Madras High Court
L. G. Balakrishnan vs Commissioner Of Income-Tax, ... on 16 October, 1962
Equivalent citations: 1963 49 ITR 102 Mad
JUDGMENT JAGADISAN J. - Section 16(3)(a)(iv) of the Indian Income-tax Act reads :

"In computing the total income of any individual for the purpose of assessment there shall be included -

(a) so much of the income of a wife or minor child of such individual as arises directly or indirectly -

(iv) from assets transferred directly or indirectly to the minor child, not being a married daughter, by such individual otherwise than for adequate consideration."

In this reference we are concerned with the applicability of the above provision to the fact and circumstances of the case. The assessee is one L. G. Balakrishnan, who had declared his status as a Hindu undivided family with one minor son. The accounting year is the year ended 31st March, 1958, and the assessment year is 1958-59. In computing the assessable income the Additional Income-tax Officer, Coimbatore, included a sum of Rs. 933 as the assessees income but it was objected to by him. The Income-tax Officer claimed to include this amount, as in his view the income arose out of a transfer of assets by the assess which fell within the mischief of section 16(3)(a)(iv) of the Act. In the course of the scrutiny of the accounts of the firm of Messrs. L. G. Balakrishnan and Brothers, the Income-tax Officer found the following deposits : (1) Rs. 50,000 credited to Kumari Vanitha, minor daughter of Varadarajulu; (2) Rs 50,000 credited to Chitra, minor daughter of Ramamurthi; (3) Rs. 50,000 credited to Vijayakumar, minor son of Balakrishnan. The Income-tax Officer found that these gifts were really in the nature of cross gifts. On the 1st February, 1958, Balakrishnan withdrew from the firm a sum of Rs 50,200. Of this, a sum of Rs. 50,000 was alleged to have been credited by him in favour of Vanitha, minor daughter of Varadarajulu, who redeposited the money with the firm. Varadarajulu withdrew from the firm a sum of Rs. 50,100 on 3rd February, 1958, and purported to make a gift of Rs. 50,000 to minor Chitra, daughter of his brother, Ramamurthi, who is turn redeposited the money with the firm. Ramamurthi withdrew Rs. 50,000 on the 4th February, 1958, and gifted Rs. 50,000 to Vijayakumar, the minor son of Balakrishnan and who also redeposited the money in the firm. According to the book entries each one of the minor children of the three brothers got by way of gift a sum of Rs. 50,000. The tenor of the entries was to make it appear that there was no direct gift or transfer of assets by any of the three brothers in favour of their respective minor children. The Income-tax Officer was of the opinion that though there was no direct transfer of assets by the father to his minor child, there was an indirect transfer within the meaning of the said expression in section 16(3)(a)(iv). He, therefore, subjected the income of Rs. 933 to tax in the hands of Balakrishnan. This sum of Rs. 933 admittedly arose by way of income from the sum of Rs. 50,000, credited in the firms accounts in the name of Vijayakumar, the minor son of Balakrishnan.

The assessee preferred an appeal to the Appellate Assistant Commissioner, Coimbatore. He affirmed the decision of the Income-tax Officer. He expressed his conclusion thus :

"In my opinion, there was very strong grounds in the present case warranting the conclusion that the transfers are mutual and part and parcel of one pre-conceived arrangement. The amounts involved are exactly identical. The gifts have been made almost simultaneously. Again the gifts are cross gifts to the minor children. From the manner in which these gifts have been made, it seems to me that there was a tacit understanding between the three brothers that they would mutually gift a sum of Rs. 50,000 to their children but that the form of gift would be so devised as to circumvent the provisions of section 16(3)(a)(iv)."

There was a further appeal by the assessee to the Income-tax Appellate Tribunal. The Tribunal affirmed the decision of the department. The Tribunal agreed with the conclusion of the Appellate Assistant Commissioner that the transactions were brought about as a result of mutual understanding among the brothers, who acted in concert in execution of a scheme and a mutual arrangement to keep outside the scope of section 16(3)(iv). The Tribunal recorded the following finding :

"The assessee has parted with Rs. 50,000, and his son has received benefit in the course of next few days for an equal amount in pursuance of such scheme. We have to hold that, in the circumstances, the income in question has been derived by the assessees minor son from an asset indirectly transferred to him so as to attract the provisions of the aforesaid sub-sections."

On an application by the assessee for reference to this court, under section 66(1) of the Act, the following question has been referred :

"Whether the assessment of the income derived by the assessees son Vijayakumar, from the said sum of Rs. 50,000 transferred to him by way of gift by his uncle L. G. Ramamurrthi in the hands of the assessee invoking the provisions of section 16(3)(a)(iv) is lega ?"

We have already set out the relevant statutory provisions. The object of section 16(3)(a)(iv) is plain. The assessee would like to lessen the burden of taxation by transferring his assets to his minor children so that he may not pay tax in the income of those assets and yet at the same time retain the income in his hands ostensibly as the guardian of the minors. Such types of transactions caused leakage of the revenue and the legislature introduced this measure to curb them. If an individual assessee transfers assets to his minor children without consideration and the income therefrom enures to the benefit of the minors the sub-section operates and treats the income as that of the assessee. A transfer in favour of the minor married daughter, and a transfer for consideration are not caught by that provision. The transfer may be "direct" or "indirect", and the benefit of the income to the transferee may also be direct or indirect. What cannot be done directly cannot, of course, be done indirectly; otherwise, circumvention of law would be easy. A gift of cash by A, the assessee, to B and a subsequent gift by B to the minor son of the assessee made at or about the same time would be a case of indirect transfer by the assessee. A gratuitous transfer by the assessee of a house or land to the minor son and a sale of that gifted property and an investment of the sale proceeds resulting in income to the donee would be a case of income arising indirectly from the assets transferred. The ingenuity of the taxpayer to avoid tax is of a high order and the legislature had to find words of wide amplitude to combat it. The use of the words directly to disclose the

transfer of assets and the income arising therefrom indicate the anxiety of the legislature to safeguard against tax avoidance by mere devices and forms of transaction which in their apparent tenor, may not attract tax. Substantially the provision lays down that a transfer of assets by the assessee resulting in an income to his minor child, not being a married daughter, and not being a transfer for consideration, would not be recognised for income-tax purposes and the income would be treated as the income of the assessee.

Learned counsel for the assessee contends that the case is not covered by the section as the assessee did not transfer any assets to this minor son and that assuming his brother made a gift to his son because the assessee had made a gift to the minor son of his another brother, that cannot lead to the inference of a gift by the assessee to his son. The outward appearance of the transaction lends support to his contention. But this cannot conclude the question whether there was in substance a transfer by the assessee to his son.

The decision in C. M. Kothari v. Commissioner of Income-tax has been very much relied upon by the assessees learned counsel. The facts of that case were as follows : K and his two sons, D and H were the partners of a firm. The firm entered into an agreement for the purchase of a house and paid an advance of Rs. 5,000 out of the partnership funds, but this amount was debited to the personal accounts of the partners, K being debited with Rs. 1,800 and D and H each being debited with Rs. 1,600. The sale of the house was in favour of Mrs. K, Mrs. D and H each of whom paid the vendor Rs. 28,333-5-4 to make up the purchase price of Rs. 90,000 less the advance of Rs. 5,000. To help the ladies to pay their share of the purchase price K made a gift of Rs. 30,000 to his daughter-in-law, Mrs. D, by cheque out of the partnership funds, and D made a similar gift of Rs. 30,000 to his mother, Mrs. K, by cheque out of the partnership funds. The amounts were respectively debited to the personal accounts of K and D. In order to reimburse their shares of advance Mrs. K. Paid the firm by cheque Rs. 1,800, which was credited to the personal account of K and Mrs. D paid Rs. 1,600 which was credited to the personal account of D. The Tribunal found that the purchase was not benami but held that the rent income arising from the property to Mrs. K and Mrs. D arose to them from assets indirectly transferred by their husbands and should be included in the assessment of K and D under section 16(3)(c)(iii) of the company of the Income-tax Act. This 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 constituted the consideration of the other, and that the transfers were mutual. It was further held that there was no material on record to justify the conclusion that the transfer of assets effected by K in favour of his daughter-in-law, Mrs. D. constituted an indirect transfer by D of his assets to his wife or that the transfer of his assets effected by D in favour of his mother constituted an indirect transfer by K to his wife, and that therefore the provisions of section 16(3)(a)(iii) did not apply. We do not think that the above case lays down any general principle of law that cross-gifts or mutual transactions are as a class outside the mischief of section 16(3)(a)(iv) of the Act. We may refer to the following observations of Rajagopalan J. at page 327 :

"In the present case there was no doubt a finding that there were cross-transfers by the assessee, C. M. Kothari and D. C. Kothari, Neither that by itself, nor the addition of the time factor that the transfers were virtually simultaneous, could prove that each transfer constituted the consideration

for the other, and that the transactions were mutual. Simultaneity in point of time with nothing more cannot always be proof of the mutuality of those transactions. There was no further evidence in this case that each of the transfers of assets effected by C. M. Kothari and D. C. Kothari constituted the consideration for the other. There was no investigation on those line at all, at any stage of the assessment proceedings. There was certainly no findings of the Tribunal, that there was any mutuality about the two transactions. There was no finding that the transfers together constituted but a single transaction, and there was no evidence either on which such a finding could be rested."

If the cross-transactions are independent of each other the section cannot have any application. If they are of the same transaction, even then, they would fall outside the section if they are real. But if they are no more than mere appearances assiduously maintained, the department can lift the veil and declare the true nature of the transaction as being one within the section. The finding of the department as well as of the Tribunal is that there was an indirect transfer of assets by L. G. Balakrishnan to his minor son, Vijayakumar. This is certainly based on the evidence on record and it seems to us that this finding is fully justified and warranted. As stated already, the decision of the Division Bench in C. M. Kothari v. Commissioner of Income-tax, is no authority for the proposition that in every case of gifts and mutual transactions, the assessee can repel the applicability of section 16(3)(a)(iv) merely on that ground. If such a contention were to be upheld, it would enable the assessee to defeat tax by merely resorting to devices and forms. In our opinion, the gifts of Rs. 50,000 in favour of minor Vijayakumar was in fact and in truth a gift by Balakrishnan to his son, and that section 16(3)(a)(iii) of the Act is plainly applicable.

The question is answered in the affirmative and against the assessee, who will pay the costs of the department. Counsels fee Rs. 250.

Question answered in the affirmative.