

IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC - C” BENCH : BANGALORE

BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER

ITA No.495 & 496/Bang/2017
Assessment years : 1993-94 & 1994-95

Dr. (Mrs.) Anwar Basith, No.16, Dr. Omar Shariff Road, Basavangudi, Bengaluru – 560 004. PAN: ABXPB 1914E	Vs.	The Assistant Commissioner of Income Tax, Circle 5(2)(1) [formerly 3(1)], Bengaluru.
APPELLANT		RESPONDENT

Appellant by	:	Shri K.Y. Ningoji Rao, CA
Respondent by	:	Smt. Swapna Das, Jt.CIT(DR)(ITAT)-2, Bengaluru

Date of hearing	:	17.05.2017
Date of Pronouncement	:	26.05.2017

ORDER

These appeals are preferred by the assessee against the order of CIT(Appeals) *inter alia* on common grounds and therefore these appeals were heard together and are being disposed of through this consolidated order. Though grounds of appeal are common in these appeals, I extract the grounds of appeal raised in the appeal ITA No.495/Bang/2017 hereunder:-

“~. That the impugned order of assessment made by the Respondent is liable to set aside in so far as the impugned order

made by the Respondent Officer is irregular, incorrect, improper, unlawful and is opposed to facts of the case and law.

2. The Learned Commissioner of Income Tax (Appeals) erred in upholding the validity of the impugned proceedings by the Respondent Assessing Officer u/s 147 of the Act by issue of the notice u/s 148 disregarding the fact that the Appellant had voluntarily filed the Return of Income on 18.9.1995.

3. The Learned CIT (Appeals) erred in holding that the Dr. Nayeema Khan Trust had income assessable in the A.Y.1993-94 as per the findings made pursuant to the direction of the Hon'ble High Court of Karnataka and that such income is liable to be added to the Total Income of the Appellant u/s 64(1)(a) of the Income Tax Act, 1961.

4. The Learned CIT (Appeals) erred in holding that the Dr. Nayeema Khan Trust had income of Rs.5,47,561/- which is assessable in the A.Y.1993-94 disregarding the provisions of Section 5 r.w.s. 145 (1) of the Income Tax Act, 1961.

5. The Learned CIT (Appeals) erred in upholding the addition of Rs.3,65,040/- made by the Respondent Officer to the Total Income of the Appellant u/s 64 (1)(a) of the Income Tax Act, 1961 when in fact the provisions of Section 64 has no application in the instant case.

6. The Learned CIT (Appeals) erred in making a finding that claim of the Appellant that Dr. Nayeema Khanum Trust did not receive the interest from the co-owners seeks to nullify the directions given by the Hon'ble High Court by miss construing the provisions of sections 5, 145, 64, 160 (1)(iv), 161(1) and other related provisions of the Income Tax Act, 1961.

7. The Learned CIT (Appeals) erred in holding that the income, if any, of Dr. Nayeema Khan Trust which is assessable in the A.Y.1993-94 ipso facto becomes the income taxable in the hands of the beneficiaries which in turn is liable to addition to the total income of the parents of minor beneficiaries u/s 64(1)(a) of the Act with complete disregard to the provisions Section 160(1)(iv) rws 161(1) of the Income Tax Act,1961.

8. The Learned CIT (Appeals) erred in upholding the interest of Rs.1,19,230/- levied by the Respondent u/s 234A of the Act.

9. The Learned CIT (Appeals) erred in upholding the interest of Rs.1,58,973/- levied by the Respondent u/s 234B of the Act.

10. The Learned CIT (Appeals) erred in upholding the interest of Rs.1,804/- levied by the Respondent u/s 234C of the Act.”

2. The facts in brief relating to the impugned issues are that assessee has filed a return of income declaring income of Rs.1,84,950. During the course of scrutiny, the AO has noted that assessee has constructed a building in 1989 for which fund had been received from a firm called M/s. INJ Enterprises in which the assessee is a partner along with her husband, Mr. Maqsood Ahmed. The children of the partners viz., Master Mohamed Iqbal, Ms. Nadia Ahmed and Master Mohamed Jesim have been admitted to the benefits of partnership. It was also provided in the partnership deed that benefits of partnership shall be distributed among the partners and 3 beneficiaries in equal shares of 1/5th of the profit of the firm. The partnership firm was dissolved on 11.07.1989 and it was provided that all the 5 partners would possess the asset and the liability of the firm as co-owners and tenants in common and have equal shares in land & building. One of the source of funds used by M/s. INJ Enterprises for construction and development of the aforesaid property was a loan of Rs.14,28,280 received from Dr. Nayeema Khan Trust formed by assessee and her husband, Mr. Maqsood Ahmed as a trustee and their children as beneficiaries of the trust.

3. The AO has noted that assessee has deducted interest paid to Dr. Nayeema Khan Trust for computing the income from property at 29, Cunningham Road. The income was reduced on account of interest on principal and compounded at the accumulated figure of loan amount from Dr. Nayeema Khan Trust. The AO further noted that Dr. Nayeema Khan Trust had filed return of income for the AYs 1990-91 & 1991-92 on account of interest received from INJ Enterprises, but return was not filed for subsequent years as no interest income was received by the trust.

4. The AO further noted that the interest amount specifically pertained to different beneficiaries as defined in the trust deed was to be apportioned equally $1/3^{\text{rd}}$ among the 3 beneficiaries. Therefore, income relating to minor beneficiaries was to be added to the income of appellant u/s. 64(1)(a) of the Act. Accordingly, out of interest income of Rs.5,47,561 deducted from the property income, addition of Rs.3,65,040 was made towards share of minor children of appellant as two beneficiaries out of 3 were minors during the relevant previous year.

5. The assessee preferred an appeal before the CIT(Appeals) against the assessment order, but did not find favour with him and again appeal was filed before the Tribunal and the Tribunal has held that the arrangement amounted to payment and receipt of amount by the same person in different capacities. It was further held that interest expenses in the hands of appellant was to be treated as paid to the trustee or to herself and

income accrued to the minor children was to be clubbed u/s. 64(1)(a) of the Act.

6. Aggrieved, an appeal was preferred to the Hon'ble High Court of Karnataka and the Hon'ble High Court vide order dated 17.03.2010 have restored the matter to the Assessing Officer for further verification. The relevant observations of the Hon'ble High Court are extracted hereunder:-

“ Having heard the learned counsel for the parties, we are also of the opinion that if the Trust is maintaining the Cash System of Accounting, and if the assessee had made provisions for payment of interest in the Return filed by her, and if the interest paid by the assessee is taken into account of the Trust, in the next assessment year or in subsequent years, it is for the Revenue to compare both the accounts and pass appropriate order, in order to find out whether the interest shown in the return of income is reflected in the accounts of the Trust.”

7. Accordingly, the matter was remanded back to the AO and he has called for the details of interest claimed in the case of co-owners of the property and the interest reflected in the account of Dr. Nayeema Khan Trust. The AO having examined the details has concluded that interest claimed by the co-owners of the property and deduction on account of interest payable to Dr. Nayeema Khan trust had not been admitted in the hands of Dr. Nayeema Khan trust in AYs 1993-94 & 1994-95. Accordingly, addition of Rs.3,65,040 being the interest income relating to minor beneficiaries of Dr. Nayeema Khan trust was added to appellant's income.

8. Thereafter, the appellant has filed appeals before the CIT(Appeals) disputing the additions and the CIT(Appeals) further re-examined the claim of assessee in the light of directions of the Hon'ble High Court and confirmed the additions. The relevant observations of the CIT(Appeals) is extracted hereunder for the sake of reference:-

“ The undisputed facts are that two beneficiaries out of the three in Dr. Nayeema Khan Trust were minors. All the three beneficiaries of the Trust were the children of the appellant. The income in the hands of the Dr. Nayeema Khan Trust was assessable in the assessment year 1993-94 as per the findings made pursuant to the direction of the Hon'ble High Court of Karnataka. Therefore, there is no basis for the contention that income of minor children should not have been added to the income of the appellant.

In the written submission, the appellant has relied in this regard on several judicial decisions including the following:

- (a) Manilal Dhanji v. CIT[1962] 44 ITR 876 (SC)
- (b) Yogindraprasad N. Mafatlal v CIT [1977] 109 ITR 602 (Bom)
- (c) CIT v D.V. Narasimhan [1992]196 ITR 499 (Kar)

In the case of CIT v Manilal Dhanji(supra), the assessee had set up a trust in respect of Rs. 25,000/- of which the trustees included his wife, his brother and himself. The scheme of the trust deed provided that interest on the sum of Rs. 25,000/- should be accumulated and added to the corpus. On attaining the age of 18 years by the assessee's daughter, the corpus as increased by the addition of interest was to be handed over to her. In this case, interpretation of clause (b) of section 16(3) of the Income-tax Act of 1922 was involved. The Hon'ble Apex Court held that section 64 of the Income Tax Act of 1961 could not be taken as declaratory of the previous law and corresponding section 64(v) of the Income Tax Act of 1961 could not be taken as determinative of the scope and effect of clause (b) of section 16(3) of the Income-tax Act of 1922. Therefore, it would not be correct to apply the ratio of this case to a taxing issue covered under the Income Tax Act of 1961.

In *Yogindraprasad N. Mafatlal v CIT(supra)*, the assessee, an individual, created three separate trusts by three deeds executed by him on the same day in favour of his three minor daughters. In the relevant accounting year, all the three daughters were minors and unmarried. The trustees to whom the shares constituting the trust fund were transferred under the three trusts were three different persons. It was clear that under the scheme of three trust deeds, the trustees were enjoined upon to hold the trust fund under each of the deeds so as to accumulate the accruing income and add the same to the corpus of the trust fund till the eldest daughter attained majority; in other words, none of the daughters, not even eldest daughter would have any beneficial interest in the income of the trust fund right up to the time she attained majority and during that period the accruing income had to the accumulated and added on to the corpus of the trust fund. The scheme of the trust deeds, therefore, appeared to be that so long as all the three daughters were minors, the income under each of the deeds was accumulated for the benefit of the principal of beneficiary concerned when she attained majority. The Court held that the instant case was a case of a single transfer of interest to minor daughters upon condition of their attaining the age of majority and the case did not come within the exception to section 21 of the Transfer of Property Act, with the result that interest created by the settlor under the three trust deeds in the instant case would have to be regarded as contingent depending upon happening of particular event, viz., attaining the age of majority by the three daughters. If that be so, the item of income which arose during the year of account in instant case could not be included in the total income of the assessee as section 64(v) would be clearly inapplicable. This case is distinguishable from the present case as in the present case there was no such provision for obligatory accumulation till majority of the beneficiaries. It was left to the discretion of the trustees whether to add entire income of a year to the corpus or to spend any part of the income for the welfare of the beneficiaries such as education and general welfare of the beneficiaries in the ratio specified under the Trust.

In *CIT v D.V. Narasimhan [1992] 196 ITR 499 (Kar)*, the issue of deferred benefit of a beneficiary of a Trust was involved. The Hon'ble Court held that it was not a case of a deferred benefit for a minor child but a case of a deferred benefit for a person who became a major subsequently. Under these circumstances, it was

held that section 64(1) was not attracted. As noted above, the present case did not involve compulsory accumulation of the income of a year till the age of majority of the beneficiaries, the ratio does not apply to the present case.

10. The appellant has in written submissions dated 06.12.2016, it has been submitted that she was agreeable to an addition of Rs, 1,99,360/- in assessment years 1993-94 and 1994-95 or buying peace and in consonance with the assessment for assessment years 1995-96 to 2004-05 wherein assessments were made in the case of Dr. Nayeema Khan Trust in respect of the income of beneficiaries, each of whom was assessed at Rs. 99,980/- The assessments have become final as these have not been challenged by the trustees in appeal. It has been stated that the simple interest of Rs. 2,99,940/- was income computed at the rate of 21% on Rs. 14,28,280/- received from Dr. Nayeema Khan Trust. Accordingly, the income relating to two minor beneficiaries amounted to Rs. 1,99,360/-.

As per the facts on record, interest expenditure of Rs. 5,47,561/- had been claimed in the case of return of income of the co-owners of the property during the relevant previous year. The same amount has been taken as basis for computing income in the hands of the beneficiaries having 1/3rd share each. Out of it, the two beneficiaries were minors and therefore the assessing officer has arrived at an income of Rs. 3,65,040/- as income includable under section 64(1A) of the Act. As the income of the Trust depends on the claim of expenditure made by the co-owners, the working of assessing officer in the assessment order is fair and reasonable.

In view of the forgoing discussion, it is held that the action of assessing officer in clubbing the income of Rs. 3,65,040/- being the interest payable to Dr. Nayeema Khan Trust and relating to the minor beneficiaries was correct in accordance with section 64(1A) of the Act.

11. In ground no.4, it has been contended that the Trust has not received any income which accrued for the benefit of the minors and which in turn could have attracted section 64(1A) of the Act.

12. The issue has already been considered by various authorities up to the High Court in the previous round of proceedings. It was in this context, the Hon'ble High court of Karnataka in order dated 17.03.2010 had directed the assessing officer to compare the interest paid by the appellant with the interest income reflected in the accounts of Dr. Nayeema Khan Trust and complete the assessment accordingly. The present assessment order has been framed in accordance with the directions of the Hon'ble Court as discussed above. The issue raised in the present ground that interest had not been received by the Trust seeks to nullify the directions given by the Hon'ble High Court. It is held that there is no substance in the ground no.4 of appeal raised by the appellant and the same is not allowed.”

9. Aggrieved, the assessee has preferred appeals before the Tribunal and during the course of hearing, he could not establish that the recipient i.e., trust has ever offered the receipt of interest to tax. This issue was thoroughly examined by the Tribunal and the Hon'ble High Court and the Hon'ble High Court has remanded the matter back to the AO with a direction that if the assessee has made provision for payment of interest in the return filed by her and if the interest paid by the assessee is taken into account of the trust in the next assessment year or in subsequent years, it is for the revenue to compare both the accounts and pass appropriate order in order to find out whether the interest shown in the return of income is reflected in the accounts of the trust.

10. Despite clear directions of the Hon'ble High Court, the assessee could not place the relevant evidence in this regard. The scope of enquiry was limited as it has to be done as per the directions of the Hon'ble High

Court. Since the assessee could not place any relevant evidence with regard to taking into account the interest received by the trust from the assessee while computing its income, the AO has rightly disallowed the claim of the assessee and the CIT(Appeals) confirmed the same. Since I do not find any infirmity in the order of CIT(Appeals), I confirm the additions.

11. The issue with regard to reopening of assessment was already examined in the first round of appeal and in the second round of appeal only on account of directions of the Hon'ble High Court. As no such direction was issued in this regard, the lower authorities have not adjudicated the issue of reassessment afresh. I therefore find no merit in this ground and reject the same.

12. In the result, the appeals of assessee are dismissed.

Pronounced in the open court on this 26th day of May, 2017.

Sd/-

(SUNIL KUMAR YADAV)
Judicial Member

Bangalore,
Dated, the 26th May, 2017.

/ Desai Smurthy /

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Assistant Registrar,
ITAT, Bangalore.