L. Sheo Narain Lal, In Re. vs Unknown on 29 April, 1954

Equivalent citations: [1954]26ITR249(ALL)

JUDGMENT

MALIK, C.J. - This is a reference under Section 66(1) of the Indian Income-tax Act.

The assessee, Lala Sheo Narain Lal, has been assessed to income-tax for several years as an individual. A notice was issued to him under Section 34 of the Indian Income-tax Act, asking him to file a fresh return of his income in respect of the assessment years 1942-43, 1943-44 and 1944-45. We are only concerned with the assessment year 1944-45. It was claimed on behalf of the Department that certain income belonging to the assessee had escaped assessment and the Income-tax Officer had received definite information leading to that result. The case for the Department was that the assessee had two houses - one in Sarup Nagar and the other in Prem Nagar at Kanpur -which stood in the name of his wife Anchi Bai but which really belonged to the assessee and his wife was only a benamidar for him. The Income-tax Officer included the income of both these house in the assessable income of the assessee but, on appeal, the Income-tax Appellate Tribunal had excluded the house in Prem Nagar on the ground that it was the property of Anchi Bai bought by her out of her own money. As regards the house in Sarup Nagar, it was held that half of the purchase price was provided by the wife and the other half must have come from the husband and so half of the income of Sarup Nagar house was held to be assessable income of the assessee. Normally, the question whether a property belongs to the assessee or belongs to his wife will be a question of fact. The point that has been referred to us by the Tribunal, is whether there was sufficient material on the basis of which the Tribunal could come to the conclusion that the wife was the benamidar for the husband. The question framed is in these words :-

> "Whether, on the facts stated in para. 3 of the statement of case, there was any material for the Tribunal to justify the finding that the applicant had contributed half of the price of the house at Sarup Nagar and half of its income was assessable in his hands ?"

The assessee and his wife belonged to well-to-do families and the claim of Anchi Bai was that her father and father-in-law had been, on ceremonial and other occasions, making gifts of cash and jewellery to her and that her father-in-law had left a sum of Rs. 15,000 to her under his will which she got after her father-in-laws death. So far as the receipt of this sum of Rs. 15,000 was concerned, there was no dispute and there could be none as there was a will and there was other reliable evidence to show that she had received the money. As regards the gifts from her father and father-in-law on various occasions, there were affidavits of the husband and the wife but the Tribunal has said that the evidence was not satisfactory. In the appellate order, the Tribunal said :

> "The entire consideration of Rs. 25,000 could not come out of the gift from the father-in-law, the quantum of which was limited to Rs. 15,000. The receipt of gifts on other occasions has not at all been proved. It is difficult to accept the mere words of

mouth of the lady about such receipts or savings."

No attempt was made on behalf of the Department to lead evidence to show that the husband had any funds outside the account books from which he could have contributed the sum of Rs. 12,500. No circumstances, leading to that conclusion, were mentioned in the judgment of the Income-tax Appellate Tribunal nor has any such circumstance been mentioned either in the statement of the case or in the argument of counsel. The question, therefore, resolves itself into this whether the mere fact that the Tribunal did not consider the statements of Anchi Bai and of her husband sufficient to prove that gifts were made to Anchi Bai by her father and father-in-law on ceremonial and other occasions was enough to come to the conclusion that the rest of the sale consideration must have been contributed by the husband.

There can be no doubt that the burden of proof was on the Department to show that the wife was a benamidar for her husband. The presumption must be that when the houses stood in the name of the wife, she was the owner thereof and it was for persons, alleging that she was a mere benamidar, to prove the allegations either by direct evidence or by circumstantial evidence. In Ramkinkar Banerji v. Commissioner of Income-tax, Bihar and Orissa, the Patna High Court held that when the property stood in the name of the wife, in the absence of evidence to the contrary, the wife must be presumed to have acquired the property with her funds and to be the owner thereof. That decision was followed by that High Court in Sovaram Jokhiram v. Commissioner of Income-tax, Bihar and Orissa, where it was held that as the title deeds with regard to the properties stood in the wifes name, the bonus was on the Income-tax authorities to show that she was not the real owner. In K. B. Sheikh Mohammad Naqi v. commissioner of Income-tax, Punjab, the Lahore High Court held that the onus of proving that the ostensible owner was not the real owner was on the Department. Learned counsel for the Department has relied on a decision of their Lordships of the Judicial Committee in Sura Lakshmiah Chetty and Others v. Kothandarama Pillai. That case is entirely distinguishable. There it was admitted that the property had been purchased by the husband with his own funds in the name of his wife. The wifes claim was that she was the beneficial owner of the property as there was an ante-nuptial agreement by which the husband had undertaken to settle a house upon her. The case for the other side was that she was a mere benamidar and it was in that connection that their Lordships of the Judicial Committee pointed out that whereas, in England, if a husband purchases property in the name of his wife, there would be presumption of advancement, in India the practice of benami transactions is so common that, in the absence of proof that the husband had intended that the wife should be the beneficial owner of the property, no presumption could be made that the purchase was made for her advancement and was not a benami purchase. As we have already said, that was a case where the fact was admitted that the husband had purchased the property in the name of the wife with his own money and the case, therefore, is not at all helpful.

The facts here are that the property stands in the name of the wife, that it is conclusively established that a part of the sale consideration was advanced by the wife and her evidence as to the rest of the sale consideration was rejected by the Tribunal. The question arises whether, by reason of mere rejection of the explanation, the Tribunal, in the absence of any facts or circumstances leading to that conclusion, could record a finding that a sum of Rs. 12,500 must have been contributed by the husband. We do not think that any such inference was possible.

The result of a mere rejection of an explanation has been discussed in several cases. In Ganga Sahai Umrao Singh v. Commissioner of Excess Profits Tax, U. P., C. P. and Berar, a case under Section 10-A of the Excess Profits Tax Act, where the question arose whether the assessee had done something with the main purpose of evading payment of excess profits tax, we pointed out that the mere fact that the Excess Profits Tax Officer had not accepted the explanation given by the assessee would not entitle him necessarily to come to the conclusion that the main purpose was to evade payment of excess profits tax and that even if direct evidence was not possible, such circumstances and facts should be made available on which a reasonable inference can be drawn that the main purpose was to evade payment of excess profits tax. Similar observations were made by us in Mithoo Lal Tek Chand v. Commissioner of Income-tax, United Provinces, where we pointed out that if an assessee gives an explanation which is false or unreasonable, that may be a circumstance which might entitle the Department to hold against the assessee but, the burden in such cases being on the Department, the mere rejection of an explanation does not necessarily lead to the result that the case of the Department must be correct, nor can it be used as positive evidence to prove their case against the assessee. This point was also considered and decided on the same lines by a Bench of this Court, of which one of us was a member, in Mahabir Prasad Munna Lal v. Commissioner of Income-tax As we have already said, no circumstances were relied upon by the Tribunal to come to the conclusion that Rs. 12,500 had been contributed by the assessee for the purchase of the Sarup Nagar house. It was proved that the house had been purchased by the wife. It was established that she had contributed, at least, half of the consideration and the mere fact that her statement was disbelieved as regards the rest of the source would, by itself, not entitle the Tribunal to hold that the sum of Rs. 12,500 must have contributed by the assessee.

Our answer to the first question, therefore, is that there was no material on which the Income-tax Appellate Tribunal could find that half of the sale price, i.e., Rs. 12,500, was contributed by the assessee for the purchase of the house at Sarup Nagar.

The next question is very simple and need not detain us long. It is as follows :-

> "Whether, in the circumstances of the case, the 25 per cent. of the net profits payable as commission to Madanlal, an employee, should for purposes of a deduction under Section 10(2)(x) or 10(2)(xv) of the Income-tax Act, have been based on the total profits as determined by the Income-tax Officer notwithstanding the fact that the actual amount paid to him was on the basis of the net profits as shown by the books ?"

Madan Lal was an employee. He was being paid as his salary a fixed amount and 25 per cent. of the net profits. The Income-tax Officer found that the net profits shown in the account books were incorrect and added to those profits a certain extra amount. The assessee claimed, that, from this extra amount added by the Income-tax Officer, 25 per cent. should be deducted which was the amount payable to Madan Lal, the employee. The assessees case was that what he had shown in his account books was the profit which he had made and he had paid Madan Lal 25 per cent. of that profit. It was never his case that the extra amount, added by the Income-tax Officer, constituted profits earned by him from which he had paid 25 per cent. to Madan Lal under Section 10(2)(x) or

10(2)(xv) of the Indian Income-tax Act. The assessee can only claim deduction of amounts actually spent by him. It is not even his case that he has paid the amount to Madan Lal, of which he claimed deduction. His case is that he is liable now to pay that amount to Madan Lal. When he makes that payment, he may be entitled to claim a deduction but so long as the payment is not made, it cannot be said that it is an allowable deduction under Section 10(2)(x) or 10(2)(xv) of the Indian Income-tax Act. This is our answer to the second question.

As we have decided one point in favour of and one point against the assessee, we direct the parties to bear their own costs. The fee of learned counsel for the Department is fixed at Rs. 300.

Reference answered accordingly.