

(1986) 04 RAJ CK 0031

In the Rajasthan High Court

Case No : Civil Wealth-tax Reference No. 17 of 1980

Commissioner of Wealth-tax

APPELLANT

Vs

Bhangur Charitable Trust

RESPONDENT

Date of Decision : 04-04-1986

Acts Referred:

Wealth Tax Act, 1957 — Section 5(1)

Citation : (1987) 61 CTR 57 : (1987) 164 ITR 249

Hon'ble Judges : S.K. Mal Lodha, J;Kanta Bhatnagar, J

Bench : Division Bench

Advocate : B.R. Arora, for the Appellant; S.L. Choudhary and Rajesh Balia, for the Respondent

Judgement

S.K. Mal Lodha, J.—The Income Tax Appellate Tribunal, Jaipur Bench, Jaipur (hereinafter referred to as "the Tribunal"), has referred the following question for the opinion of this court, which is said to arise out of its order dated October 31, 1978, in WTA Nos. 252, 253 and 254/JP/ 1977-78:

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the assessee-trust was entitled to exemption of Rs. 1,50,000 u/s 5(1)(xxiii) of the Wealth-tax Act, 1957, on shares of Indian companies held by it, in respect of the years under consideration ?"

2. The assessee, M/s. Bangur Charitable Trust, Didwana, claimed exemption of Rs. 1,50,000 u/s 5(1)(xxiii) of the Wealth-tax Act, 1957 (No. XXVII of 1957) (for short "the Act"), on the shares of various companies held by it. The assessment years under consideration are 1973-74, 1974-75 and 1975-76. The Wealth-tax Officer, Central Circle, Jodhpur, held that the exemption is not allowable because it is admissible only to individuals and Hindu undivided families and not to a trust. Aggrieved, the assessee filed appeals u/s 16(3) of the Act. The Appellate Assistant Commissioner, Jodhpur, opined that the assessee was right in claiming exemption of Rs. 1,50,000 on shares of Indian companies and, therefore, he directed the Wealth-tax Officer to allow the exemption as claimed by the

assessee. Further appeals were filed before the Tribunal in respect of each of the assessment years. The Tribunal, in its consolidated order passed in respect of the years 1973-74, 1974-75 and 1975-76, held that the assessee-trust shall be deemed to be an individual and as such it is entitled to exemption u/s 5(1)(xxiii) read with Section 2 of the Act. The Tribunal, therefore, maintained the order of the Appellate Assistant Commissioner.

3. An application being made, the Tribunal has referred the aforesaid question for the opinion of this court.

4. We have heard Mr. B.R. Arora for the Revenue and Mr. S.L. Choudhary for the assessee. In order to determine the question whether the assessee-trust was entitled to exemption of Rs. 1,50,000 u/s 5(1)(xxiii) of the Act, on shares of Indian companies held by it in respect of the three assessment years in question, it is necessary to notice the relevant provisions of the Act.

5. Section 3 of the Act is the charging section. Section 3, at the relevant time, was as under :

"Section 3. Charge of wealth-tax.--Subject to the other provisions contained in this Act, there shall be charged for every assessment year commencing on and from the 1st day of April, 1957, a tax (hereinafter referred to as wealth-tax) in respect of the net wealth on the corresponding valuation date of every individual, Hindu undivided family and company at the rate or rates specified in the Schedule."

6. Section 4 deals with the assets which are included in the assets of the assessee under the special circumstances mentioned therein. Section 5 gives the list of various assets which are exempt from the levy of wealth-tax, the amount of exemption and the conditions under which these assets are exempted from the levy of wealth-tax. Material part of Section 5 for the present purpose is as follows :

"5. (1) Exemptions in respect of certain assets.--Subject to the provisions of Sub-section (1A), wealth-tax shall not be payable by an assessee in respect of the following assets, and such assets shall not be included in the net wealth of the assessee--....."

7. It may be stated that Clause (xxa) was inserted by the Finance Act, 1975, with effect from April 1, 1975. The words "held by the assessee" were omitted by the Finance Act, 1975, with effect from April 1, 1975. This was done with a view to secure that the exemption from wealth-tax in respect of shares in an Indian company is available even in cases where the shares, though owned by the assessee, are not registered in his name. Section 21A deals with assessment in cases of diversion of property, or of income from property held under trust for public charitable or religious purposes. The relevant part is as follows :

"Notwithstanding anything contained in Clause (i) of Sub-section (1) of Section 5, where any property is held under trust for any public purpose of a charitable

or religious nature in India and--....."

8. According to this section, the wealth-tax shall be leviable upon, and recoverable from, the trustee or manager (by whatever name called) in the like manner and to the same extent as if the property were held by an individual who is a citizen of India and resident in India for the purposes of this Act, but without excluding the value of any asset under Sub-section (1) of Section 5, at the maximum marginal rate.

9. Exemption u/s 5(1)(xxiii) is available to an assessee as defined in the Act. u/s 5(1)(xxiii), the assessee, if he is an individual or a Hindu undivided family and holds shares in an Indian company other than the shares mentioned in Clause (xx) or (xxa), is entitled to exemption. Section 3, which is the charging section, shows that wealth-tax is payable by an individual, a Hindu undivided family and a company. Exemption u/s 5(1)(xxiii) is available to an individual or a Hindu undivided family. Companies has been excluded. The view taken by the Tribunal is that the word "individual" mentioned in Section 5(1)(xxiii) of the Act includes a charitable trust. It may be mentioned that in the whole of the Act, there is no prohibition that a charitable trust or, for that matter, a trust is not included in the word "individual" as used in Section 5(1)(xxiii) of the Act. Wealth-tax is payable by an assessee as defined in the Act and u/s 3 of the Act, the wealth-tax is payable by an individual, Hindu undivided family and company. The framers of the Act did not want to give any exemption to companies u/s 5(1)(xxiii) of the Act. The exemption thereunder is limited to an assessee who is an individual or a Hindu undivided family.

10. It was held, after considering sections 3 and 21(1) of the Act in *Suhashini Karuri and Another Vs. Wealth Tax Officer, "D" Ward and Another*, , by the learned judge of the Calcutta High Court, that joint trustees must be taken to be a single unit in law, and not an association of persons and there is nothing wrong in treating such a unit as an individual holding property and becoming assessable u/s 3 of the Act.

11. In *Abhay L. Khatau and Others (Trustees of L.K. Trust) Vs. Commissioner of Wealth Tax, Bombay City II*, , the trustees of L. K. Trust formed an association of persons among themselves. The Wealth-tax Act did not contain any provision for assessing such an association. The question arose whether the status of the assessee was "individual". In that connection, Section 21(4) of the Act came up for consideration where the word "individual" has been used. It was held that joint trustees are regarded as a unit for purposes of taxation and they can be assessed to wealth-tax in the status of an "individual" in respect of the value of the properties held by them as trustees and that they cannot be treated as an "association of persons" and exempted from wealth-tax on the ground that an "association of persons" is not an entity mentioned in the charging section of the Wealth-tax Act, 1957. For coming to this conclusion, *The Commissioner of Income Tax, Madhya Pradesh and Bhopal Vs. Sodra Devi*, and *Suhashini Karuri and Another Vs. Wealth Tax Officer, "D" Ward and Another*, were relied out.

12. Whether the word "individual" includes trustees of a trust so as to be an assessable unit came up for examination in connection with sections 3, 5(1)(i) and 21 of the Act before the Supreme Court in Trustees of Gordhandas Govindram Family Charity Trust Vs. Commissioner of Income Tax, Bombay, Their Lordships were in agreement with the view taken in Suhashini Karuri and Another Vs. Wealth Tax Officer, "D" Ward and Another, and Abhay L. Khatau and Others (Trustees of L.K. Trust) Vs. Commissioner of Wealth Tax, Bombay City II, and held that the trustees of the trust, with which their Lordships were concerned in the appeals, constitute an assessable unit under the provisions of the Act. It was ruled that so far as trustees were concerned, the word "individual" in Section 3 of the Act included individuals and the trustees of a trust constituted an assessable unit under the provisions of the Act. Section 5(1)(xxiii) deals with the exemption in respect of the shares held by an assessee in any Indian company if the assessee is an individual or Hindu undivided family. According to Section 21A, wealth-tax is leviable and recoverable, amongst others, from trustees and the levy of wealth-tax and its recovery is to be made in accordance with the manner laid down in the Act as if the property is held by an individual who is a citizen of India and resident of India for the purposes of the Act. The same is the case with respect to a manager from whom wealth-tax is leviable and recoverable in the like manner and to the same extent as if the property was held by an individual who is a citizen of India and resident of India.

13. On a careful reading of Section 3, Section 5(1)(xxiii) and Section 21A of the Act and the principles laid down by the Calcutta and Bombay High Courts and the Supreme Court in the cases referred to hereinabove, we are unhesitatingly of the opinion that the exemption laid down u/s 5(1) of the Act is available to the assessee-trust in respect of shares to the extent of Rs. 1,50,000 of Indian companies, as it is an "individual" within the meaning of Section 5(1)(xxiii) of the Act. The Tribunal was right when it affirmed the order of the Appellate Assistant Commissioner, who held that the assessee-trust is deemed to be an individual and is thus entitled to claim exemption. We agree with the view taken by the Tribunal that the assessee-trust shall be deemed to be an individual and is entitled to exemption u/s 5(1)(xxiii) of the Act,

14. We, therefore, answer the question referred by the Tribunal in the affirmative, i.e., in favour of the assessor-trust and against the Revenue. In the circumstances of the case, we pass no order as to costs of this reference.

15. Let a copy of this order be sent to the Tribunal as required by Section 27(3) of the Act.