

Pramod Chand Soni Trust Vs. Commissioner of Income-tax

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Court : Madhya Pradesh

Decided On : Apr-26-1983

Reported in : [1984]148ITR573(MP)

Judge : G.G. Sohani and ;R.K. Vijayvargiya, JJ.

Acts : [Income Tax Act, 1961](#) - Sections 164; [Indian Trusts Act, 1882](#) - Sections 17

Appeal No. : Miscellaneous Civil Case No. 20 of 1982

Appellant : Pramod Chand Soni Trust

Respondent : Commissioner of Income-tax

Advocate for Def. : R.C. Mukati, Adv.

Advocate for Pet/Ap. : Chitale, Adv.

Judgement :

Vijayvargiya, J.

1. By this reference under Section 256(1) of the I.T. Act, 1961 (for short 'the Act'), the Income-tax Appellate Tribunal has referred the; following questions of law for the opinion of this court :

'(1) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in holding that the deed of rectification executed on April 8, 1975, was not merely clarificatory/declaratory of a pre-existing state of things but it modified and changed the basic structure of a trust and could be invoked only for subsequent period and not for the earlier period ?

(2) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the requirements of the two beneficiaries would be unequal ?'

2. The facts giving rise to this reference briefly stated are as follows : The assessee is a family trust. The assessment years involved are 1974-75 and 1975-76. The accounting year for the assessment year 1975-76 ended on March 31, 1975. The ITO held that the shares of the beneficiaries of the trust were indeterminate and, therefore, he treated the assessee as a discretionary trust. The assessee contended that by a rectification deed, dated April 8, 1975, the shares of the assessee were made determinate and, as such, it cannot be held that the assessee was a discretionary trust and, therefore, the provisions of Section 164 of the Act were not

attracted. The ITO negated the contention of the assessee. On appeals, the AAC upheld the orders of the ITO. The further appeals by the assessee before the Tribunal were also unsuccessful. At the instance of the assessee the Tribunal has referred the aforesaid questions of law for the opinion of this court.

3. We have heard the learned counsel for the parties.

4. Re. question No. 2 : It is not in dispute that the accounting year for the last assessment year in question ended on March 31, 1975. The rectification deed on which reliance was placed by the assessee was executed on April 8, 1975, i.e., after the expiry of the last accounting year in question. The learned counsel for the assessee was unable to point out as to how the rectification deed can have retrospective effect. He, however, contended that the rectification deed was only clarificatory of the preexisting state of affairs, and, therefore, it should be read as a part of the original trust deed. He did not dispute the fact that under the original trust deed the interest of the beneficiaries was indeterminate. He contended that under Section 17 of the Indian Trusts Act, the trustees are bound to be impartial when there are more beneficiaries than one and they must not execute the trust for the advantage of one at the expense of the other. However, from this provision it cannot be contended that the interest of beneficiaries, which was indeterminate according to the trust deed, becomes determinate. Moreover, the trust has already been executed in regard to the assessment years in question before the execution of the rectification deed and, therefore, it is difficult to appreciate how the rectification deed can be given retrospective effect. The rectification deed, therefore, cannot have any effect on the assessment of the assessee for the assessment years in question, the accounting year of the last assessment year, as stated above, having expired before the execution of the rectification deed.

5. In this view of the matter it is not necessary to express any opinion regarding the validity of the rectification deed or its efficacy after its execution and the question referred to us also requires modification. We, therefore, reframe question No. 1 which arises out of the order of the Tribunal as follows :

'(1) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the deed of rectification executed on April 8, 1975, could not be invoked for the period earlier to its execution ?'

6. We have already held above that the deed of rectification cannot have any effect on the assessment of the assessee for the assessment years in question as the accounting year of the last assessment year ended before the execution of the rectification deed. Our answer to question No. 1, reframed by us, therefore, is in the affirmative and against the assessee.

7. Re. question No. 2: The question referred to us by the Tribunal really does not arise out of the order of the Tribunal. Before the Tribunal the assessee placed reliance upon the decisions in CIT v. Bhim Chandra Ghosh : [1956]30ITR46(Cal) and CIT v. Pulin Behari Dey : [1951]20ITR314(Cal) . It was contended that as there were two beneficiaries under the trust, their interest in the trust property should be deemed to be equal. The Tribunal while distinguishing the aforesaid decisions observed that the decisions relied upon related to two deities whose requirements were equal and, therefore, their interest in the trust property may be treated as equal. But in the present case the requirement of the beneficiaries, who are the mother and the son

and one of them being major and the other minor, were unequal and, therefore, it cannot be held that their interest in the trust property was equal. This really relates to a question of fact and not a question of law.

8. Paragraph 5 of the trust deed provides that the credit balance in favour of the beneficiaries shall be utilised for their benefit alone jointly or severally as required by the first beneficiary (mother) and for the education of the second beneficiary (minor son) and incidental expenses and for such other purposes as the trustees, in their sole and final discretion, deem most beneficial, in the interest of the beneficiaries. The trustees will ordinarily spend for the benefit of the beneficiaries out of the interest income of the corpus of the fund settled in their favour. The trustees are, however, empowered to advance to the second beneficiary a loan for his education abroad and adjust it against the amounts due to the said beneficiary at the termination of the trust.

9. This term in the trust deed negatives the contention of the assessee that the interest of the two beneficiaries in the trust is equal and, therefore, determinate. On the facts and in the circumstances of the case, in our opinion, the Tribunal did not commit any error in holding that the requirement of the two beneficiaries would be unequal and, therefore, it cannot be held that their interest in the trust property was equal.

10. Our answer to question No. 2 referred to us is in the affirmative and against the assessee.

11. The reference is answered accordingly. In the circumstances, there shall be no order as to costs of this reference.