

M.M. Mehta Vs. Commissioner of Income-tax (Central)

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Court : Kolkata

Decided On : Jun-21-1978

Reported in : [1979]117ITR362(Cal)

Judge : Dipak Kumar Sen and ;C.K. Banerji, JJ.

Acts : [Income Tax Act, 1961](#) - Section 2(24)

Appeal No. : Income-tax Reference No. 254 of 1976

Appellant : M.M. Mehta

Respondent : Commissioner of Income-tax (Central)

Advocate for Def. : B.K. Naha, Adv.

Advocate for Pet/Ap. : Debi Pal and ;Gopal Sinha, Advs.

Judgement :

Dipak Kumar Sen, J.

1. On the application of M.M. Mehta, the assessee, under Section 256(1) of the I.T. Act, 1961, the Tribunal has drawn up a statement of case and has referred for the opinion of this court the following questions as questions of law arising from its order :

'(1) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the speculation income earned in the names of Mukesh Mehta and Bhupen Mehta belonged to the assessee for the assessment year 1970-71 ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the amount of Rs. 1,800 was income of the assessee for the assessment year 1970-71 ?'

2. The admitted facts and/or facts found in the proceedings leading up to the present references are, inter alia, that in the assessment year 1970-71, the previous year being 2025 G.D., the assessee was assessed to income-tax. It was found that some income had arisen in the hands of his minor sons in the said assessment year. On being summoned to show cause why the said income in the hands of his minor sons should not be treated as his benami income, the assessee filed a letter contending that the business was being carried on by him on behalf of his minor sons. It was also contended that the initial capital employed in the said business had accrued in the hands of the minors from gifts. The ITO did not accept the contentions of the assessee and included such income of the said business in the income of the assessee and brought the same to tax.

3. During the relevant assessment year, the assessee as the managing director of a company, named, Western Trading Co. Pvt. Ltd. had also obtained the use of a motor car belonging to the said company. On the basis that a benefit of some value had accrued to the assessee, the ITO added a notional sum of Rs. 1,800 to the income of the assessee.

4. Being aggrieved, the assessee preferred an appeal to the AAC who considered the details of the transactions and found that the transactions had been effected through brokers in the individual names of the minors, namely, Bhupen Mehta and Mukesh Mehta, without disclosing that they were minors. He also found that in the bank accounts in the names of the minors the assessee had been described as their guardian. Accordingly, he confirmed the addition of the income arising out of the said transactions to the income of the assessee. He also confirmed the addition of the said sum of Rs. 1,800 on the ground that the free use of a motor

car was a benefit or perquisite under Clause (iii) or (iv) of Section 2(24) of the I.T. Act, 1961, and the value thereof was taxable as the assessee had control over the affairs of the said company.

5. There was a further appeal by the assessee to the Tribunal. It was contended on behalf of the assessee that from the books and the bank account it appeared that the income from the business had accumulated for the benefit of the minors which showed that the business really belonged to the minors. It was also contended that the source of the capital of the minors had been satisfactorily established by evidence.

6. On the other hand, it was contended on behalf of the revenue that there was nothing to show from the records that the assessee was carrying on business as the guardian of the minors and in the transactions the fact that minors were involved had been kept secret.

7. On the facts and circumstances, viz., that the transactions, if effected by the minors, would be illegal and that the assessee had kept secret that he was acting as a guardian for the minors, the Tribunal concluded that the assessee had entered into the said speculative transactions on his own using the names of the minors. The Tribunal also held that there was no evidence to show that the income from the business was being actually enjoyed by the minors. The Tribunal held further that the income notionally accruing to the assessee for the free use of the motor car should be properly taxed as his income from other sources rather than income from salary and, therefore, it was not necessary to consider whether this item would be a perquisite or not. Accordingly, the appeal of the assessee was dismissed.

8. At the hearing Dr. Debi Pal, learned counsel for the assessee, contended that there was no finding that the income from the business carried on in the name of the minors had been appropriated by the assessee. This crucial test of a benami transaction was not satisfied in the instant case. He also submitted that the finding that the bank account stood in the name of the minors and was being operated upon by the assessee as their guardian was unchallenged. Even if the source of the capital was not established, it would have no bearing on the question as to in

whose hands the income of the business would be taxed.

9. Dr. Pal did not dispute that the question whether a transaction was a benami one or not was basically a question of fact. But he submitted that the burden of proof was on the person who alleged benami. In the instant case, the revenue having alleged benami, had to prove that the transaction was a benami transaction and unless this prima facie onus was discharged there would be no question of the assessee furnishing any evidence. In this context, he cited a decision of the Supreme Court in CIT v. S.P. Jain : [1973]87ITR370(SC) , where a question of benami was involved. The Supreme Court set aside the finding of the Tribunal which had been confirmed by the High Court holding that the Tribunal had acted on inadmissible evidence, had based its conclusion on conjectures and surmises and on wrong facts. The Supreme Court also held that the Tribunal had failed to consider the probability of the case which could justify the orders of the ITO and the AAC. Drawing inspiration from this decision of the Supreme Court, Dr. Pal invited us to consider the evidence on record and answer the question in favour of the assessee.

10. It appears to us that in the instant case the authorities below in considering abstruse legal concepts like benami and the abstract principles of illegality in a contract lost sight of the real position. The assessee does not dispute that he was carrying on business in the names of his minor sons. In that sense, the transactions were admittedly benami. Therefore, the only question to be decided was whether the father was carrying on the business on his own or on behalf of his minor sons. On the evidence on record, the Tribunal has found that the assessee was carrying on business on his own account using the names of the minors. This finding has not been challenged. The question of the burden of proof has little relevance in these facts nor are we concerned with the legality of the transactions. Had it been found that the assessee was carrying on business on behalf of his minor sons, the question of legality of the transaction would have to be considered. For the reasons given above, we answer question No. 1 in the affirmative and in favour of the revenue.

11. On question No. 2, Dr. Pal cited a decision of the Madras High Court in CIT v. A. R. Adaikappa Chettiar : [1973]91ITR90(Mad) . The facts in that case were as follows : The assessee, a firm, acted as the managing agents of a limited company. The partners of the firm were the shareholders and the directors of the company. In the relevant assessment years the ITO disallowed a portion of the company's claim for deduction on account of expenditure incurred on motor cars on the ground that the same were being partly used by the partners of the managing agents for their private purposes. The assessments of the said partners of the managing agents were consequently reopened and additions were made to their income for the use of the motor cars. The reassessment was confirmed by the AAC but the assessee succeeded before the Tribunal on a further appeal. On a reference, the Madras High Court upheld the decision of the Tribunal and held that before a person can be stated to have obtained a benefit or perquisite from a company, he should have some legal or equitable claim for such benefit or perquisite. The benefit or advantage which might have been taken by a director or any other person from a company without any claim of right had to be repaid or returned to the company if the company on discovery of such unauthorised taking, sought to enforce restitution.

12. In the instant case, the Tribunal has found that the assessee had control over the company and was enjoying the use of the car and has also held that the notional income on this account should be deemed to 'be income from other sources. Therefore, it appears that the Tribunal impliedly accepted the position that there was no contractual obligation of the company to provide the use of the motor car as a perquisite or benefit. We are in respectful agreement with the principles of law laid down by the Madras High Court in CIT v. Adaikappa Chettiar : [1973]91ITR90(Mad) . Therefore, following the same, we answer the question No. 2 in the negative and in favour of the assessee.

13. In the facts and circumstances, there will be no order as to costs.

C.K. Banerjee, J.

14. I agree.

