# K.K. Handique vs Member, Board Of Agricultural ... on 16 November, 1965

## Equivalent citations: AIR1966SC1191, [1966]60ITR216(SC), AIR 1966 SUPREME COURT 1191, 1966 (1) ITJ 396, 1966 (1) SCJ 499, 60 ITR 216, ILR 1966 18 ASSAM 1

## Bench: J.C. Shah, K. Subba Rao, S.M. Sikri

JUDGMENT

Subba Rao, J.

1. These two appeals raise the question of construction of the relevant provisions of the Assam Agricultural Income-tax Act, 1939 (IX of 1939), hereinafter called the Act.

2. One P. K. Handique executed in respect of his properties a deed of trust dated January 8, 1941, whereunder he appointed four trustees, with an option to co-opt another person as a trustee. He appointed his son, the appellant, as a managing trustee. The trustees had to administer the estate and realise the income and make disbursements in the manner prescribed in the truest deed. For the assessment years 1954-55 and 1955-56, the managing trustee was assessed to agricultural income-tax on the total income from the trust properties under section 12 of the Act. The assessee, interalia, contended that the assessment should have been made under section 13 of the Act and not under section 12 thereof. The Income-tax Officer and, on revision, the Commissioner of Taxes, Assam, rejected his contention. At the instance of the assessee, the Member, Board of Agricultural Income-tax, Assam, referred the following question to the High Court of Assam for its decision :

> "Whether the assessments for the years 1954-55 and 1955-56 should have been made under section 13 of the Assam Agricultural Income-tax Act ?"

3. The High Court answered the question in the negative. Hence the appeals. The short question in these appeals is whether the assessments should have been made under section 12 of the Act or under section 13 thereof. At the outset it will be convenient to read the two sections :

> "Section 12. (1) Save as provided in sections 10, 13, and 14, if a person holds lands from which agricultural income is derived partly for his own benefit and partly for the benefit of beneficiaries, agricultural income-tax shall be assessed on the total

agricultural income derived from such land at the rate which would be applicable if such person had held the land exclusively for his own benefit and agricultural income-tax so payable shall be assessed on the person holding such land, and he shall be liable to pay the same...

Explanation. - In this section 'beneficiary' means a person entitled to a portion of the agricultural income derived from the land."

"Section 13. Where any person holds land, from which agricultural income is derived, as a common manager appointed under any law for the time being in force or under any agreement or as receiver, administrator, or the like on behalf of persons jointly interested in such land or in the agricultural income derived therefrom, the aggregate of sums payable as agricultural income-tax by each person on the agricultural income derived from such land and received or receivable by him shall be assessed on such common manager, receiver, administrator or the like and he shall be deemed to be the assessee in respect of the agricultural income-tax so payable by each such person and shall be liable to pay the same."

4. Section 13 is subject to section 12. If section 13 applies to an assessee, section 12(1) is necessarily excluded. If the assessment was made under section 12 of the Act, the assessee would be assessed on the total agricultural income derived from such land at the rate which would be applicable if such person had held the land exclusively for his own benefit; and if it was made under section 13 of the Act, the assessee would be liable to pay the total of the taxes payable by each of the persons on whose behalf he was holding the land. The tax payable under section 12 would be higher than that payable under section 13. Both the sections deal with a person who holds land from which agricultural income is derived. The expression "holds" includes a two-fold idea of the actual possession of a thing and also of being invested with a legal title. Sometimes it is used only to mean actual possession. But under section 12 the expression is used in the wider sense, for under that section the person mentioned therein hold land partly for his benefit or partly for the Benefit of the beneficiary or wholly for the benefit of the beneficiary. In its wide phraseology the section takes in the trustees in whom property vests and also managers and the like who manage the properties on behalf of others. But, if the case falls under S. 13, to that extent it is taken out of S. 12. As the same expression "holds" is used in S. 13, it must be given the same meaning as it bears in S. 12: that is to say, it takes in both title and possession. That section deals with persons who hold land on behalf of persons jointly interested in the land or in the agricultural income derived there from. It does not, therefore, apply to a person who holds land on his own behalf as well as on behalf of others. It deals with two categories of persons, namely, (1) common manager appointed under any law for the time being in force or under an agreementmanagers who do not fall under the above category are outside the section; and (ii) receivers, administrators or the like. Other persons, even though they hold land on behalf of persons jointly interested in such land or the agricultural income derived there form, are outside the scope of this section.

5. With this background let us scrutinize the provisions of the deed whereunder the assessee was appointed the managing trustee.

6. Radha Kanta Handique executed the trust deed on January 8, 1941. To that trust deed, his two sons and daughter and another were made parties. They were described as trustees. In the preamble to the deed, he stated his intention that the income of the properties should be enjoyed by certain persons and that the two estates mentioned therein should remain indivisible for all time to come. He transferred the properties described in the schedule to the said trustees to be held by them in trust for themselves and for another. The trustees were authorized to nominate within one month after the execution of the trust deed another trustee who would be entitled to be elected as the managing trustee. If no such additional trustee was nominated by the trustees within the said period or if the additional trustee so nominated died or otherwise became incapable of working as a trustee, then his son, Krishna Kanta Handique, was to be the managing trustee. The managing trustee was empowered to manage the trust properties either directly or through agent or agents, realise the money due from the trust properties and meet the expenditure; he had also to consult the other trustees in all important matters. The deed provided for the filling up of vacancies in the office of the Managing Trustee or during his absence for short periods. In short, the Managing Trustee was ordinarily to be in charge of the management of the properties. It also provided that a sum of Rs. 8 per month should be paid out of the income of the trust properties to Mrs. Annada Bargohain for the maintenance of three old servants and another sum of Rs. 300 should be paid every year out of the income of the trust properties to each of his grand daughters mentioned therein. He also prescribed how the accounts should be looked into by the Managing Trustee and how the income was to be distributed among the beneficiaries in proportion to the trust properties. He gave a direction that the trust properties should be undivided and impartible for all times to come. The document, so far read, leaves no room for doubt that the testator created a trust with the object of preserving the Tea Estates, vested the property in the trustees and directed only the income therefrom to be paid to the trustees, as well as to his servants and to his grand daughters in the manner prescribed thereunder. All the elements of a trust are present in the document. The property, therefore, vested in the trustees.

7. Mr. A. V. Viswanatha Sastri relied upon clauses 17 and 20 of the document in support of his contention that under the document, though the expression "trustees" and "trust" were used loosely, the properties really were held by the beneficiaries in certain proportions. The said clauses read :

> "Clause 17. - Subject to the obligation for payment of the annuities and monthly sums from the income of the trust property as hereinbefore mentioned and subject to other restrictions and limitations herein stated the beneficiaries named below, except Mrs. Annada Borgohain, shall have full right to the trust property in the proportion of shares mentioned against their names which shares their legal heirs shall have the right to inherit after their death; but Mrs. Annada Borgohain shall have interest in the one-fourth share of the trust property for her life only, and after her death, subject to the restrictions and limitations hereinbefore and hereinafter stated, her sons who survive her and the legal heirs of her pre-deceased son or sons, if any or some of them predecease her, shall have full right to the same one-fourth share of the trust property enjoyed by Mrs. Annada Borgohain during her lifetime. All sons of Mrs. Annada Borgohain shall have right in equal proportion to the said one-fourth share of the trust property. The heir of a pre-deceased son of Mrs. Annanda

Borgohain shall get the same share as the son would have got if he had survived her.

Clause 20. - No beneficiaries shall have the right to transfer by way of sale the whole or any part of his undivided share of the trust property to any stranger when another beneficiary agrees to purchase the same for a reasonable price which shall be fixed by the trustees if the vendor and vendee cannot agree as to what should be the reasonable price. But in no case shall a beneficiary have a right to transfer his undivided share in the truest property by way of gift, mortgage or lease except to another beneficiary."

8. Under clause 17, the beneficiaries except Mrs. Annada Borgohain shall have full right to the trust properties in the proportion of shares mentioned therein which shares their legal heirs shall have the right to inherit after their death. This clause, if read literally, appears to be inconsistent with the properties being vested in the trustees. But in the context of the recitals in the entire document, it can only mean that so far as the sons were concerned the income will have to be paid not only to them but also to their legal heirs. Nor does clause 20 detract from the document being a trust deed. It prohibited the beneficiaries from transferring their undivided shares in the trust property to any stranger when another beneficiary agreed to purchase the same for a reasonable price or from making a gift, mortgage or a lease of their shares to another person except another beneficiary. If literally understood, this clause would be bad in law; but, this clause could be reconciled with the rest of the document if it was interpreted to mean that the alienation contemplated was in respect of the right to receive a share of the income. We are not concerned here as regard the validity of the document or any of its clauses, for no question was raised in that regard in the High Court or before the Tribunals. The only question, therefore, is, what was the intention of the testator? The intention of the testator was made clear not only by the preamble but also by the express words used in C1. (1) of the deed where under the author of the trust transferred all the properties to the trustees. That apart, the income of the properties was given not only to the trustees but also to others who were not trustees. Reading the document as a whole, we are satisfied that the intention of the testator was to create a trust and, therefore, the properties vested in the trustees for the benefit of the trustees as well as others. On this interpretation of the document, it is manifest that it cannot fall under S. 13, for the trustees cannot be described as common managers appointed under any law for the time being in force or under any agreement. They are obviously not receivers administrators or the like on behalf of persons jointly interested in such land or in the agricultural income derived there from. If S. 13 does not apply, they directly fall under S. 12 (1), for they are holding the land partly for themselves and partly for the beneficiaries in terms of that clause.

9. The High Court was, therefore, right in holding that the case fell under section 12 and not under section 13 of the Act. The answer given by the High Court to the question referred to it is correct.

10. In the result, the appeals fail and are dismissed with costs. One hearing fee.

11. Appeals dismissed.