

Ashok Vardhan Birla Vs Commissioner of Wealth-tax

Court: Bombay High Court

Date of Decision: April 30, 1992

Acts Referred: Wealth Tax Act, 1957 " Section 23, 23(4), 23(5), 24, 24(5)

Citation: (1992) 3 BomCR 645 : (1994) 208 ITR 958

Hon'ble Judges: Sujata V. Manohar, J; B.N. Srikrishna, J; B.N. Deshmukh, J

Bench: Full Bench

Advocate: R.H. Toprani, for the Appellant; Dr. Balasubramanian, for the Respondent

Judgement

Mrs. Sujata Manohar J.

1. This reference u/s 27(3) of the Wealth-tax Act, 1957, deals with the assessment years 1962-63, and 1963-64 and 1964-65, the corresponding

valuation dates March 31, 1962, March 31, 1963, and March 31, 1964. The original applicant was one of the beneficiaries under a deed of

settlement made by the grandfather of the applicant (hereinafter referred to as the "Shri R. D. Birla Trust"). The applicant was entitled to the

balance of the income of the trust and to the corpus of the trust in terms of clause 1 of the deed of settlement. The applicant was also the sole

beneficiary under another trust known as the "Ashok Kumar Birla Trust" in which the applicant was entitled to receive the entire income of the trust

in terms of clause 2 of the deed of settlement.

2. For the relevant assessment years, the applicant had included in his net wealth the total wealth the total value of the assets of the Shri R. D. Birla

Trust, after deducting therefrom the value of the life interest of two other beneficiaries instead of the capitalised value of his interest in the income

and corpus of the trust ascertained on an actuarial basis. Similarly, the applicant had included in his net wealth the total value of the assets of the

Ashok Kumar Birla Trust instead of the capitalised value of his interest in the income of the trust on actuarial basis. The Wealth-tax Officer

accepted the valuation put by the assessee on his interest in these two trusts for the three assessment years in question.

3. For the assessment year 1962-63, the applicant had preferred an appeal to the Appellate Assistant Commissioner on some other grounds. At

this stage also, the applicant had not raised the question of mode of valuing his interest in two trusts. The applicant, however, in his appeal before

the Tribunal from the order of the Appellate Assistant Commissioner sought to raise for the first time additional grounds for the assessment year

1962-63 in order to challenge the valuation put upon his interest in the R. D. Birla Trust as well as the Ashok Kumar Birla Trust. He contended for

the first time that the valuation based on the total value of the assets of these two trusts was incorrect and that his interest in these trusts had been

wrongly valued for the purpose of wealth-tax.

4. For the assessment years 1963-64 and 1964-65 also, the application has filed against on other points before the Appellate Assistant

Commissioner. The applicant sought to raise for the first time before the Appellate Assistant Commissioner additional grounds of appeal for these

two assessment years contending that his interest in the R. D. Birla Trust should be valued on actuarial basis. He relied upon a valuation report

prepared on actuarial basis dated July 5, 1965, in this connection. The Appellate Assistant Commissioner, however, did not admit these additional

grounds of appeal for reasons set out in his orders dated May 12, 1966, and July 5, 1966. From the orders of the Appellate Assistant

Commissioner, the applicant had preferred appeals before the Tribunal.

5. Before the Tribunal, the applicant contended that the Appellate Assistant Commissioner ought to have allowed him to arise the question of

valuation of his interest in the R. D. Birla Trust. The Tribunal considered this submission and rejected it, holding that the Appellate Assistant

Commissioner has correctly exercised his discretion in not permitting the applicant to raise this ground.

6. The applicant also sought to raise before the Tribunal for the first time an additional ground of appeal for the assessment years 1963-64 and

1964-65 in respect of valuation of his interest in the Ashok Kumar Birla Trust on actuarial basis. The Tribunal declined to permit the assessee to

raise the additional ground. It said that the ground of appeal did not arise out of the order of the Appellate Assistant Commissioner and hence could

not be permitted to be raised. It relied upon the decision in the cases of Commissioner of Income Tax, Gujarat I Vs. Karamchand Premchand

Private Ltd., . The Tribunal also gave a second reason for declining to permit the assessee to raise the additional ground. It said that the question

was a mixed question of law and fact. In the absence of evidence already on record, it could not be decided without getting the requisite facts on

file. It could not, therefore, be permitted to be raised at that stage.

7. From the decision of the Tribunal which is a common decision for the three assessment years, two questions were framed for reference to the

High Court u/s 27(1) of the Wealth-tax Act for the assessment year 1962-63. Two questions were also framed for the assessment year 1963-64

and two questions were framed for the assessment year 1964-65.

8. A Division Bench of this court before whom this reference came up for hearing, by its order dated April 6, 1991, has directed that both the

questions raised for the assessment year 1962-63 as well as question No. 2 raised for the assessment years 1963-64 and 1964-65 be placed

before a Full Bench. This is because the Tribunal had, inter alia, declined to allow the additional ground to be raised on the ground that it did not

arise out of the decision of the Appellate Assistant Commissioner, following the decision of the Gujarat High Court in the case of Commissioner of

Income Tax, Gujarat I Vs. Karamchand Premchand Private Ltd., . This decision of the Gujarat High Court which relates to the jurisdiction of the

Tribunal to allow and additional ground to be raised for this first time before it has been relied upon by our High Court in the case of Ugar Sugar

Works Ltd. Vs. Commissioner of Income Tax, Poona, .

9. In view of the conflict of authorities of this court in the case of Ugar Sugar Works Ltd. Vs. Commissioner of Income Tax, Poona, and in the

case of Controller of Estate Duty Vs. Bipinchandra N. Patel, . The following questions are required to be decided by us along with similar

questions which arose in Income Tax References Nos. 481 of 1976 and 45 of 1977, Ahmedabad Electricity Co. Ltd. And Godavari Sugar Mills

Ltd. Vs. Commissioner of Income Tax, . We have, accordingly, heard this reference along with the above two Income Tax references.

10. The questions referred to us a per the order of the Division Bench are :

11. For assessment year 1962-63 :

1. Whether, on the facts and in the circumstances of the case, the Tribunal was right and justified in law in not permitting the assessee to raise

before it the additional ground that the Wealth-tax Officer erred including a total sum of Rs. 13,70,980 (rupees thirteen lakhs seventy thousand and

nine hundred eighty only) being the balance of the assets in the deed of settlement made by Shri R. D. Birla (after excluding the interest of other

beneficiaries of the trust) instead of the capitalised value of the assessee's interest in the income and corpus of the trust as per the provisions of the

trust deed, as forming part of the assessee's wealth for the purpose of assessment under the Wealth-tax Act, 1957 ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right and justified in law in not permitting the assessee to raise

before it additional ground that the learned Wealth-tax Officer erred in including the total value of assets in Ashok Kumar Birla Trust instead of the

capitalised value of his interest in the income of the said trust as per the provisions of the trust deed, as forming part of his wealth for the purpose of

assessment under the Wealth-tax Act, 1957 ?

12. For assessment year 1963-64 :

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right and justified in not permitting the assessee to raise before it

the additional ground that the Wealth-tax Officer erred in including the total value of assets in Ashok Kumar Birla Trust instead of the capitalised

value of his interest in the income of the said trust, as forming part of his wealth for the purpose of assessment under the Wealth-tax Act, 1975 ?

13. For assessment year 1964-65 :

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right and justified in not permitting the assessee to raise before it

the additional ground that the Wealth-tax Officer erred in including the total value of assets in Ashok Kumar Birla Trust instead of the capitalised

value of his interest in his income of the said trust, as forming part of his wealth for the purpose of assessment under the Wealth-tax Act, 1957 ?

This reference was argued before us along with Income Tax Reference No. 481 of 1976 and Income Tax Reference No. 45 of 1977,

Ahmedabad Electricity Co. Ltd. And Godavari Sugar Mills Ltd. Vs. Commissioner of Income Tax, . As far as the present reference is concerned,

the relevant powers of the Appellate Assistant Commissioner and the Appellate Tribunal are set out in sections 23 and 24 of the Wealth-tax Act,

1957. u/s 23(4) of the Wealth-tax Act, 1957, the Appellate Commissioner may, ""(a) at the hearing of an appeal, allow and appellant to go into any

ground of appeal, not specified in the grounds of appeal; (b) before disposing of an appeal, make such further inquiry as he thinks fit or cause

further inquiry to be made by the Wealth-tax Officer"". Under sub-section (5) of section 23, ""in disposing of an appeal, the Appellate Assistant

Commissioner may pass such orders as he thinks fit which may include an order enhancing the assessment or penalty : Provided that no order

enhancing the assessment or penalty shall be made unless the person affected thereby has been given a reasonable opportunity of showing cause

against such enhancement.

Section 24 provides for an appeal to the Appellate Tribunal from the order of the Appellate Assistant Commissioner. Under sub-section (5) of

section 24, ""The Appellate Tribunal may, after giving both parties to the appeal an opportunity of being heard, pass such order thereon as it thinks

fit and such orders may include an order enhancing the assessment or penalty"".

14. Therefore, under the Wealth-tax Act, the powers of the Appellate Assistant Commissioner u/s 23(5) and the powers of the Tribunal u/s 24(5)

in deciding an appeal are worded in identical language. For reasons which are set out by us in our judgment of today's date in Income Tax

Reference No. 481 of 1976 and Income Tax Reference No. 45 of 1977, Ahmedabad Electricity Co. Ltd. And Godavari Sugar Mills Ltd. Vs.

Commissioner of Income Tax, , we have held that, while deciding a tax appeal, the appellate authorities - the Appellate Assistant Commissioner as

also the Appellate Tribunal - have jurisdiction to permit additional grounds to be raised before them even though these grounds may not have been

raise before either the Assessing Officer or the Appellate Assistant Commissioner - so long as the points for decision arise from the proceedings

which were the subject-matter of assessment before the assessing authority.

15. The ratio of the decision of the Supreme Court in the case of Jute of Corporation of India Ltd. Vs. Commissioner of Income Tax and another,

would apply to the Wealth-tax Act also because the reasons which are set out in that judgment apply as much to these provisions of the Wealth-

tax Act as to similar provisions in the Income Tax Act. In this view of the matter, the powers of the appellate authorities are the same as the

powers of the assessing authority. Additional grounds can be entertained so long as they relate to the subject-matter of the proceedings which

were before the Assessing Officer or before the appellate authority.

16. In fact, this position is brought out far more clearly in the Wealth-tax Act than in the Income Tax Act. The identical wording of sections 23(5)

and 24(5) in this regard clearly shows that the powers of the Appellate Tribunal are identical with the powers of the Appellate Assistant

Commissioner under the Wealth-tax Act, including the power of enhancement. Any controversy, therefore, which may have earlier existed relating

to the powers of the Appellate Tribunal under the Income Tax Act, cannot, in any event, extended to the Appellate Tribunal under the Wealth-tax

Act. The Tribunal, therefore, had jurisdiction, in the present case, to permit additional grounds to be raised even though these did not arise out of

the order of the Appellate Assistant Commissioner. The Tribunal, however, had the discretion to allow or not allow such additional grounds to be

raised. We are not concerned here with this aspect of the question.

17. Mr. Toprani, learned advocate appearing for the applicant, did seek to raise certain additional points before us. It was urged by him that

though, u/s 23(4)(a) of the Wealth-tax Act, "the Appellate Assistant Commissioner may - at the hearing of an appeal, allow an appellant to go into

any ground of appeal not specified in the grounds of appeal", there is in fact no discretion given to the Appellate Assistant Commissioner to permit

such an additional ground. It was urged by him that the word "may" in this context should be raised as "must" or "shall" and that we should hold that

the Appellate Assistant Commissioner does not have any discretion to allow or not to allow any new grounds to be raised. He must allow the new

ground to be raised. This question which relates to the exercise of discretion by the Appellate Assistant Commissioner is not referred to us and

hence we need not go into this question. But we may observe that we do not see any warrant for reading the word "may" which clearly gives a

discretion to the Appellate Assistant Commissioner, as meaning "must". There is nothing in this section or in any of the following sections which

would indicate that the Appellate Assistant Commissioner is bound to permit the applicant to raise new grounds before it. As observed by the

Supreme Court in the case of Jute of Corporation of India Ltd. Vs. Commissioner of Income Tax and another, , the appellate authority has the

discretion to decide whether to permit such a new ground to be raised or not. Raising of such new ground not raised earlier cannot be a matter of

light. Whether such ground should be permitted or not is a matter of discretion; and this discretion had to be exercised on relevant considerations

which are set out by the Supreme Court in the above case.

18. In the alternative, it is submitted by Mr. Toprani that the decision in the present case ought to have been exercised in favour of the assessee. In

this connection, he has relied upon the decision in the case of R.P. David and Others Vs. Agricultural Income Tax Officer and Another, to the

effect that the discretionary power in a public officer is to be exercised in favour of the person concerned unless there are good reasons for denying

the benefit. Once again, we cannot go into this question in view of the fact that the question of proper exercise of discretion by the Appellate

Assistant Commissioner is not before us for consideration. We are only concerned with the jurisdiction of the Tribunal to permit additional grounds

to be raised which do not arise out of the order of the Appellate Assistant Commissioner.

19. In the premises, we answer the two questions above for the assessment year 1962-63 and the second question in the assessment years 1963-

64 and 1964-65 which have been referred to us, for the reasons set out in the order of the Divisional Bench dated April 6, 1991, in the negative

and in favour of the assessee. The Tribunal is, accordingly, directed to dispose of the case in conformity with our judgment.