(1995) 11 MP CK 0077

In the Madhya Pradesh High Court

Case No : M.C.C. No. 377 of 1987

Commissioner of Wealth Tax APPELLANT

Vs

Dalchand Jain RESPONDENT

Date of Decision : 14-11-1995

Acts Referred:
Wealth Tax Act, 1957 — Section 2(e), 2(e)(2)(ii), 27(1)

Citation : (1996) 85 TAXMAN 453

Hon'ble Judges : A.K. Mathur, Acting C.J.;S.C. Pandey, J

Bench : Division Bench

Advocate : Vivek Tankha and A. Adhikari, for the Appellant; B.L. Nema, for the Respondent

Judgement

1. This is a reference at the instance of the Commissioner made by the Tribunal u/s 27(1) of the Wealth-tax Act, 1957 (''the Act''). The following question of law has been referred for answer by this Court which reads as under:

Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the payment made under the Compulsory Deposit Scheme (income tax Payers) Act, 1974 falls under the exempted provisions of section 2(e)(2)(ii) of the Wealth-tax Act, 1957?

Brief facts giving rise to this reference are that the assessee had claimed that payment made under the Compulsory Deposit Scheme (income tax Payers) Act, 1974 was exempted in the light of the provisions of section 2(e) (2) (ii) of the Act, but this fixed amount was added by the WTO to the asset of the assessee. It was contended by the assessee that it is not includible to the asset and, secondly, it was contended that these assets are exempted under the definition of the word ''asset'' in section 2(e)(2)(ii) and in that connection the assessee had relied upon the decision of the Tribunal reported in WTO v. S.D. Nargolwala [1983] 5 ITD 690 (Delhi). On appeal by the assessee, the Commissioner (Appeals) accepted the contention of the assessee relying on the decision of the Tribunal and exempted the amount of deposit from the assets of the assessee.

The matter was brought by way of appeal before the Tribunal at the instance of the revenue and the Tribunal confirmed the order of the Commissioner (Appeals) as he had followed the Delhi Bench decision of the Tribunal and the appeal of the revenue was dismissed. Thereafter the revenue approached for referring this question of law before this Court. Hence, the Tribunal referred the aforesaid question for answer by this Court.

2. We have heard the learned counsel for the parties and perused the record.

3. The word ''asset'' has been defined under the Act in section 2(e) relevant portion of which, reads as under:

''assets'' includes property of every description, movable or immovable, but does not include-

(1) ******

(2) in relation to the assessment year commencing on the 1st day of April, 1970, or any subsequent assessment year-

(i) ******

(ii) a right to [any annuity (not being an annuity purchased by the assessee or purchased by any other person in pursuance of a contract with the assessee)] in any case where the terms and conditions relating thereto preclude the commutation of any portion thereof into a lump sum grant

Now, the question is whether the Compulsory Deposit made by the income tax payer in pursuance of the Compulsory Deposit Scheme (income tax Payers) Act, falls under this clause of exclusion or not. Though the word ''annuity'' has not been defined under the Act, but the annuity means that (i) it is a money payment, (ii) made annually, (iii) it is of fixed sum, and (iv) usually it is a charge personally on the grantor. The Compulsory Deposit is not an annuity in that sense. The nearest example of annuity that can be quoted is that when Jagirs were resumed and certain annual grants were made to Jagirdars that was known as an annuity, but the Compulsory Deposit made under the Compulsory Deposit Scheme cannot be said to be annuity by any stretch of imagination. Since it is not annuity, therefore, it is not exempted from being included in the assets as defined in section 2(e).

4. Shri Tankha, the learned counsel, has invited our attention to the decision of the Calcutta High Court given in the case of Smt. Sunanda Devi Singhania Vs. Commissioner of Wealth Tax, , wherein a similar question come up for consideration and Their Lordships have taken the view that Compulsory Deposit made under Compulsory Deposit Scheme (income tax Payers) Act, is the income of the depositor which is refunded by instalments and annuity means where an income is purchased with a sum of money and the capital has gone and has ceased to exist, the principal having been converted into an annuity. Ordinarily, an annuity is a money payment of a fixed sum annually made and is a charge

personally on the grantor. Thus, it is a right to receive a specified sum and not an aliquot share in the income arising from any fund or property. In order to constitute an annuity, the payment to be made periodically should be a fixed or pre-determined one, and it should not be liable to any variation depending upon any ground relating to the general income of the fund or estate which is charged for such payment. In order to constitute an annuity, it is not essential that the payment must be made once a year only and not monthly or quarterly. What is necessary is that the payments made must constitute a certain sum payable in a year to the annuitant. Therefore, Their Lordships held that Compulsory Deposit made under the said Scheme cannot be treated as annuity. In this connection number of cases have been referred by the Court but that need not be detailed here. Suffice it to say that the payment made under the Compulsory Deposit Scheme cannot mean to be annuity under the Act. The same view has been taken by the Bombay High Court also in the case of Commissioner of Wealth-tax Vs. Master Asutosh K. Mahadevia, . It was held that the amount deposited under the Compulsory Deposit Scheme cannot be said to be an annuity. In fact, compulsory deposits made under the provisions of the Act is repaid in five equal annual instalments commencing from the expiry of two years from the end of the financial year in which the deposits were made. It is pointed out that the whole of the amount standing to his credit in that account would, therefore, form part of his "assets" within the meaning of section 2(e). Therefore, it was held that the aforesaid compulsory deposit under the Compulsory Deposit Scheme cannot be said to be annuity so as to be excluded from inclusion in the ''assets'' as defined u/s 2(e). In this view of the matter, we are of the opinion that the view taken by the Tribunal is not correct. Hence, the reference is answered in favour of the revenue and against the assessee.

