

(1999) 05 GUJ CK 0011

In the Gujarat High Court

Case No : Wealth-tax Reference No. 78 of 1984

Commissioner of Wealth Tax

APPELLANT

Vs

G.R. Employees Welfare Trust

RESPONDENT

Date of Decision : 04-05-1999

Acts Referred:

Income Tax Act, 1961 — Section 164(1)
Wealth Tax Act, 1957 — Section 2(14)

Citation : (2001) 169 CTR 343 : (2001) 251 ITR 514 : (2001) 119 TAXMAN 115

Hon'ble Judges : Rajesh Balia, J; Anil R. Dave, J

Bench : Division Bench

Advocate : Manish R. Bhatt, for the Appellant; R.K. Patel, for the Respondent

Judgement

1. At the instance of the Commissioner of Income Tax, the statement of case has been submitted by the Income Tax Appellate Tribunal, Ahmedabad Bench "B". The following question of law arising out of the Tribunal's order in Wealth-tax Appeals Nos. 85 to 87/Ahd of 1983 for the assessment years 1977-78 to 1979-80 has been referred for the opinion of this court by the Income Tax Appellate Tribunal :

"Whether the provisions of section 21(4) of the Wealth-tax Act, 1957, cannot be applied in the case of the assessee-trust and whether its wealth has to be taxed at the appropriate rate and not at the rate it was charged by the Wealth-tax Officer ?"

2. The assessee is a trust brought into existence by a deed of settlement dated March 30, 1972. The trust was created for giving financial help to the employees who were defined and the members of their families for the purpose of education, medical relief, providing gainful employment, housing, expenses on marriage and other social obligations, etc. The trustees had uncontrolled discretion to give moneys for those purposes.

3. The Wealth-tax Officer assessed the trust as an association of persons,

accepted the net wealth returned by the trust which was otherwise duly within the taxable limit but charged tax at 1.5 per cent, applying sub-section (4) of section 21. On appeal before the Appellate Assistant Commissioner, the Wealth-tax Officer was directed to apply the appropriate rate under the Schedule, by following the decision of the Income Tax Appellate Tribunal, Ahmedabad "Bench A", dated December 10, 1981, rendered in Income Tax Appeals Nos. 1617, 1618 and 1620/Ahd. of 1998, in matters arising under the Income Tax Act for the assessment years 1974-75 to 1977-78 wherein it was held that though the trust was governed by section 164(1) the rate applicable to such trust u/s 164 of the Income Tax Act was not applicable. On the same principle, section 21(4) of the Wealth-tax Act was also held to be not applicable. On further appeal, the Tribunal too following the aforesaid decision under the Income Tax Act affirmed the decision of the Appellate Assistant Commissioner.

4. While considering the question under the Income Tax Act it was accepted that the trust was a discretionary trust and individual shares of the person in whose behalf or for whose benefit the income or any part thereof is receivable by the trust were indeterminate and it fell within section 164(1) which, inter alia, provides that on the receipt of income of any such trust is to be charged as an association of persons or at the rate of 65 per cent, on the income whichever course would be more beneficial to the Revenue. Section 164(1) under its proviso enumerated exceptions in which the main provision would not be applicable, and the tax was to be charged as if the whole or part or total income is of an association of persons. In such cases the maximum marginal rate of 65 per cent, could not be levied. The decision under the Income Tax Act rested on the conclusion that Clause (i) of the proviso applied to cases where none of the persons had other income chargeable to tax under this Act (income tax Act, 1961) and, therefore, the provision levying maximum marginal rate at 65 per cent, on the income governed by sub-section (1) of section 164 was not applicable.

5. Applying the decision which we are told was subsequently affirmed by this court on a reference being made to it, the assessment under the Wealth-tax Act which was made in the status of an association of persons by applying section 21(4) and tax was computed at 1.5 per cent, on the total value of asset as disclosed by the assessee, was made to conform with levy of tax at the rate prescribed in the Schedule and not at the specified rate u/s 21(4) is substantially the same, so far as substantive provision is concerned. However, there is marked difference in so far as exception provided under the proviso. Section 21(4) relevant for the present purpose read as under at the relevant time.

"21. (4) Notwithstanding anything contained in the foregoing provisions of this section, where the shares of the persons on whose behalf or for whose benefit any such assets are held are indeterminate or unknown, the wealth-tax shall be levied upon and recovered from the Court of Wards, administrator-general official trustee, receiver, manager, or other person aforesaid as the case may be, in the

like manner and to the same extent as it would be leviable upon and recoverable from an individual who is a citizen of India and resident in India for the purposes of this Act, and-

(a) at the rates specified in Part I of Schedule I ; or

(b) at the rate of three per cent.

whichever course would be more beneficial to the Revenue : Provided ...

Explanation 1.--For the purposes of this sub-section, the shares of the persons on whose behalf or for whose benefit any such assets are held shall be deemed to be indeterminate or unknown unless the shares of the persons on whose behalf or for whose benefit such assets are held on the relevant valuation date are expressly stated in the order of the court or instrument of trust or deed of wakf, as the case may be, and are ascertain-able as such on the date of such order, instrument or deed."

6. We find that no corresponding provision existing under the Wealth-tax Act under the proviso to sub-section (4) of section 21 which corresponds to Clause (i) of the proviso to section 164(1) of the Income Tax Act. In the Income Tax Act, in a case where none of the beneficiaries has any other income chargeable under the Income Tax Act the rigour of the substantial provision of charging tax at the rate of 65 per cent, was mitigated, by permitting the assessment of income of the trust governed u/s 164(1) by treating the same to be income of an association of persons.

7. This makes a material difference as to the applicability of the provision of sub-section (4) under the Wealth-tax Act, in comparison to the application of section 164 under the Income Tax Act in the facts and circumstances of the present case. The Tribunal in our opinion apparently erred in not noticing this apparent difference in the provisions under the two Acts which were not *pari materia*. Assuming them to be so, it had applied the ratio of the decision rendered under the Income Tax Act to the proceedings under the Wealth-tax Act.

8. We are, therefore, of the opinion that the Tribunal was not justified in not applying the special rate of wealth-tax u/s 21(4) as charged by the Wealth-tax Officer merely on the ground that the question has been determined under the Income Tax Act relating to application of rate u/s 164(1) to be applied to the income received by the trustees of the trust governed by section 164(1) was not applicable, without considering the fact that exclusion from the applicability of the rate provided u/s 164(1), at which Income Tax was to be calculated, was made because the case fell within Clause (i) to the proviso of section 164(1) whereas no corresponding provision exist under the Wealth-tax Act during the assessment years in question.

9. Faced with this situation learned counsellor the assessee urged that the tax would still not be leviable because under the Wealth-tax Act, an association of persons is not an assessable entity but the assessable entities are only

individual, Hindu undivided family, or. the company and sub-section (4) of section 21 which operates notwithstanding other provisions of section 21 does not preclude the applicability of other provisions of the Act including the exemption limit provided under the Schedule on which no tax is leviable. We are afraid both the questions do not arise out of the Tribunal's order which could be examined by us. It is for the Tribunal when it decides the appeal again in the light of the decision rendered by this court in this reference to consider and decide these issues.

9. Accordingly, reference is disposed of.

10. There shall be no order as to costs.