

C.T. Senthilnathan Chettiar vs State Of Madras on 20 July, 1967

Equivalent citations: [1968]67ITR102(SC)

Bench: J.C. Shah, S.M. Sikri

JUDGMENT

Sikri, J.

1. This appeal by special leave is directed against the judgment of the Madras High Court in a revision under section 54(1) of the Madras Agricultural Income-tax Act, 1955, hereinafter referred to as "the Act", whereby the High Court held that the settlement, which we will presently refer to, was hit by section 9(1) of the Act, and the income from the lands settled were liable to be included in the assessable agricultural income of the assessee. The relevant facts are these : The appellant, C.T. Senthilnathan Chettiar, hereinafter referred to as the assessee, executed a deed of settlement on November 19, 1959, in favour of Vatsala, who was his concubine. After reciting that the settlor had great love and affection for her, etc., the deed provides :

"Now this indenture witnesseth that in consideration of the love and affection which the settlor has for the settlee and the promise which the settlor had made to the settlee the settlor hereby confers in favour of the settlee a life interest only in the properties set out in the schedule hereunder, without any powers of alienation whatever. The settlor puts the settlee in possession of the properties set out in the schedule. The settlee shall take possession of the abovesaid properties and enjoy them for her life and without any powers of alienation. The settlee shall not be entitled to alienate even her life interest in the properties set out in the schedule hereunder. After the lifetime of the settlee, the properties set out in the schedule hereto shall be taken by the children born to the settlee by the settlor who may be alive at the time of the demise of the settlee, absolutely and with full powers of alienation. Should there be no children for the settlee through the settlor at the time of death of the settlee, the properties set out hereunder shall revert back to the settlor or his heirs.

This indenture further witnesseth that the settlor hereby specifically reserves his right to cancel or revoke or alter this settlement in case the settlee fails to reside with the settlor in his house and under this protection or conduct herself in any manner to the prejudice of the settlor and/or if any other circumstances intervene requiring the cancellation or alteration of this deed of settlement."

2. The Agricultural Income-tax Officer included the income from the lands settled under this deed in

the hands of the assessee. The assessee filed a revision before the Commissioner of Agricultural Income-tax who held that the document evidenced a revocable transfer and the settled lands were an asset remaining the property of the settlor within the meaning of section 9(1) of the Act. He refused to exclude the income from the lands settled in the deed from the assessable income of the assessee.

3. The assessee then filed a revision under section 54(1) of the Act to the High Court. The High Court agreeing with the Commissioner held that the settlement was hit by section 9(1) of the Act. The assessee having obtained leave from this court, the appeal is now before us.

4. We may mention that this court at the time of hearing of the application under article 136 gave liberty to the appellant to urge additional grounds, one ground being that section 9(1) of the Act was ultra vires the legislature and also violative of article 14 of the Constitution of India.

5. The relevant provisions of section 9(1) of the Act, which are in terms similar to section 16(1)(c) of the Indian Income-tax Act, 1922, are as follows :

"9. (1) In computing the total agricultural income of an assessee, all agricultural income arising to any person by virtue of a settlement or disposition, whether revocable or not, and whether effected before or after the commencement of this Act, from assets remaining the property of the settlor or disponent, shall be deemed to be the agricultural income of the settlor or disponent, and all agricultural income arising to any person by virtue of a revocable transfer of assets shall be deemed to be agricultural income of the transferor :

Provided that, for the purposes of this sub-section, a settlement, disposition or transfer shall be deemed to be revocable if it contains any provision for the retransfer directly or indirectly of the agricultural income or assets to the settlor, disponent or transferor or in any way gives the settlor, disponent or transferor a right to reassume power directly or indirectly over the agricultural income or assets :

Provided further that the expression 'settlement or disposition' shall, for the purposes of this sub-section, include any disposition, trust, covenant, agreement or arrangement and the expression 'settlor or disponent' in relation to a settlement or disposition shall include any person by whom the settlement or disposition was made :

Provided also that this sub-section shall not apply to any agricultural income arising to any person by virtue of a settlement or disposition which is not revocable for a period exceeding six years or during the lifetime of the person and from which agricultural income the settlor or disponent derives no direct or indirect benefit but that the settlor shall be liable to be assessed on the said agricultural income as and when the power to revoke arises to him."

6. The learned counsel for the appellant contends that the case was governed by the third proviso to section 9(1) and that will the power of revocation was exercised the income should not be assessed in the hands of the assessee. He further contends that the settlement deed creates two interests, viz., a life interest coupled with and followed up by an absolute interest created in favour of the children of the settlor through the settlee, and even if the initial transfer in favour of Vatsala is terminated under the deed, the ultimate transfer gets accelerated; in other words an absolute estate becomes vested in the children. The learned counsel also relies on section 126 of the Transfer of Property Act.

7. In our opinion, the High Court was right in holding that the settlement deed amounts to a revocable transfer of assets within section 9(1), proviso 1. The settlement deed specifically reserves power to the settlor to cancel or revoke or alter the settlement in any circumstances which require the cancellation or alteration of the deed of settlement. It seems to us that this clause falls squarely within proviso 1, for the assessee could at any time reassume power over the assets or the agricultural income by just cancelling or altering the terms of the deed.

8. We are unable to appreciate how section 126 of the Transfer of Property Act helps the assessee. If section 126 is applicable, it is quite clear that the gift would be wholly void. But we are not concerned with this question. We assume that the gift is valid, but the settlor has specifically retained the power to cancel or revoke or alter the settlement.

9. The learned counsel then urges that section 9(1) of the Act is void. He points out that a similar question regarding the validity of section 16(1)(c) of the Indian Income-tax Act, 1922, was left open in *Sardar Baldev Singh v. Commissioner of Income-tax and Balaji v. Income-tax Officer, Special Investigation Circle, Akola* [[1961] 43 I.T.R. 393, 397 (S.C.)]. But we are unable to allow him to raise this point because this court has held in *K.S. Venkataraman & Co. v. State of Madras* that the authorities under a taxing statute are not concerned with the validity of the taxing provisions and the question of ultra vires is foreign to the scope of their jurisdiction. As no such point could be raised before the income-tax authorities, neither the High Court nor the Supreme Court can go into these questions in a revision or reference from the decision of those authorities. This case was followed in *Commissioner of Income-tax v. Straw Products Ltd.*

10. There is nothing in article 142 of the Constitution relied on by the counsel to enable us to deal with the question in the present appeal. Accordingly, we cannot allow him to urge this point before us, but it would be open to him to raise the point in any appropriate proceeding.

11. In the result the appeal fails and is dismissed but in the circumstances of the case there will be no order as to costs.

12. Appeal dismissed.