IN THE HIGH COURT OF KERALA AT

ERNAKULAM PRESENT THE HONOURABLE MR.

JUSTICE GOPINATH P.

THURSDAY, THE 5TH DAY OF JANUARY 2023 / 15TH POUSHA, 1944

WP(C) NO. 9919 OF 2019

PETITIONERS:

1 SIBI JOY,
BETHEL, VNRA 110, VIKAS NAGAR, SREEKARIYAM,
TRIVANDRUM 695 017.

2 GRACE MARY VARGHESE (MINOR)
REPRESENTED BY MOTHER MRS. SIBI JOY,
BETHEL, VNRA 110, VIKAS NAGAR, REEKARIYAM,
TRIVANDRUM 695 017.

BY ADVS.
D.S.SREEKUMARAN
T.S.MAYA (THIYADIL)
SHRI.MAHESH A
SHRI.RAMAKRISHNAN P

RESPONDENTS:

1 INCOME-TAX OFFICER (TDS)
AAYAKAR BHAVAN, KAWDIAR, TRIVANDRUM 695 003.

2 COMMISSIONER OF INCOME -TAX (TDS) I.S PRESS ROAD, KOCHI 682 018.

3 MANAGER,
STATE BANK OF INDIA, SREEKARIYAM
BRANCH, TRIVANDRUM 695 017.

BY ADVS.
SRI.CHRISTOPHER ABRAHAM, S.C., INCOME TAX DEPARTMENT

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 05.01.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

'C.R.'

JUDGMENT

The writ petition has been filed challenging Ext. P5 order of the 1st respondent and Ext. P6 order of the 2nd respondent. According to the petitioners, the income (interest on fixed deposits) accruing to the 2nd petitioner - a minor - cannot be clubbed with the income of the 1st petitioner and that tax at source cannot be deducted in respect of the interest income accruing on the fixed deposit under the provisions of the Income Tax Act, 1961 (the Act).

2. The facts of the case, in brief, are that the 1st petitioner herein is a regular income tax assessee. The 2nd petitioner (minor) is the daughter of the 1st petitioner. The husband of 1st petitioner / father of the 2nd petitioner, Vinod Easaw Varghese, died in an accident. The Ist Addl. Subordinate Judge's Court, Thiruvananthapuram, vide Ext.P3 order in OP(Succession) No. 44/2008 (dated 12.11.2009), held that the 1st petitioner is entitled to 1/3rd share and that the 2nd petitioner is entitled to 2/3rd share from the estate of the deceased, which includes amounts received as compensation owing to the death of the aforesaid Vinod Easaw Varghese. In terms of Ext.P3 order, the 2nd petitioner's share was to be deposited as a fixed deposit in the State Bank of India, and the fixed deposit receipt was to be produced before the Court for safe custody until the 2nd petitioner attains majority**.** It is the case of the petitioners that the 3rd respondent Bank cannot deduct tax at source under S.194 A of the Act on the interest income accruing annually on the said fixed deposit of the 2nd petitioner. The petitioners preferred Ext.P4 application under section 197 (1) of the Act before the 1st respondent seeking a certificate for non-deduction of tax with respect to interest accruing annually on the said fixed deposit. The 1st respondent vide Ext.P5 order rejected the said application on the ground that the income of the minor has to be clubbed with the income of the 1st petitioner (mother of the 2nd petitioner),

for the purpose of taxation under the Act. A revision petition was preferred under Section 264 of the Act before the 2nd respondent, who vide Ext.P6 order (dt. 02/11/2012), did not find any ground to issue any directions in exercise of jurisdiction under Section 264 of the Act. The petitioners are therefore before this Court under Article 226 of the Constitution of India.

3. Sri. D.S. Sreekumaran, the learned counsel appearing for the petitioners would contend that the petitioners were entitled to the death benefits of the deceased from his employer and also as part of the motor vehicle accident claim. It is submitted that the 2/3rd share of the death benefits (an amount of Rupees Sixty lakhs) was deposited in the name of the 2nd petitioner as per Ext.P3 order of the Court and that the fixed deposit receipt is produced before the Court for safe custody. It is submitted that since the order of the Court clearly stipulates that any payment to be made to the minor only when she attains majority, any benefit (interest income) arising out of the fixed deposit will also be received by the 2nd petitioner only when she attains majority. It is submitted that in the absence of receipt of any income in the intervening period, tax cannot be deducted at source. It is submitted that since immediate or deferred payment of benefit is not available to the 2nd petitioner during her minority and the benefit of the fixed deposit together with accumulated interest is payable only after she attains majority; tax cannot be deducted u/s 194 A. It is contended that the 1st respondent, without appreciating the peculiar fact circumstances in the present case, issued Ext.P5 order. The learned counsel pointed out that, in view of the aforesaid order, the income of the 2nd petitioner has to be clubbed with the income of the 1st petitioner (mother of the 2nd petitioner) as per Section 64(1A) of the Income Tax Act and that the 1st petitioner is made liable to pay

tax for the interest income with respect to the said fixed deposit of the minor. It is submitted that the 1st petitioner is not liable to pay income tax on the interest accruing annually from the fixed deposit of the 2nd petitioner. It is submitted that since there is no income earned by the 2nd petitioner during her minority, the interest income could not be clubbed with the income of the 1st petitioner. It is also submitted that the 2nd petitioner maintains a cash system of accounting, and therefore, clubbing of income u/s 64 (1A) of the Act in the hands of the 1st petitioner cannot be justified, as no amount (income) has actually been received by the petitioners. The learned Counsel submits that the 2nd respondent failed to appreciate the peculiar circumstance in which the petitioners are placed and erroneously refused to exercise jurisdiction under Section 264 of the Act. In support of his contentions, the learned counsel for the petitioners placed reliance on the judgment of the Supreme Court in ***Commissioner of Income Tax, Gujarat v M.R. Doshi (Dead) by Lrs. 1995 (supp) 3 SCC 464 (1995) 211 ITR 1)*** & ***Kapoor Chand v Asst. Commr. of Income Tax, (2015) 14 SCC 405,*** to

buttress his contentions. Relying on the above decisions, it is contended for the petitioners that there is no immediate or deferred benefit for the minor during the period of her minority. The benefit is to be received only after the period of her minority; therefore, the petitioners are not liable to pay tax with respect to the said fixed deposit. It is further submitted for the petitioners that, in the present case, taxation of income in the hands of the 1st petitioner is legally unsustainable.

Reference is made to Sections 5 & 145 of the Act. It is also submitted that the respondents have no jurisdiction to change the order of Sub Court with respect to the said fixed deposit and the department can initiate action to collect tax from the 2 nd

petitioner only when she becomes major. It is submitted that if the interest income accrued from the said fixed deposit is clubbed with that of the 1st petitioner's income, the same will result in payment of heavy tax by the 1st petitioner. It is contended that, if the provisions of section 64(1A) provide for the clubbing of income (whether received or not) of the minor that would render the provision ultra vires the Constitution of India as it requires an individual assessee to pay tax on an income that the minor is not entitled to receive during her minority. It is contended that the intention and purpose of enactment would not be to cause a heavy burden on another person who is not receiving any benefit out of the interest income accrued annually. It is contended that the same is in violation of the principles of natural justice.

4. Adv. Christopher Abraham, the learned Standing Counsel appearing for the Respondent department, would contend that Ext.P5 and Ext.P6 orders pertain to the assessment year 2013-2014. It is submitted that the impugned orders were passed in the year 2012. Therefore, the cause of action for the present case arose in the year 2012 and the petitioners did not pursue further legal proceedings challenging the said orders. It is submitted that tax is being deducted at source regularly from the interest credited in the said fixed deposit account from the year 2012 . It is submitted that petitioners have acquiesced for such deduction all these years; therefore, they cannot challenge the same after a delay of more than 6 years without any justifiable reason for the inordinate delay caused in filing the petition.

He submits that the question arising for consideration in the present writ petition is whether the 3rd respondent bank can deduct tax at source u/s 194A of the Act from the interest income that accrues to the 2nd petitioner and whether the interest income of the minor can be clubbed with that of 1st petitioner under section 64 (1A) of the Act.

The learned counsel contends that, a reading of section 194A makes it clear that the bank with whom the fixed deposit is maintained has the liability to deduct tax at the applicable rate when the interest accrued in the fixed deposit is credited to any account. It is submitted that the bank has to credit the accrued interest after deducting tax at applicable rates so as to claim a deduction of the interest so paid as an expense in computing its (bank's) income each year. It is contended that section 194A mandates the deduction of tax at source at the happening of the earliest event of credit or payment. It is submitted that the credit of the interest takes place annually though the right to receive the interest along with the principal is postponed till the 2nd petitioner attains majority. It is submitted that since income accrues on the fixed deposit each year, such income is taxable as per the provisions of the Income Tax Act. It is submitted that there is no infirmity in Ext.P5 order of the 1st respondent, as also in Ext.P6 order of the 2nd respondent. It is submitted that the interest accruing annually on the fixed deposit is liable to be clubbed with the income of the 1st petitioner u/s 64(1A) of the Income Tax Act. The learned counsel would contend that the decision rendered by the Supreme Court in ***M.R. Doshi (supra)*** is not applicable to the present case. It is contended that the case relates to a trust deed created in favor of a minor and the income was to vest in the minor only after the attainment of majority and thus there was deferment of benefit until such time and the assessment of the benefit in the hands of the parent on any earlier occasion was against the provisions of section 64(1)(v). It is contended that the provisions of section 64(1)(v) [since deleted] are materially different from the S.64(1A) of the Income Tax Act and, therefore, the interpretation given by the Supreme Court to Section 64(1)(v) of the Act cannot be applied while interpreting the provisions of section 64(1A) of the Act. The learned counsel also submitted that the decision in

Kapoor Chand (supra) relates to trust created for the benefit of two minor children and, therefore, is not applicable to the present case. It is contended that, in the present case, section 64(1A) of the Act requires the clubbing of the minor's income with that of the parent when it accrues to the minor. It is further submitted that the 3rd respondent bank deducting TDS u/s 194 A and clubbing of the interest income of the minor with the income of 1st petitioner u/s 64 (1 A) is independent of each other and that the petitioners are liable to pay tax for the interest income accruing annually.

5. I have considered the contentions raised. In order to appreciate the contentions raised, it would be useful to refer to the text of Section 64(1A) of the Act. Section 64 (1A) of the Act reads as under:-

> *"(1A) In computing the total income of any individual, there shall be included all such income as arises or accrues to his minor child, not being a minor child suffering from any disability of the nature specified in* section 80 U :
>
> ***Provided*** *that nothing contained in this sub-section shall apply in respect of such income as arises or accrues to the minor child on account of any—*
>
> *(a) manual work done by him; or*
>
> *(b) activity involving application of his skill, talent or specialised knowledge and experience.*
>
> *Explanation. —For the purposes of this sub-section, the income of the minor child shall be included, —*
>
> *(a) where the marriage of his parents subsists, in the income of that parent whose total income (excluding the income includible under this sub-section) is greater; or*
>
> *(b) where the marriage of his parents does not subsist, in the income of that parent who maintains the minor child in the previous year,*
>
> *and where any such income is once included in the total income of either parent, any such income arising in any succeeding year shall not be included in the total income of the other parent, unless the Assessing Officer is satisfied, after giving that parent an opportunity of being heard, that it is necessary so to do."*

It is clear from the provision that income **accruing or arising** in the hands of a minor child will be added to the parent's total income. Exceptions are provided only if income arises or accrues to the minor child on account of any manual work done by him or any activity involving application of his skill, talent or specialized knowledge and experience. The Income Tax Act, does not exempt the interest income accruing to 2nd petitioner on an amount received as part of death benefits of her deceased father even if, by order of Court, that income can be utilized only after the minor attains majority. The contention that the income can be taxed only after the minor attains majority cannot be accepted, as the income has accrued, on the bank crediting the account of the 2nd petitioner every year with the amount of interest payable. ***M.R. Doshi (supra)*** proceeds on the proper interpretation to be placed on the provisions of Section 64(1)(v) of the Act. That provision (as extracted in the judgment) reads as follows: -

> *"64. In computing the total income of any individual, there shall be included all such income as arises directly or indirectly—*
>
> ***
>
> *(v) to any person or association of persons from assets transferred otherwise than for adequate consideration to the person or association of persons by such individual, to the extent to which the income from such assets is for the immediate or deferred benefit of his or her spouse or minor child (not being a married daughter) or both."*

On an interpretation of that provision, it was held: -

> *"5. As the facts show, the trusts in the present case have this cumulative effect, that the income therefrom is to be accumulated until the attainment of majority by the assessee's three sons; the cumulative income is then to be divided in three equal shares and one such share is to be paid to each son. The payment, therefore, is to be made after each of the sons attains majority. Section 64(1)(v) requires, in the computation of the total income of an assessee, the inclusion of such income as arises to the assessee from assets transferred, otherwise than for adequate consideration, to the extent to which the income from such assets is for the immediate or deferred benefit*

> *of, inter alia, his minor children. The specific provision of the law, therefore, is that the immediate or deferred benefit should be for the benefit of a minor child. Inasmuch as in this case the deferment of the benefit is beyond the period of minority of the assessee's three sons, since the assets are to be received by them when they attain majority, the provisions of Section 64(1)(v) have no application.*"

Kapoor Chand (supra) was decided with reference to Section 64(1)(iii) of the Act as well as Explanation 2-A thereof and those provisions are completely different from the provisions of Section 64 (1A) of the Act. Therefore, ***Kapoor Chand (supra)*** also does not come to the aid of the petitioners. Therefore, the arguments raised on the authority of the aforesaid judgments of the Supreme Court can only be rejected.

6. The contention of the learned counsel that the provisions of section 64(1A) of the Income Tax Act are *ultra vires* the Constitution of India, cannot be accepted. The question was considered by a Full Bench of the Madras High Court in

K.M Vijayan and others v Union of India and others, (1995) 215 ITR 371 Mad, where it was held: -

> *"33. In view of the foregoing reasons, we uphold the constitutional validity of sub-section (1A) of section 64 of the Income-tax Act. We also hold that it is within its legislative competence for Parliament to enact sub-section (1A) of section 64 of the Income-tax Act, since it falls under Schedule VII, List I, entry 82. Further, we hold that sub-section (1A) of section 64 of the Incometax Act, 1961, is not violative of article 14 and article 19 of the Constitution. In that view of the matter, it is not possible to strike down sub-section (1A) of section 64 of the Income-tax Act as illegal, unconstitutional and ultra vires the Constitution as alleged by the petitioners. In the result, the writ petitions are dismissed. No costs"*

I am in complete agreement with the view taken by the Madras High Court. A statutory provision can be declared unconstitutional only on the following 1rounds; (i) Violation of the fundamental rights guaranteed under Part-III of the Constitution;

(ii) Lack of legislative competence; (iii) Violation of the basic structure doctrine; and (iv) Manifest arbitrariness {vide ***Shayara Bano and others v. Union of India and others***, ***(2017) 9 SCC 1***} . None of these grounds are made out.

7. The ground of extreme hardship to the 1st petitioner if she is required to pay tax on the income accruing to the minor is no ground to hold that the income cannot be clubbed with that of the 1st petitioner. Harshness in a statutory provision is no ground to hold that it should not be applied in a given case. Moreover, I am of the view that if this income were to be taxed only after the 2nd respondent attains majority, the financial burden on the 2nd petitioner when she attains the age of majority will be huge. Moreover it would be practically impossible to get the credit of the tax deducted at source, by the bank in the year in which the minor attains majority. Further the financial hardship to the 1st petitioner does not appear to be so great as projected in the writ petition. The tax deducted at source by the 3rd respondent bank as per section 194 A (10%) will be available as credit, (Rule 37BA of the Income Tax Rules, 1962). The benefit of threshold exemption is also available. Considering that the 1st petitioner will have to bear the tax only on the balance amount and also considering that the interest income on the sum of Rs.60 lakhs cannot create a huge financial burden on the 1st petitioner, the plea of extreme prejudice/difficulty to the 1st petitioner is only to be rejected.

8. The provisions of Sections 5 of the Act have no relevance in determining the questions raised. Section 145 on which reliance has been placed, along with the argument that the 2nd petitioner follows 'cash system'

and therefore income can be recognized only on actual payment, reads as under:-

> *"145. Method of accounting.- (1) Income chargeable under the head "Profits and gains of business or profession" or "Income from other sources" shall, subject to the provisions of sub- section (2), be computed in accordance with either cash or mercantile system of accounting regularly employed by the assessee."*

The 2nd petitioner is a minor. Therefore, the question of her following a "*...system of accounting regularly employed by the assessee"* does not arise for consideration.

9. No other point has been raised.

The impugned orders are not perverse or contrary to law. The writ petition fails and it is accordingly dismissed.

Sd/-
GOPINATH P.
JUDGE

AMG

APPENDIX OF WP(C) 9919/2019

PETITIONER EXHIBITS

EXHIBIT P1	TRUE COPY OF DEATH CERTIFICATE OF LATE VINOD EASAW VARGHESE DATED 18-11-2008
EXHIBIT P2	TRUE COPY OF BIRTH CERTIFICATE OF GRACE MARRY VARGHESE DATED 03-06-2008
EXHIBIT P3	TRUE COPY OF ORDER OF THE HON'BLE SUB COURT TRIVANDRUM IN OP(SUCCESSION) NO. 44/2008 DATED 12--11-2009
EXHIBIT P4	TRUE COPY OF APPLICATION U/S. 197 OF IT ACT IN FORM NO. 13 DATED 04-06-2012.
EXHIBIT P5	TRUE COPY OF PROCEEDINGS OF THE INCOME TAX OFFICER (TDS), TRIVANDRUM DATED 16-07-2012.
EXHIBIT P6	TRUE COPY OF ORDER U/S. 264 OF THE COMMISSIONER OF INCOME TAX (TDS) COCHIN DATED 02-11-2012.