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Gauhati High Court

Case No: Wealth-tax Reference No. 6 of 1981

Commissioner of Wealth-tax		APPELLANT
	Vs	
N.R. Sirkar		RESPONDENT

Date of Decision: Aug. 18, 1988

Acts Referred:

- Income Tax Act, 1961 - Section 64(1)
- Trusts Act, 1882 - Section 82
- Wealth Tax Act, 1957 - Section 27(2), 4, 4(1)

Citation: (1989) 77 CTR 184 : (1989) 178 ITR 311

Hon'ble Judges: A. Raghuvir, C.J; J.M. Srivastava, J

Bench: Division Bench

Advocate: D.N. Choudhury and K.H. Choudhury, for the Appellant; J.P. Bhattacharjee, B.P. Saraf and A.K. Saraf, for the Respondent

Judgement

A. Raghuvir, C.J.
The following three questions are referred to this court under Sub-section (2) of Section 27 of the Wealth-tax Act:

"(i) Whether, on the facts and in the circumstances of the case and on a proper construction of Section 4(1)(a)(i) of the Wealth-tax Act, 1957, the Tribunal was justified in holding that the house property concerned was not an asset indirectly transferred by the assessee to his wife ?

(ii) Whether, on the facts and in the circumstances of the case and on a proper construction of Section 4(1)(a)(i) of the Wealth-tax Act, 1957, the Tribunal was justified in holding that only the debit balances in the books of the assessee representing funds transferred to the wife should be included u/s 4(1)(a) in the assessment of the assessee ?

(iii) Whether the Tribunal had any materials or valid reasons for not following its own decision given in Income Tax cases by its order dated November 28, 1973, in I. T. A. No. 5610 (Gau) of 1971-72 for the assessment year 1963-64 and order dated June 7, 1979, in I. T. A. Nos. 682 and 683 (Gau) of 1975-76 for the assessment years 1972-73 and 1973-74 sustaining the application of Section 64(1)(iii) of the Income Tax Act, 1961, which is identical to Section 4(1)(a)(i) of the Wealth-tax Act, 1957, and whether the decision based on a contrary view taken by the Tribunal in the case is tenable in law ?"

2. The building referred in the first question bears No. 69 in Purnadas Road, Calcutta-29. The assessee in this reference is N. R. Sirkar. Rama Sir-kar is the spouse of the assessee. She purchased the land on September 9, 1959, for Rs. 24,700. The construction of the building commenced on April 15, 1960, and completed in four years by March, 1964. The plinth area of the building is 4,824 sq. feet.

3. The assessee advanced amounts on different dates in between the four years, Rs. 18,500 in 1959-60 and Rs. 1,46,617 was advanced as loans to her in the calendar years 1960-62. The amount spent by her on the building was Rs. 1,78,821. She invested her stridhana gifted by her parents and relatives amounting to Rs. 28,204 on the building. The rest of the amount was obtained by her as loan from the assessee. She repaid Rs. 30,000 of the loan. The outstanding debt on March 31, 1971, was Rs. 1,58,821. The further particulars show that when the land was purchased, her stridhana amounting to Rs. 10,459 and the balance of Rs. 14,241 was paid to the vendor after the loan was obtained by her.

4. The particulars of the loans were shown to the wealth-tax authorities in the three returns filed by the assessee on August 1, 1967, for the assessment years 1960-61, 1961-62 and 1962-63. The officer, in the three separate orders, accepted the amounts of loans advanced by the assessee to his spouse. In the order for the assessment year 1964-65, the loan paid to the spouse in the relevant period was not accepted in view of the Tribunal''s order No. 4610 (Gau) of 1971-72 under the Income Tax Act, 1961, for the assessment years 1963-64, 1964-65, 1965-66, 1966-67, 1967-68 for the assessee''s spouse was not accepted as a debtor in the assessment orders for 1965-66, 1966-67 and 1967-68 in the appeals and further appeals under the Income Tax Act. The references to this court are awaiting decision in this reference.

5. The appellate authority confirmed the order of assessment under the Wealth-tax Act for the year 1963-64. The Appellate Tribunal held that no reliance can be placed on the accounts of the assessee. The returns for 1960-63 were filed on August 1, 1962. The 1963-64 Income Tax return was filed on November 11, 1963. Having noted the dates, it was held that wealth-tax assessment orders passed on the returns for 1960-63 cannot be relied upon. It was held that no repayment of the debt was made before July 29, 1971. The spouse of the assessee was held as an ostensible owner or to that effect as she has no source of income. The assessee is the "virtual owner" of

the building. The income from the house was held to be the income of the assessee. These factors were adverted to in rejecting the assessee''s contention.

6. In the three wealth-tax assessments for 1960-61, 1961-62 and 1962-63, the assessee was accepted as the creditor and in the order for 1963-64, that finding is departed from by the Revenue. That circumstance calls for consideration whether the principles of res judicata and estoppel govern assessment orders. One does not need authority at this distance of time to hold that the principles of res judicata and estoppel are not at all applicable in tax jurisprudence. The orders in taxation proceedings and the enquiries held are concluded every year is accepted as axiomatic we intend to review cases in this reference (sic).

7. We see in M.M. Ipoh and Others Vs. Commissioner of Income Tax, Madras, the Supreme Court held that the doctrine of res judicata is not applicable. The assessment made in one year does not bind the assessment in the succeeding year. The facts found are conclusive only in the year of assessment when findings are recorded. Such a finding surely is cogent evidence or may even be a guide in a subsequent years, when the same question or a similar question falls to be determined in another year, but nevertheless it is accepted as not binding and not conclusive. In Commissioner of Income Tax, West Bengal Vs. Brij Lal Lohia and Mahabir Prasad Khemka, the application of the principle of res judicata was adverted to. This case is more on facts but it is a case where because of availability of evidence which was shown not to have been available in the preceding year and because of the surfeit of evidence in the year in question the conclusion was varied. The importance of this case is that reason was shown for varying the earlier decision. In another case, Dwarkadas Kesardeo Morarka Vs. Commissioner of Income Tax, Central Bombay, the Supreme Court emphasised that under tax laws assessment orders are separate and the taxing authorities cannot regard a complete order and a decision arrived at in a previous year as binding in the assessment for subsequent years.

8. Adverting to the case of Dwarkadas Kesardeo Morarka Vs. Commissioner of Income Tax, Central Bombay, we do not think that every time a like question arises, the answer to such a question cannot be put in such simple terms, for example, we see in a Full Bench case in the Madras High Court in T. M. M. Sankaralinga Nadar and Bros. v. CIT AIR 1930 Mad 209 certain deposits made by the female members of the assessee were considered as loan in a particular year but in the following year the Revenue intended to reopen and enquire into the truth or otherwise of the debts. The Madras High Court stated that the taxation authorities, no doubt, are entitled to reopen the question. But the court qualified the power and stated that where Income Tax officials have, after enquiry, proceeded to assess on a certain basis, though they may be entitled to reopen their order, they cannot arbitrarily vary the order simply on the ground that the succeeding officer does not agree with the preceding officer''s finding. The Revenue officers may have power to reopen the

enquiry, but the court emphasised that they should reopen only where there were fresh facts to arrive at a different conclusion, otherwise, in the absence of fresh facts, exercise of power will be considered as arbitrary exercise of power. The Madras High Court used the expression "natural justice" to bar the exercise of power. The court warned that Revenue officers should not capriciously set aside or arbitrarily overlook the finding of their predecessors as findings are recorded after enquiries. It is, in that context, the court said (at p. 215) : "the Income Tax Officer cannot simply say that he would not be bound by the order of his predecessor affecting a question like the present, namely, whether a certain sum is the capital of the firm or a loan. But if on investigation any additional facts come to his notice which he considers sufficient, he would be entitled to act upon that additional information". That court considered a similar question in Trustees, Nagore Durgah Vs. Commr. of Income Tax, Madras, and again the principle of natural justice was referred to and it was held that if there was a prior determination by the Income Tax officials, ordinarily there should be no variation from that decision unless there are fresh circumstances to warrant a deviation from the previous decision.

9. The Bombay High Court considered a like question in H.A. Shah and Co. Vs. Commissioner of Income Tax and Excess Profits Tax, Bombay City, . In that case, the principles of res judicata and estoppel were elucidated including the Madras Full Bench case. It was emphasised, on facts, that the conclusion reached in the preceding year was not determinative and final and conclusive in relation to the assessment for that year. A decision in an earlier year is not binding in a subsequent year. In that case, what are the constraints were stated as limitations. There should be finality and certainty in revenue proceedings, it was emphasised, like all litigations including litigation arising out of the Income Tax Act. A decision on a question cannot be reopened unless that decision is arbitrary or perverse. If no fresh facts are there, the earlier decision should be followed. Finally, it was stated that the effect of revising a decision in a subsequent year (and this we consider to be very important), courts must always be anxious to avoid injustice to the assessees. These aspects were highlighted as principles to be followed by the officers holding enquiries under taxing enactments.

10. A similar question was considered by the Nagpur High Court in (1952) 22 ITR 208 where it was held that the principle of res judicata does not operate on the decisions of taxing authorities. The orders in a previous year can be departed from in subsequent years and enumerated the circumstances in which this may be done, namely, that : "if the previous decision is not arrived at after due enquiry", "if the previous decision was arbitrary", "if fresh facts were brought out in such cases", a different conclusion from the one arrived at earlier is permissible. It was emphasised in this case that the Income Tax Officer cannot arbitrarily depart from the finding reached after due enquiry merely because the succeeding officer does not agree with the preceding officer''s findings.

11. The Patna High Court considered this question in KANIRAM GANPAT RAI Vs. COMMISSIONER OF Income Tax, BIHAR and ORISSA., wherein it was held that if fresh facts are brought to light before an Income Tax Officer a different conclusion in a subsequent year can be arrived at from that of his predecessor since power is vested in the officers of the Revenue to reconsider a question, but if there are no fresh facts and the previous order was not arbitrary, it cannot be deviated from.

12. The Allahabad High Court in RAM DATTA SITA RAM OF BASTI, IN RE., considered the principle of res judicata and estoppel and stated if there are good and valid grounds for taking a different view, it is open to take a different view. In Kamlapat Moti Lal Vs. Commissioner, Income Tax, that court held that if a competent authority has enquired into the matter, such a decision must be held to be binding even if the decision was by implication.

13. We have two Privy Council cases on the subject. The two cases arose from Australia : one is a case in Broken Hill Proprietary Co. Ltd, v. Broken Hill Municipal Council [1926] AC 94. In that case there was a previous decision where liability to tax was determined in the context of valuation of the subject-matter. The Privy Council stated that the earlier decision related to a different question. The decision on the subsequent year on facts was "a new question and therefore the principles of res judicata cannot apply". We consider these facts necessary to understand the decision of the Privy Council ; otherwise, the decision in that case ex facie or at the first blush appears contrary to another case rendered a year later by the Privy Council. The latter case, Hoystead v. Commr. of Taxation [1926] AC 155 shows that the earlier decision was as to the status of six daughters of a testator under a trust created by him in the last testament and as to whether the six of them were joint owners or owned their shares as six individuals. If they were individual owners, they were entitled to separate deductions as against the charging authority. The Full Court of the Australian High Court held that the daughters were not joint shareholders. In a subsequent year that conclusion was departed from. The Privy Council held "very numerous authorities were referred to. In the opinion of their Lordships, it is settled, first, that the admission of a fact fundamental to the decision arrived at cannot be withdrawn and a fresh litigation started, with a view to obtaining another judgment upon a different assumption of fact ; secondly, the same principle applies not only to an erroneous admission of a fundamental fact, but to an erroneous assumption as to the legal quality of that fact. Parties are not permitted to begin fresh litigations because of new views they may entertain of the law of the case, or new versions which they present as to what should be the proper apprehension by the court of the legal result either of the construction of the documents or the weight of certain circumstances. If this were permitted, litigation would have no end, except when legal ingenuity is exhausted. It is a principle of law that this cannot be permitted, and there is abundant authority reiterating that principle. Thirdly, the same principle, namely, that of setting to rest rights of litigants, applies to cases where a point, fundamental to the decision, taken or

assumed by the plaintiff and traver-sable by the defendant, has not been traversed. In that case also, a defendant is bound by the judgment, although it may be true enough that subsequent light or ingenuity might suggest some traverse which had not been taken. The same principle of setting parties'' rights to rest applies and estoppel occurs. The decision of the Privy Council indicates what we pointed out as qualifications, limitations or natural justice or justice in the case. Ordinarily, earlier decisions are not to be departed from. The comity of decisions is to be followed. The decisions reached after inquiry have to be respected and not to be departed from for the pleasure of doing so, a disease which is not unknown in India.

14. Learned counsel for the assessee argued that the decisions of the wealth-tax authorities in the orders for 1960-61, 1961-62 and 1962-63 show that amounts advanced were loans. The intention of the debtor was to purchase a plot of land and to construct a building to augment her resources. Those intentions of the assessee and his spouse were accepted in the assessment orders for the three years. These orders are binding because the orders have become final. Further, because they have not been set aside. Therefore, counsel urged, even if there should be power left in the hands of the authorities, justice in the case warrants that those findings are not to be departed from.

15. Learned counsel for the Revenue contended that once it is accepted that res judicata and estoppel, the two doctrines, do not restrict the powers of the authorities, it is argued, the facts in the case show that the assessee advanced the money. The law and practice in this country is that the beneficiary of a trust owns the property. Therefore, it is urged in the instant case that there is an indirect transfer within the meaning of Section 4 of the Wealth-tax Act, 1957. Therefore, the assessee is the owner of the building. His spouse is not a debtor.

16. We see that in the UK where the theory of advancement operates, there is a presumption in favour of the person for whose benefit advancement is made. Such a presumption is not accepted in India. Section 82 of the Indian Trusts Act (II of 1882) is apposite in this regard which reads :

"Where property is transferred to one person for a consideration paid or provided by another person, and it appears that such other person did not intend to pay or provide such consideration for the benefit of the transferee, the transferee must hold the property for the benefit of the person paying or providing the consideration."

17. In India, if property is purchased in the name of a person often referred to as the ostensible owner, such a person is not the owner. The person who advances the money is held to be the owner as he is the beneficiary of the trust which was created when the amount was advanced. The other shades of benami are not necessary to be dilated upon in the instant case.

18. We see on September 9, 1959, the spouse of the assessee purchased a plot of land. A building is constructed on that plot of land. The plinth area of the building is 4,824 sq. feet. On September 9, it is shown she possessed Rs. 28,204 out of which she paid Rs. 10,489 as purchase money for the land. The balance of Rs. 14,211, she obtained as loan from her husband and paid the vendor. The importance of this fact is that her intention was to construct a building. The loans advanced by the assessee were for construction of the building. Subsequent events show that Rs. 30,000 of the loan was repaid by March 31, 1971, and, on that day, Rs. 1,16,617, 200 (sic) was outstanding.

19. She asserted that she was the owner of the building she constructed. The assessee declared she is the owner. The Wealth-tax Officer accepted the declaration. A finding was recorded that she was a debtor. The assessee was the creditor. These conclusions were arrived at after inquiry. Therefore, in a subsequent proceeding can such a finding be departed from ? If it is to be departed from, a valid reason is to be recorded and should be shown. We have not found any fresh facts in the orders of the authorities. No fresh facts are stated to have been discovered in the orders. In such a situation, the Bombay High Court held that even if it can be departed from for doing justice, what principle of justice warranted departure in this case from the earlier decision. We put this question and answer it in favour of the assessee.

20. The first question we answer in the negative, in favour of the assessee and against the Revenue. Having regard to this answer to the first question, the second and the third questions, in view of the answer to the first question, are not required to be answered. No costs.