

PETITIONER:  
MRS. ARUNDHATI BALKRISHNA

Vs.

RESPONDENT:  
COMMISSIONER OF INCOME TAX

DATE OF JUDGMENT 15/03/1989

BENCH:  
PATHAK, R.S. (CJ)  
BENCH:  
PATHAK, R.S. (CJ)  
MISRA RANGNATH

CITATION:  
1989 AIR 1092                      1989 SCR (1) 865  
1989 SCC Supl. (1) 278 JT 1989 (1) 429  
1989 SCALE (1) 529

ACT:

Income Tax Act, 1961--s. 161(1) read with s. 166--Computation of assessee's income derived from a Trust--Real income of Trust to be included in the total income of assessee after taking into consideration different items of permissible deductions in relation to that income.

HEADNOTE:

The appellant was an assessee who derived income from a Trust. For assessment years 1964-65 and 1966-67 the Income Tax Officer disallowed deduction of two amounts claimed as interest paid by the Trust for amounts withdrawn from an Estate Account for investment on the ground that a portion of the amounts withdrawn from the Estate Account had been utilized for personal expenditure by the assessee. The appellants appeals to the Assistant Commissioner having been rejected, she preferred second appeals to the Appellate Tribunal raising an additional question in respect of the assessment year 1964-65 that she was liable to tax on the net income only received by her from the Trust and not on income determined in accordance with the provisions of the Income Tax Act in the case of the Trust. The Tribunal dismissed the appeals but at the instance of the appellant referred the two questions of law arising therein to the High Court which answered both of them against the assessee. Dismissing the appeals,

HELD: It is not the income shown in the books of account of the Trust actually paid to the assessee after deduction of the outgoings from the income received in the hands of the Trust, but the real income of the Trust has to be included in the total income of the assessee after taking into consideration the different items of permissible deductions in relation to that income. [869E-F]

It is apparent from s. 161(1) of the Income Tax Act, 1961 that a representative assessee, that is to say a trustee, as regards the income in respect of which he is a representative assessee, is subject to the same duties, responsibilities and liabilities as if the income were income received by or accruing to or in favour of him beneficially, and he is

liable to assessment in his own name in respect of that income; but any such assessment is deemed to be made upon him in his representative capacity only, and the tax is levied upon and recovered from him in like manner and to the same extent as it would be leviable upon and recoverable from the person represented by him. And s. 166 of the Act clarifies that the provisions relating to the liability of a representative assessee will not prevent either the direct assessment of the person on whose behalf or for whose benefit income is receivable, or the recovery from such person of the tax payable in respect of such income. The Income Tax Officer has the option to proceed either against the trustee or against the beneficiary, but in either case the income to be assessed must be in the same figure. What the trustee receives as the income pertaining to the beneficiary is received by him under an obligation to pass on that income to the beneficiary. However, in most cases administration charges and expenses have to be met out of the Trust's income and it is only the net income which reaches the beneficiary. If the income had, to pass directly to the beneficiary and not under trust through a trustee, the beneficiary would have equally to meet those outgoings, leaving a net income in his hands which for the purposes of the Income Tax Act would have been computed after reducing the gross income by the deductions admissible under the Act. [868H; 869A-E]

(ii) The High Court was right in deciding the question relating to the disallowance of part of the interest claimed as a deduction against the assessee. [868F]

Padmavati Jaikrishna v. Addl. Commissioner of Income-Tax, Gujarat, [1987] 166 I.T.R. 176, referred to.

#### JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 80 & 81 of 1975.

From the Judgment and Order dated 26/27.8.1974 of the Gujarat High Court in I.T. Reference Nos. 7 and 29 of 1973. S.C. Patel for the Appellant.

Dr. V. Gauri Shanker and Ms. A. Subhashini for the Respondent.

The Judgment of the Court was delivered by PATHAK, CJ. The appellant is an assessee who derives income 867

from various sources, including income from the Shrimati Arundhati Balkrishna Trust, Ahmedabad. In assessment proceedings for the assessment year 1964-65 the Income Tax Officer found that a sum of Rs. 10,880 had been debited to the interest account maintained in the books of the Ahmedabad Trust as interest paid to the Harivallabhadas Kalidas Estate Account. Upon further scrutiny, he discovered that substantial debits totalling Rs.2,19,804 included withdrawals from the Estate Account by the Ahmedabad Trust on account of the personal expenses of the assessee. After taking into consideration earlier withdrawals from the Estate Account by the Ahmedabad Trust for the purpose of investment and making adjustments for deposits during the year, the Income Tax Officer concluded that the net withdrawals from the Estate Account for personal expenditure were Rs.3,10,806- He held that the proportionate interest of Rs.6,199 out of the total interest of Rs. 10,880 paid by the Ahmedabad Trust to the Estate Account was referable to such withdrawals, and, therefore constituted an inadmissible deduction. Similarly, for the assessment year 1966-67 the

Income Tax Officer found that a sum of Rs.25,496 had been shown in the books of account of the Ahmedabad Trust for the relevant previous year as interest paid to the Estate Account. He held that of this sum, an amount of Rs.12,833 was referable to withdrawals for purposes other than investment, and accordingly he disallowed the claim of interest to that extent.

The assessee appealed to the Appellate Assistant Commissioner of Income-Tax, and failing there he proceeded in second appeal to the Income Tax Appellate Tribunal, claiming that the entire amount of interest should have been allowed as a deduction for each year. An additional question raised in respect of the assessment year 1964-65 related to the point whether the assessee was liable to tax on the net income only received by her from the Trust or the income determined in accordance with the provisions of the Income Tax Act in the case of the Trust. The Appellate Tribunal dismissed the appeals of the assessee.

At the instance of the assessee the Appellate Tribunal referred the following questions of law to the High Court of Gujarat in respect of the assessment year 1964-65:

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal was right in not holding that out of the interest payment of Rs.10,880, Rs.6,199 was not an admissible deduction against the income from other sources?"

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(2) Whether, on the facts and in the circumstances of the case, the income includible in the total income of the assessee is income determinable as per provisions of the Income Tax, 1961 in the case of the Trust or the income receivable by the assessee from the said trust?"

The question referred to the High Court for assessment year 1966-67 was:

"Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that out of the interest payment of Rs.25,496, Rs. 12,833 was not an admissible deduction against the income from other sources?"

The High Court held that the question relating to the disallowance of part of the interest for the two assessment years was rightly decided against the assessee and in favour of the Revenue. On the second question in the reference for the assessment year 1964-65, the High Court held that the income includible in the total income of the assessee was income determinable in accordance with the provisions of the Income Tax Act in the case of the Trust and not the income actually received or receivable by the assessee from the Trust or according to the entries in the books of accounts of the Trust. In the result that question was also answered against the assessee and in favour of the Revenue.

In regard to the question arising in each of the assessment years 1964-65 and 1966-67 relating to the disallowance of part of the interest claimed as a deduction by the assessee, the High Court relied on the view taken by it earlier in *Shrimati Padmavati Jaykrishna v. Commissioner of Income Tax.*, [1975] 101 I.T.R. 153. The judgment of the High Court was considered in appeal by this Court in *Padmavati Jaikrishna v. Addl. Commissioner of Income-Tax, Gujarat*, [1987] 166 I.T.R. 176 and this Court affirmed the view taken by the High Court. For the reasons which found favour with this Court in that case, we must answer the question in the two appeals before us against the assessee and in favour of the Revenue.

Turning to the additional question referred to the High Court for the assessment year 1964-65, it seems to us clear that

what is assessable in the hands of the assessee must be the income of the Trust received by it on behalf of the assessee. It is apparent from s. 161(1) of the

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Income Tax Act, 1961 that a representative assessee, that is to say a trustee, as regards the income in respect of which he is representative assessee, is subject to the same duties, responsibilities and liabilities as if the income were income received by or accruing to or in favour of him beneficially, and he is liable to assessment in his own name in respect of that income; but any such assessment is deemed to be made upon him in his representative capacity only, and the tax is levied upon and recovered from him in like manner and to the same extent as it would be leviable upon and recoverable from the person represented by him. And s. 166 of the Act clarifies that the provisions relating to the liability of a representative assessee will not prevent either the direct assessment of the person on whose behalf or for whose benefit income is receivable, or the recovery from such person of the tax payable in respect of such income. The Income Tax Officer has the option to proceed either against the trustee or against the beneficiary, but in either case the income to be assessed must be in the same figure. What the trustee receives as the income pertaining to the beneficiary is received by him under an obligation to pass on that income to the beneficiary. However, in most cases administration charges and expenses have to be met out of the Trust's income and it is only the net income which reaches the beneficiary. If the income had to pass directly to the beneficiary and not under trust through a trustee the beneficiary would have equally to meet those outgoings, leaving a net income in his hands which for the purposes of the Income Tax Act would have been computed after reducing the gross income by the deductions admissible under the Act. It seems to us clear that it is not the income shown in the books of account of the Ahmedabad Trust actually paid to the assessee after deduction of the outgoings from the income received in the hands of the Ahmedabad Trust, but the real income of the Ahmedabad Trust has to be included in the total income of the assessee after taking into consideration the different items of permissible deductions in relation to that income. We are of opinion that the High Court is right in the view which it has taken.

In the result, the appeals fail and are dismissed with costs.

H.L.C.

Appeals dismissed.

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