
(1996) 07 MAD CK 0005

In the Madras High Court

Case No : Tax Case No's. 301, 302 and 825 of 1984

Commissioner of Wealth-Tax

APPELLANT

Vs

Bhavani Devi Sadhaiya

RESPONDENT

Date of Decision : 02-07-1996

Acts Referred:

Wealth Tax Act, 1957 — Section 21, 27(1), 4(1), 4(1)(a), 4(1)(a)(i)

Citation : (1997) 90 TAXMAN 217

Hon'ble Judges : Thanikkachalam, J; Balasubramanian, J

Bench : Division Bench

Advocate : C.V. Rajan, for the Appellant;

Judgement

Thanikkachalam, J.—At the instance of the department, the Tribunal referred the following question No. 1 for the assessment years 1976-

77 and 1977-78 with regard to Tax Case Nos. 301 and 302 of 1984 and question No. 2 for the assessment year 1978-79 with regard to Tax

Case No. 825 of 1984 for the opinion of this Court u/s 27(1) of the Wealth-tax Act, 1957 ("the Act"):

1. Whether, on the facts and in the circumstances of the case, the value of the assets settled by assessee for the deferred benefit of her son's

minor son under a trust deed, dated 29-3-1974 could be included in the net wealth of assessee either u/s 4(1) (a) (i) or u/s 4(1) (a) (v) of the

Wealth-tax Act 1957?

2. Whether, on the facts and in the circumstances of the case and having regard to the provisions of section 4(1)(a) of the Wealth-tax Act, the

Appellate Tribunal was right in deleting the inclusion of Rs. 41,000 being the value of the property settled by the assessee on her grandson, as per

deed, dated 29-3-1974?

The assessee is an individual. All the three tax cases relate to the assessment years 1976-77 to 1978-79. By a deed, dated 29-3-1974, she settled

certain immovable properties being godowns in Calcutta for the benefit of her grandson, Darsan Kumar Gadhaiya, appointing her spouse Shri

Nemichand Gadhaiya as the trustee. The deed provided that the trustee shall hold the properties on trust on condition that he shall accumulate the

income and transfer the property to the beneficiaries on his attaining the age of twenty one. In case of the death of the beneficiary, before attaining

the age of twenty one, the properties were to be held for the benefit of the heirs of Darsan Kumar Gadhaiya and transferred to them when they

attained the age of majority.

2. The case put forward by the revenue was that the properties in question should be considered to be an asset held by the son's minor child of the

assessee to whom such assets have been transferred directly or indirectly, otherwise than for adequate consideration and, consequently, added to

the net wealth of the assessee by applying section 4(1)(a)(v) of the Act. The alternate contention of the revenue was that the asset should be

considered to be the one transferred by the assessee to her spouse without consideration and, therefore, required to be added to the net wealth of

the assessee u/s 4(1)(a)(i).

4. On the other hand, the contention of the assessee was that there is no specific provision in the Act for adding back the assets transferred for the

deferred benefit of a son's minor child. The other contention of the assessee was that a transfer of an asset to a spouse in the capacity of a trustee

cannot be considered to be transferred to the spouse within the meaning of section 4(1)(a)(i).

5. Aggrieved, the assessee filed an appeal before the AAC, contending that since the minor son did not get any immediate benefit, the provisions of

section 4(1)(a)(i) could not be applied. The AAC agreed with the said contention, but sustained the addition u/s 4(1)(a)(i) as an asset

transferred to the spouse of the assessee.

6. Not satisfied with the order passed by the AAC, the assessee filed an appeal before the Tribunal, contending that since the transfer was only to

a trustee for the benefit of a minor child, it was not transferred to the spouse

and, therefore, section 4(1)(a)(ii) could not be applied. On the other hand, the department contended that the section read with the Explanation did not make any distinction between the vesting of the properties and the beneficial ownership. Alternatively, it was contended that even if the reasoning of the AAC was not correct, the addition should be sustained on the reasoning of the WTO.

7. On consideration of the submissions made by the assessee as well as the department, the Tribunal came to the conclusion that the assessee should succeed. According to the Tribunal, the property transferred by the grandmother in favour of the grand child by creating a trust and appointing her spouse as the trustee of... such a transferred asset.... cannot be assessed in the hands of the assessee either u/s 4(1)(a)(i) or u/s 4(1)(a)(v).

8. Before us, the learned standing counsel appearing for the department submitted that inasmuch as the assets were transferred by the transferor to her spouse, even if it is in his capacity as a trustee, under the provisions of section 4(1)(a)(i), the net wealth-tax is includible in the hands of the assessee for wealth-tax purposes. It was further submitted that only the enjoyment of the income was postponed till the minor attained the age of twenty one. Even during the minority of the spouse the beneficiary is holding the property transferred by his grandmother under a trust. Since the trust is holding the property on behalf of the minor, the provisions contained in section 4(1)(a)(i) would be applicable.

9. We have heard the learned standing counsel appearing for the department and we have also perused the records carefully.

10. The point for consideration is in a case, where the assets transferred by the grandmother for the benefit of her grandson by creating a trust and appointing her spouse as the trustee, would be includible in the hands of the assessee who is the grandmother either under the provisions of section 4(1)(a)(i) or under the provisions of section 4(1)(a)(v).

11. Section 4(1) states that in computing the net wealth of an individual, there shall be included, as belonging to that individual, the value of the assets on the valuation date as held by the spouse of such individual to whom such assets have been transferred by the individual, directly or indirectly otherwise than for adequate consideration or in connection with an

agreement to live apart. The Explanation to the said section states that the expression "transfer" includes any disposition, settlement, trust, covenant, agreement or arrangement and the expression "property" includes any interest in property. Therefore, the asset given to a person to be held in trust would be an asset transferred to that person and if that person happens to be a spouse of the assessee, those assets could be added to the net wealth of the assessee, as belonging to him. In the present case, the assets were transferred to the trust and not to the spouse. The spouse was appointed as a trustee of the trust. Therefore, it does not mean that the properties were transferred by the assessee in favour of her spouse for inadequate consideration. When the property was transferred by the assessee to a trust for the benefit of her minor grandson and when a direction was given in the trust deed to vest with the minor the corpus and the income accumulated thereon on his attaining the age of twenty one years, it cannot be said that during minority, the minor is entitled to either enjoy the income from the trust or to hold the property. u/s 21 of the Act, only a representative assessee can be assessed, in case where the beneficiary cannot be assessed directly. Therefore, when the property was not transferred either directly or indirectly by the assessee who is the grandmother to her spouse, the provisions of section 4(1)(a)(i) cannot be applicable to the facts of this case.

12. Insofar as the provision contained in section 4(1)(a)(v) is concerned, it states as under:

Net wealth to include certain assets. -(1) In computing the net wealth of an individual, there shall be included, as belonging to that individual-

(a) the value of assets which on the valuation date are held-

(i) to(iv)*****

(v)by the son's wife, or the son's minor child, of such individual, to whom such assets have been transferred by the individual, directly or

indirectly, on or after the 1st day of June, 1973, otherwise than for adequate consideration....

Section 4(1)(a)(i) cannot be made applicable to the facts of this case. The procedure as contemplated u/s 4(1)(a)(i) for the purpose of its

application is an agreement between the husband and wife to live apart. Here, there is no such agreement between the spouses. As per the terms

of the trust deed, both the corpus and the accumulated income arising out of the trust properties should be handed over to the minor, when he attains the age of twenty one years. Till then, there is no enjoyment of the income from the trust properties by the minor and the corpus also cannot be said to be absolutely vested with the minor. The crucial word u/s 4(1)(a)(v) is word "held" and this word is to be understood as equivalent to the phrase "belonging to". Though the property vests in the trustee, it is not held by him in his own right, since he cannot set up a title against the beneficiary. Therefore, when the properties are transferred in trust to the spouse, it cannot be said that the properties are held by the spouse, as he does not hold them in his own right. In such a case, no question of lack of adequate consideration would arise. After the transfer of the property by the assessee in favour of the trust, it cannot be said that the assessee is holding the assets, which were transferred to the trust. Neither the assessee nor the beneficiary held the property during the assessment years under consideration. Therefore, the inclusion of the transferred property in the hands of the assessee, as her "net wealth" u/s 4(1)(a)(v) cannot be made. Sub-clause (v) of section 4(1)(a) does not include the deferred benefit of the son's child. Therefore, the property transferred by the assessee, who is the grandmother in favour of her grandson, by creating a trust and appointing her spouse as the trustee can never be included as the net wealth in her hands for the assessment years under consideration either under the provisions of section 4(1)(a)(i) or under the provisions of section 4(1)(a)(v). Accordingly, we answer the question No. 1 referred to us in T.C. Nos. 301 and 302 of 1984 in the negative and against the department. Insofar as the question No. 2 referred to us in T.C. No. 825 of 1984 is concerned, we answer the same in the affirmative and against the department. There will be no order as to costs.