

(1975) 11 BOM CK 0002

In the Bombay High Court

Case No : Welth-tax Reference No. 7 of 1966

Commissioner of Wealth-tax

APPELLANT

Vs

K.J. Somaiya Trust

RESPONDENT

Date of Decision : 13-11-1975

Acts Referred:

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

Citation : (1977) 109 ITR 798

Hon'ble Judges : S.K. Desai, J; J.R. Vimadalal, J

Bench : Division Bench

Advocate : R.J. Joshi, for the Appellant; S.P. Mehta, for the Respondent

Judgement

Vimadalal, J.—This is a reference made at the instance of the Commissioner in which the only question that arises is, whether the assessment on the trustees should be made u/s 21(1) or u/s 21(4) of the Wealth-tax Act, 1957. The trust deed in the present case, which is dated the 6th of January, 1955, is a very complicated document providing for various life interests and other interests. It may be mentioned that there was initially a deed of settlement dated the 15th of December, 1948, in respect of 4,000 shares of Godavari Sugar Mills Ltd., under clause 9 of which it was provided that the said trust deed was to be irrevocable for a period of six years and five days. 12,000 bonus shares were issued by the Godavari Sugar Mills Ltd., and in exercise of the powers reserved to him under the said deed of settlement dated the 15th of December, 1948, the settlor revoked the provisions of sub-clauses (b), (c), (d), (e), (f), (g) and (h) of clause 2 of the said deed of settlement, and in lieu thereof declared certain new trusts in respect of the trust property which then consisted of 16,000 ordinary shares of Godavari Sugar Mills Ltd., as already stated above. It may be mentioned that clause (a) of the original deed of settlement dated 15th of December, 1948, merely provided that the trustees were to recover the dividend interest and income of the trust fund and were, in the first instance, to pay the outgoings and expenses therefrom. That is a clause which has not been revoked, but the

effective clauses creating certain trusts have been revoked and substituted by the new clauses contained in the deed of trust dated 6th of January, 1955, with which we are concerned in this reference.

2. Clauses (b) to (j) of the trust deed dated the 6th of January, 1955, provided for various life interests and other interests of a temporary nature which were to enure till the events specified therein occur, but it is not necessary to refer in detail to those clauses. Sub-clause (k) which has been brought in by the trust deed dated the 6th of January, 1955, then proceeds to deal with what may be called the remainder men's interests. It provides that if the settlor's son, Shantilal, is alive on the 31st of March, 1978, the trustees must transfer and hand over the entire corpus of the trust fund to him absolutely after making due provision for the payments directed to be made in the earlier sub-clauses. It is then provided that if the settlor's son, Shantilal, dies before the 31st of March, 1978, but his wife is alive and survives him, then a moiety of the balance of the net income of the trust fund is to be paid to her from the date of the death of the said Shantilal, for and during the term of her natural life. It is further provided that, subject thereto and subject to the earlier provisions of the said trust deed, the trustees were, in the event of the settlor's son, Shantilal, dying before the 31st of March, 1978, to hold the trust fund for all the children of the said Shantilal in the proportions mentioned therein, and in the event of there being only one child to the said Shantilal, then upon trust as to the whole for the said child absolutely. It was further provided in the said sub-clause (k) that, in case no such child of the said Shantilal is born or is alive, and in the event of the said Shantilal dying before the 31st of March, 1978, the trustees were to hold the trust fund subject to the earlier provisions of the said trust deed for the charitable purposes specified therein.

3. The Wealth-tax Officer took the view that the life interests should be taxed in the hands of the beneficiaries and the value of the remainder, being not ascertainable, should be assessed in the hands of the trustees u/s 21(4) of the Wealth-tax Act. Proceeding in that manner, he took the value of the trust properties at Rs. 62,72,000 and deducted therefrom the total value of the life interests at Rs. 38,72,007 and ordered that the balance net wealth of the trustees amounting to Rs. 23,99,993 should be assessed in the hands of the trustees u/s 21(4) of the Act. That view of the Wealth-tax Officer was confirmed by the Appellate Assistant Commissioner with one variation, viz., that the Wealth-tax Officer should compute not merely the life interests of the various beneficiaries, but also the reversionary interest of the said Shantilal and charge the net surplus of the capital value of the trust to wealth-tax u/s 21(4) of the Act. On appeal by the assessee to the Tribunal, the Tribunal held that on the valuation dates the interests of the several beneficiaries enumerated in sub-clauses (b) to (j) were determinate and the beneficiaries were also specific and the assessment should, therefore, be made only u/s 21(1) of the Act. The Tribunal has, however, not given a direction as to what is to be done in regard to the remainder men's interests under the trust.

4. The question as to whether section 21(1) or section 21(4) is applicable in a case like the present one is now concluded, at any rate, as far as this court is concerned, by the decision in the case of the Trustees of Putlibai R.F. Mulla Trust Vs. Commissioner of Wealth Tax, , in which it was held that the fact that there was a possibility of the shares of the remainderman being altered, by reason of subsequent events is immaterial because the question that arises in regard to section 21 is, whether the shares of the persons on whose behalf the assets are held are indeterminate or unknown with reference only to the relevant date, which would be the valuation date in each case (at page 661). There can be no doubt, and, indeed, it has not been seriously disputed, that, as on the respective valuation dates, the life interests in the present case as well as the shares of the remainder men could not be said to be indeterminate or unknown, having regard to the test laid down by this court in Trustees of Putlibai Trustees of Putlibai R.F. Mulla Trust Vs. Commissioner of Wealth Tax, , which still holds the field. The assessments on the trustees must, therefore, be made u/s 21(1) and not u/s 21(4) of the Act. Mr. Joshi has, however, pointed out that, in view of the Tribunal's order which does not clarify what is to happen in regard to the remainder men's interests, we should, in answering the question referred to us, make the position clear that both the life interests as well as the remainder men's interests have to be valued and assessed u/s 21(1) as at the respective valuation dates. It may be that, by this process, the total value of the life interests, taken together with the remainder men's interests, may fall short of the net wealth of the trusts, as was pointed out in the unreported judgment of the Gujarat High Court, dated 30th August, 1974, in the case of Commissioner of Wealth Tax, Gujarat Vs. Arundhati Balkrishna Trust and Others,), but that is because what is to be taxed, so far as the remainder men's corpus of the trust funds at an uncertain future date. I would, therefore, answer this reference in favour of the assessee.

S.K. Desai, J.

5. I agree and have nothing to add.

The Court

6. The question referred to us is answered as follows :

7. On the facts and in the circumstances of this case, the assessment on the trustees should be made u/s 21(1) of the Wealth-tax Act, 1957, both in respect of the life interests as well as in respect of the remainder men's interests under the trust in question. The Commissioner must pay the assessee's costs of the reference.