

(2004) 12 GUJ CK 0040
In the Gujarat High Court
Case No : WT Ref. No. 21 of 1991

Commissioner of Wealth Tax

APPELLANT

Vs

C.D.R. Laxmidevi

RESPONDENT

Date of Decision : 02-12-2004

Acts Referred:

Wealth Tax Act, 1957 — Section 5, 5(1), 5(3), 7

Citation : (2005) 193 CTR 222 : (2005) 274 ITR 257 : (2005) 144 TAXMAN 600

Hon'ble Judges : Harsha Devani, J;D.A. Mehta, J

Bench : Division Bench

Advocate : Manish Upadhyay, for Pranav G. Desai, for the Appellant; None, for the Respondent

Judgement

D.A. Mehta, J.—The Tribunal, Ahmedabad Bench, "C", has referred the following question of law, at the instance of the CWT, Rajkot, u/s 27(1) of the WT Act, 1957 ("the Act") :

"Whether the Tribunal is right in law and on facts in allowing claim of exemption u/s 5(l)(xxa) of the Act in respect of shares of various companies worth Rs. 10,11,686 ?"

2. The respondent-assessee claimed exemption u/s 5(l)(xxa) of the Act in respect of shares worth Rs. 10,11,686 for asst. yr. 1981-82. The corresponding valuation date is 31st March, 1981. According to the WTO, the said exemption was not allowable because the shares in question were held by the assessee as a dealer. That business assets were to be valued u/s 7(1) of the Act or u/s 7(2)(a) of the Act after making adjustments under Rules 2A to 2G of the WT Rules, 1957. The AO, further held that the shares in question were not directly purchased by the assessee from the company and do not pertain to initial issue of share capital. The third reason assigned by the AO was that requirements of Section 5(3) of the Act were not fulfilled, inasmuch as, the shares were not held by the assessee for a minimum period of six months. Accordingly, the AO disallowed the exemption claimed by the assessee.

3. The assessee carried the matter in appeal before the CWT(A), who vide his order dt. 4th Feb., 1987, allowed the appeal on this count. According to the CWT(A), the WTO had himself allowed similar claim in assessee's own case for asst. yrs. 1978-79 and 1979-80, as per details available in the paper book filed before him. The CWT(A), also took note of the fact that in case of the husband of the assessee-appellant, M.K.S. Shivrajsinghji also the WTO had allowed similar claim for asst. yrs. 1980-81 and 1981-82. The CWT(A), further held that on a plain reading of Section 5(1)(xxa) of the Act, the interpretation placed by the AO did not flow, namely, that exemption under the said provision was not available to an assessee who was treated as a dealer in shares.

4. The Revenue carried the matter in appeal before the Tribunal, who, for the reasons stated in its order dt. 18th Jan., 1990, upheld the findings recorded by the CWT(A). The Tribunal further took note of the fact that in the case of the assessee and her husband, no remedial action had been initiated by the Revenue, either u/s 17 or u/s 25(2) of the Act for disturbing the assessment orders whereunder similar claims were allowed in the hands of the assessee and her husband. The Tribunal held that the section does not prohibit grant of such exemption in respect of eligible shares owned by an assessee in the capacity of a dealer. That exemption was granted under the said provision in respect of initial issue of the shares issued by the specified companies engaged in activities in the priority sector as enumerated in the Ninth Schedule of the IT Act, in order to promote the growth of such industries. That the assessee had produced certificates issued by the AO having jurisdiction over respective companies confirming that the particular issue of shares made by the companies was eligible for grant of exemption u/s 5(1)(xxa) of the Act. It was further held that the exemption was attached to the qualifying initial issue of shares for the qualifying period of five years, and was not subject to the condition that the shares had to be purchased directly from the company or that the assessee concerned should be the first registered owner of the shares; even a subsequent purchaser of the qualifying shares was entitled to get exemption for the balance of the qualifying period of five years. Therefore, according to the Tribunal, the stand adopted by the AO was not justified on plain reading of the provisions.

5. Mr. Manish Upadhyay for Mr. Pranav G. Desai, the learned standing counsel for the applicant-Revenue, has been heard. He has placed reliance on the order of the AO and reiterated the reasons stated in the assessment order. Though served, there is no appearance on behalf of the respondent-assessee.

6. Section 5(1) of the Act states that wealth-tax shall not be payable by an assessee in respect of the assets specified in the clauses that follow, and such assets shall not be included in the net wealth of the assessee, subject to provisions of Sub Section (1A) of the Act. Before adverting to Clause (xxa), under Sub Section (1) of Section 5, it is necessary to take note of the definition of "assets" given in Section 2(e) of the Act. The said definition clause states that "assets" includes property of every description, movable or immovable, but does

not include the assets specified thereafter. Admittedly, for the year under consideration, stock-in-trade is not an asset excluded from the definition. Therefore, even if the assessee is a dealer in shares, as held by the WTO, such shares are assets liable to charge under the Act. The charge of wealth-tax" is levied as per provisions of Section 3 of the Act whereunder the tax in respect of net wealth is levied at the rate or rates specified in the Schedule. The term "net wealth" is defined u/s 2(m) to mean the excess amount by which the aggregate value of all the assets computed in accordance with the provisions of this Act exceeds the aggregate value of all the liabilities/debts owed by the assessee on the valuation date. Therefore, the scheme of the Act shows that, where assets are otherwise included in the net wealth of an assessee or includible, if the assessee shows that the assets are those which are specified in any one of the clauses mentioned in Sub Section (1) of Section 5 of the Act, such assets are not required to be included in the net wealth of the assessee.

7. Admittedly, in the case of the assessee, the appellate authorities have found that the shares in question are those which fulfil the description of such shares which are entitled to be excluded under clause (xxa) of Section 5(1) of the Act. As noticed, the Tribunal has found that the assessee has placed on record certificates from the ITO having jurisdiction over the companies to establish the fact that the said shares formed part of the initial issue, and as such, qualify for exemption. The Tribunal has further found on reading of Sub Section (3) of Section 5 of the Act that the requirement of owning the assets specified in various clauses of Sub Section (1) of Section 5 are in the alternative, namely, from the date on which the shares were first issued by the company or for a period of at least six months ending with the relevant valuation date, whichever is the shorter period. In the present case, the Tribunal has found that the said condition, namely, holding/owning the shares for a period of six months is satisfied by the assessee.

8. In relation to reason assigned by the AO regarding applicability of Section 7 of the Act for the purposes of denying the relief of exemption, the Tribunal has rightly held that the said section is merely a machinery provision laying down as to how the value of the assets has to be determined and cannot govern Section 5 of the Act which specifies the assets which are not to be included in the net wealth of an assessee on a given valuation date. In other words, the Tribunal is right in holding that the question of valuation of an asset can arise only if a particular asset is required to be included for the purposes of levying wealth-tax in relation to an assessment year, but where the asset is not required to be included in the net wealth, it will not be necessary to undertake the exercise of valuing the said asset, and in the circumstances, provisions of Section 7 cannot govern the availability or otherwise of exemption u/s 5 of the Act.

9. In the circumstances, there being no infirmity in the order of the Tribunal, the question referred requires to be answered in the affirmative, i.e., in favour of the assessee and against the Revenue and is answered accordingly. The reference

stands disposed of accordingly with no order as to costs.