

The Punjab National Bank Ltd.,
v.
M/s.
Iqbal Singh
Kalyan Singh
and others, B.R.T.

of the plaintiff Bank against defendant No. 6. In view of the circumstances of the case I would leave the parties to bear their own costs.

KHOSLA, C.J.—I agree.

Gurdev Singh,
J.

CIVIL MISCELLANEOUS

Before G. D. Khosla, C.J., and D. K. Mahajan, J.

RAGHBIR SINGH RAJA SANSI,—*Petitioner.*

versus

THE COMMISSIONER OF INCOME-TAX, SIMLA,—
Respondent.

Income-Tax Reference No. 19 of 1958

Income-tax Act (XI of 1922)—S. 16 (I) (C)—Scope and interpretation of—Benefit accruing to the transfer or directly or indirectly—Effect of.

1960

Sept. 22nd.

Held, that section 16(1)(C) of the Income-tax Act, 1922, deals with a transfer of his assets by the assessee. If the transfer is irrevocable, there is no question of the income from those assets being considered the income of the assessee for the purposes of the Income-tax Act, but the proviso makes it clear that even when a transfer purports to be irrevocable, it may be deemed to be revocable in certain circumstances and those circumstances are two, namely (1) where the income from the assets is transferred to the transferor and (2) where there is provision in the deed of transfer enabling the transferor to resume power, directly or indirectly, over the income or assets or the property so transferred. If the case does not fall within either of these two exceptions, then the transfer must be deemed to be irrevocable and the income from the property transferred will be the income of the transferee and not of the transferor. It is, therefore, immaterial whether the transferor derives any benefit, direct or indirect, from the transfer or not. It may be that he indirectly benefits from the income of the property transferred, but as long as the transaction is of such

a nature that he has divested himself completely not only of the property itself but of the income accruing from it, then the transfer will be deemed to be irrevocable. If, for instance, he cannot deal with the property as he would like to, or assume complete control over its income, then it will not be said that the income is being transferred to him or that there is any provision which enables him to reassume power, directly or indirectly, over the assets.

Case referred U/S 66(i) of the Income-tax Act by the Indian Income-Tax Appellate Tribunal (Delhi Bench) for opinion on the following two questions of law arising out of the Tribunal's Order in I. T. A. No. 1038 of 1956-57:—

- (1) *Whether the divided income of the 300 shares of the Simbhaoli Sugar Mills, Private, Ltd., transferred by the assessee to S. Raghbir Singh Trust was the income of the assessee liable to tax?*
- (2) *Whether the assessee was entitled to claim deduction of Rs. 19,856 paid as interest to R.B. Seth Jessa Ram- Fateh Chand against the dividend income of the aforesaid 300 shares?.*

DEVA SINGH RANDHAVA, ADVOCATE, for the Petitioner.

D. N. AWASTHY AND HEM RAJ MAHAJAN, ADVOCATES, for the Respondents.

ORDER

G. D. KHOSLA, C.J.—This is a reference by the Income-tax Appellate Tribunal under section 66 of the Indian Income-tax Act asking for an opinion of this Court on two questions of law. Before setting out the questions, it is necessary to state the facts of the case. The assessee in this case is Sardar Raghbir Singh, who was originally a member of a joint Hindu Family consisting of himself and his sons as coparceners and also his wife. On 10th April, 1953, a disruption of the Joint Hindu Family took place and the assets were partitioned. The assessee received 400 shares of

Khosla, C. J.

Raghubir Singh
Raja Sansi
v.
The Commis-
sioner of
Income-tax,
Simla

Khosla, C. J.

the Simbhoali Sugar Mills, Private Ltd., among other assets of the joint Hindu Family. He was also assigned the obligation to pay off a debt of nearly Rs. 4,00,000 which was contracted by the joint Hindu Family and was due to Rai Bahadur Seth Jessa Ram-Fateh Chand. On 14th April, 1953, the assessee executed a deed of trust whereby he constituted a Trust in respect of 300 out of the 400 shares of the Simbhaoli Sugar Mills and the trustees appointed under the Trust undertook to accept the obligation and to carry out the objects of the Trust. The objects of the first were, in the first place, to pay off the debt due to Rai Bahadur Seth Jessa Ram-Fateh Chand, out of the income of these shares and thereafter to provide for the maintenance and education of the assessee's children and grand-children. Eighty per cent of the income from the Trust was reserved for this purpose and the remaining 20 per cent was to be expended on various charitable purposes which are enumerated in the trust-deed printed at page 4 of the paper book. The trustees were authorised to mortgage the shares in case they thought it necessary to do so in order to pay the debt.

The assessment year is 1954-55 and the accounting year is the previous financial year ending on 31st March, 1954. Therefore, the disruption of the joint Hindu family, the undertaking of the liability to pay the debt of Rai Bahadur Seth Jessa Ram-Fateh Chand, and the execution of the trust-deed all fell within the accounting year. The question that arose for decision was whether the income from these shares was to be deemed the income of the assessee or the income of the Trust. The shares could also be sold in certain circumstances set out in the trust-deed.

When the matter came before the Income-tax Officer, he disposed of it very briefly in the following words:—

“Income from these shares is also included in the income of the assessee for the reasons discussed in the file of the Trust.”

Raghubir Singh
Raja Sansi
v.
The Commissioner of
Income-tax,
Simla
Khosla, C. J.

We have not before us the ‘file of the Trust,’ but Appellate Assistant Commissioner of Income-tax gave his reasons a little more fully, and I may set out the paragraph from his order which deals with this matter—

“The settler in this case, no doubt, transfers certain assets to the Trust, but the income from these assets is not utilized by any person other than the appellant himself. It is his own liability that he has arranged to wipe off by a legal arrangement which unfortunately does not escape the clutches of section 16(1)(c) first proviso. This is not a case where income is irrevocably transferred to any person other than the settler himself. Accordingly, there is no doubt that in the arrangement contemplated in the Trust, there is a direct retransfer of the income to the settler himself. The I.T.O. was, therefore, quite right in including the income from the Trust in the income of the appellant.”

The matter was taken to the Income-tax Appellate Tribunal, and paragraph 2 of their order deals with the matter—

“Assuming the alleged trust to be a valid one, it is plain that the assessee received benefit, at least indirectly, by the

Raghubir Singh
Raja Sansi

v.

The Commis-
sioner of
Income-tax,
Simla

Khosla, C. J.

said settlement inasmuch as the income went to wipe off a liability which was his responsibility to meet or discharge. The terms of the 1st proviso to clause (c) of sub-section (1) of section 16 lay down in no uncertain terms that in such a case the income has to be the income of the transferer. The Appellate Assistant Commissioner is, therefore, perfectly right in sustaining the order of the Income-tax Officer in this respect."

I have taken the liberty to quote *in extenso* the passages relating to the matter from the orders of the Appellate Assistant Commissioner and the Appellate Income-tax Tribunal, because a reading of these passages at once leads to the conclusion that these tribunals were under some misapprehension regarding the exact meaning of section 16(1)(c) and the first proviso to that section. The Appellate Income-tax Tribunal appears to have thought that when the assessee received some benefit, even indirectly, then it must be assumed that proviso 1 comes into play. It is, therefore, necessary to examine carefully the provisions of section 16(1)(c) and the first proviso to it. The relevant portion reads as follows:—

"16(1)(c) * * * * *

* all income arising to any person by virtue of a revocable transfer of assets shall be deemed to be income of the transferer:

Provided that for the purposes of this clause * * * * * a transfer shall be deemed to be revocable if it contains any provision for the

retransfer directly or indirectly of the
 income or assets to the * * *
 transferer, or in way gives
 the * * * transferer a right to
 re-assume power directly or indirectly
 over the income or assets.”

Raghubir Singh
 Raja Sansi
 v.
 The Commis-
 sioner of
 Income-tax,
 Simla

Khosla, C. J.

I have left out the words which did not apply in order to clarify the position. It, therefore, follows that section 16(1)(c) deals with a transfer of his assets by the assessee. If the transfer is irrevocable, there is no question of the income from those assets being considered the income of the assessee for the purposes of the Income-tax Act, but the proviso makes it clear that even when a transfer purports to be irrevocable, it may be deemed to be revocable in certain circumstances and those circumstances are two, namely, (1) where the income from the assets is transferred to the transferer and (2) where there is provision in the deed of transfer enabling the transferer to reassume power, directly or indirectly, over the income or assets or the property so transferred. If the case does not fall within either of these two exceptions, then the transfer must be deemed to be irrevocable and the income from the property transferred will be the income of the transferee and not of the transferer. It is, therefore, immaterial whether the transferer derives any benefit, direct or indirect, from the transfer or not. It may be that he indirectly benefits from the income of the property transferred, but as long as the transaction is of such a nature that he has divested himself completely not only of the property itself but of the income accruing from it, then the transfer will be deemed to be irrevocable. If, for instance, he cannot deal with the property as he would like to,

Raghubir Singh
Raja Sansi
v.
The Commis-
sioner of
Income-tax,
Simla

or assume complete control over its income, then it will not be said that the income is being transferred to him or that there is any provision which enables him to reassume power, directly or indirectly, over the assets.

Khosla, C. J.,

It is in the light of these observations that we must examine the trust-deed. By the trust-deed four trustees were appointed of which the assessee himself was one. 300 shares having considerable value were transferred to the Trust. The exact value of these shares is not given on the record of this case, but from the statement of the Department it is clear that the dividend for one year on these shares was more than Rs. 65,000, and it may, therefore, be assumed that the shares were worth not less than Rs. 6,00,000 if it is assumed that these shares carried the, by no means large, dividend of 10 per cent. If that be the case, then it will be seen that the assessee divested himself of considerable property in order to pay off a debt which could have been liquidated by the sale of a little more than half of those shares. He did not content himself with that. He made no provision for revoking the Trust, and under the Indian Trusts Act, when there is no provision for revocation, the Trust is to be deemed irrevocable. The trustees were charged with the duty of first paying this debt and then of providing for the children and grand-children of the author. Only 80 per cent of the income was to be utilised for this purpose and the remaining 20 per cent was to be expended in helping a number of charitable institutions. The Income-tax Officer and the Appellate Assistant Commissioner were not quite right in saying that only the residue was to be utilised for charitable purposes. From these facts it is quite clear that the assessee did not reserve to

himself the right to use the income from these shares or the shares themselves in a manner according to his own will. This was made the duty of the trustees who were charged with the task of using the income from the shares in the manner provided by the trust-deed. It is hardly necessary to point out that the conduct of trustees is open to scrutiny by a Court of law and that any misconduct on their part is liable to be visited with dire consequences. It is, no doubt, true that the trustees were the relatives of the maker of the Trust and there was a provision that no stranger should be appointed as trustee in the presence of lineal descendants of the first trustees, but this does not mean that the Trust was a colourable transaction. Trusts of this kind are frequently met with, and when the object of the Trust is to provide for the education and welfare of the children and grand-children of the maker of the Trust, then the best persons to see that the object of the Trust is carried out properly are the relatives of the beneficiaries.

Raghubir Singh
Raja Sansi
v.
The Commissioner of
Income-tax,
Simla
Khosla, C. J.

Our attention has been drawn to two cases which, in my view, seem to be somewhat in point. The first of these is *Ramji Keshavji v. Commissioner of Income-tax, Bombay* (1). In this case property was transferred to a Trust and it was provided that the income was to be paid to the wife of the maker of the Trust during her lifetime. She was to maintain her minor children and run the household during her lifetime. After her death the income from the trust property was to revert back to the settler. It was held by the Bombay High Court that this did not bring the case within the first proviso inasmuch as it could

(1) 13 I.T.R. 105.

Raghubir Singh
Raja Sansi
v.
The Commissioner of
Income-tax,
Simla

Khosla, C. J.

not be said that the income was being retransferred back to the settler or that there was any provision which empowered the settler to re-assume power, directly or indirectly, over the income or the assets. The income and the assets during the lifetime of his wife were to be used in a certain manner specified by the Trust and in no other manner. Therefore, the settler had no control of any kind either over the assets or the income arising therefrom. *D. R. Shahapure v. Commissioner of Income-tax, Bombay* (1), was a case in which there was a similar settlement in favour of the settler's wife. He settled a sum of Rs. 20,000 guaranteeing that she would receive the income from the trust-money with a minimum of Rs. 600 per annum. The property in the capital was to remain in the settler, but he could not use the income from it in any way except in the manner provided by him. It was held that it could not be said that there was any direct or indirect benefit accruing to the settler or that there was any retransfer of the income to him, merely because he was under an obligation to maintain his wife and by providing for the maintenance of his wife in this way he benefited himself.

Mr. Awasthy, who appeared on behalf of the Department, relied upon certain observations made in *Ratilal Nathalal v. Commissioner of Income-tax* (2). In that case the facts, however, were wholly different, and the decision of that case has no bearing whatsoever on the matter before us.

I, therefore, find that in this case there has been no retransfer of the income from the trust

(1) 14 I.T.R. 781.

(2) 20 I.T.R. 307.

property to the author of the Trust, nor does the Trust make any provision whatsoever which entitles him at any time named or in the future to reassume power over the income of the assets directly or indirectly. That being so, the case does not fall within the mischief of the first proviso, nor is the case covered by section 16(1)(c); the income from the shares must be deemed to be the income of the Trust and not of the assessee. which is—

Ragbir Singh
Raja Sansi,
The Commissioner of
Income-tax,
Simla,

Khosla, C. J.,

In this view of the matter, the first question “Whether the dividend income of the 300 shares of the Simbhaoli Sugar Mills, Private Ltd., transferred by the assessee to S. Ragbir Singh Trust was the income of the assessee liable to tax?” must be answered in the negative. The second question does not arise and I need not even set it out here.

The reference is answered accordingly. The assessee will recover his costs which we assess at Rs. 250.

MAHAJAN, J.—I agree.

B.R.T.

APPELLATE CIVIL

Before A. N. Grover, J.

KAMLESH KUMARI,—Appellant

versus

KARTAR CHAND,—Respondent.

F.A.O. No. 3/M of 1960.

Hindu Marriage Act (XXV of 1955)—S. 13 (1) (ix)—Decree for restitution of conjugal rights passed in favour of the husband against the wife—Wife—Whether can ask for dissolution of marriage on the ground that husband did not