

IN THE HIGH COURT OF PATNA

Tax Cases Nos. 126 of 1982 and 28 of 1986

Assessment Year: 1776-1777

Decided On: 01.08.2019

Appellants: **Loknath Goenka and Ors.**

Vs.

Respondent: **Commissioner of Income Tax**

The Income Tax Act, 1961---Section 256(i), Section 64(1)(iii)—The Taxation Law (Amendment) Act 1975---Section 2—with effect from April 1, 1976—reference made by the Income Tax Tribunal, Patna-accounting year—financial year—assessment year—Constitution Bench settled that if an amendment takes place on April 1 of any financial year— it would apply to the assessment held for that financial year—but not if the amendment comes into force after the start of the financial year on April 1—in which case it would take effect on the next assessment year.

Held: For deciding the liability of a particular provision of the Income Tax Act, the date of accrual of income is relevant—if the provision comes into force in a particular financial year, it would apply to the assessment for that year but cannot be made applicable in respect of assessment for a previous year—the Amending Act introduced a new tax liability which came into force with effect from April 1, 1976—cannot be given a retrospective effect and made applicable to the previous accounting year i.e. 1975-76 corresponding to the assessment year i.e. 1976-77—under the new provision—a new liability has been prescribed and not the rate for ascertaining the liability—new liability under the Income Tax Act cannot be given a retrospective effect—liability can only be fastened on an individual if the same was existing at the time of accrual and not at the time of assessment.

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Appellants: **Loknath Goenka and Ors.****Vs.**Respondent: **Commissioner of Income Tax****Hon'ble Judges/Coram:***Jyoti Saran, Madhuresh Prasad and Mohit Kumar Shah, JJ.***Counsels:***For Appellant/Petitioner/Plaintiff: D.V. Pathy, Amicus Curriae**For Respondents/Defendant: Rishi Raj Sinha, Sr. SC, IT and Shilpi Keshri, Jr. SC, IT***JUDGMENT****Madhuresh Prasad, J.**

1. These two cases arise from a reference made by the Income Tax Tribunal, Patna Bench, Patna under Section 256(i) of the Income Tax Act, 1961 (hereinafter referred as 'the Act').

2. The point for consideration in the reference is whether the Appellate Tribunal was correct in law in holding that the share income of minor sons of the assessee, including the share in interest on capital credited to the minor sons out of the partnership firm was to be computed in the hands of their father under Section 64(1) (iii) in the Assessment year 1976-77. The said provision was introduced in the Income Tax Act by the Taxation Law (Amendment) Act 1975 with effect from 1.4.1976, whereas the accounting year of the assessee(s) in the instant case(s) came to an end on 10.8.1975 and on 31.12.1975 in Taxation Case No. 126 of 1983 and Taxation Case No. 28 of 1986 respectively.

3. The authorities were of the opinion that the question was answered by a Division Bench decision rendered in the case of Badri Prasad & ors. vs. Commissioner of Income Tax MANU/BH/0068/1990 : (1990) Volume 185 ITR 307, which concluded the issue in the following terms:-

"It is a cardinal principle of tax laws that the law to be applied is that which is in force at the commencement of the assessment year. (See Karimtharuvi Tea Estate Ltd. v. State of Kerala MANU/SC/0155/1965 : [1966] 60 ITR 262 (SC) and Maneklal Vallabhdas Parikh and Sons v. CIT MANU/GJ/0097/1967 : [1969] 72 ITR 637 (Guj)).

In the instant case, the assessment year is 1976-77. Therefore, the law in force on April 1, 1976, would govern the assessment for the assessment year

in question.

The Tribunal, in our opinion, was right in holding that the share income of the minor sons from the firm to which they were admitted as partners was assessable in the hands of their fathers by virtue of the provisions of Section 64(1)(iii) of the Act as amended from April 1, 1976 by the Taxation Law (Amendment) Act, 1975

Our answer to the question referred to this Court is, therefore, in the affirmative and against the assessee."

4. It is when the issue arose for consideration in these two cases before the Division Bench that the decision of the Apex Court in the case of Kesoram Industries and Cotton Mills Ltd, vs. Wealth Tax Commissioner (Central), Calcutta, reported in MANU/SC/0142/1965 : AIR 1966 SC 1370 was relied upon by Counsel for the assessee to contend that the liability to pay income tax hinges on accrual of income and has no concern with the time when computation is made by the taxing authority. It was the submission of learned Counsel that the decision in the case of Kesoram Industries (supra) was not considered by the Division Bench which decided the case of Badri Prasad (supra).

5 . It is bearing note of such circumstances the Division Bench, which was considering Tax Case No. 28 of 1986, referred the issue for consideration to a larger Bench by an order dated 8.5.1996.

6. It is under Section 256(i) of the Income Tax Act, the Income Tax Tribunal Patna Bench had earlier in the year 1982, referred the same question for opinion of this Court, which remained pending consideration in the proceedings arising out of Tax Case No. 126 of 1982 and it is bearing note of the earlier order in Tax Case No. 28 of 1986 that the Division Bench which was considering Tax Case No. 126 of 1982, also referred the same question to a larger Bench.

7. Accordingly both matters are before us for answering the reference.

8. The entire issue arises on the scope and applicability of Section 64(1)(iii) of the Act. This Court would therefore consider it useful to quote relevant provisions which reads as under:-

"64. Income of individual to include income of spouse, minor child, etc. (1)
In computing the total income of any individual, there shall be included all such income as arises directly or indirectly.

.....

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

9. The admitted facts are that in both the instant cases, the accounting year of the firm had closed much prior to coming into force of Section 64(1)(iii). In spite of the accounting year having closed prior to coming into force of Section 64(1)(iii) with effect from 1.4.1976, the Income Tax Tribunal added the share income of the minor sons from the partnership firm at the hands of the income of the assessee father under Section 64(1)(iii) of the Act.

10. Mr. D. V. Pathy has assisted the Court on behalf of the assessee in Tax Case No.

126 of 1982. In spite of valid service of notice upon the assessee in Tax Case No. 28 of 1986 none appeared on behalf of the assessee. In the circumstances, this Court has requested Mr. Pathy to appear as Amicus Curiae in Tax Case No. 28 of 1986 also. We have also heard Mr. Rishi Raj Sinha, learned Senior Standing Counsel on behalf of the department.

11. The issues in both the cases are one and the same.

12. Mr. Pathy appearing on behalf of the assessee in both the matters has submitted that the provisions of the Amending Act have come into force with effect from the date specified in the notification issued under Section 2 of the Amendment Act i.e. with effect from 1.4.1976. It is his submission that even if the share income of the minor accrued prior thereto, the same was liable to be added in the income of the parent, for the purpose of computing taxable income of the father in compliance with the provisions contained in Section 64(i)(iii) of the Amendment Act.

13. Learned Counsel have placed reliance on the judgment rendered in the case of Badri Prasad (supra), the relevant extract of which has been extracted hereinabove at paragraph 3. It is their submission that in view of the consideration and opinion expressed by the Division Bench in the case of Badri Prasad (supra), the issue now stands settled. It is canvassed that irrespective of the fact that the Taxation Law Amendment Act has come into force with effect from 1.4.1976 and irrespective of the fact that the accounting year of both the assesseees had closed prior thereto, the income of the minor children of the assesseees was liable to be added at the hands of their father while computing his total income.

14. As per submissions of Mr. Pathy, the law applicable on the date of assessment is relevant for ascertaining the tax liability. He submits that the time of accrual of income is irrelevant for the purpose of applicability of the Amending Act. Irrespective of the fact that income has accrued and accounting year of the assessee has come to an end prior to 1.4.1976, the Amending Act which came into force with effect from 1.4.1976 will apply to arrive at the taxable income of the assessee in the accounting year 1976-77 corresponding to accounting year 1975-76. According to him, para 8 of the Constitution Bench judgment of the Apex Court in Karimtharuvi Tea Estate Ltd. Versus State of Kerala, reported in MANU/SC/0155/1965 : AIR 1966 SC 1385 which has been relied upon in the case of Badri Prasad (supra) supports his contention.

Para 8 of the judgment in the case of Karimtharuvi Tea Estate Ltd. (supra) reads as follows:-

"Now, it is well settled that the Income Tax Act, as it stands amended on the first day of April of any financial year must apply to the assessment of that year. Any amendments in the Act which come into force after the first day of April of a financial year, would not apply to the assessment for that year, even if the assessment is actually made after the amendments came into force."

15. In the opinion of this court, the legal position settled by the Constitution Bench, is neither as appreciated by the Division Bench in the case of Badri Prasad (supra) nor as canvassed by Mr. Pathy. In fact what the Constitution Bench has settled is that if an amendment takes place on 1st of April of any financial year, it would apply to the assessment held for that financial year but not if the amendment comes into force after the start of the financial year on 1st of April in which case it would take effect on the next assessment year. By applying the said law to the facts of the two cases

under reference, it is seen that the provisions of the Amending Act came into force on the first day of April of the financial year 1976-77. As per the legal position settled in para 8 of the judgment in the case of Karimtharuvi Tea Estate Ltd. (supra), the amendment would apply to the assessment to be held for the financial year 1976-77 i.e. the assessment year 1977-78. This is the irresistible conclusion reached by applying the law laid down by the Apex Court in para 8 of the Constitution Bench judgment in the case of Karimtharuvi Tea Estate Ltd. (supra).

16. The earlier judgment of the Apex Court in the case of Kesoram Industries (supra) decided on 24.11.1965 is in line with the Constitution Bench judgment of the Supreme Court in Karimtharuvi Tea Estate Ltd. (supra) decided on 15.12.1965. The relevant extract of the judgment of the Apex Court in Kesoram Industries (supra) is as follows:-

26. Uninfluenced by judicial decisions let us at the out-set look at the relevant provisions of the two Acts. Under Section 3 of the Income Tax Act, where any Central Act enacts that income tax shall be charged for any year at any rate or rates, tax at that rate or those rates shall be charged for that year in accordance with, and subject to the provisions of, the said Act. The expression "charged" is used both in the case of the Central Act i.e. the Finance Act, and the Income Tax Act. It could not have been the intention of the Legislature to charge the income to income tax under two Acts. Necessarily, therefore, they are used in two different senses. The tax is to be charged for that year in accordance with, and subject to, the provisions of the Income Tax Act; but the said charge will be in accordance with the rates prescribed under the Finance Act. This construction will harmonize the apparent conflict between the two Acts. When you look at Section 2 of the Finance Act, it shows that income tax shall be charged at the rates specified in Part I of the First Schedule, and super tax, for purpose of Section 55 of the Income Tax Act, 1922, shall be charged at the rates specified in Part II of the First Schedule. The primary object of the Finance Act is only to prescribe the rates so that the tax can be charged under the Income Tax Act. The Income Tax Act is a permanent Act whereas the Finance Act is passed every year and its main purpose is to fix the rates to be charged under the Income Tax Act for that year. That should be the construction is also made clear by Section 55 of the Income Tax Act, whereunder super tax shall be charged for any year in respect of the total income of the previous year of any individual, Hindu undivided family, company etc. at the rate or rates laid down for that year by a Central Act. This section brings out the distinction between a tax charged and the rate at which it is charged. This construction is also emphasized by Section 67-B of the Income Tax Act, whereunder if on the 1st day of April in any year provision has not yet been made by a Central Act for the charging of income tax for that year, the Income Tax Act shall nevertheless have effect until such provision is so made as if the provision in force in the preceding year or the provision proposed in the Bill then before Parliament, whichever is more favourable to the assessee, was actually in force. This shows that the charging section is only Section 3 of the Income Tax Act; and that Section 2 of the Finance Act only gives the rate for quantifying the tax; for, this section gives an alternative for quantification in the contingency the of the Finance Act not having been made on the 1st day of April of that year. Even if such an Act was made, the charge under the Income Tax Act could be imposed and worked out only in terms of the provisions of the Income Tax Act. If that be the construction, the conclusion

will flow that the tax liability at the latest will arise on the last day of the accounting year.

33. To summarize: A debt is a present obligation to pay an ascertainable sum of money, whether the amount is payable in praesenti or in futuro: debitum in praesenti, solvendum in futuro. But a sum payable upon a contingency does not become a debt until the said contingency has happened. A liability to pay income tax is a present liability though it becomes payable after it is quantified in accordance with ascertainable data. There is a perfected debt at any rate on the last day of the accounting year and not a contingent liability. The rate is always easily ascertainable. If the Finance Act is passed, it is the rate fixed by that Act; if the Finance Act has not yet been passed, it is the rate proposed in the Finance Bill pending before Parliament or the rate in force in the preceding year, whichever is more favourable to the assessee. All the ingredients of a "debt" are present. It is a present liability of an ascertainable amount.

36. For the reasons we have stated earlier, we agree with the conclusion arrived at by the Gujarat High Court. We, therefore, hold that the liability to pay income tax is a debt within the meaning of Section 2(m) of the Wealth Tax Act and it arises on the valuation date during the accounting year.

17. Reading the judgment of the Apex Court in the case of Kesoram Industries and Cotton Mills Ltd. harmoniously with the Constitution Bench judgment of the Apex Court in the case of Karimtharuvi Tea Estate Ltd. (supra), this Court would observe that the argument advanced by Counsel for the assessees (Amicus Curiae) as well as the Department can be made only in respect of a rate prescribed under a Finance Act or an Act providing a surcharge if the same is brought into force on the 1st of April of the assessment year in which assessment for the previous year is being done as the same would only provide for ascertaining the rate, for existing liability under the Income Tax Act. But that is not the case here. Under the new provision, i.e. Section 64(1)(iii) a new liability has been prescribed and not the rate for ascertaining the liability. Such new liability under the Income Tax Act cannot be given a retrospective effect. Such liability can only be fastened on an individual if the same was existing at the time of accrual and not at the time of assessment. The observations of the Apex Court in paragraph 33 of the judgment in the case of Keshoram Industries and Cotton Mills (supra), clarifies this position.

18. In view of the judgments of the Apex Court in the case of Keshoram Industries (supra) as well as Karimtharuvi Tea Estate Ltd. (supra) this Court would have no hesitation in holding that for deciding the liability of a particular provision of the Income Tax Act, the date of accrual of income would be relevant. If the provision comes into force in a particular financial year, it would apply to the assessment for that year but cannot be made applicable in respect of assessment for a previous year.

19. The Amending Act introduced a new Section 64(1) (iii) in the Income Tax Act with effect from 1.4.1976. The tax liability under the said provision could therefore be charged on the assessee, in the assessment which was to be made for that accounting year i.e. 1976-77, which would be done in the assessment year 1977-78. The Amending Act introducing a new tax liability which came into force with effect from 1.4.1976 could not be given a retrospectivity and be made applicable to the previous accounting year i.e. 1975-76 corresponding to the assessment year i.e. 1976-77.

20. In view of the foregoing discussions and conclusions arrived at by us, I am of the considered opinion that the judgment rendered in the case of Badri Prasad (supra) does not lay down the correct law.

21. The issue of law having been clarified as aforesaid the reference stands answered. The matter is remanded to the Division Bench for disposing of the matter in terms of the law as considered by the Full Bench in the instant proceeding.
