
(1993) 11 RAJ CK 0012

In the Rajasthan High Court

Case No : Wealth-tax Reference No. 39 of 1983

Commissioner of Wealth-tax

APPELLANT

Vs

Amar Singh Rathore

RESPONDENT

Date of Decision : 01-11-1993

Acts Referred:

Wealth Tax Act, 1957 — Section 4, 4(3), 5, 5(1), 5(3)

Citation : (1993) 11 RAJ CK 0012

Hon'ble Judges : V.K. Singhal, J;N.C. Kochhar, J

Bench : Division Bench

Advocate : G.S. Bapna, for the Appellant;

Judgement

V.K. Singhal, J.—The Income Tax Appellate Tribunal has referred the following question of law arising out of its order dated March 7, 1981, in respect of the assessment years 1972-73 to 1974-75 u/s 27(1) of the Wealth-tax Act, 1957 :

"Whether on the facts and in the circumstances of the case, the Tribunal was justified in upholding the finding of the Appellate Assistant Commissioner that the assessee was entitled to exemption of Rs. 1,50,000 u/s 5(3) of the Wealth-tax Act, 1957 ?"

2. The brief facts of the case are that the assessee made a gift of Rs. 3 lakhs to his minor son, Rajesh Kumar. The Wealth-tax Officer included this amount in the assessment of the assessee but allowed the exemption to the extent of Rs. 1,50,000 in accordance with the provisions of Section 5(3) of the Wealth-tax Act. Subsequently, the assessment order was reopened and it was held that the assessee is not entitled to the exemption in respect of the deposit held by the minor son because the provisions of Section 5(3) were amended with effect from April 1, 1975, i.e., for the assessment year 1975-76, when the words "held by him" were substituted by the words "owned by him". According to the Wealth-tax Officer, these provisions were applicable from 1975-76 and, therefore, the exemption of Rs. 1,50,000 was wrongly granted in the original assessment order.

3. It is not in dispute that the assessee was holding the bank account in the name of his minor son for the entire amount of Rs. 3 lakhs. The submission of learned counsel for the Revenue is that since the assessee was not the owner of it, the exemption u/s 5(3) of the Act could not be given.

4. The Orissa High Court in the case of Damji Jairam Vs. Commissioner of Wealth-tax, has held that the words "held by him" appearing in Section 5(3) extends to the assets held by the wife or the child which is to be included in the total wealth of the assessee by virtue of Section 4. The Madras High Court has also taken the same view in the case of S. Naganathan Vs. Commissioner of Wealth Tax,

5. Sub-section (3) of Section 4 was substituted by the Finance Act 25 of 1975, with effect from April 1, 1975, and after its amendment it was mentioned that where the value of any asset is to be included in the net wealth of the assessee in accordance with Clause (a) of Sub-section (1), there shall be deducted from such value any debts owing on the valuation date by the transferee mentioned in that clause in so far as such debts are referable to such assets and the provisions of Section 5 shall apply in relation to such assets as if such assets were assets belonging to the assessee. Section 4(3)(b) makes it clear that the provisions of Section 5 shall apply in relation to such assets as if such assets were "belonging to the assessee". The words "belonging to the assessee" creates a deeming fiction and, therefore, if the assets are to be included in the net wealth by a deeming fiction, then the exemption u/s 5 has to be allowed by the deeming fiction. As such the exemption to the extent of Rs. 1,50,000 has to be allowed to the assessee. In Late Nawab Sir Mir Osman Ali Khan Vs. Commissioner of Wealth Tax, Hyderabad, it was held by the apex court that the liability to wealth-tax arises because of the belonging of the asset and not otherwise. Mere possession, or joint possession, unaccompanied by the right to be in possession or ownership of property, would, therefore, not bring the property within the definition of "net wealth" for it would not then be an asset "belonging" to the assessee.

6. The provisions of Section 2(m) provide that net wealth includes all assets belonging to the assessee on the valuation date including assets required to be included in his net wealth on that date under this Act. Section 3 creates a charge on the net wealth. u/s 5(3), the words "held by him" were substituted by the words "owned by him" by the Finance Act, 1975 (25 of 1975), with effect from April 1, 1975. The words "by the assessee" were interpreted by the Gujarat High Court to mean that deposit should be in his own name or the investments were registered in his name in COMMISSIONER OF WEALTH-TAX, GUJARAT Vs. HARSHAD RAMBHAI PATEL AND ANOTHER., . The words "owned by him" were substituted to include beneficially owned by the assessee or the asset is otherwise includible in his net wealth, then the exemption would be available. The amendment cannot be considered to exclude the exemption in respect of those assets which are included in the net wealth by the deeming fiction created by Section 4 and, therefore, it could be considered only clarificatory in nature.

7. As explained above in accordance with the provisions of Section 4, a legal

fiction has been created by which, in computing the net wealth of an individual the value of the assets of the spouse of such individual and minor child have to be included. The logical conclusion of this legal fiction is that, if the value of the asset of the spouse or minor child is to be included then the exemption attached to such asset has also to be given. The provisions of Section 5(1) at the relevant time provided for an exemption to the extent of Rs. 1,50,000 in respect of "bank deposits". The exemption was not related to the person, but was related to the "bank deposit" subject to certain conditions being fulfilled. Since there is no dispute with regard to the other conditions, the exemption which was available to the minor child will be applicable to the assessee, who by the deeming fiction is considered as an owner. Under the provisions of Section 4 of the Act, in computing the net wealth of an individual, assets which are transferred by an individual to his minor child have been considered as belonging to the individual. The amendment made in Section 5(3) which has used the words "owned by him", therefore, has to be read along with Section 4(1)(a)(ii) and Section 4(3) and if a particular asset, even if it is owned by the minor child, it is deemed to be as belonging to the individual and, therefore, the amendment made in 1975 would be considered as clarificatory in nature.

8. In view of this position, we are of the view that the Income Tax Appellate Tribunal was justified in coming to the conclusion that the assessee was entitled to exemption of Rs. 1,50,000 u/s 5(3) of the Wealth-tax Act. Accordingly, the reference is answered in favour of the assessee and against the Revenue.