
(1993) 09 RAJ CK 0010

In the Rajasthan High Court

Case No : Wealth-tax Reference No's. 21, 21A and 21B and 67 of 1982

Commissioner of Wealth-tax

APPELLANT

Vs

A.S. Rathore

RESPONDENT

Date of Decision : 22-09-1993

Acts Referred:

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

Citation : (1994) 207 ITR 403 : (1995) 1 RLW 640 : (1993) WLN 265

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

Bench : Division Bench

Advocate : G.S. Bafna, for the Appellant; G.G. Sharma, for the Respondent

Judgement

V.K. Singhal, J.—The above four references are disposed of by this common order since questions of law are common.

2. Reference No. 21 of 1982 pertains to the assessment years 1972-73 to 1975-76 and arises out of the order of the Tribunal dated December 19, 1981. Reference No. 67 of 1982 pertains to the assessment year 1972-73 and arises out of the order of the Tribunal dated July 10, 1981. The question which has been referred for the determination of this court is:

3. Assessment year 1972-73 :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the interest having accrued to the minor son, Shri Rajesh Kumar, cannot be included in the wealth of the assessee u/s 4(1)(a)(ii) of the Wealth-tax Act, 1957 ?"

4. The brief facts of the case are that the assessee had a bank account showing the closing balance in the name of his minor son, Rajesh Kumar, on the relevant valuation date and that amount had been shown by him as his wealth in the wealth-tax return. The assessee gifted that amount to his minor son and, by virtue of the provisions of Section 4(1)(a) of the Wealth-tax Act, 1957, the

assessee disclosed that amount as his wealth. A sum of Rs. 36,831 (sic) had accrued as interest on the said amount in respect of the assessment year 1972-73, Rs. 3,698, Rs. 3,363 and Rs. 3,663 in respect of the assessment years 1973-74, 1974-75 and 1975-76. The plea of the assessee was that the interest amount belonged to his minor son, i.e., the donee, and that that amount was not includible in his wealth. The wealth-tax authorities did not accept the case of the assessee and the amount of interest was treated by them as the wealth of the assessee. The Income Tax Appellate Tribunal came to the conclusion that the law is well-settled that deeming provisions should be read very strictly and no fiction over fiction should be made. On this principle, it was held that only the sum which was gifted by the assessee to his minor son and no other asset which has not been transferred to his minor son can be included. The accretion to the gifted amount cannot be treated to have been transferred to his minor son on account of the fiction created by Section 4(1). Reliance was placed on the decision of the Bombay High Court in the case of Popatlal Bhikamchand Vs. Commissioner of Income Tax, Bombay City, where the provisions of Section 16(3)(a)(iv) of the Indian Income Tax Act, 1922, were considered and it was held that the source of the dividend income from the bonus shares is not the assets transferred but the accretion thereto and that income cannot be regarded as arising even indirectly from the assets transferred by the assessee. The Legislature has not, by enacting Section 16(3)(a)(iv), sought to tax in the hands of the assessee the income arising from accretions to the assets transferred by him to his minor children. The facts of that case were that the assessee held 350 shares in a company and transferred those shares to his minor son by way of gift. The minor son was later on allotted 744 bonus shares on account of holding the 350 shares gifted. The question was whether the dividend income from 744 bonus shares allotted to the minor son could be included in the total income of the assessee u/s 16(3)(a)(iv) of the Indian Income Tax Act, 1922. The Bombay High Court held that it cannot be included for the reasons mentioned above. The Income Tax Appellate Tribunal found that the provisions of Section 4(1)(a)(ii) are *pari materia* to the provisions of section 16(3)(a)(iv) which have been interpreted by the Bombay High Court and, therefore, the interest which has accrued to the minor son in varying amounts could not be included in the wealth of the assessee. It has been provided u/s 4(1)(a)(ii) of the Wealth-tax Act that, in computing the net wealth of an individual, there shall be included, as belonging to that individual the value of the assets which on the valuation date are held by a minor child, not being a married daughter of such individual, to whom such assets have been transferred by an individual, directly or indirectly, otherwise than for adequate consideration.

5. In Commissioner of Wealth Tax (Central), Bombay Vs. Kishanlal Bubna, the question was about the interpretation of the provisions of Section 4(1)(a)(iii) (as it was before April 1, 1967). The clause at that time was that, in computing the net wealth of an individual, there shall be included, as belonging to that individual, the value of assets which, on the valuation date, are held by a person or association of persons to whom such assets had been transferred by the

individual, directly or indirectly otherwise than for adequate consideration or for the immediate or deferred benefit of the individual or his spouse or minor child (not being a married daughter) or both. The definition of "net wealth" as given u/s 2(m) of the Act was also taken into consideration according to which "net wealth" means the amount by which the aggregate value computed in accordance with the provisions of the Act of all the assets, wherever located, belonging to the assessee on the valuation date, including the assets required to be included in his net wealth as on that date under the Act, is in excess of the aggregate value of all the debts owed by the assessee on the valuation date other than those specified therein. It was held that the words "such assets" really indicate and pinpoint the specific assets which have been transferred. It was found that the intention was made clear by the latter part of the section which says "whether the assets referred to in any of the sub-clauses aforesaid are held in the form in which they were transferred or otherwise". The object of this latter part of the section is that regard is to be had to the value of the original assets irrespective of whether the original assets are retained in the form in which they were transferred or are converted into different types of assets. In either case, it is the value of the assets that are transferred that is to be determined as on the relevant valuation date. There can be no controversy as regards the value of the assets transferred when the assets so transferred are in the form of money. It was held that the value on the valuation date is to be determined of the original assets which are transferred. In *V. VAIDYASUBRAMANIAM Vs. COMMISSIONER OF WEALTH-TAX, MADRAS.*, the interpretation with regard to the provisions of sections 4(1)(a)(i) and 4(1)(a)(v) was given and the decision of the Bombay High Court in *Commissioner of Wealth Tax (Central), Bombay Vs. Kishanlal Bubna*, was dissented from on the ground that according to the decision of the Bombay High Court, the value to be included in the net wealth of the assessee is the value of an asset which is no longer in existence and though the existence of the different form of the asset on the valuation date is to be taken note of for the purpose of the liability to inclusion of the value of the asset u/s 4(1)(a), its value as on the date of the valuation is completely ignored. In the case before the Madras High Court, the logic which was given was that if the assessee had not transferred Rs. 90,000 to his wife and retained that Rs. 90,000 simply as cash, certainly Rs. 90,000 alone would be included in his net wealth. If, on the other hand, instead of transferring Rs. 90,000 to his wife, he himself had built the house out of the sum of Rs. 90,000 it is only the value of the house as on the valuation date that would be included in the net wealth. There is, therefore, no question of the assessee being in a worse position for having made the transfer of a sum of Rs. 90,000 to his wife. In these circumstances, it was held that the value of the house which was constructed from the money transferred has to be included in the net wealth on account of specific provisions of Clause (v) of Section 4(1)(a), which provides that it is not necessary that the assets transferred should be the same and if it has been converted, the value has to be taken as on the valuation date of the converted assets.

6. From the reasons which have been given in the aforesaid judgment, it is clear that, in case the asset is transferred, then the value has to be taken of that asset only. The said High Court has mentioned that if the assessee in the present case had not transferred Rs. 90,000 to his wife and retained that amount simply as cash, certainly that Rs. 90,000 alone would be included in the net wealth.

7. In *P.R. Mukherjee Vs. Commissioner of Income Tax*, the Calcutta High Court considered the provisions of Section 16(3)(a)(iii) of the Indian Income Tax Act, 1922, which are *pari materia* to Section 64(iii) of the Income Tax Act, 1961, and came to the conclusion that accretions in the shape of interest on the money gifted or loans obtained on the security of the property purchased or constructed with the gifted money or the profits made from the business carried on with the property gifted cannot be described or considered to be assets transferred indirectly. The question is whether the income that arises from the totality of all these, viz., the money originally gifted by the assessee's husband to the wife, the accretions thereon in the shape of interest and loans obtained from the bank on the security of such property purchased with the gifted money or profits earned by running the business with the gifted money, could such entirety of that amount be described to be such income which arose either directly or indirectly from the assets gifted. The transfer was only of the money, the accretions were not transfers. The entirety of the income does not arise from the assets transferred, part of it does arise from the accretions. Such accrual of income as arising from the income of the accretions cannot properly perhaps be described as income arising indirectly from the assets transferred because such income does arise directly but not because of the transfer but out of the accretions.

8. In *Commissioner of Income Tax, West Bengal, Calcutta Vs. Prem Bhai Parekh and Others*, which was also referred, the apex court has observed that Section 16(3)(a)(iii) of the Indian Income Tax Act, 1922, created an artificial income. That section must receive strict construction. The connection between the transfer of assets and the income must be proximate. The income in question must arise as a result of the transfer and not in some manner connected with it.

9. Another decision of the apex court in *Smt. Mohini Thapar (Dead) by Lrs. Vs. Commissioner of Income Tax , (Central) Calcutta and Others*, was also referred to. In the said case, the assessee made certain gifts to his wife from which she purchased certain shares and invested the balance in deposits. The question was whether the income derived by the assessee's wife from the deposits and shares had to be assessed in the hands of the assessee u/s 16(3)(a)(iii) of the Indian Income Tax Act, 1922. It was held that the transfers in question were direct transfers and the income realised by the wife was the income indirectly received in respect of transfer of cash directly made by the assessee. There was a proximate connection between the income and the transfer of assets made by the assessee. After considering the principles enunciated by the apex court in these two cases, the Calcutta High Court in *Prahladrai Agarwala Vs. Commissioner of Income Tax, .* held that the income from share of profits in the

firm arising to the individual's wife could not, therefore, be included in the total income of the individual under the provisions of Section 64(iii) of the 1961 Act as it did not arise as a result of the gift and the income arose only because the other partners had agreed to take the individual's wife as a partner and had allowed her to contribute to the capital of the firm.

10. In Commissioner of Wealth-tax Vs. T. Saraswathi Achi, and in Commissioner of Income Tax Vs. T. Saraswathi Achi, the Madras High Court, while interpreting the provisions of Section 4(1)(a)(ii), has held that the accretion of the assets transferred cannot be included in the chargeable wealth of the assessee and the decision of the Bombay High Court in Popatlal Bhikamchand Vs. Commissioner of Income Tax, Bombay City, was relied upon.

11. We have considered the matter. The provisions of Section 4 of the Wealth-tax Act create a fiction by which the value of certain assets has to be included in the net wealth. It has been provided under Clause (ii) that the value of such assets which have been transferred could be included. The word "such assets" could be interpreted as only those assets which have been transferred. It is a different matter that, if assets have been converted in some other form, then the value thereof could be included in the net wealth. In case the asset transferred is cash, then it is only the amount which has been transferred that could be considered to be such assets which could be included in computing the net wealth of the assessee in the value of the assets on the valuation date. The accretion on the transferred assets have not been included by the plain language used in the section. The fiction which has been created cannot be extended beyond the clear wording which has been used therein. It would be creating another fiction to include the accrual from the transferred assets for inclusion in the net wealth of the assessee. It has not been contemplated by that section. The charge could be created by specific and unambiguous words and neither can there be any presumption in respect thereof nor can the meaning be extended beyond what has specifically been included. A strict interpretation has to be taken for the purpose and, accordingly, we are of the view that the Income Tax Appellate Tribunal was justified in coming to the conclusion that the interest which has accrued to the minor son, Rajesh Kumar, cannot be included in the net wealth of the assessee u/s 4(1)(a)(ii).

12. The reference is accordingly answered in favour of the assessee and against the Revenue.

13. No order as to costs.