Supreme Court of India
V. Venugopala Varma Rajah vs Commissioner, Agricultural ... on 6 October, 1971
Equivalent citations: 1972 AIR 404, 1972 SCR (1)1000
Author: K Hegde
Bench: Hegde, K.S.

PETITIONER:
V. VENUGOPALA VARMA RAJAH

Vs.

RESPONDENT:
COMMISSIONER, AGRICULTURAL INCOME TAX, TRIVANDRUM, KERALA

DATE OF JUDGMENT06/10/1971

BENCH:
HEGDE, K.S.
BENCH:
HEGDE, K.S.
GROVER, A.N.
KHANNA, HANS RAJ

CITATION:
1972 AIR 404 1972 SCR (1)1000
1971 SCC (3) 669

ACT:
Kerala Agricultural Income-tax Act, 1950, s. 9(1)-Property allotted to a member of family-Income utilised for discharging obligations of assessee-When deemed to be income of family as assessee.

HEADNOTE:
The assessee was a Hindu undivided family of which the appellant was the Kamavan. It possessed agricultural properties. There was a family settlement among all the members of the family then living. The settlement allotted some properties to some of the male members but did not provide for their devolution. Also the joint status of the members was not disrupted and the properties allotted for the enjoyment of the various members of the family continued to be the properties of the family. The liability to maintain the other male members and the responsibility of performing the marriages of the female members continued to be that of the Karnavan. He was also responsible for the payment of land revenue in respect of the family properties excepting some items.
On the question whether the income of the properties put in possession of the male members under the settlement

continued to be the income of the family and therefore liable to tax under the Kerala Agricultural Income-tax Act, 1950, the department, Tribunal and the High Court on reference, held against the assessee.

Dismissing the appeal to this Court,

HELD : Section 9(1) of the Act is similar to s. 16(1) (c) of the Income-tax Act, 1922. Under the latter section the test is that if the income in dispute is considered as having been applied to discharge an obligation of the assessee, the same is liable to be included in the assessable income of the assessee, but if on the other hand the same bad been diverted by an overriding charge then it is not liable to be so included as it ceases to be the assessee's income. [1006 A-B)

In the present case, the arrangement only provided for maintenance and did not give any absolute right in any portion of the family properties to any one. It thus conferred benefit on the family inasmuch as it was absolved of the responsibility of maintaining its members. [106-5 G-H]

Further, it was not even a permanent arrangement and was revocable if there was any substantial change in the circumstances of the family. The properties would 'go back to the possession of the Karnavan on the death of the member to whom the property was allotted. [1005 C, D, E]

The members of the family received the income of the various properties allotted to them on behalf of the family, and applied the same in discharge of an obligation of the family. Therefore, the income reached the hands of the family as soon as it reached the hands of any of its members. [1008 F-H]

1001

Hence, under s. 9(1) of the Act, the income should be deemed to be that of the assessee. [1005 F-G]

Raja Bejoy Singh Dudhuria v. C.I.T., Bengal, 1 I.T.R. 135 and Mullick v. C.I.T. Bengal, 6 I.T.R. 206, explained and applied.

C.I.T., Bombay City v. Sitaldas Tirathdas, 41 I.T.R. 367, followed.

C.I.T., Bombay v. Makanji Lalji, 5 I.T.R. 539 and C.I.T., Bombay City v. Ratilal Nathalal, 25 l.T.R. 426, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 266 of 1969. Appeal by special leave from the judgment and order dated August 16, 1967 of the Kerala High Court in Income-tax Referred Case No. 44 of 1966.

C. K. Viswanatha Iyer and K. Jayaram, for the appellant. V. A. Seyid Muhammad and A. G. Pudissery, for the respon- dent.

The Judgment of the Court was delivered by Hegde, J. The appellant, Venugopala Varma Rajah is the present Rajah of the Vengunad Swaroopan in Palghat District, Kerala State. He is the Karnavan of his Tarwad. He will be hereinafter referred to as the assessee. The predecessor of the appellant, as the then Kamavan of the family, submitted the return for the assessment year 1959-60 under the Kerala Agricultural Income-tax Act (which will hereinafter be referred to as the Act) showing a gross income of Rs. 1,21,912/- and a net income of Rs. 84,065/60 P. That 'represented the income from the properties held by him under the family Karar dated May 29, 1909. The. Agricultural Income-tax Officer overruling the objection of the assessee included in the income returned, the income of the properties which had been put in possession of the junior members of the family under the aforementioned Karar of 1909. The net income so computed was Rs. 2,32,957/- and a tax of Rs. 1,30,672/35 P. was imposed. In appeal the Appellate Authority excluded from the taxable income the income of the properties allotted to the "Rani Group" but sustained the addition of the income of the properties allotted for the enjoyment of the male members. Aggrieved by the order of the Appellate Authority, the assessee took up the matter in second appeal to the Appellate Tribunal of the Agricultural Income-tax. The Tribunal rejected the contention of the assessee and dismissed the appeal. Thereafter at the instance of the assessee, it stated a case under s. 60(1) of the Act and submitted to the High Court for its opinion three questions of law namely L119SupCI/72 "(1) Whether the findings of the Tribunal that the family karar of 1909 does not constitute a diversion of family income to the various allottees thereunder is correct ?

(2) Whether the findings of the Tribunal that the provisions of sub-section (1) of sec. 9 of the Act are applicable only to cases of diversion of income and not otherwise is correct ?

(3) Whether the findings of the Tribunal that the provisions of sub-sec. (1) of sec. 9 of the Act are not applicable to the facts of this case are correct ?

Questions Nos. 2 and 3, in our opinion, do not bring out the import of sec. 9 (1) correctly but it is not necessary to go into that aspect as our decision covers the real point in issue.

The Reference originally came up for hearing before a Division Bench but as the questions arising for decision were considered to be of importance, the same was referred to a Fun Bench of three judges. The High Court by its judgment dated August 16, 1967 answered Question Nos. 1 and 2 against the assessee. It did not answer the third question as it was of the view that answer to that question was unnecessary in view of its findings on Questions Nos. 1 and 2. Thereafter this appeal was brought by certificate. The assessee in this case is the H.U.F. of which the appellant was the Kamavan at the relevant time. The question for decision is whether the income of the properties put in possession of the male members under the Karar of 1909 continues to be the, income of the family. At present we are not concerned with the income of the properties put in possession of the "Rani Group" in view of the decision of the Appellate Authority which had not began appealed against. If the income in dispute continues to be the income of the family then the revenue is justified in bringing the same to tax under the provisions of the Act. On the other hand if that income has ceased to be the income of the family, then the same cannot be brought to tax in the hands of the assessee. Therefore, the sole question is whether that income is the income of the family ? Section 9 of the Act provides "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 asset remaining the property of the settlor or disponer shall be deemed to be the agricultural income of the settlor or disponer and all agricultural income arising to any person by virtue of a revocable transfer of asset shall be deemed to be the agricultural income of the transferor Provided that for the purpose of this sub- section a settlement, disposition or transfer shall be deemed to be revocable if it contains any provision for the transfer directly or indirectly of the agricultural income or asset to the settlor, disponer or transferor or in any way gives the settlor, disponer or transferor a right to reassume power directly or indirectly over the agricultural income or assets :

Provided further that the expression settlement, disposition shall, for the purposes of the sub-section include any disposition trust, covenant, agreement or. arrangement and the expression "settlor or disponer" 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 dispo sition which is not revocable for a period exceeding six years or during the life- time of the person and from which agricultural income the settlor or disponer 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."

A Hindu Undivided Family is a person within the, meaning of s.2(m) of the Act.

We shall now proceed to examine the nature of the Karar entered into in 1909. The family of the assessee appears to have been one of the premier land holding families in Malabar. It appears to have had agricultural properties in various places. To the Karar in question all the then living members (12 in number) of the family were parties. The properties mentioned in 'A' Sch. to the Karar were set apart for the maintenance, education and other expenses of the female and male members residing in Kalari Kovilagom which is otherwise known as "Rani Group". Under the Karar, Karnavan of the Tarwad was to perform the marriage ceremonies of the female members of the Tarwad in accordance with the prevailing conditions and to meet the expenses thereof. All other expenses of female, and male members residing in Kalari are to be met from the income of the 'A' Sch. properties. The members residing in the Kalari have no right to alienate or encumber the properties allotted to them and all government revenue due in respect of those properties should be paid by them. Party No. 2, the second senior most member in the family was to be given 7,000 paras of paddy annually for his maintenance and for this purpose paddy lands yielding 3,500 paras of paddy shown in 'B' Sch. were made over to his possession and Party No. 1, Karnavan of the Tarwad was directed to give to- Party No. 2 from Malayalam era 1085 onwards 3,500 paras of paddy. Further the Karnavan was directed that he should redeem "Karukakode Challa Nilam" and make over the same to Party No. 2, but after making over the same to Party No. 2, be was not to pay 3,500 paras of paddy referred to earlier.

" C" Sch. properties yielding an income of 4,750 paras of paddy were allotted for the enjoyment of Party No. 3. He was required to maintain himself from out of their income. Properties shown in 'D' Sch. were set apart for the mainte- nance of Party No. 4. The land-revenue of B, C and D Sch.

properties was required to be paid by the Karnavan of the tarwad. On the death of Party No. 2 or on his becoming Karnavan of the family, Party No. 3 was to take over the properties allotted for the maintenance of Party No. 2 and Party No. 4 was to take over the properties for the maintenance of Party No. 3. The Karar prohibited the persons who were in possession of the properties allotted for their enjoyment from alienating or encumbering those properties, and if in contravention of those terms, they alienated any of those properties, the Karnavan was entitled to resume the properties treating the alienation as void. Clause 18 of the Karar prohibited the parties in possession of the properties from cutting and selling the kuzhikoors or dismantling the buildings in the properties in their possession. Clause 19 of the Karar prohibited the parties from enhancing the munpattom amounts due to the tenant. Clause 6 of the Karar provided that all the male members living in the Kalari, on completing the age of 21 should leave the Kalari and thereafter the Kamavan should make arrangements for their maintenance. Karar does not stipulate what arrangement he should make for their maintenance. Therefore it follows that he may maintain them either in the Tarwad house or give them maintenance allowance either in the shape of paddy or cash. It may also be noted that the Karar does not provide as to what would happen if the number of members in the Tarwad substantially increases. One other thing that has got to be noted is that the Karar is silent as to what would happen to the properties shown in Schs. B, C and D after Parties Nos. 2, 3 and 4 die, all of whom, we were told have died. Hence Kamavan can take possession of them on behalf of the family after their death.

On an examination of the various clauses in the Karar, it is obvious that the joint status of the parties was not disrupted. The arrangement made in the Karar was only an arrangement for providing maintenance. No party was given any absolute right in any portion of the family properties. The properties mentioned in the Karar continued to be the properties of the family. The arrangement made under the Karar cannot even be considered as a permanent arrangement. The properties were not divided on the basis of Thavazies. The liability to maintain the male members, aged more than 21 years excepting Parties Nos. 2, 3 and 4 continued to be that of the Karnavan. The Karar also does not provide for devolution of the properties allotted to Parties 2 to 4. Hence those properties must necessarily go back to the possession of the Karnavan after those Members die. We have earlier seen that the responsibility of performing the marriage ceremonies of the female members continued to be that of the Karnavan. He is also responsible for the payment of land revenue in respect of the family properties excepting properties included in Sch. (A) to the Karar. Under these circumstances, it is not possible to hold that Karar in question embodied an irrevocable settlement. In the very nature of things, the arrangement made under that Karar must be held to be one which is revocable if there is any substantial change in the circumstances of the family. For our present purpose it is sufficient if we hold that the properties allotted for the enjoyment of the various members of the family under the Karar continued to be the properties of the family.

In view of s. 9(1) of the Act in computing the total agricultural income of the H.U.F., all agricultural income arising from the assets remaining the property of the family should be deemed to be the agricultural income of the family. We have earlier come to the conclusion that the agrrangement made under the Karar is revocable if there is substantial change in the circumstances of the family. That arrangement confers benefit on the family inasmuch as it is absolved of the responsibility to maintain its members which, otherwise is its responsibility. Section 9 (1) of the Act is similar to s. 16

(1) (c) of the Indian Income-tax Act, 1922. The latter section has come up for consideration by courts. The courts have laid down the test that if the income in dispute is considered as having been applied to discharge an obligation of the assessee, the same is liable to be included in the assessable income of the assessee but if on the other hand the same had been diverted by an overriding charge, then it is not liable to be included in the assessable income of the assessee as it ceased to be his income. If we apply this test to the facts of the present case, it is clear that the income in dispute continued to be the income of the family. It was merely applied to discharge an obligation of the family namely the obligation to maintain the junior members of the family. At first sight some of the decided cases on the subject appear to speak in conflicting voices. But on a careful examination, it is possible to find out the dividing line. The earliest decision on the subject is that of the Judicial Committee in Raja Bejoy Singh Dudhuria v. Commissioner of Income-tax, Bengal(1). The, assessee therein succeeded to the family ancestral estate on the death of his father. Subsequently his step-mother brought a suit for maintenance against him in which a consent decree was made directing the assessee to make a monthly payment of a fixed sum to his step-mother and declaring that the maintenance was a charge on the ancestral estate in the hands of the assessee. While computing his income, the assessee claimed that the amounts paid by him to the step-mother under the decree should be excluded. That contention was not accepted by the authorities under the Act as well as by the High Court but the Judicial Committee reversing their decision came to the conclusion that though assessee's liability under the decree did not fall within any of the exemptions or allowances conceded in ss. 7 to 12 of the Indian Income-tax Act, yet the sums paid by the assessee to his stepmother were not "income" of the assessed at all; the decree of the court by charging the appellant's whole resources with a specific payment to his step-mother had to that extent diverted his income from him and had directed it to his step-mother; to that extent what he received for her was not his income; it was not a case of the application by the appellant of part of his income in a particular way; it was rather the allocation of a sum out of his revenue before it became income in his hands. This decision at the first sight appears to lend support to the assessee's contention but in understanding the ratio of the decision, we must bear in mind the fact that in that case the Advocate-General had abandoned before the High Court the contention that the assessee and his stepmother were members of undivided family and accepted the Position that the appellant was liable to be assessed as an individual and in no other manner. In view of this concession, the payment that had to be made to the step-mother of the assessee became a (1) 1, I.T.R. 135.

charge on tile estate even before that estate devolved on him. Therefore what the assessee got was the income of the property minus what he had to pay to his step-mother. The above conclusion of ours receives support from a later decision of the Judicial Committee in P. C. Mullick and anr. (Executors) v. Commissioner of Income-tax, Bengal(1). Therein a testator had by his will appointed the appellants his executors and had directed them to pay Rs. 10,000/- out of the income of his property on the occasion of his addya sradh for expenses in connection therewith to the person who was entitled to perform the sradh. He had also directed them to pay out of the income of his property the costs of taking out probate of his will. During the year of account the executors had paid Rs. 5,537/- for expenses in connection with the addya sradh and a sum of Rs. 1,25,000/- for probate duty. The question arose whether those payments were deductible in computing the chargeable income. The Judicial Committee held affirming the judgment of the Calcutta High Court, that the payments made for the sradh expenses and the costs of probate could not be excluded in

computing the chargeable income. Those were payments made out of the income of the estate coming to the hands of the appellants as executors and in pursuance of obligation imposed by the testator. Their Lordships were of opinion that it was not a case in which a portion of the income was by an overriding title diverted from the person who would otherwise have received it as in Bejoy Singh Dudhuria's (2) case, but a case in which the executors having received the whole income apply a portion of it in a particular way. From this judgment of the Judicial Committee, it is dear that the true test is that if the income in question is an income of the assessee, the application of the same being not relevant for determining its assessability, it is assessable in his hands but if it is not his income then it cannot form part of his assessable income. The scope of s. 16 (1) (c) of the Indian Income-tax Act, 1922 came up for consideration by this Court in Commissioner of Income-tax, Bombay City v. Sitaldas Tirathdas (3) . Therein the assessee Sitaldas Tirathdas of Bombay had many sources of income, chief among them being property, stocks and shares, bank deposits and share in a firm known as M/s. Sitaldas Tirathdas. He followed the financial year as his accounting year. For the assessment years 1953-54 and 1954- 55, his total income was respectively computed at Rs. 30,375/- and Rs. 55,160/-. This computation was not disputed by him but he sought to deduct Rs. 1350/- in the first assessment year and a sum of Rs. 18,000/- (1) 1 I.T.R. 135.

(3) 41, I.T.R. 367.

(2) 6 I.T.R. 206.

in the second assessment year on the-ground that under a decree, he was required to pay these sums as maintenance to his wife and his children. In support of his claim, he relied on the decision of the Judicial Committee in Bejoy Singh Dudhuria's case (supra). This Court rejected that contention observing (at pp. 374 and 375 of the Report) "In our opinion, the true test is whether the amount sought to be deducted, in truth, never reached the assessee as his income.

Obligations, no doubt, there are in every case, but it is the nature of the obligation which is the decisive fact. There is a difference between an-amount which a person is obliged to apply out of his income and amount which by the nature of the obligation cannot be said to be a part of the income of the assessee. Where by the obligation income is diverted before it reaches the assessee, it is deductible, but where the income is required to be applied to discharge an obligation after such income reaches the assessee, the same consequence, in law, does not follow. It is the first kind of payment which can truly be excused and not the second. The second payment is merely an obligation to pay another a portion of one's own income, which has been received and is since applied. The first is the case in which the income never reaches the assessee who even if he were to collect it, does so, not as part of his income, but for and on behalf of the person to whom it is payable."

Counsel for the assessee tried to lay stress on the observation of this Court that the income should reach the hands of the assessee before it can be considered as his income. According to him in the case before us, the income in dispute never reached the hands of the assessee. We are unable to accept this contention as correct. The income is the income of the family. It reached the hands of the family as soon as it reached the hands of any of the members of the family who were entitled to

receive it on behalf of the family. The members of the family received that income on behalf of the family and applied the same in discharge of an obligation of the family. When this Court spoke of the income reaching the hands of the assessee, it did not refer to any physical act. It was dealing with a legal concept a receipt in law. Viewed that way, it is quite clear that the income with which we are concerned in this case was received by the family.

One other decision on the point in issue which we would like to refer is the decision of the Bombay High Court in Commis- (1) 5 I.T.R. 539.

sioner of Income-tax, Bombay v. Makanji Lalji(1), wherein Beaumont C.J., speaking for the court held that in computing the income of the H.U.F. for purposes of income-tax, moneys paid to the widow of a deceased coparcener of the- family as maintenance and residence allowance cannot be deducted, even though the amount of such allowance has been fixed by a decree of the Court and has be en made a charge on properties belonging to the family.

It is not necessary to refer to cases which deal with the diversion of the income of the assessee. The test to be applied for finding out whether there is diversion of income or not is set, out by this Court in Commissioner of Income Tax, Bombay City, V. Ratilal Nathalal(1). For the reasons mentioned above this appeal fails and the same is dismissed with costs.

V.P.S. Appeal dismissed.

(1) 25 I.T.R. 426.