

## Commissioner Of Income-Tax, Bombay ... vs Keshavji Morarji And Anr. on 16 March, 1967

Equivalent citations: [1967]66ITR142(SC), AIRONLINE 1967 SC 32

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

### JUDGMENT

Shah, J.

1. In a reference under section 66 of the Indian Income-tax Act, 1922, the High Court of Judicature at Bombay answered the second question set out herein below in the negative, and declined to answer the first question :

"1. Whether, on the facts of the case, the provisions of section 16(3)(a)(iv) are applicable to the two trusts created by Keshavji Morarji and Jaysinh Keshavji both on February 22, 1954 ?

2. Whether, on the facts and in the circumstances of the case, the creation of a trust by Keshavji in favour of his minor grand-children concurrently with the creation of a trust by Jaysinh in favour of Keshavji's daughters constitute indirect transfers of assets by Keshavji and Jaysinh to their respective children for the purpose of section 16(3)(a)(iv) of the Act ?"

2. With special leave, the Commissioner of Income-tax has appealed to this court.

3. Keshavji, a resident of Bombay, has a son, Jaysinh, and three daughters, Indumati, Kusum and Dipika, of whom, in the relevant years of assessment, Dipika was a minor. Jaysinh has two infant children, Bipin and Kamla. On June 14, 1952, Keshavji transferred a sum of Rs. 5 lakhs to his son, Jaysinh. On February 22, 1954, by a deed, Keshavji settled a sum of Rs. 4,41,000 in favour of his minor grand-children, Bipin and Kamla, and on the same day Jaysinh, by another deed, settled a sum of Rs. 1,54,000 upon his three sisters, Indumati, Kusum and Dipika. In proceedings for assessment of tax for the assessment years 1955-56 and 1956-57 the Income-tax Officer held that Keshavji had by the settlement indirectly transferred assets belonging to him to his minor daughter and Jaysinh had transferred assets belonging to him to his minor children, and on that view directed that under section 16(3)(a)(iv) the income attributable to the share of Dipika be assessed in the hands of Keshavji and the income from the trust created by Jaysinh "being in reality" for the benefit of his minor children be assessed in his hands. The Appellate Assistant Commissioner upheld the view of the Income-tax Officer about the nature of the transactions. He, however, held that the income which could be included in the total income of the assessee was only that amount which

"related to the interest in the assets conveyed in favour of the minors and not the income of the whole of the assets". The Income-tax Appellate Tribunal confirmed the order of the Appellate Assistant Commissioner.

4. The High Court held that the circumstance that the two deeds of settlement were executed on the same day did not justify an inference that Keshavji and Jaysinh made indirect transfers of assets in favour of their respective children "for the purposes of section 16(3)(a)(iv) of the Act." Citing with apparent approval the decision of the Madras High Court in *C. M. Kothari v. Commissioner of Income-tax*, the High Court held that the fact that there were cross-gifts either by itself or taken with the fact that the gifts were simultaneous in point of time did not establish that each transfer formed consideration for the other or that the transfers were mutual.

5. In this appeal, counsel for the Commissioner submitted that the learned judges of the High Court in exercising their advisory jurisdiction upset findings of fact recorded by the Tribunal and persuaded themselves to record an answer in the negative on the second questioning relying mainly on the decision of the Madras High Court in *C. M. Kothari's* case, which has since been reversed by this court in *Commissioner of Income-tax v. C. M. Kothari*. The Tribunal in recording its conclusion has observed :

"The gifts by the father and son on February 22, 1954, have been mutually prompted so that it is impossible to escape the conclusion that each of the so-called gifts had provided the consideration for the other. It cannot be denied that the minor children of each of the two assesseees have received benefit to the extent of at least Rs. 1,54,000 along with a simultaneous and equal depletion of their parents' resources. This, to our mind, clearly constitutes an indirect transfer by each of the two assesseees to his respective minor child or children."

6. The observations made by the Tribunal are cryptic. The Tribunal has not referred to all the material evidence on which their conclusion was founded. The High Court's observations that the only circumstance on which the contention of an indirect transfer was based was the simultaneous execution of the two deeds of settlement is also not accurate. There were several other circumstances which appeared from the order of the Tribunal which are incorporated in the statement of case and the record. To mention only a few : the two settlors were related as father and son; that the father had made a settlement in favour of his grand-children simultaneously with the execution of a deed of settlement by the son in favour of his sisters one of whom was a minor; that from the description given in the two deeds of settlement both the settlors were residing in the same house; that no explanation was given why Keshavji and his son, Jaysinh, executed the two deeds of settlement simultaneously.

7. In a recent judgment of this court, in *Commissioner of Income-tax v. C. M. Kothari* this court, in dealing with a case under section 16(3)(a)(iii) of the Income-tax Act, observed at page 110 :

"It is true that the section says that the assets must be those of the husband, but it does not mean that the same assets should reach the wife. It may be that the assets,

in the course of being transferred, may be changed deliberately into assets of a like value of another person ....

A chain of transfers, if not comprehended by the word 'indirectly', would easily defeat the object of the law which is to tax the income of the wife in the hands of the husband, if the income of the wife arises to her from assets transferred by the husband ....

It is next contended that even if chain transactions be included, then, unless there is consideration for the transfer by the husband, each transfer must be regarded as independent, and in the present case, the department has not proved that the transfers by the son to the mother and by the father-in-law to his daughter-in-law were made as consideration for each other. We do not agree. It is not necessary that there should be consideration in the technical sense. If the two transfers are inter-connected and are parts of the same transaction in such a way that it can be said that the circuitous method has been adopted as a device to evade implications of this section, the case will fall within the section."

8. Therefore if the transfers are inter-connected and are parts of the same transaction in such a way that it can be said that the circuitous method was adopted as a device to evade implications of the section, the case will fall within the section. In C. M. Kothari's case the court was interpreting section 16(3)(a)(iii), but the same considerations are relevant in the application of section 16(3)(a)(iv). The Tribunal merely observed that the two transactions were "mutually prompted" and each of the gifts provided for the consideration of the other and did not attempt an examination of the evidence in the light of the true test. The High Court, in disagreeing with the Tribunal, also did not consider all the material evidence in the light of the test suggested by this court. We are, in the circumstances, unable to sustain the answer recorded by the High Court on the second question.

9. We may observe, lest there should be misconception as to the true rule applicable, that the observations made by the Madras High Court in L. G. Balakrishnan v. Commissioner of Income-tax on which reliance was placed at the Bar that if "cross-transactions are independent of each other the section cannot have any application. Even if they are parts of the same transaction they would fall outside the section if they are real. But if they are no more than mere appearances devised to circumvent the section assiduously maintained, the department can lift the veil and declare the true nature of the transaction as being one within the section" - do not correctly interpret section 16(3)(a), clauses (iii) and (iv). What is material is not the unreality of the cross-transactions, nor whether the appearance of reality is attempted to be maintained, but whether the transfers are part of the same transaction adopted with a view to evade the implications of the section.

10. We allow this appeal. We direct that the case be remanded with the direction that the High Court do call upon the Tribunal to submit a statement of the case under section 66(4) of the Indian Income-tax Act in the light of the tests expounded by this court in Commissioner of Income-tax v. C. M. Kothari and that the High Court do proceed to dispose of the reference in the light of the statement of the case and such supplementary statement of the case as the Tribunal may make. We

also direct that the High Court do consider and record their answer on the first question. Costs of this appeal will be costs in the reference before the High Court.

11. Appeal allowed. Case remanded.