

(1983) 04 MP CK 0004

Madhya Pradesh High Court (Indore Bench)**Case No:** Miscellaneous Civil Case No. 196 of 1982

Pramodchand Soni Trust

APPELLANT

Vs

Commissioner of Wealth Tax

RESPONDENT

Date of Decision: April 26, 1983**Acts Referred:**

- Trusts Act, 1882 - Section 17
- Wealth Tax Act, 1957 - Section 21(4)

Citation: (1984) 148 ITR 617 : (1983) 14 TAXMAN 365**Hon'ble Judges:** R.K. Vijayvargiya, J; G.G.Sohani, J**Bench:** Division Bench**Advocate:** A.K. Chitale, for the Appellant; R.C. Mukati, for the Respondent

Judgement

Vijayvargiya, J.

By this reference u/s 27(1) of the Wealth-tax Act, 1957 (for short "the Act"), the Income Tax Appellate Tribunal, Indore Bench, Indore, has referred the following question of law for the opinion of this court :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the deed of rectification executed on April 8, 1975, was not merely clarificatory/declaratory of the pre-existing state of things but modified and changed the basic structure of the trust and could be invoked only for subsequent period and not for the earlier period with the consent of the author of trust, beneficiaries and the trustees for such clarification ?"

2. The assessee is a private trust. The assessee was assessed to wealth-tax for the assessment years 1971-72 to 1975-76. The WTO while completing the assessment held that it was a case of a family trust wherein the shares of the beneficiaries were indeterminate. Before the WTO it was contended on behalf of the assessee that on April 8, 1975, a rectification deed was executed whereby the shares of the beneficiaries were declared to be equal and as such the provisions of Section 21(4)

of the Act were not attracted. The WTO held that the rectification deed was not valid and the assessments have to be made on the basis of the original trust deed. On appeal by the assessee, the AAC upheld the orders of the WTO. On further appeal, the Tribunal also maintained the order of the WTO. At the instance of the assessee, the Tribunal has referred the aforesaid question of law for the opinion of this court.

3. It is not in dispute that the accounting year of the last assessment year in question ended on March 31, 1975. The rectification deed on which reliance was placed by the assessee was executed on April 8, 1975, i.e., after the expiry of the last accounting year in question. The learned counsel for the assessee was unable to point out as to how the rectification deed can have a retrospective effect. He, however, contended that the rectification deed was only clarificatory of the pre-existing state of affairs, and, therefore, it should be read as part of the original trust deed. He did not dispute the fact that under the original trust deed the interest of the beneficiaries was indeterminate. He contended that u/s 17 of the Indian Trusts Act, the trustees are bound to be impartial when there are more beneficiaries than one and they must not execute the trust for the advantage of one at the expense of the other. However, from this provision it cannot be contended that the interest of the beneficiaries which was indeterminate according to the trust deed becomes indeterminate. Moreover, the trust has already been executed in regard to the assessment years in question before the execution of the rectification deed and, therefore, it is difficult to appreciate how the rectification deed can be given retrospective effect. The rectification deed, therefore, cannot have any effect on the assessment of the assessee for the assessment years in question, as the accounting year of the last assessment year as stated above having expired before the execution of the rectification deed.

4. In this view of the matter it is not necessary to express any opinion regarding the validity of the rectification deed or its efficacy after its execution and the question referred to us also requires modification. We, therefore, reframe the question which arise out of the order of the Tribunal as follows :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the deed of rectification executed on April 8, 1975, could not be invoked for the period earlier to its execution ?"

5. We have already held above that the deed of rectification cannot have any effect on the assessment of the assessee for the assessment years in question.

6. For reasons stated above, our answer to the question reframed by us is in the affirmative and against the assessee. The reference is answered accordingly. There shall be no order as to costs of this reference.