(1997) 10 MAD CK 0056

In the Madras High Court

Case No : Tax Case No''s. 50 and 51 of 1981

Commissioner of Income Tax — APPELLANT

Vs

C.R. Rajendran — RESPONDENT

Date of Decision : 16-10-1997

Acts Referred:
Income Tax Act, 1961 — Section 28, 64(1)(V)
Wealth Tax Act, 1957 — Section 27(1)

Citation : (1999) 237 ITR 123

Hon'ble Judges : P. Thangavel, J;N.V. Balasubramanian, J

Bench : Division Bench

Advocate : Deokinandan, for the Appellant; K.M.L. Majele, for the Respondent

Judgement

N.V. Balasubramanian, J.—This is a combined reference both under IT Act and WT Act by the Tribunal at the instance of the Revenue. In

so far as the reference under IT Act is concerned, the Tribunal has stated a case and referred the following question of law :

Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the trust income should not be included in

the Income Tax assessment of the assessee-minor for the asst. yr. 1977-78 ?

In so far as the reference under WT Act is concerned, the Tribunal has stated a case and referred the following question of law under s. 27(1) of

the WT Act :

Whether, on the facts and in the circumstances of the case, the Tribunal was right in deleting the wealth of Venkatesh Trust of Rs. 30,495 from the

total wealth of the assessee for the asst. yr. 1977-78 ?

Since it is a combined reference and the facts are common, we propose to deal with both the cases in common.

2. One R. V. Bhuvanesh, the settlor by an indenture made on 5th February, 1976, created a trust known as Venkatesh Trust by appointing three

trustees and he settled a sum of Rs. 3,000 in trust for the benefit of one Venkatesh (hereinafter referred to as the beneficiary) son of G. R.

Rajendran (hereinafter referred to as ''the assessee''). The relevant clauses and terms are set out in the order passed by the Tribunal. On construing

the trust deed, the ITO came to the conclusion that the income accrued to the beneficiary during the previous year relevant to the asst. yr. 1977-78

and is includible in the hands of the assessee as he is the father of the beneficiary. According to the ITO, the corpus and the income of the trust

accrued to the beneficiary during the accounting year even though the trust fund that is the corpus and the accumulated income have to be handed

over to him only on his attaining the age of 18. According to him, the accumulation of income on behalf of the beneficiary could not postpone the

assessment of the income and upon reading cl. 12 of the trust deed, he held that it was only a provision for disposition of the trust funds in an

eventuality such as the beneficiary''s death and assessed the trust income of Venkatesh Trust in the hands of the assessee for the asst. yr. 1977-78.

Similarly, for the asst. yr. 1977-78, in the wealth-tax assessment, the WTO included in the net wealth the value of the asset relating to the

Venkatesh Trust including the accrued income for the reason that the beneficiary was the owner of the trust funds.

3. The assessee filed separate appeals before the AAC, both under IT Act and the WT Act. The AAC held that the beneficiary had neither

beneficial interest in the trust income, nor control over the income during the accounting year as he was a minor and as the corpus and the income

have to be accumulated and payable only when the beneficiary attains the age of 18. The AAC, therefore, held that the income is not includible in

the hands of the assessee and so also, he deleted the inclusion of such assets in the appeal under the WT Act preferred by the assessee for the

same reasons.

4. The Revenue has challenged both the orders passed by the AAC by preferring separate appeals before the Tribunal. In so far as the appeal

under the IT Act is concerned, the Tribunal, after considering the terms of the deed came to the conclusion that the income cannot be included for the Income Tax assessment and in so far as the wealth-tax assessment is concerned, it held that the corpus of the trust cannot be included in the

hands of the assessee. The Tribunal proceeded on the basis that the income did not accrue to the beneficiary and in so far as the wealth-tax

assessment is concerned, the Tribunal held that the assets in question cannot be treated as that of the assessee during the accounting year. The

Tribunal also held that the interest of the minor was only a contingent interest in view of the provisions of s. 21 of the Transfer of Property Act and

s. 120 of the Succession Act. In view of the above, the Tribunal dismissed both the appeals preferred by the Revenue.

5. The Department has challenged the findings of the Tribunal and sought for a reference and the Tribunal has stated a case both under IT Act and

WT Act and in a common reference the questions of law set out above are referred to.

6. Mr. C. V. Rajan, learned counsel for the Revenue, has brought to our notice the decision in unreported cases of this Court in TC No. 850 of

1983 dt. 11th March, 1996, and TC No. 1132 of 1985, dt. 21st February, 1997, wherein this Court held that the income from the trust was

deferred till the minor attains majority. This Court, therefore, held that the income of the trust during the assessment year when the beneficiary was

a minor cannot be taxed in the hands of the assessee since the income did not accrue to the beneficiary till he attains majority. The above view was

arrived at by this Court following a decision of this Court in Commissioner of Income Tax Vs. Sitalakshmi, . In view of the above two decisions of

this Court rendered in the assessee''s own case, we have to answer the first question of law referred to us under the IT Act in the affirmative and

against the Revenue.

7. Logically speaking, the second question of law arising under the WT Act is also liable to be answered in the affirmative and against the Revenue.

Mr. C. V. Rajan, learned counsel for the Revenue, however, submitted that when the Tribunal held that the beneficiary''s interest is a contingent

interest, the contingent interest is also an asset according to the provisions of the WT Act and such the value of the contingent interest is liable to be

included in the hands of the assessee. He strongly placed reliance on a decision of the Supreme Court in the case of Commissioner of Income Tax, Bombay Vs. Scindia Steam Navigation Co. Ltd., and submitted that though this point was not specifically argued before the Tribunal, still the

question whether the contingent interest is liable to be included as a part of the wealth is only an aspect of the question referred to us and since the

main issue whether the interest of the assessee on the trust was liable to be included in the hands of the assessee was an issue before the Tribunal,

the issue whether the contingent interest can be included or not is an aspect of the question and it is open to the Revenue to urge the point before

this Court and there must be a direction to the Tribunal to include the value of contingent interest in the net wealth of the assessee.

8. We are unable to accept the contention of the learned counsel for the Revenue. The only issue before the WTO at the time of finalising the

assessment was whether the interest of the beneficiary in the trust was an absolute interest or a contingent interest. The WTO held that it was an

absolute interest and in that view of the matter, he included the value of the interest in the net wealth of the assessee. In the appeal preferred by the

assessee, the AAC held that the income did not accrue to the beneficiary during the accounting year and the income could not be included in the

hands of the assessee, C. R. Rajendran, the father and guardian of the minor beneficiary. For the same reason stated in the IT appeal, that there is

no income due to the beneficiary during the year of accounting, the AAC held that the value of the assets cannot be included in the hands of the

assessee. In the appeals preferred before the Tribunal, it is fairly admitted that in the grounds of appeal raised before the Tribunal, no such ground

was raised by the Revenue as regards the inclusion of contingent interest. Therefore, we are of the view that even if it is held that the interest is

contingent interest, whether the value of the interest should be included in the hands of the assessee is a question of fact involving detailed

investigation of facts. No argument was advanced before the Tribunal to the effect that even if the interest is a contingent interest, that contingent

interest should be regarded as an asset and must be evaluated and liable to be included in the net wealth of the beneficiary. Since no ground of

appeal was raised and no argument was advanced before the Tribunal regarding the nature of the contingent interest and the inclusion of the value

of the contingent interest in the net wealth, we are of the view that it is not open for the Revenue to raise a new point that the contingent interest should be regarded as an asset and its value should be included. The questions how to evaluate the contingent interest, whether it is liable to be

included in the hands of the assessee and how much is liable to be included all involve investigation into the facts of the case. Since it involves

investigation into new facts, we are of the opinion that it is not permissible for the Revenue to raise the question of inclusion of value of interest

before this Court in the reference in the wealth-tax assessment of the assessee.

9. The decision of the Supreme Court in Scindia Steam Navigation Co. Ltd. case, cited supra, makes the position clear that when a question of

law is neither raised before the Tribunal nor considered by it, it is not a question arising out of its order notwithstanding that it may arise on the

findings given by it. Since the question of law regarding the inclusion of the contingent interest was neither raised before the Tribunal nor considered

by the Tribunal, we are of the opinion that the question whether it should be included in the net wealth of the assessee cannot be stated to arise out

of the order of the Tribunal. Further, it does not logically follow that once the interest is contingent interest, the same is liable to be included in the

hands of the assessee. It is necessary to undertake other investigations into facts for such inclusion and, therefore, the question of inclusion of the

value of the contingent interest cannot be regarded as an aspect of the question. The Tribunal has recorded a finding that there is no asset at all

which was liable to be included in the net wealth of the assessee. In view of the clear findings of the Tribunal, we are of the view that since the

question was not raised before the Tribunal, it is not necessary to consider the question whether the contingent interest should be regarded as an

asset and what would be the value of the contingent interest. We do not find any infirmity in the order of the Tribunal that the sum of Rs. 30,495 is

liable to be deleted from the total wealth. Accordingly, we are of the view that the second question referred to us is liable to be answered against

the Revenue.

10. In the result, we answer both the questions of law referred to us in the affirmative and against the Revenue. However, there will be no order as

to costs.

