(2009) 02 BOM CK 0089

In the Bombay High Court

Ardeshir Behramdubash APPELLANT

Vs

Wealth Tax Officer RESPONDENT

Date of Decision : 13-02-2009

Acts Referred:

Citation : (2011) 237 CTR 430 : (2010) 326 ITR 451

Hon'ble Judges : R.S. Mohite, J;F.I. Rebello, J

Bench : Division Bench

Judgement

F.I. Rebello, J.—The learned Tribunal had referred the following questions for consideration of this Court:

1. Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the right to purchase property at a fixed sum was an asset includible in the total wealth of the assessee ?

2. Whether on the facts and in the circumstances of the case, the Tribunal was right in upholding the reopening of the assessment u/s 17(1)(a) ?

3.Whether on the facts and in the circumstances of the case, the Tribunal was right in upholding and approving the directions of the CWT(A) in the context of qualification of the value of the right referred to in question No. 1 above ?

Though three questions have been referred, the answer really will depend on answering the first question.

2. A few facts may be stated. The assessee is Behram K Dubash. His grandfather Ardeshir Behram Dubash had created a trust on 2-5-1928. A supplementary deed was executed on 2-8-1945 which is the document which is really relevant for consideration of the present controversy. The settlor Ardeshir Behram Dubhash died in December, 1950. He had three sons viz. Kaikhushru, Ratanji and Bomanji. The assessee is the son of Kaikhushru A. Dubhash. The assessees father Ratanji died before the valuation date. The youngest uncle Bomanji Behram Dubash was alive as on that date. The subject matter of the trust was

the property described as "Mount Nepean".

3. For considering the issue two clauses of the deed dated 2-8-1945 are relevant. Clause 1 (b) reads as under:

1(b) Subject to the provisions aforesaid, for residence of the settlor during his lifetime from the date hereof till the death of the last survivor of the settlors sons Kaikhushru, Ratanji and Bomanji the trustees shall hold the said Mt. Nepean upon the trust for use as family residence for the said sons of the settlor with the members of their families as hereafter specified.

The next relevant clause is part of Clause 4 which reads as under:

4. From and after the death of the last survivor of the said Kaikhushru, Ratanji and Bomanji the trustees shall hold the aforesaid "Mt. Nepean" with permanent fixtures, fittings, fixed decorations, chandeliers, lights fans, furnitures in the basement hall and dining room statues in the gardens and the said plot No. 3 upon the following trust:

(a) The trustees shall offer for outright sale for Rs. 8 lakhs the same to Behram Kaikhushru Dubash if he be alive and if Behram be not alive, to the son Ardeshir and if Ardeshir be also not alive then to the eldest male child of the said Bomanji Ardeshir Dubash as may then be alive.

4. On behalf of the assessee the learned Counsel submits that firstly Clause 4 itself was not operational, considering that Boman Ardeshir Dubash was alive as noted by the Tribunal on the date of the valuation. Independently it is pointed out that mere right to purchase may be for an ascertained price is not property or interest in property and, therefore, could not have been added to the net wealth of the assessee. --

5. We have heard the learned Counsel. In our opinion as far as the first contention is concerned, really speaking it is only on the death of Boman Ardeshir Dubash would the relevant part of Clause 4, become operational. In the instant case as noted by the Tribunal itself on the date of the valuation Boman Ardeshir Dubash was alive. Consequently the question of the assessee exercising his right and purchasing the property for the predetermined value could not have arisen and consequently could not have been treated as an asset for the purpose of calculating net wealth.

6. The second question which is consequential question would be whether the clause confers any right in the property or interest in the property in the assessee. In our opinion the issue is answered in the case of Swami Motor Transport (P) Ltd. and Another Vs. Sri Sankaraswamigal Mutt and Another, . Though the facts are not identical the question of law which arises here is similar. In the area known as Tanjore rented premises were covered by the Madras City Tenants Protection Act. The said Act provided for a provision for exercise of right to purchase on the happenings of certain events. By an amendment, the said provision was excluded. The said amendment was challenged on the ground that

it violates articles 14 and 19 including the right to the property as it then stood. The question before the Supreme Court considering the challenge under Article 19 was whether the right to property was affected. The said issue was answered in the following manner:

The question that falls to be considered is whether the second right, namely, the right of a tenant to apply to the court for an order directing the landlord to sell the land to him for a price to be fixed by it, u/s 9 of the principal Act is a right to property. The law of India does not recognize equitable estates. No authority has been cited in support of the contention that a statutory right to purchase land is, or confers, an interest or a right in property. The fact that the right is created not by contract but by a statute cannot make a difference in the content or the incidents of the right, that depends upon the nature and the scope of the right conferred. The right conferred is a right to purchase land. If such a right conferred under a contract is not a right of property, the fact that such a right stems from a statute cannot obviously expand its content or make it any the less a non-proprietary right. In our view, a statutory right to apply for the purchase of land is not a right of property." Thus the Supreme Court held that right to purchase even though by statute would not amount to right to property. In the instant case also the clause in the trust deed only provided for purchase in the event of certain contingencies. In our opinion, the clause by itself, therefore, could not be said to be property in the hands of the assessee nor any interest in the property. We are clearly, therefore, of the opinion that considering the law declared by the Supreme Court in Swami Motors (supra) that Clause 4(a) did not confer any proprietary right or interest in the property in favour of the assessee and consequently that asset for the purpose of net wealth could not have been assessed in the hands of the assessee herein.

7. From the ratio of the judgment it would be clear that the clause did not confer any property right or interest in property. Once that be the case, it would not be treated as an asset. In the light of what we have stated above question No. 1 would have to be answered in the negative in favour of the assesses and against the revenue.

8. Consequently question No. 2 would have also to be answered in the negative in favour of the assessee and against the revenue.

9. Consequently question No. 3 would not arise.

10. Reference answered accordingly.