

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15. 04.2009

Coram :

THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN

and

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

**Tax Case (Appeals) Nos.866 to 870, 929 to 932 of 2004
and 454 to 459 of 2005**

Commissioner of Income Tax,

Coimbatore.

Appellant in all

the appeals

v.

M/s. P.Sekar Trust,

Respondent in TC

3 Chatram Street, Pollachi.

(As) Nos.866 to 870

of 2004 & 454 to

459 of 2005

M/s. Peegee Trust,

16 Venkatapuram Street,

Pollachi.

Respondent in TC

(As) Nos.929 to

932 of 2004

Appeals filed under section 260-A of the Income Tax Act, 1961 against the common order passed by the Income Tax Appellate Tribunal 'A' Bench, Chennai, dated 24.02.2004 made in I.T.As. Nos.2023 to 2033 of 2003 for the assessment years 1989-90 to 1999-2000 and 2045 to 2048 of 2003 for the assessment years 1994-95 to 1997-98.

For appellant : Mr.T.Ravikumar,

Standing Counsel for

Income Tax Department

For respondents : Mr.C.Sarangan, Senior Counsel, for
Mr.R.Janakiraman

JUDGMENT

K.RAVIRAJA PANDIAN, J.

All these 15 appeals are filed at the instance of the revenue against the common order of the Income Tax Appellate Tribunal 'A' Bench, Chennai, dated 24.02.2004 made in I.T.As. Nos.2023 to 2033 of 2003 and 2045 to 2048 of 2003. Tax Case Appeals Nos.866 to 870 of 2004 and 454 to 459 of 2005 arise out of I.T.As. Nos.2023 to 2033 of 2003 relate to the assessment years 1989-90 to 1999-2000 in respect M/s. Sekar Trust and Tax Case Appeals Nos.929 to 932 of 2004 arise out of ITA Nos.2045 to 2048 of 2003 relate to the assessment years 1994-95 to 1997-98 pertaining to M/s.Peegee Trust.

2. The appeals in T.C. (As.) Nos.866 to 870 of 2004 and 454 to 459 of 2005 were admitted by this Court on 10.02.2005 on the following substantial question of law :

"Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that in the case of the assessee Trust, the beneficiaries and their shares are determinate and, therefore, the trustees could not be assessed for tax and the provisions of section 164 of the Income Tax Act are not attracted?"

The appeals in T.C. (As) Nos.929 to 932 of 2004 were admitted by this Court on 20.07.2005 on two substantial questions of law, the first one being the same as that of the one in T.C. (As.) Nos.866 to 870 of 2004 and 454 to 459 of 2005 which is extracted above and the second question of law is as follows :

"Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was justified in following the decision in Advance Ruling reported in 224 ITR 473 (AAR) does not have binding effect on the assessee's case?"

3. As the order of the Tribunal is common order and the issue involved in these appeals is one and the same, all the appeals are disposed of by this common judgment. For the purpose of narration of facts, which are common in all the appeal, Tax Case (Appeal) No.866 of 2004 is taken as a typical case.

4. The assessee was a Trust created by a Trust Deed dated 01.04.1986. The author of the Trust was one Smt. A. Lalitha. The Trustees were Sri P.Sekar, Smt. S.Gowri and Sri P.Badri. The Trust was created for the benefit of seven beneficiaries. The beneficiaries and their beneficial interest in the income of the Trust other than the income which forms part of the corpus or capital fund of the Trust were as under :

From 01.04.1986 to 31.03.1989 the following were the beneficiaries with the following sharing ratios :

1. Smt. P.Girija in the status of individual -15%
2. Sri P.Sekar in the status of individual - 20%
3. Smt.S.Gowri in the status of individual - 15%
4. Sri P.Badri in the status of individual - 25%
5. Sri P.Prabhakar in the status of individual - 25%

From 01.04.1989 to the determination period of 25 years from 01.04.1986 the following were the beneficiaries with equal sharing ratios:

1. Sri D.Parthasarathy in the status of individual
2. Smt. P.Girija in the status of individual
3. Sri P.Sekar as karta of Hindu Undivided Family
4. Sri P.Sekar in the status of individual
5. Smt.S.Gowri in the status of individual
6. Sri P.Badri in the status of individual till the date of his marriage and separately in the status of the individual and Hindu Undivided Family consisting of himself and his wife from the date of marriage.
7. Sri P.Prabhakar in the status of individual till the date of his marriage and separately in the status of individual and Hindu Undivided Family consisting of himself and his wife from the date of marriage.

5. The material terms of the trust deed culled out from the order of the Tribunal, are as follows :

(a) As and when Sri P.Badri and Sri P.Prabhakar are married, their spouses would automatically become beneficiaries along with the other continuing beneficiaries in the said accounting year and subsequent accounting years and equally divide the beneficial interest in income of the aforesaid beneficiaries.

(b) As and when any child/children is/are born to Sri P.Sekar, Sri P.Badri and Sri P.Prabhakar such child/children should automatically become beneficiaries along with the other continuing beneficiaries in the said accounting year and subsequent accounting years and equally divide the beneficial interest in income along with the

(c) In the case of death of any beneficiaries, the male legal heir or heirs of the deceased beneficiary shall automatically become beneficiary in his or her place. In the absence of a male legal heir, the other legal heirs shall be treated as beneficiaries in respect of the said accounting year and subsequent accounting years along with the other surviving beneficiaries and the share income ratio of the deceased beneficiary alone should be divided in equal shares as per the number of substituted beneficiaries succeeding to the shares of the deceased beneficiary without changing the sharing ratio of other continuing and surviving beneficiaries at the end of each accounting year and pay one part to each of the said beneficiaries or credit to his or her personal account in the books of the trust.

(d) In case of the deceased being the kartha of the Hindu Undivided Family, it should be represented by any other senior member of the family irrespective of gender, as manager and the beneficial interest and/or the share income of the trust of the said Hindu Undivided Family shall always be deemed to be the beneficial interest and/or income of the Hindu Undivided Family beneficiaries.

(e) The property vested in the Board of Trustees should be held for the benefit of the beneficiaries and the beneficiaries shall have beneficial interest and right in the corpus or capital fund of the Trust in the ratio of their beneficial interest inter se till the determination of Trust, which is for 25 years or sooner if the trustees or beneficiaries unanimously agree, and shall be paid such capital fund upon extinguishment of the Trust. The corpus of the Trust or capital fund shall not be divided and distributed among the beneficiaries during the subsistence of the Trust.

(f) 10% of the income of the trust should be distributed to the beneficiaries and the balance 90% should be accumulated to the corpus fund.

(g) 'Corpus' or 'capital fund' of the Trust would include the sum of Rs.1,000/- declared by the author of the trust. It should also include any other gifts, donations and endowments given by any other person or persons and include 9/10th share of net agricultural income, 9/10th share of the net capital gains after deducting expenditures, and 9/10th share of all other net income and their corresponding investments. Losses suffered in respect of investment activity or agricultural business of the trust or on sale of its investments (i.e., assets) of the Trust should be deducted from capital fund.

6. The trust deed clarified that in order to avoid doubts and misunderstandings, misinterpretations, that the beneficiaries were identifiable and that the shares of the beneficiaries in a given particular accounting year are specific and determinable in the ratio, as provided, it could not be said that the beneficiaries are not identifiable on the date of the Trust deed and the share of the beneficiaries were unknown and not determinate in respect of the said accounting year as the beneficiaries and the shares are expressly stated.

7. The beneficiaries filed returns admitting 10% income distributed to them in their individual returns. In respect of the accumulated income in the corpus fund, the assessing officer was on the view that 90% of the income received by the trustees have not been subjected to tax either under section 161 or 164 of the Income Tax Act, rejecting the objection of the assessee to the notice under section 148 of the Income Tax Act (hereinafter referred to as 'the Act') that whatever the beneficial interest, the beneficiaries had in the income of the Trust have been directly assessed under section 166 of the Act in the hands of the beneficiaries and so no liability arises in the hands of the Trustees under section 161, or under section 164 of the Act framed the assessment under section 164 of the Act treating the trustees as the representative assessee in respect of 90% of the accumulated income. The assessee carried on the matter before the Commissioner of Income Tax (appeals), who dismissed the appeals on the very same ground that prevailed with the assessing officer. Ultimately, the matter was taken up before the Tribunal. The Tribunal, after construing the Trust Deed held that the beneficiaries were known and that the shares were determinate and therefore, the question of assessing the Trust under section 164 of the Act did not arise. The correctness of the said order is now canvassed before us in these appeals.

8. Mr.T.Ravikumar, learned standing counsel for the revenue contended that the reliance on the decision of the advance ruling authority by the Tribunal is misplaced

reliance for the reason that the said ruling pronounced by the authority shall be binding only on the applicant who had sought for it, in respect of the transaction in relation to which the ruling had been sought and on the Commissioner and the Income Tax authorities subordinate to him, in respect of the applicant and the said transaction only. He further contended that the various decisions relied on by the Tribunal to decide that section 164 of the Act was not attracted, are not identical to the facts of the present case. If the facts are not identical and are in variance, the decision relied on cannot be made applicable. In order to bring home his contention, he relied on the decision of the Supreme Court in the case of Commissioner of Central Excise, Bangalore v. Sri Kumar Agencies, 2009 AIR SCW 942. On facts, he submitted that though the beneficiaries are known and the share of the beneficiaries are determinate apparently, but are fluctuating depending upon the contingencies, such as, getting married, begetting children. He further submitted that number of beneficiaries would be less in the beginning of the accounting year, but more at the end of the accounting year, if such contingencies happen. Hence, the beneficiaries cannot be regarded as known. He relied on the judgments in the cases of CIT v. Atreya Trust [1992] 193 ITR 716, Commissioner of Income-tax v. Trustees of Keshav Mohta Family Trust, [1998] 232 ITR 875, Anasuya Muthanna v. CIT [1998] 232 ITR 561, A.V. Reddy Trust v. CWT, [1999] 240 ITR 409, CIT v. Saroja Raman, (1999) 238 ITR 34, Vairavan Chettiar (VE. A.) v. CIT, [1973] 92 ITR 474, CIT v. Nirmala Bala Sarkar, 74 ITR 268, Allahabad Bank v. CIT, (1953) 24 ITR 519 and CIT v. Muthukrishnan, (2003) 260 ITR 526.

9. Mr.C.Sarangan, learned senior counsel appearing for the respondents/assesseees contended that the first question of law in these appeals is identical to the one in the case of CIT v. Muthukrishnan, (2003) 260 ITR 526, which has been decided in favour of the assesseees by the Division Bench of this Court. Hence, any contention raised on the part of the revenue to differentiate the facts, has to be rejected, particularly in view of the statement made by the tribunal in its order to the effect that the decision relied upon by the assessee (260 ITR 526) is squarely applicable to the facts of the present case. By his argument, he differentiated the judgments relied on by the learned counsel for the revenue and sought for sustaining the order of the Tribunal.

10. Heard the learned counsel on either side and perused the materials available on record.

11. Section 5 of the Act deals with the scope of the total income of any previous year of residents and non residents. Section 4 of the Act deals with the charge of income tax in respect of total income of the previous year of every person "subject to the provisions of this Act". Chapter XV of the Act deals with the liability in special cases.

Representative assesseees are dealt in section 160 of the Act. Section 160(1)(iv) of the Act provides that in respect of income which a trustee appointed under a trust declared by a duly executed instrument in writing whether testamentary or otherwise (including any wakf deed, which is valid under the Musalman Wakf Validity Act, 1913 (6 of 1913) receives or is entitled to receive on behalf of or for the benefit of any person such trustee or trustees will be representative assessee. Section 161 provides for the extent of the liability of the representative assessee to the effect that every representative assessee as regards the income in respect of which he is a representative assessee, shall be subject to the same duties, responsibilities and liabilities as if the income received by or accruing to or in favour of him beneficially, and shall be liable to assessment in his own name in respect of that income; but any such assessment shall be deemed to be made upon him in his representative capacity only, and the tax shall, subject to the other provisions contained in Chapter XV, be 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.

12. Section 41 of 1922 Act, which is similar to section 160 of the 1961 Act was considered by Bombay High Court in CIT v. Balwantraj Jethalal Vaidya, (1958) 34 ITR 187 Chagla C.J., speaking for the Bench observed in that case as follows :

"Whether the assessee carries on business or is the owner of a property or owns shares and receives dividend, if he is a trustee and if he is being assessed as a trustee then section 41 must come into play and his liability to pay tax must be determined according to the provisions of section 41. The sole question, which should be easy to answer, would be : Is the assessment being made upon a trustee or not ? If the assessment is made upon a trustee, whatever the nature of the property, whatever the nature of the income, whatever the mode of computation, his liability to pay tax must be determined in accordance with section 41."

13. The apex Court in the case of Nagappa (C.R.) v. CIT, (1969) 73 ITR 626 considered section 64(V), section 161 (1) and (2) as also section 166 of the Act. The Court quoted with approval, the observations of Chagla C.J., in Balwantraj Jethalal Vaidya, referred to supra, as follows :

"The basic idea underlying section 41, and which is in conformity with principle, is that the liability of the trustees should be co-extensive with that of the beneficiaries and in no sense a wider or a larger liability. Therefore, it is clear that every case of an assessment against a trustee must fall under section 41, and it is equally clear that, even though a trustee is being assessed, the assessment must proceed in the manner laid down in Chapter III."

The Court further observed that the legislature, while enacting the new Act, to avoid doubts has given effect to the observations made by Chagla C. J. in Balwantrai Jethalal Vaidya's case and has enacted that where the income is assessable under Chapter XV in the hands of a person in the capacity of a representative assessee it is not liable to be assessed under any other provision of the Act, that is, the tax is not liable to be levied under any other provision of the Act.

14. In yet another case in CIT v. Nandlal Agarwal, (1966) 59 ITR 758, a case arising out of the old Act, the apex Court while considering the manner in which a guardian of the person and properties of minors and who receives income on behalf of the minor should be assessed, held that assessment on guardian should be made only under section 40 of the old Act.

15. The apex Court in the case of CIT v. Kamalini Khatau, [1994] 209 ITR 101, a decision rendered by a three Judge Bench, after reviewing the earlier decisions of the Court as also the decisions of the Bombay High Court in the case of CIT v. Balwantrai Jethalal Vaidya [1958] 34 ITR 187 summarized the law with regard to the representative assessee as follows :

"As the judgments of this court referred to above lay down, a representative assessee may be assessed in respect of income received by him as such and tax recovered from him thereon only under and in the manner provided by the provisions in the statute dealing with representative assessees. A trustee may, therefore, be assessed in respect of the income of the trust and tax recovered from him thereon only under and in the manner provided by sections 160 to 166 of the Act."

16. Thus, the scheme of the Act, the statutory provisions, as well as the line of judgments referred to above clearly state that though section 5 referred to total income of the person whose income is being assessed and the charge on income tax under section 4 of the Act is on the total income, what could be taxed in the hands of the representative assessee is only the income which the beneficiaries could be said to have received or to be deemed to have received in India or in whose favour the income has accrued or arises or is deemed to accrue or arise to him in India; or accrues or arises to him outside India during the relevant year. Though the Trust may receive the income, the extent to which the same can be taxed is to the extent to which tax would be leviable and recoverable from the beneficiaries. Section 161 of the Act specifically provides that the tax to be levied on the representative assessee and to be recovered from him is to be "in the like manner and to the same extent as it would be leviable upon and recoverable from the person represented by him." (emphasis supplied)

17. Section 164 of the Act gets attracts only when the shares of the beneficiaries are unknown, which is manifest from the marginal heading of that section itself, viz., Charge of tax where the share of the beneficiaries unknown. That section comes into play only where any income or any part thereof is not specifically receivable on behalf of or for the benefit of any one person or where the individual shares of the persons on whose behalf or for whose benefit such income or such part thereof is receivable are indeterminate or unknown, and in such case, the relevant income, or part of the relevant income shall be charged at the maximum marginal rate.

18. From this, it is clear that in order to attract section 164(1) of the Act, the beneficiaries on whose benefit, such income or such part thereof is receivable are indeterminate and unknown.

19. Coming to the facts of the case, as stated earlier, the beneficiaries are five in number for the period from 01.04.1986 to 31.03.1989 and the respective share of each beneficiary is in different percentage as stated in the deed itself. From 01.04.1989 onwards the beneficiaries are seven in number and their shares in the income is equal. The shares in respect of 6th and 7th beneficiaries are equal in the status of individual till the date of their marriage and separately in the status of the individual and Hindu Undivided Family consisting of themselves and their respective wife from the date of marriage. As per clause 3(b)(i) as and when Badri and Prabhakar are married, their spouses would automatically become beneficiaries along with the other continuing beneficiaries in the said accounting year and subsequent accounting years and equally divide the beneficial interest in income of the aforesaid beneficiaries. Likewise, as and when any child or children is/are born to the said Badri and Prabhakar the child or children so born shall automatically become a beneficiary/beneficiaries along with the other continuing beneficiaries in the said accounting year and subsequent accounting years and equally divide the beneficial interest in income of the aforesaid beneficiaries. From the above, it is clear that the shares of the beneficiaries is equal and as and when the two stated beneficiaries get married, they become HUF and on the birth of child/children, it or they also become the beneficiaries. With the increase of numbers, the share of each person gets reduced. So, the share income is determinate.

20. An identical case has been decided by a Division Bench of this High Court, in which one of us is a party (Raviraja Pandian, J.), in the case of CIT v. Muthukrishnan, (2003) 260 ITR 526, wherein one of the questions of law referred for the opinion of the Court, was as to whether the Appellate Tribunal_x0012_s view that the share of the beneficiaries are clearly known and determinate is reasonable, supported by

valid material and sustainable in law, has been answered in the affirmative on the following facts :

"One L. Narayana Iyer created a trust on May 27, 1982, by contributing a sum of Rs. 1,500 for the benefit of L.Muthukrishnan, Smt. M. Thrayambika Devi, minor M.Sathishkumar and Shri K. Kuppusamy, the first three to have 1/15th share and the last 12/15ths share. Muthukrishnan, Balasubramanian and K. Kuppusamy were appointed as trustees. The instrument directed the trustees to augment the corpus with all gifts, donations, etc., received and any prize money received on lottery tickets as well as 2/3rds share of the net interest earned from investments made by the trustee. The trust deed also provided that the corpus of the trust shall not be divided or distributed among the beneficiaries until the duration of the trust which was to be for a period of fifteen years, or sooner, if all the beneficiaries unanimously agreed to terminate the trust even before the expiry of fifteen years. Out of the interest income of the trust, the beneficiaries were to receive only one-third and the balance was to be accumulated. The trustees were also empowered to carry on business and invest the funds of the trust and loss, if any, was to be deducted from the corpus. For the assessment year 1983-84, the trustees filed a return of income and claimed a refund of tax deducted at source amounting to Rs. 3,75,000 out of a sum of Rs. 15,00,000 which had been received by them as a lottery prize under the U. P. State Lottery Scheme in January, 1983. The Income-tax Officer rejected the claim for refund and held that the entire amount received should be treated as income in the hands of the trustees who were to be taxed in the status of association of persons. On appeal, the Commissioner affirmed that view of the Income-tax Officer. On further appeal, the Tribunal set aside the assessment that had been made and directed the assessing officer to frame fresh assessment in accordance with law on the ground that the share of the beneficiaries are clearly known and determinate."

In the circumstances, the Court has answered the question in favour of the assessee by observing that,

"In the assessment year with which we are concerned, having regard to the terms of the trust, the beneficiaries had no right to receive any part of the corpus of the trust to which the income received by the trustees by way of prize money on the lottery ticket was required to be credited. The right to the beneficiary was only to share in the division of that corpus at the end of the fifteen year period or sooner, if all the beneficiaries unanimously agreed to terminate the trust. The beneficiaries could not have been assessed to tax in respect of any part of this prize money in the year in which that money was received by the trust. The prize money received by the trustees on the lottery tickets not being an amount in which the beneficiaries, whose identities are known and whose shares are determinate, could claim a share in the year of account and which amount could not have been assessed in their hands as their income in whole or in part, therefore, was not assessable in the hands of the trustees who only represented the beneficiaries for the purposes of assessment and

who could only be assessed in the same manner and to the same extent as the beneficiaries could have been assessed. The trustees assumed no higher liability than the beneficiaries themselves were required to bear under the law. If the beneficiary was not to be taxed, that tax could not be levied on the trustee who only represented the beneficiary and no more, in cases where the identity of the beneficiary was known and the share of the beneficiary was determinate. (emphasis supplied)

21. The next objection on behalf of the revenue was that there are certain contingencies like getting married and begetting children, which differentiates Muthukrishnan's case referred to supra.

22. From the facts of the present case and from the terms of the trust deed, we find that the intention of the author of the trust cannot be said to be uncertain. The shares of the beneficiaries are stated to be equal and in case the unmarried beneficiaries get married and begetting children, they would also become the beneficiaries and with the increase in the number, shares of each person can be reduced. So long as the trust deed gives the details of the beneficiaries and the description of the person who is to be benefitted, the beneficiaries cannot be said to be uncertain, merely because wife/children cannot be known until the marriage and begetting of children by the stated beneficiaries. The deed also provided that in the event of death of a beneficiary what should be done. The above view of us is fortified by the decision of this Court in the case reported in 147 ITR 500 referred to supra.

23. The judgment of a Division Bench of this Court in the case of CIT v. Bhandari (P.), (1984) 147 ITR 500, in which the facts are comparable to the facts of the present case, can be taken in aid. In that case, the assessee created a trust for the prospective wife of his minor son and on the same day, the assessee's wife created another trust for the benefit of the prospective wife of another minor son of the assessee. The Income Tax Officer, with the view that income accruing to the trust created by the assessee should be included in his assessment, reopened the assessments and subjected to tax the proportionate share income of the trust as his income on the ground that both the trusts were invalid. The Appellate Assistant Commissioner, held that the reopening of the assessments on a mere change of opinion was invalid, held that the two trusts in favour of prospective daughters-in-law were not invalid as they did not violate the rule against perpetuity. The Tribunal, however, held that though the reopening of the assessment was proper and justified, the trusts were valid and did not offend the rule against perpetuity and consequently the income arising to the trusts should not be included in the income of the assessee. A reference was made before the Court by framing

the two questions of law. The second question of law is relevant to the facts of the present case, which is as follows :

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the beneficiary of each of the Trusts is not indeterminate and uncertain?"

The Division Bench has held that,

"Coming to the contention of the Revenue that the purpose of the trust and also the beneficiary are vague and indeterminate, we find that the intention of the testator cannot be said to be uncertain. The object of creating the trust is to benefit the prospective wife of Dileep Kumar and if that clause fails, the benefit will have to go to the prospective wife of Pradip Kumar and if that object also fails, it will go to public charitable purposes. The properties which were originally those of the assessee are vested with the trustees for administering the same for the benefit of the beneficiaries. It is no doubt true that it is not possible to say at the stage of the execution of the trust deed as to who is the actual person to be benefited by the trust. But so long as the trust deed gives the description of the person who is to be benefited, the beneficiary cannot be said to be uncertain merely because the actual beneficiary cannot be known until the marriage of Dileep Kumar or Pradeep Kumar takes place. It is also said that since there is a possibility of both of them not marrying, the beneficiary should be taken to be uncertain. It is well established that a trust may be created in favour of an unborn person provided it satisfies the conditions laid down in s. 13 of the Transfer of Property Act, even though the coming, into existence of such a beneficiary is uncertain." (emphasis supplied)

The very same reasoning of the Division Bench in respect of the prospective wife would well be applied in respect of the child or children also.

24. In CIT v. M.K.Kannan Marriage Benefit Trust, (1999) 240 ITR 785 the Division Bench of this Court, while construing the trust deed, which was for the benefit of son-in-law to be and daughter-in-law to be of the settler has held that the beneficiaries were known persons and it could not be said that they were non-existent on the date of the execution of the relevant trust deeds. When the beneficiaries are known, the provisions of section 164 of the Act were not attracted.

25. A Division Bench of this Court in which one of us was a party (Raviraja Pandian, J.), in an unreported judgment in the case of CIT v. Manilal Bapalal Family Benefit Trust in Tax case Nos.320 to 322 of 1997 decided on 18.09.2002 held to the following effect :

"The beneficiaries of the Trust included the prospective spouses of some of the beneficiaries. The Trust deed also provided that in the event of a beneficiary dying before marriage or not marrying before the Trust came to an end, that part of the benefit which was to be given to the spouse would be given to the heir of the beneficiary or to the beneficiary himself or herself." ..."The share to be allotted to

the beneficiaries being determinate under the trust deed and the beneficiaries also being known, the Tribunal has rightly held the Commissioner was in error in revising the order of the assessment officer on the ground that the shares were indeterminate and that the trust deed is void for vagueness."

26. Hence, having regard to the terms of the trust deed, which clearly prescribes the beneficiaries and the shares they are entitled to and other terms relevant to the share of interest in the corpus on determination or termination of the trust, we are of the considered view that section 164 of the Act is not attracted.

27. Coming to the decision relied on by the learned counsel for the revenue, the decision of the Supreme Court in the case of Commissioner of Central Excise, Bangalore v. Sri Kumar Agencies, 2009 AIR SCW 942, wherein it was held that when the facts are different, the Court should not blindly apply the precedent. This proposition is a well recognised proposition of law. But the said case is not applicable to the facts of the present case, as we have come to the conclusion that the beneficiaries are known and the share of income is determinate in the given set of facts.

28. The cases of CIT v. Athreya Trust, [1992] 193 ITR 716, CIT v. Trustees of Keshav Mohta Family Trust, [1998] 232 ITR 875, Anasuya Muthanna v. CIT [1998] 232 ITR 561 are all cases in which the trust has been created for the benefit of the would be minor children and the would be wife, on minor attaining majority. In Anusuya Muthanna's case, the Trust was a discretionary Trust giving absolute discretion to the trustees in respect of disbursement of income to the beneficiaries and thus those decisions are in variance on facts to the present case.

29. Counsel for the revenue relied on the decision of the apex Court in the case of A.V. Reddy Trust v. CWT, [1999] 240 ITR 409 to bring home his contention that the assessment on the income of the beneficiaries has to be done under section 164 of the Act. We are afraid, as to how that decision is in favour of the revenue. In that case, the Supreme Court, after construing the terms of the Trust, has come to the conclusion that it was apparent that the right of the beneficiaries to get the corpus of the trust fund come into existence on a future date when the condition regarding the survival is fulfilled, with regard to clause 18 of the trust deed and having found that the shares of the beneficiaries on whose benefit the assets were held were not indeterminate and unknown, approved the decision of the High Court to that extent. Moreover, in the body of the order, the Supreme Court reproduced the ratio laid down in the case of CWT v. Trustees of H.E.H. Nizam's Family (Remainder Wealth) Trust [1977] 108 ITR 555 to the effect that once it was established that a trustee of a trust could be assessed only in accordance with the provisions of section 21 and under these provisions, it is only the beneficial interests which are taxed in the hands of the trustee, it must follow as a necessary corollary that no part of the value of the corpus in excess of the aggregate value of the beneficial interest can be brought to tax in the assessment of the trustee. This decision tilts the case in favour of the assessee.

30. In CIT v. Saroja Raman, (1999) 238 ITR 34, the Division Bench of this Court has held :

"There can be no manner of doubt in this case, having regard to the terms of the trust deed, that the trustees have no discretion whatsoever with regard to the choice of the beneficiary. All assets held by them are meant to be held solely for the benefit of the one beneficiary viz., T. G. C. Raman, and no part of the assets can be utilised by the trustees for others or for the benefit of any other third person. The income received by the trustees is clearly income received for the benefit of the beneficiary. The discretion available to the trustees with regard to the time at which, and the extent to which the money may be disbursed is not of any materiality for the purpose of deciding as to whether the section is or is not attracted in the circumstances of this case."

This case, we are of the view, rather supports the view of the Tribunal, which is now questioned by the revenue.

31. The decision in the case of Vairavan Chettiar (VE. A.) v. CIT, [1973] 92 ITR 474 was also relied on. It was a case in which it was found as a fact that the shares of various beneficiaries of the Trust are indeterminate and unknown and as a matter of fact, the beneficiaries themselves are fluctuating body of persons. Having regard to the peculiar facts of the case that a certain amount of money and a bungalow were set apart for meeting the marriage and "rPh;Kiw" expenses, which means gift to female members of the family, the asset and the income were credited to an account called "Ch;bghJr;bryt[." which means general expenses of the village, it was held that beneficiaries were unknown and the share income was indeterminate. The reliance placed on the decision in the case of CIT v. Nirmala Bala Sarkar, 74 ITR 268, is also a misplaced one since the contingencies stated in the trust deed did not arise in any of the assessment years in that case and hence there was uncertainty with regard to the beneficiaries. In Allahabad Bank v. CIT, (1953) 24 ITR 519, wherein it was held that there was uncertainty as regards the beneficiaries and there was absence of any obligation to grant pension with the result that no legal and effective trust could be said to have been created. Hence, this decision also is of no use to the revenue and these decisions are having no bearing on the issue involved in the present case.

32. Having regard to the terms contained in the trust deed that the beneficiaries are known and the shares are determinate, and having regard to the provisions of the Act, extracted above and having regard to the decisions in the cases of CIT v. Muthukrishnan, (2003) 260 ITR 526. CIT v. Bhandari (P.), (1984) 147 ITR 500, CIT v. Manilal Bapalal Family Benefit Trust in Tax case Nos.320 to 322 of 1997 decided on 18.09.2002 and CIT v. M.K.Kannan Marriage Benefit Trust, (1999) 240 ITR 785, the first question of law has necessarily to be answered in favour of the assessee and against the revenue. The same is answered as such.

33. As regards the second question of law raised, as per the statutory provision, section 245S, the ruling of the advanced ruling authority is not binding on others. In

this case, though the Tribunal has observed in its order that, "we refer to the decision of the Advance Ruling Authority brought on record, which examined one of the points as to whether beneficiaries of the trust are ascertainable and shares determinable on the basis of the trust deed." But the Tribunal has not rested its decision on the advance ruling authority, rather the decision of this Court has been taken in aid and relied on. We are of the view that there is no bar for the Tribunal to take a view, have the reason or form opinion which is in consonance with the reasoning of the advance ruling authority de hors the binding nature. Hence, the second question of law does not arise for consideration from the order of Tribunal.

34. The first question of law having been answered in favour of the assessee and the second question of law having been decided as not arising out of the order of the Tribunal, the appeals stand dismissed. No costs.

To

- 1. The Income Tax Appellate Tribunal, 'A' Bench, Chennai,**
- 2. The Commissioner of Income Tax, Coimbatore**