

KAPOOR CHAND (DEAD)

A

v.

ASSTT. COMMNR. OF INCOME TAX

(Civil Appeal No. 675 of 2005)

B

JULY 14, 2015

[A.K. SIKRI AND N.V. RAMANA, JJ.]

Income Tax Act, 1961 – s. 64(1) (iii), Explanation 2A – Applicability of – Trust created for the benefit of minor children – The two trustees (including the assessee) became partners in a partnership firm – Income arising to the Trust from the membership of the trustees in the firm – Whether taxable u/s. 64(1) (iii) – Held: The income of a minor child is taxable at the hands of individual – However, in the present case, the income has not accrued to the minors in the relevant assessment year, in view of the stipulation in the Trust-deeds that the income would be available to the minors on their attaining majority – Thus assessee's income was not taxable u/s. 64(1) (iii).

C

D

E

Allowing the appeal, the Court

HELD: 1. It is clear from a plain reading of Section 64(1) (iii) of Income Tax Act, 1961 that while computing the total income of any individual, the income of a minor child of such individual from the admission of the minor to the benefits of partnership in a firm is to be included as the income of the said individual. The Explanation 2A clarifies that if the minor child is a beneficiary under a trust, income arising to the trust from the membership of the trustee in a firm shall also be treated as income of the child and provisions of sub-clause (iii) of Section 64 (1) shall get attracted even in that eventuality. [Para 7]

F

G

H

[875-H; 876-A,B]

A 2. The provision that is contained in Explanation
2A is only to take care of the income, even when a trust
is created. It does not go further and make any provision
to the effect that even when the income earned by the
B trust cannot be utilized for the benefit of the minor during
his minority the Explanation 2A shall be attracted. There
is no such stipulation even in the said Explanation.
Moreover, the language of Section 64 (1) (iii) is clear and
C categorical which makes the income of minor child
taxable at the hands of individual. [Para 12] [879-B-D]

3. The income which is not to be given or spent for
the benefit of the child so long as he is minor, his income
cannot be treated as income of a “minor child” and taxed
at the hands of individual. [Para 9] [877-E-F]

D *Commissioner of Income Tax vs. M.R. Doshi*
(211) ITR 1 (SC) – relied on.

E *Yogindraprasad N. Mafatlal vs. Commissioner of*
Income Tax, Bombay City-I 109 ITR 602(Bom) –
referred to.

F 4. In the present case one of the conditions
contained in the trust deeds was that the income so
generated by the trust, shall not be given to or spent for
the benefit of the minor children till they attain majority
and the money was to be handed over to them only on
attaining the majority which would mean that the income
was available to these persons when they cease to be
G the minors. Thus, the requirement that the share of
income is at the hands of minor child is not satisfied in
the present case. [Paras 8 and 12] [876-E-F; 879-D]

H 5. The Department is not remediless inasmuch as
the income earned by the two minors would not go

untaxed. On attaining majority, when the aforesaid money in the form of income is received by the two individuals, it would be open to the Department to tax the income at that time. Or else, the Department could take up their cases under Section 166 of the Act if permissible. However, that course of action was not taken by the Department in the present case. [Para 13] [879-E-F]

Case Law Reference

(211) ITR 1 (SC)	relied on	para 8
109 ITR 602(BOM)	referred to	para 8

CIVILAPPELLATE JURISDICTION: Civil Appeal No. 675 of 2005

From the Judgment and Order dated 24.10.2003 of High Court of Uttaranchal at Nainital in Income Tax Appeal No. 01 of 2003.

Rohit Sthalekar, Avi Tandon, Kamendra Mishra for the Appellant.

Arijit Prasad, Anil Katiyar for the Respondent.

The Judgment of the Court was delivered by

A. K. SIKRI, J. 1. The facts in brief, which give rise to the present appeal filed by the assessee against the impugned judgment dated 24.10.2003 passed by the High Court of Uttaranchal at Nainital, are as under:

2. The brother-in-law of the appellant, namely, Shri Ram Niwas Agarwal had created two trusts for the benefit of two minor children of the appellant, Kapoor Chand. One trust known as Priti Life Trust was for the benefit of Km. Priti who

A was aged about 7 years and the other trust was created in the name of Anuj Family Trust for the benefit of master Anuj, minor son of the appellant, Kapoor Chand.

Both these trustees became partners in the partnership firm.
B The said partnership firm earned profits in the year 1980-1981 with which we are concerned in the present appeal and share of the two trusts was given to them.

3. Since these trusts were for the benefit of two minor children of the appellant, invoking the provisions of Section 64(1)(iii) of Income Tax Act, 1961 (for short "the Act"), the Assessing Officer included the said income in the income of the assessee and taxed as such.
C

4. The appellant contested the assessment by filing appeal before the Commissioner of Income Tax (Appeals). The CIT (Appeals) allowed the appeal by order dated 30.01.1996 holding that since the minors had no right to receive the income of the trusts till the time they were minors, the provisions of Section 64(1)(iii) read with Explanation 2A of the Act would not be attracted. It would be relevant to mention here that one of the important terms of both the trust deeds was that income so earned by the trusts shall not be received by two minors during their minority and will be spent for their benefits only once they attain the majority. Another fundamental clause in both the trust deeds was that in case any of the beneficiaries dies before attaining majority, his/her share would be given to the other sibling.
D
E
F

5. The Department challenged the aforesaid order of the CIT (Appeals) before the Income Tax Appellate Tribunal, New Delhi (for short "the Tribunal"). The Tribunal allowed the appeal and set aside the order of the CIT (Appeals). Dis-satisfied with the outcome, the appellant approached the High Court of Uttaranchal by way of an appeal filed under Section 260A of
G
H

the Act which appeal has been dismissed by the High Court vide impugned judgment dated 24.10.2003 affirming the order of the Tribunal. Undeterred, the appellant approached this Court by filing special leave petition and leave was granted. This is how the present appeal has come up for final hearing.

6. Before we take note of the contention advanced by the learned counsel for the appellant challenging the correctness of the impugned judgment, it would be apposite to reproduce the relevant provisions of the Act. Section 64(1)(iii) as well as Explanation 2A thereof read as under:

“64(1) In computing the total income of any individual, there shall be included all such income as arises directly or indirectly-

(i).....

(ii).....

(iii) to a minor child of such individual from the admission of the minor to the benefits of partnership in a firm:

Explanation 2A- For the purposes of clause (iii), where the minor child of an individual is a beneficiary under a trust, the income arising to the trustee from the membership of the trustee in a firm shall, to the extent such income is for the benefit of the minor child, be deemed to be income arising indirectly to the minor child from the admission of the minor to the benefits of partnership in a firm.”

7. It is clear from a plain reading of the aforesaid Section that while computing the total income of any individual the income of a minor child of such individual from the admission

A of the minor to the benefits of partnership in a firm is to be
included as the income of the said individual. The Explanation
2A clarifies that if the minor child is a beneficiary under a trust,
income arising to the trust from the membership of the trustee
in a firm shall also be treated as income of the child and
B provisions of sub-clause (iii) of Section 64(1) shall get attracted
even in that eventuality.

8. In the present case, as is clear from the facts narrated
above, no doubt two minor children of the appellant were the
C beneficiaries under the two trusts. It is also not in dispute that
the said trustees were the partners in the firm and had their
shares in the income as partners in the said firm. However,
the entire controversy revolves around the question as to
whether it could be treated as income of a "minor child". This
D controversy has arisen because of the reason that the income
that had been earned by the trustees was not available to the
two minor children till attaining the age of majority. As pointed
out above, this was one of the conditions contained in the trust
deeds that the income so generated by the trust, shall not be
E given to or spent for the benefit of the minor children till they
attain majority and the money was to be handed over to them
only on attaining the majority which would mean that the income
was available to these persons when they cease to be the
minors. This very question came up before this Court in almost
F identical circumstances in the case of Commissioner of
Income-Tax vs. M.R. Doshi [(211) ITR 1 (SC)]. The Court, after
taking note of some judgments of High Courts including the
judgment of High Court of Bombay in Yogindraprasad N.
G Mafatlal vs. Commissioner of Income-Tax, Bombay City-I [109
ITR 602 (Bom.)] interpreted the provisions of Section 64(1)(v)
of the Act in the following manner:-

H "Section 64(1) (v) requires, in the computation of the total
income of an assessee, the inclusion of such income as

arises to the assessee from assets transferred, otherwise than for adequate consideration, to the extent to which the income from such assets is for the immediate or deferred benefit of, inter alia, his minor children. The specific provision of the law, therefore, is that the immediate or deferred benefit should be for the benefit of a minor child. Inasmuch as in this case the deferment of the benefit is beyond the period of minority of the assessee's three sons, since the assets are to be received by them when they attain majority, the provisions of Section 64(1)(v) have no application."

9. Since the judgment of the Bombay High Court in Yogindraprasad N. Mafatlal (supra) has been affirmed by this Court, on going through the said judgment of High Court of Bombay we find that there is a very detailed discussion while interpreting the provision mentioned therein. In this case, the Bench comprising Tulzapurkar and Desai, JJ. (as their Lordships then were) wrote separate but concurring opinion. Justice Desai in his opinion gave three reasons for coming to the conclusion that the income which is not to be given or spent for the benefit of the child so long as he is minor, his income cannot be treated as income of a "minor child" and taxed at the hands of individual. These reasons can be summarized as below:

"(i) The benefit which may be immediate or deferred must still be a benefit of the minor child. In view of the fact that the said expression is still retained in the relevant provisions it is not possible to accept the argument that the "deferment" can be beyond the minority of the child. If the enjoyment of the benefit is postponed beyond the minority of the child it cannot be fairly regarded and accepted as a benefit even deferred for the minor child.

(ii) In order to attract the provision, the minor child must

A have a direct benefit of the interest in the income and the assets transferred to the trustees. Where the trust contains a stipulation that the income is to be accumulated or added to the corpus it cannot be held that the child has any direct benefit in that income.

B (iii) Benefit, if any, receivable by the child must be certain and vested. It cannot be the mere possibility of a benefit or benefit available on the fulfillment of a contingency.”

C 10. In the present case, as pointed out above, specific stipulation which is contained in both the trust deeds is that in case of demise of any of the minor the income would accrue to the other child. Therefore, the receipt of the said income is also contingent upon the aforesaid eventuality and the two minors had not received the benefit immediately for the assessment year in question viz. as “minor” children.

D 11. Learned counsel appearing for the respondent submitted that the aforesaid stipulation in the trust deeds is devised mainly to have the income escaped in the hands of the individuals and it was precisely the reason because of which Explanation 2A was inserted by the Finance Act, 1979. In support, he has produced memo corresponding the provision in the Finance Bill, 1979 and referred to para 55 thereof which reads as under:-

E “55. Under another existing provision, the income rising to a minor child from admission to the benefits of partnership is included in the income of that parent who has higher income, although neither of the parents is a partner in the firm to the benefits of which the minor is admitted. With a view to countering a device for circumventing this provision through interpolation of a trust, it is proposed to provide that where a minor child of an individual is a beneficiary under a trust and the trustee

G

H

joins in any partnership business with any person, the income arising to the trust, to the extent it is for the benefit of the minor child, will be included in the total income of that parent who has the higher income.” A

12. We are afraid the aforesaid explanation does not help the Department. The provision that is contained in Explanation 2A is only to take care of the income even when a trust is created. It does not go further and make any provision to the effect that even when the income earned by the trust cannot be utilised for the benefit of the minor during his minority the Explanation 2A shall be attracted. We do not find any stipulation even in the said Explanation. Moreover, the language of Section 64(1)(iii) is clear and categorical which makes the income of minor child taxable at the hands of individual. Thus, in the first instance it has to be shown that the share of income is at the hands of minor child which requirement is not satisfied in the present case. B C D

13. We may add that the Department is not remediless inasmuch as the income earned by the two minors would not go untaxed. On attaining majority when the aforesaid money in the form of income is received by the two individuals it would be open to the Department to tax the income at that time. Or else, the Department could take up their cases under Section 166 of the Act if permissible. However, that course of action was not taken by the Department in the present case. E F

14. In view of the foregoing conclusions we are of the view that the impugned judgment dated 24.10.2003 of the High Court does not lay down the correct proposition of law. This civil appeal is accordingly allowed and the impugned judgment dated 24.10.2003 passed by the High Court is set aside. G