(1994) 12 BOM CK 0060

Bombay High Court

Case No: Wealth-tax Reference No. 19 of 1977

Commissioner of Wealth-tax		APPELLANT
	Vs	
State Bank of India		RESPONDENT

Date of Decision: Dec. 7, 1994

Acts Referred:

- Income Tax Act, 1961 - Section 11, 13, 2(15)
- Wealth Tax Act, 1957 - Section 2, 21, 21(1), 27(1), 3

Citation: (1995) 125 CTR 461 : (1995) 213 ITR 1

Hon'ble Judges: S.M. Jhunjhunwala, J; B.P. Saraf, J

Bench: Division Bench

Advocate: G.S. Jetley, for the Appellant; P.F. Kaka, for the Respondent

Judgement

Dr. B.P. Saraf, J.
By this reference made u/s 27(1) of the Wealth-tax Act, 1957, at the instance of the Revenue, the following question has been referred by the Tribunal to this court for opinion :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the wealth of the trust is exempt u/s 5(1) of the Wealth-tax Act, 1957 ?"

2. The assesses is the State Bank of India ("the bank") which has been assessed in this case as executors and trustees of two trusts, namely, (i) Trust Settlement of Apostles Raptakos No. 307, Bombay, and (ii) Trust Settlement of Apostles Raptakos No. 217, Bombay, in respect of the assets of those trusts. Both these trusts were executed by one Mr. Raptakos. The assessment years involved are 1967-68 to 1970-71. When the bank was sought to be assessed to tax under the Wealth-tax Act in respect of the net wealth of the trusts in question, it claimed exemption u/s 5(1)(i) of the Wealth-tax Act, 1957 ("the Act"). This contention was not accepted by the Wealth-tax Officer. He, therefore, assessed it in respect of the entire wealth of the

two trusts. The bank appealed to the Appellate Assistant Commissioner of Wealth-tax, who held that the trusts fulfilled the requirements of section 5(1)(i) of the Act and so the wealth of the said trusts was exempt from wealth-tax. This decision of the Appellate Assistant Commissioner was affirmed by the Income Tax Appellate Tribunal ("the Tribunal"). Hence, this reference at the instance of the Revenue.

3. Counsel for the Revenue, Mr. G. S. Jetley, stated before us that the Tribunal has held the wealth of the trust to be exempt u/s 5(1) of the Act relying upon its own decision in the assesses''s case under the Income Tax Act, 1961, holding the income to be exempt u/s 11 thereof. It was pointed out to us that the above finding of the Tribunal has since been reversed by this court in reference (arising from the order of the Tribunal) which is Commissioner of Income Tax Vs. State Bank of India, . In that view of the matter, according to Mr. Jetley, exemption u/s 5(1) would not be available in respect of the assets of these trusts. According to Mr. Kaka, learned counsel for the assesses, the above decision is of no consequence in determining the question of applicability of section 5(1)(i) of the Wealth-tax Act because the conditions precedent for applicability of section 11 do not apply to section 5(1)(i) of the Act.

4. We have carefully considered the controversy before us in the light of the rival submissions of counsel for the parties. We feel that for a proper appreciation of the controversy in this case, it would be expedient to examine the scheme of the Wealth-tax Act and the relevant provisions thereof.

5. Section 2(c) of the Act defines "assesses" to mean "a person by whom wealth-tax or any other sum of money is payable under this Act", including,

(i) every person in respect of whom any proceeding under this Act has been taken for the determination of wealth-tax payable by him or by any other person or the amount of refund due to him or such other person;

(ii) every person who is deemed to be an assess under this Act;

(iii) every person who is deemed to be an assesses in default under this Act.

6. Section 3 is the charging section. It provides for levy of tax at the rates specified in the Schedule in respect of the net wealth of every individual, Hindu undivided family and company. This section, so far as relevant, as it stood during the material period, reads as under :

"3. Charge of wealth-tax. - Subject to the other provisions contained in this Act, there shall be charged for every assessment year commencing on and from the first day of April, 1957, a tax (hereinafter referred to as ''wealth-tax'') in respect of the net wealth on the corresponding valuation date of every individual, Hindu undivided family and company at the rate or rates specified in the Schedule."

7. The levy of wealth-tax in respect of the net wealth of companies was, however, discontinued for and from the assessment year 1960-61 (vide section 13 of the Finance Act, 1960).

8. Section 21 of the Act provides for assessment of the trustees of a trust. This section, as it stood at the material time, reads as follows :

"21. Assessment when assets are held by courts of wards, administrators-general, etc. - (1) In the case of assets chargeable to tax under this Act, which are held by a court of wards or an administrator-general or an official trustee or any receiver or manager or any other person, by whatever name called, appointed under any order of a court to manage property on behalf of another, or any trustee appointed under a trust declared by a duly executed instrument in writing, whether testamentary or otherwise (including a trustee under a valid deed of wakf), the wealth-tax shall be levied upon and recoverable from the court of wards, administrator-general, official trustee, receiver, manager or trustee, as the case may be, in the like manner and to the same extent as it would be leviable upon and recoverable from the person on whose behalf or for whose benefit the assets are held, and the provisions of this Act shall apply accordingly.

(2) Nothing contained in sub-section (1) shall prevent either the direct assessment of the person on whose behalf or for whose benefit the assets above referred to are held, or the recovery from such person of the tax payable in respect of such assets.

(3) Where the guardian or trustee of any person being a minor, lunatic or idiot [all of which persons are hereinafter in this sub-section included in the term ''beneficiary''] holds any assets on behalf or for the benefit of such beneficiary, the tax under this Act shall be levied upon and recoverable from such guardian or trustee, as the case may be, in the like manner and to the same extent as it would be leviable upon and recoverable from any such beneficiary if of full age, of sound mind and in direct ownership of such assets.

(4) Notwithstanding anything contained in this section, where the shares of the persons on whose behalf or for whose benefit any such assets are held are indeterminate or unknown, the wealth-tax may be levied upon and recovered from the court of wards, administrator-general, official trustee, receiver, manager or other person aforesaid as if the persons on whose behalf or for whose benefit the assets are held were an individual who is a citizen of India and resident in India for the purpose of this Act.

(5) Any person who pays any sum by virtue of the provisions of this section in respect of the net wealth of any beneficiary, shall be entitled to recover the sum so paid from such beneficiary, and may retain out any assets that he may hold on behalf or for the benefit of such beneficiary, an amount equal to the sum so paid.

9. Section 5 of the Act, which grants exemptions in respect of certain assets, so far as relevant, provides :

"5. Exemption in respect of certain assets. - (1) Wealth-tax shall not be payable by an assesses in respect of the following assets, and such assets shall not be included in the net wealth of the assesses -

(i) any property held by him under trust or other legal obligation for any public purpose of a charitable or religious nature in India."

10. On a combined reading of the above provisions, it becomes clear that the subject-matter of charge imposed by section 3 is the net wealth of an individual and a Hindu undivided family. Any "person" who is responsible for payment of wealth-tax in respect of such wealth is regarded as an assesses for the purposes of this Act. "Person" is a word of wide import and is not confined to individual and Hindu undivided families. In a given case, even an association of persons might be regarded as an "assesses", if it is found to be responsible for payment of tax under this Act in respect of the net wealth of an individual or a Hindu undivided family. This aspect of the matter came up for consideration before this court in Abhay L. Khatau and Others (Trustees of L.K. Trust) Vs. Commissioner of Wealth Tax, Bombay City II, and Trustees of Trustees of Gordhandas Govindram Family Charity Trust, Bombay Vs. Commissioner of Income Tax, Central, Bombay, , and the Calcutta High Court in Suhashini Karuri and Another Vs. Wealth Tax Officer, ''D'' Ward and Another, , where it was held that "joint trustees" could be regarded as a unit for the purpose of taxation under the Wealth-tax Act and assessed to wealth-tax in the status of an individual in respect of the value of the appropriates held by them as trustees. The word "individual" was held to be wide enough to include a group of person forming a unit. This view was followed by the Andhra Pradesh High Court in CWT v. Trustees of H. E. H. Nizam''s Family (Reminder Wealth) Trust [1977] 108 ITR 558 (at page 568). On appeal, the above decision of the Andhra Pradesh High Court was also approved by the Supreme Court. (The decision of the Supreme Court is reported in the same volume of ITR 108 at pages 580 to 601).

11. Section 21 is a special provision for assessment of trustees of a trust. Section 3, which is apparently the charging section, has been specifically made "subject to the other provisions" of the Act, which obviously includes section 21. Section 3, therefore, is subject to section 21 and it must yield to that section in so far as assessment of trustees of a trust is concerned. Section 5(1)(i) of the Act, which grants exemption from levy of wealth-tax in respect of "any property held by the assesses under trust or other legal obligation for any public purpose of a charitable or religious nature in India", has also to be construed and understood in that context. Consequently, whenever any assessment is to be made on a trustee, it must be made in accordance with the provisions of section 21. Every case of assessment on a trustee must fall u/s 21. He cannot be assessed apart from and without reference to the provisions of that section. The Commissioner of Wealth Tax, Andhra

Pradesh, Hyderabad Vs. Trustees of H.E.H. Nizam''s Family Hyderabad, . This position has undergone some change with the insertion of sub-section (4A) in section 21 of the Act by the Finance Act of 1981 with effect from April 1, 1981. But we are not concerned with the same as the controversy in this reference pertains to the pre-amendment period.

12. So far as the question of applicability of section 21 to the assessment of trustees is concerned, the legal position in that regard appears to be well-settled by the decision of the Supreme Court in The Commissioner of Wealth Tax, Andhra Pradesh, Hyderabad Vs. Trustees of H.E.H. Nizam''s Family Hyderabad, . In the above case, the Supreme Court summed up the legal position thus (at page 593) :

"It must, therefore, be held to be incontrovertible that whenever a trustee is sought to be assessed, the assessment must be made in accordance with the provisions of section 21."

13. It was held that, since under sub-sections (1) and (4) of section 21, it is the beneficial interests which are taxable in the hands of the trustee in a representative capacity and the liability of the trustee cannot be greater than the aggregate liability of the beneficiaries, no part of the corpus of the trust properties can be assessed in the hands of the trustee u/s 3 of the Act and any such assessment would be contrary to the plain mandatory provisions of section 21. In the above case, the Supreme Court also noticed the consequences of the provisions in section 21(1) that the trustee is assessable "in the manner and to the same extent" as the beneficiary and observed : the consequences are three-fold. In the first place, there would have to be as many assessments on the trustee as there are beneficiaries with determinate and known shares, though, for the sake of convenience, there may be only one assessment order specifying separately the tax due in respect of the wealth of each beneficiary. Secondly, the assessment of the trustee would have to be made in the same status as that of the beneficiary whose interest is sought to be taxed in the hands of the trustee. And, lastly, the amount of tax payable by the trustee would be the same as that payable by each beneficiary in respect of his beneficial interest, if he were assessed directly. It was also observed that even if the beneficiaries themselves were indeterminate or unknown, sub-section (4) of section 21 would apply and the assesses would be liable to be assessed in respect of the totality of the beneficial interest in the remainder as if it belonged to one single beneficiary. However, the question in regard to the applicability of sub-section (1) or sub-section (4) of section 21 will have to be determined with reference to the relevant valuation date. If, on the relevant valuation date, it is not possible to say with certainty and definiteness as to who would be the beneficiaries and whether their shares were determinate and specific, the case would be governed by sub-section (4) of section 21.

14. From the above decision of the Supreme Court, it is clear that a trustee is assessable to wealth-tax in respect of the assets held by him in trust by virtue of the

provisions of section 21 of the Act. It is in this context that section 5(1)(i) which exempts any property held by a "trust for any public purpose of charitable or religious nature in India" becomes relevant. The expression "trust for any public purpose of charitable or religious nature" connotes a trust for charitable objects involving an element of public utility. This requirement would be fulfilled if the trust can be said to be primarily or dominantly for public purpose of a charitable or religious nature in India. No further requirement is there in section 5(1)(i). Nor any further requirement can be introduced in it by reference to section 11 of the Income Tax Act. It may be pertinent to mention that exemption given to charitable and religious institutions under the Income Tax Act is hedged in by a number of restrictions and conditions including conditions regarding accumulation, etc., set out in sub-section (2) of section 11. "Charitable purpose" has also been defined for the purposes of that Act in section 2(15). The exemption has also been made subject to various conditions set out in section 13. That is not the position under the Wealth-tax Act. Consequently, even where the property held by an assesses under a trust or any other obligation for any public purpose of a charitable or religious nature in India is exempt from wealth-tax by virtue of section 5(1)(i), still income from such properties might not be exempt u/s 11 of the Income Tax Act, if it does not fulfil any of the requirements of that Act or if it falls within any of the restrictions or exceptions contained therein. The conditions for grant of exemption from wealth-tax u/s 5(1)(i) being wholly different and distinct, for the purpose of deciding the claim of an assesses for exemption under the Wealth-tax Act, any decision under the Income Tax Act in regard to exemption or taxability of its income under the said Act would have no relevance. That being the legal position, the decision of the Tribunal in the assesses''s own case under the Income Tax Act, holding it to be not entitled to exemption in respect of its income u/s 11 of the Income Tax Act is of no relevance in deciding the claim for exemption from wealth-tax u/s 5(1)(i) of the Act because the expression appearing in section 5(1)(i) cannot be interpreted with reference to the scope and ambit of a somewhat similar expression used for the purposes of Income Tax under the Income Tax Act. It is not a sound principle of construction to do so. To put it in the words of Lord Loreburn, "it would be a new terror in the construction of Acts of Parliament if we were required to limit a word to an unnatural sense because in some act which is not incorporated or referred to such an interpretation is given to it for the purposes of that Act alone". Observations in Macbeth and Co. v. Chislett [1910] AC 220 (HL) quoted with approval by the Supreme court in CST v. Jaswant Singh Charan Singh [1967] 19 STC 469.

15. Now, turning to the fact of the case before us, we find that, on a consideration of the totality of the facts and circumstances of the case, the Tribunal has recorded a categorical finding that the requirements of section 5(1)(i) of the Wealth-tax Act had been met by the trusts in question. In view of the above finding, which apparently is a finding of fact, and is not the subject-matter of challenge in this reference, we do not find any justification to hold that the assesses was not entitled to exemption u/s

5(1)(i) of the Wealth-tax Act in respect of the assets of the said trusts held by it.

16. We are, therefore, of the clear opinion that the Tribunal was right in holding that the net wealth of the two trusts in question was exempt from wealth-tax u/s 5(1)(i) of the Wealth-tax Act. Accordingly, we answer the question referred to us in the affirmative and in favour of the assesses.

17. Under the facts and in the circumstances of the case, there shall be no order as to costs.