

Agha Abdul Jabbar Khan vs Commissioner Of Income Tax, M.P. on 3 August, 1971

Equivalent citations: [1972]82ITR872(SC), (1972)4SCC336

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Bench: A.N. Grover, K.S. Hegde

JUDGMENT

K.S. Hegde, J.

1. This appeal by special leave arises from the decision of the High Court of Madhya Pradesh in a reference under Section 66(1) of the Indian Income-tax Act, 1922 (hereinafter referred to as "the Act"). The question referred for the opinion of the High Court was : "Whether, in the facts and circumstances of this case, the income from the property transferred to the assessee's wife for a consideration of Rs. 1 lakh could be assessed in the hands of the assessee under Section 16(3) of the Act?"
2. The facts of the case, as set out in the statement of the case submitted by the Tribunal, are as follows :

The assessee, a Muslim, claimed in his assessment proceedings for the assessment year 1961-62 that a particular item of income is not his income but that of his wife. According to him he had transferred for consideration the property from out of which the income in question arose to his wife for a consideration of Rs. 1 lakh. His case was that at the time of his marriage with the transferee, in 1930, a meher of Rs. 10,000 had been fixed. But, in 1960, he enhanced the meher to rupees one lakh and in February or March of that year he orally transferred the property in question to his wife to discharge his meher. The Income-tax Officer did not accept the claim of the assessee. He came to the conclusion that there is no satisfactory evidence to show that the transfer in question is a genuine one. In his view the transaction was a gift and not a transfer for consideration. The conclusion reached by the Income-tax Officer was affirmed in appeal by the Appellate Assistant Commissioner. But, on a further appeal by the assessee to the Tribunal, the Tribunal came to the conclusion that the transfer was genuine as well as valid. In its view it was open to the assessee to increase the meher fixed at the time of marriage, on a subsequent date, and the evidence on record established the enhancement pleaded by the assessee as well as the transfer put forward. It also came to the conclusion that, ever since the transfer, the wife of the assessee was in possession of the property transferred in her name.

Hence, the income of that property cannot be considered as the income of the assessee.

3. Aggrieved by that decision, the department sought to have the following questions referred to the High Court of Madhya Pradesh under Section 66(1) of the Act:

(1) Whether, having regard to the evidence on record, the Appellate Tribunal was justified in holding that the transfer of property under dispute was not a gift ?

(2) Whether there was any material before the Appellate Tribunal to support its finding that the assessee had in fact increased the dower debt from Rs. 10,000 to Rs. 1,00,000?

(3) Without prejudice to the questions Nos. 1 and 2 above, whether the Appellate Tribunal was justified in holding that, the property transferred to the wife in consideration of dower debt did not attract the provisions of Section 16(3)(a)(iii) ?

4. The Tribunal opined that the only question of law that arose for reference is the one mentioned by us earlier. In fact the Tribunal's question proceeds on the basis that there was in fact a transfer as alleged by the assessee and that transfer is a valid one. The question on which the Tribunal sought the opinion of the High Court was whether the income of the property so transferred could be assessed to tax under Section 16(3) of the Act. The question framed by the Tribunal appears to us to be self-contradictory. If its findings are correct on fact as well as on law, there can be hardly any doubt that the income of the property in question cannot come within the scope of Section 16(3)(iii).

5. The department does not appear to have made any attempt before the High Court for calling for a supplementary statement of the case. Unfortunately, the High Court instead of answering the question referred to it, reframed the questions. While doing so, it observed : " In the application made under Section 66(1) of the Act, the department desired three questions to be referred to this Court. However, as already indicated, the Tribunal referred only one question for the opinion of this Court. That question, as formulated by the Tribunal, does not pointedly bring out the real issue in controversy but we think it is sufficiently wide to include within its ambit the following two questions:

(i) Whether, in the facts and circumstances of the case, there could be, in law, an oral transfer of the property in lieu of rupees one lakh due as dower debt ?

(ii) If so, whether the income from the property is liable to be included in the assessable income under Section 16(3) of the Act ?

6. In our opinion the High Court had no jurisdiction to raise new questions of law. The questions raised by it do not flow from the question referred to it for its opinion. The High Court's power under the Act is only to give its opinion on the questions of law referred to it by the Tribunal. It cannot take into consideration questions of law which have not been referred to it for its opinion. If

the High Court thought that the question referred to it did not bring out the real point in issue it was open to it to call for a fresh statement of the case and direct the Tribunal to submit for its opinion the real question arising for decision. The High Court did not do so. On the other hand the High Court dealt with the reference as if it was dealing with an appeal before it. It failed to realise the limits of its jurisdiction in references under Section 66(1).

7. It was urged by Mr. Manchanda, the learned Counsel for the department, that on the face of it, the transfer pleaded by the assessee is an invalid one and the story put forward by him is unbelievable. We cannot go into those questions in this appeal because this Court is subject to the same limitations, while hearing appeals against the orders of the High Courts in references under Section 66(1), as the High Courts are., Our advisory jurisdiction is no more extensive than that of the High Courts.

8. For the reasons mentioned above, we allow this appeal and set aside the order of the High Court. Now, the case will go back to the High Court for considering the question referred to it for disposal, according to law. In the circumstances of the case, we make no order as to costs.