

(1994) 02 CAL CK 0028

In the Calcutta High Court

Case No : Matter (Wealth-tax) No. 1284 of 1990

Commissioner of Wealth Tax

APPELLANT

Vs

Aditya Vikram Birla

RESPONDENT

Date of Decision : 02-02-1994

Acts Referred:

Wealth Tax Act, 1957 — Section 21, 21(3)

Citation : (1994) 209 ITR 558 : (1994) 75 TAXMAN 308

Hon'ble Judges : Shyamal Kumar Sen, J;Ajit K. Sengupta, J

Bench : Division Bench

Advocate : A.C. Moitra and Sunil Mukherjee, for the Appellant;

Judgement

Ajit K. Sengupta, J.—In this reference u/s 27(1) of the Wealth-tax Act, 1957, the Tribunal has referred at the instance of the Commissioner of Income Tax, the following questions for determination :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that Rule 1D of the Wealth-tax Rules, 1957, is directory and not mandatory ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the unquoted shares of Birla Brothers (P.) Ltd. should be valued on net maintainable profit method and not on break up value method in accordance with the provisions of Rule 1D of the Wealth-tax Rules, 1957 ?

3. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was justified in law in holding that the assets held by the minor assessee in the Kumar Mangalam Birla Trust on the valuation dates were his beneficial interest of the trust and not the corpus of the trust and in that view of the matter the beneficial interest only should be included in the net wealth of the assessee ?

4. Whether, on the facts and in the circumstances of the case, the Tribunal was

justified in law in holding that the provisions of Section 21(3) of the Wealth-tax Act, 1957, should not be applicable in the case of Sri Kumar Mangalam Birla (minor) for the purpose of making assessment of the assets held by him in the Kumar Mangalam Birla Trust ?"

2. The facts giving rise to the first two questions are as follows :

The assessee is a resident individual and the assessment year involved is 1983-84, the valuation date being March 31, 1983. In the course of assessment proceedings, the Assessing Officer found that the assessee held certain unquoted equity shares of Birla Brothers (P.) Ltd. The value of the shares was disclosed on the basis of the assessee's valuer's report which computed the value on the profit-making method and not on the break-up value method as prescribed by the provisions of Rule 1D of the Wealth-tax Rules, 1957, for the purpose of valuing the unquoted equity shares. The Assessing Officer held that Rule 1D is mandatory. Therefore, the Assessing Officer made his own valuation of the said unquoted shares in accordance with the method prescribed by Rule 1D which enjoins the break-up method. The Commissioner (Appeals), however, reversed the Assessing Officer's valuation and directed him to make the valuation of the unquoted shares on the method of capitalisation of the maintainable profit for the last five years abandoning the method laid down by Rule 1D. The Tribunal further directed the officer to allow a discount at 15 per cent. of pre-tax profit for the retention of reserve and non-negotiability of the shares and further to adopt rate of capitalisation of 15 per cent. per annum.

3. Thus, the first two questions referred to us relate to the question of the applicability of Rule 1D as against the yield method. The questions pertaining to the discount and the capitalisation rate were also sought for reference which, however, the Tribunal declined to refer as such questions relate to findings of facts. We are not, at the moment, concerned with those facts. This court, by judgment delivered on March 21, 1991, in Matter No. 149 of 1987, Commissioner of Wealth Tax Vs. India Exchange Traders' Association, , held that the provisions of Rule 1D are not directory but mandatory. The first two questions are, therefore, answered in the negative and in favour of the Revenue

4. The facts relating to the last two questions are that the assessee, Sri Kumar Mangalam Birla (minor), is the sole beneficiary of the trust named Kumar Mangalam Birla Trust. The said trust was settled by Sri Basant Kumar Birla by a deed of settlement executed on March 18, 1968, in favour of the said minor. Clause (3) of the said trust deed dated 18th March, 1968, read as follows :

"The trustees shall hold the trust properties and shall, from time to time, until Shri Kumar Mangalam Birla attains the age of 21 years, apply the whole or part of the income and/or the whole or part of the corpus of the trust properties for the maintenance, education, marriage, medical relief and otherwise for the absolute benefit and enjoyment of Shri Kumar Mangalam Birla and upon the said Kumar Mangalam Birla attaining the age of 21 years to hand over the trust fund

or such part thereof that will then remain in their hands and all investments thereof representing the same and all additions and accretions thereto to the said Shri Kumar Mangalam Birla and in case of his death before attaining the age of 21 years to his heirs and legal representatives to be held and enjoyed by him or them absolutely."

5. Thus, according to the terms of the said trust, Shri Kumar Mangalam (minor) had interest in the income and the corpus of the trust fund.

6. The assessee, Kumar Mangalam Birla (minor), showed the value of the property of the trust in the return on the basis of the value of the beneficial interest in the trust property as per his valuer's report. The valuer held that the minor was not the absolute owner of the assets of the trust and the value of his beneficial interest as life tenant is to be the value taken for the purpose of assessments of net wealth in respect of the trust properties. The valuer went on the basis that the assessee is the sole beneficiary of the trust fund with full interest in the income and corpus of the fund, no matter when it may be applied for his benefit before his attainment of the age of 21 years but he cannot be said to be the absolute owner of the corpus. In the event of the death of the beneficiary before attaining the age of 21 years, the residual fund including any income carried forward should go to his heirs. On his attaining the age of 21 years, the balance of the corpus and income not utilised would go to the beneficiary. Therefore, for valuation the mortality before the age of 21 years, in his view, could not be ignored. The impact of such mortality was held by him to be includible. Thus, the valuer having regard to the fact that the assessee was 16 years on the valuation date, determined the value of the beneficial interest of the assessee.

7. But the Assessing Officer held that the market value of all the trust properties on the valuation date should be assessed in the hands of the assessee as he took the minor beneficiary as the absolute owner of the properties on the valuation date and that he is assessable in terms of the provisions of Section 21(3) of the Act. Thus, the entire market value of the trust properties was included in the net wealth of the assessee.

8. On appeal, the Commissioner (Appeals) directed the Assessing Officer to accept the valuation of the assessee's beneficial interest instead of the market value of the properties in accordance with the method adopted by the valuer of the assessee. The Department in its appeal from the order contended before the Tribunal that the assessee was to be taken as the absolute owner of the property as the assessee had a vested interest in the trust property and that the assessment was to be made on the basis of the provisions of Sub-section (3) of Section 21, because that sub-section deals with assessments, inter alia, of a minor where the minor is in direct ownership of the asset. The Tribunal did not, however, accept this view and following their earlier order in the assessee's case for the assessment years 1976-77 to 1978-79 held that the assessee had only a beneficial interest in the assets of the trust and the value of the corpus of the

trust is not includible in his net wealth, the beneficial interest alone being includible in the wealth of the assessee. Moreover, the Tribunal found the case to be one where the minor is not in direct ownership of the assets and held Sub-section (3) of Section 21 to be inapplicable and that the assessment has to be made under Sub-section (1).

9. The Revenue agitates its case in the last two questions on these aspects contending that the Tribunal should have held that the minor beneficiary under the trust deed is assessable in respect of the full value of the corpus of the trust and not the value of the beneficial interest in the trust assets and that the provisions of Sub-section (3) of Section 21 are applicable in this case as the assessee, a minor, is in direct ownership of the property.

10. The minor beneficiary has doubtless vested interest in the property under the trust. But the trust is to determine on the assessee's attaining the age of 21 years when the trustees shall hand over the trust fund as remaining on his attaining that age along with the accretions thereto, if any. Until attainment of the age of 21 years the assessee was to enjoy the income as well as the corpus either in part or whole for his benefit. The question arises whether the transfer of the corpus being held over or postponed till the attainment of the specified age makes his interest short of full ownership and his interest partakes of the nature of beneficial interest.

11. Learned counsel for the assessee in the first instance contests the departmental contention that the case falls for assessment in terms of the provisions of Sub-section (3) of Section 21 of the Wealth-tax Act and not Section 21(1) as urged by the assessee. The provisions of Section 21(3), inter alia, enjoin that where the guardian or trustee of a minor 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 beneficiary, if of full age, and in direct ownership of such assets.

12. Learned counsel argued that the Revenue misconceived the case on the facts. The case is not one of a guardian holding assets on behalf, or for the benefit, of the minor who is in direct ownership of such assets.

13. Thus, the contention of the Revenue, according to him, totally brushes aside the fact that the interest of the minor arises only by virtue of a deed of settlement which we have already referred to. The settlor is Shri Basant Kumar Birla, who appointed as trustees for the trust one Shri Babulal Champalal Bihani and another Shri Pradip Kumar Daga. Therefore, learned counsel for the assessee strongly contended that it is a case of assessment of a minor beneficiary having beneficial interest in the trust property and the Department's point of view that the assessment is to be u/s 21(3) in respect of the minor as the full owner of the corpus through his father and natural guardian is contrary to what appears from the records. The whole argument of the Revenue proceeds

from an erroneous view of the facts. It is a clear case of assessment of a trust in favour of a minor beneficiary. He is to become the owner contingent on his attaining a certain age. There is no doubt that an interest in the property is vested in the beneficiary but the transfer of the absolute ownership is postponed till the attainment of a specified age. Until such attainment the minor beneficiary in such interregnum is only entitled to the benefit of the income from the trust property or part of the corpus of the trust property but absolute ownership is not a present interest of the beneficiary.

14. We have heard the rival contentions. Under the law of trusts, a beneficiary can convert beneficial interest into direct ownership even before the trust period. The content of the legal right of the beneficiary in the case of the beneficial interest for a limited period, destined to animate absolute interest after the efflux of the stated time may be said to have in it embedded an absolute interest in the corpus. The beneficial interest is not a mere life interest. In this case, the minor beneficiary is not a life tenant under the deed of settlement. He has beneficial interest in the income of the trust property during the trust period which terminates on his attaining the age of 21 years and upon such termination the corpus as well vests in him in absolute terms. In the event of his pre-deceasing the terminal transition of the beneficial interest into ownership, the corpus shall vest in his legal heirs and successors as owners. Therefore, it is not a case where the beneficiary holds a life interest with remaindermen.

15. The question is whether the beneficiary under the trust can convert at his option the beneficial interest into an absolute interest by accelerating the transition of the interest into ownership. Normally, the direction of the trustee is binding on the beneficiary. If no power is vested in the beneficiary by the settlor under the terms of the trust, he cannot bring the trust to an end and cause any modification in its terms. But, this is not an inflexible rule. u/s 78 of the Indian Trusts Act, the beneficiary or the beneficiaries can end a trust by accelerating the distribution of the corpus if the beneficiaries are competent to contract. Clause (a) of Section 78 says that a trust otherwise created than by will can be revoked, where all the beneficiaries are competent to contract--by their consent; no doubt, the provisions postulate plurality of beneficiaries but the same principle shall also apply where the beneficiary is a single person.

16. But, the law rules out the exercise of such power by a beneficiary who is a minor not being competent to contract. Even in that case the remedy does not stop short. If the trust has among its beneficiaries any minor, the termination of the trust is possible provided the principal court of original jurisdiction grants such modification or termination on behalf of the minor beneficiary. The court shall substitute its consent for that of the minor or any major beneficiary who is not competent to contract being either a lunatic or an insolvent. It is, therefore, open to the beneficiary to have the transfer of the corpus before the attainment of the age of 21 years by exercise of his power u/s 78. If the beneficiary is still a minor, even then he could approach a principal court of original jurisdiction to

grant sanction for exercise of such option by the minor beneficiary.

17. But, the question is whether in a case where the settlor has a specific mandate that the gift of the corpus to the beneficiary is contingent on his attaining a certain age, Section 78 can apply or the court can override such mandate. In such a situation, the mandate that the gift shall actually take effect on a particular date is indelible. This again brings us to section 11 of the Indian Trusts Act which says that the trustee is bound to fulfil the purpose of the trust, and to obey the directions of the author of the trust given at the time of its creation. This rule is, however, subordinated to a condition that consent of all the beneficiaries being competent to contract shall, however, prevail over the directions of the settlor. The said section also says that where the beneficiary is incompetent to contract, his consent may, for the purpose of this section, be given by a principal civil court of original jurisdiction. There is also a limitation on the powers of the court. As earlier said, when a settlor or a testator has made some provision that postpones the enjoyment through a direction for accumulation of the income for a given period, the trustees cannot disobey the direction of the settlor. In general terms, as long as a trust is being properly administered and is duly continuing, a beneficiary has no right to interfere in its administration but has passively to wait to receive the benefit under the trust. If, however, the trust is not being properly administered, a beneficiary can take steps to compel its proper administration and in any case may take certain action to preserve his beneficial right. Section 11 in the ultimate analysis accepts the proposition that the beneficiaries for whose benefit the trust was created are the final masters of the trust. At any rate, the beneficiary's power to accelerate the transfer of the property upon revocation of the trust is hedged in by the various conditions of which the principal one is that the minor beneficiary requires the consent of the principal court of original jurisdiction which again shall intervene only where the continuation of the trust is to the jeopardy of the interest of the beneficiary, otherwise not.

18. Where the settlor directs the trustees to pay an infant beneficiary the corpus and accumulations on his attaining a specified age and in the meantime to allow maintenance, the infant takes an absolute interest. The ownership vests in him though transmissible on attaining the stated age. The beneficiary in such a case cannot put an end to the trust sooner. See *Re Lord Nunburnholme*, *Wilson v. Nunburnholme* [1912] 1 Ch. 489.

19. Even if we assume that in view of the deferment of full ownership of the corpus till the age of 21 years, the beneficiary during such deferment cannot be held to be the full owner and he can be assessed only in respect of the beneficial interest, that does not settle the controversy.

20. It is the assessee's case that the chance of mortality before 21 years should be a discounting factor and the full value of the assets of the trust cannot be brought to the charge of tax. What is exigible to tax is the beneficial interest. But, this argument does not advance the assessee's case, because after the

Supreme Court had decided in *The Commissioner of Wealth Tax, Andhra Pradesh, Hyderabad Vs. Trustees of H.E.H. Nizam's Family Hyderabad*, , that a trust is liable to tax only in respect of the aggregate of the value of the beneficial interests of the beneficiaries irrespective of whether such aggregate is equal to the value of the assets held on trust. The Legislature inserted a new Sub-section (1A) by the Finance (No. 2) Act, 1980, having effect from the assessment year 1980-81, whereby the balance interest is taxable at the maximum marginal rate. The said sub-section is as under:

"(1A) Where the value or aggregate value of the interest or interests of the person or persons on whose behalf or for whose benefit such assets are held falls short of the value of any such assets, then, in addition to the wealth-tax leviable and recoverable under Sub-section (1), the wealth-tax shall be levied upon and recovered from the court of wards, administrator-general, official trustee, receiver, manager or other person or trustee aforesaid in respect of the value of such assets, to the extent it exceeds the value or aggregate value of such interest or interests, as if such excess value were the net wealth of an individual who is a citizen of India and resident in India for the purposes of this Act, and-

(i) at the rates specified in Part I of Schedule I ; or

(ii) at the rate of three per cent. ; whichever course would be more beneficial to the Revenue."

21. This shows that the Legislature is aware that beneficial interest is not absolute interest and its value cannot be the full value of the corpus. The insertion of this new Sub-section (1A) can be adverted to for support that beneficial interest is not absolute interest and is distinguishable from it. Where the beneficiaries are more than one, the aggregate value of all their beneficial interests cannot exhaust the full value of the assets in which such interests subsist. Therefore, where the beneficiary is a minor and has no present right to the corpus which right is to accrue to him only on attainment of majority, such interest is only a beneficial interest and its value cannot be equivalent to the full value of the asset. This principle is embedded in the provisions of the new sub-section.

22. The contention of the Revenue is that Sub-section (1A) can apply where the beneficiary is not a minor. Even if the minor has only a beneficial interest the full value of the property held in trust is none the less exigible to tax by virtue of Sub-section (3). It is Sub-section (3) which holds the field where the minor is a beneficiary. Sub-section (5) creates a fiction that where the trust is for the benefit of a minor, lunatic or idiot, it has to be assumed that the minor is of full age and in direct ownership of such assets. The said provisions of Sub-section (3) of Section 21 are as under:

"Where the guardian or trustee of any person being a minor, lunatic or idiot 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, or sound mind and in direct ownership of such assets."

23. The language of the provisions makes it clear that it is immaterial whether the minor is in direct ownership of the assets held under the trust by the trustees. The expression "tax shall be levied upon and recoverable 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, and in direct ownership" is the keynote to the intent of the said sub-section. It clearly indicates that even if the interest of the beneficiary is limited to beneficial interest, the minor being the person for whom the trustee holds the assets shall be liable to tax on the basis of two hypotheses--(1) he is not a minor, (2) he is in direct ownership of such assets.

24. In the light of these unambiguous provisions, all other questions, though dealt with by us, fade into insignificance. There is no doubt or dispute that the interest of the minor in the trust is a vested interest. We also do not question the assessee's argument that there is deferment of direct ownership as far as the minor beneficiary is concerned until he attains the age of 21 years. All these issues become immaterial by reason of one decisive fact that here is a trust of which the beneficiary is a minor and the trustee holds the assets for his benefit. Therefore, the case fully answers the conditions precedent contained in Sub-section (3) of Section 21. The Tribunal has not appreciated the impact of Section 21(3) and, therefore, fell into error in concluding that the taxability should be confined only to the beneficial interest in the corpus of the trust.

25. Sub-section (3) directly deals with the case of a minor beneficiary of a trust. The fact-situation required is that the assets are held by a guardian or trustee on behalf or for the benefit of the minor. If this be the situation, Sub-section (3) lays down the method and -extent of taxation. The taxation would be on the basis of two fictions. One is that the minor is not a minor but of full age. The second fiction is that even though his interest is a beneficial interest and not an absolute interest, yet he would be treated as the direct owner of such assets. The expression of the nature of the interest as "direct ownership" necessarily predicates the interest to be absolute interest. Thus, the contention of the Revenue has the support of the literal interpretation of Sub-section (3) of Section 21. On the face of the unambiguous provisions, there is, thus, no escape from the inference that in the instant situation, we have to take the minor beneficiary as the direct owner of the property and his tax liability should be governed accordingly.

26. For the reasons stated, questions Nos. 3 and 4 are answered in the negative and in favour of the Revenue.

27. There will be no order as to costs.

Shyamal Kumar Sen , J.

28. I agree.