settled. The decisions of the Supreme Court in the case of Commissioner of Income-tax v. Keshavlal Lallubhai : [1965]55ITR637(SC) and Commissioner of Income-tax v. Prem Bhai Parekh : [1970]77ITR27(SC) make the position absolutely clear.

8. In the facts and circumstances of this case the Tribunal has correctly appreciated the legal position. In our opinion, the Tribunal after proper appreciation of the legal principles involved has correctly applied the same to the facts of the instant case and has correctly concluded that the income, derived from the building was rightly included in the income of the assessee under Section 64(iii) of the Income-tax Act. The reasons stated, by the Tribunal in its order are sound and have our approval. It has to be noted that the building was constructed with a loan borrowed from the bank on the mortgage of the land which was gifted by the assessee. The amount borrowed on the mortgage of the land was utilised for the purpose of construction of the building and the wife had no independent or other source of income for construction. The construction cost had also been met out of the advance rent realised by the wife. The income derived by way of rent from the building which was built with money borrowed on the mortgage of the land and money received by way of advance rent, therefore, arises directly and, in any event, indirectly from the transfer of the land by the assessee in favour of his, wife. The connection between the transferred asset and the income is proximate and cannot be said to be too remote.

9. We, therefore, answer the first question in the affirmative, in favour of the revenue and against the assessee.

10. In view of our answer to the first question, the second question does not call for any answer.

11. We, however, make no order as to costs.

Bimal Chandra Basak, J.

12. I agree.