(1996) 02 MAD CK 0103

In the Madras High Court

Case No : Tax Cases No''s. 887 to 889 of 1982 (References No''s. 589 to 591 of 1982)

Commissioner of Wealth-tax — APPELLANT

Vs

M.A. Jan — RESPONDENT

Date of Decision : 22-02-1996

Acts Referred:
Income Tax Act, 1961 — Section 28, 64, 64(1)
Wealth Tax Act, 1957 — Section 27(1), 4(1)

Citation : (1997) 226 ITR 828

Hon'ble Judges : N.V. Balasubramanian, J;K.A. Thanikkachalam, J

Bench : Division Bench

Advocate : Deokinandan, for the Appellant; K.M.L. Majele, for the Respondent

Judgement

K.A. Thanikkachalam, J.—At the instance of the Department, the Tribunal referred the following question for the opinion of this court u/s 27(1) of the Wealth-tax Act, 1957 :

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was correct in law in holding that section 4(1)(a)(iii) of the Wealth-tax Act, 1957, could not be applied as no benefit accrued to the miners during their minority ?"

2. The assessment years involved in these tax cases are 1974-75 to 1976-77. The assessee by a trust deed called Ameerjan Trust executed on March 26, 1974, settled certain immovable properties on his seven children of whom six were miners at the time of execution of the trust deed. The assessee did not include these properties in his return of net wealth. Section 4(1)(a)(iii) of the Wealth-tax Act provides that in computing the net wealth of an individual, there shall be included, as belonging to that individual, the value of the assets which on the valuation date are held by a person or an association of persons to whom such assets have been transferred by the individual directly or indirectly otherwise than for adequate consideration for the immediate or deferred benefit of the

individual, his or her spouse or minor child (not being a married daughter) or both. So the Wealth-tax Officer on the basis of this provision was of the view that these properties should be included in the net wealth of the assessee.

3. The trust deed is dated March 26, 1974. The properties are settled on seven children of the assessee. One of them was a major even at the time of execution of document. Her share is 10 per cent. So, for all these assessment years her share had been excluded from net wealth. Only the balance has been included in the reassessments. Another minor with 17 1/2 per cent, share became major earlier to April 1, 1975. So that also has been excluded for the assessment years 1975-76 and 1976-77. Other miners became major only after the assessment year 1976-77. The trust is to last for a period of ten years. Clause IV of the document provides that each of the miners shall be deemed to be a beneficiary only after the respective minor has attained majority, i.e., he has completed eighteen years. Clause VI of the document provides for accrual of the net profit for each year and as to how the same has to be shared by the beneficiaries. As per this clause, no minor gets any benefit in the income of the property during his or her minority. The net profit of a particular year is seen allotted only to such of those majors who are specified in the clause as the recipients of the net profit for that particular year. In like manner that clause VI specifies the recipients of the income for each of the ten years and all such recipients are only majors. Clause XIV provides for extinction of the trust. That provides that the trust shall stand determined on March 31, 1984, or even earlier provided that the trustees are satisfied that it should be so extinguished. It further provides that the immovable properties on the extinction of the trust be owned by the beneficiaries as co-owners and tenants-in-common according to the ratio of the beneficial interest of the beneficiaries.

4. The argument of the assessee was that as no benefit was provided for the minor during his or her minority, it could not be said that the trust was for the immediate or deferred benefit of any minor child. That submission was not accepted by the Wealth-tax Officer. Hence, he included the value of the properties relating to the miners'' share for each of the three assessment years.

5. On appeal, the Appellate Assistant Commissioner confirmed the order of assessment made by the Wealth-tax Officer.

6. On further appeal before the Tribunal, the assessees contended that inasmuch as no benefit was provided for a minor during his or her minority it could not be said that the trust was for the immediate or deferred benefit of any minor child. The Tribunal following the Bombay High Court decision in the case of Yogindraprasad N. Mafatlal Vs. Commissioner of Income Tax, Bombay City-I, and of the Gujarat High Court decision in the case of Addl. Commissioner of Income Tax, Gujarat Vs. M.K. Doshi, , accepted the contention of the assessee and allowed the appeal of the assessee.

7. The Departmental representative also pointed out that as per clause XIV of

the trust deed if the trust is extinguished, say after five years and if only the a majors are treated as beneficiaries an anomalous position would arise in that a substantial portion of the immovable property would belong to no one and that, therefore, the real intention of the transferor in creating the trust is that in such an event all the seven inclusive of the miners should get the ownership in the property and that, therefore, the miners will get a benefit even during their minority by way of ownership in the property. That is how the Departmental representative attempted to distinguish these two High Court judgments. But the Tribunal rejected that argument. The Tribunal found that first of all there is no vacuum created because if after five years the trust is extinguished, what clause XIV provides is that the majors alone will take it according to the ratio of the beneficial interest of the beneficiaries. The Tribunal further held that in any event as laid down by the two High Courts the accrual of interest on the miners in the manner suggested by the Departmental representative is only a contingent interest and not a vested interest. Therefore, the submission of the Department that a benefit is created in the minor even during the period of minority was not accepted by the Tribunal. Accordingly, the Tribunal allowed the appeals of the assessee.

8. Before us, learned standing counsel for the Department submitted that even before attaining majority that is during the period of minority the miners will hive a vested interest in the corpus of the trust. Clause XIV of the trust deed would go to show that the miners are provided with determinate shares. Under clause XIV, it is stated that if one of the beneficiaries died, his or her interest in the corpus would devolve upon his or her legal heirs. This would go to show that the miners are also having vested interest in the trust properties. According to learned standing counsel, even the deferred benefit of the individual is includible in the net wealth of the minor in the hands of the assessee as per the provisions contained in section 4(1)(a)(iii) of the Wealth-tax Act. It was, therefore, submitted that the Tribunal was not correct in stating that no interest accrued to the miners from the trust during the period when they were miners. Hence, the miners'' share in the trust property can be included in the net wealth of the assessee.

9. Learned counsel for the assessee while supporting the order passed by the Tribunal submitted that inasmuch as no interest had accrued to the miners during their minority, the miners'' share in the trust properties cannot be included in the hands of the assessee. The provisions of section 4(1)(a)(iii) of the Wealth-tax Act would not be applicable to the facts of this case. As per clause VII of the trust deed, if a major beneficiary dies, his or her share would devolve upon his or her legal heirs. Therefore, if a minor died during minority since the minor was not given any benefit in the trust property, nothing will devolve upon the death of the minor. According to clause XIV, the trust shall stand determined on March 31, 1984, or even earlier provided the trustees are unanimously satisfied that the interest of the beneficiaries requires the determination of the trust earlier than the aforesaid date. On the determination of the trust, the

assets of the trust shall be distributed in accordance with the balance standing in the respective accounts of the beneficiaries. The immovable properties shall on the extinction of the trust be owned by the beneficiaries as co-owners and tenants-in-common according to the ratio of the beneficial interest of the beneficiaries. The movable assets shall also be distributed in accordance with the amounts standing to the credit in the accounts of the beneficiaries. This clause would not lead to the conclusion that the miners were also having beneficial interest in the trust during their minority. It was, therefore, submitted that the Tribunal was correct in holding that section 4(1)(a)(iii) of the Wealth-tax Act would not be applicable to the facts of these cases.

10. We have heard the submissions made by learned standing counsel for the Department as well as learned counsel for the assessee. The fact remains that a trust was created by the assessee by executing a trust deed on March 26, 1974. The properties were settled on seven children of the assessee. One of them was a major even at the time of the execution of the document. Her share is 10 per cent. So far as these three assessment years are concerned, her share had been excluded from the net wealth. Only the balance has been included in the reassessment. Another minor with a 17 1/2 per cent. share became major earlier to April 1, 1975. That minor''s share was also excluded for the assessment years 1975-76 and 1976-77. Other miners became majors only after the assessment year 1976-77. The trust is to last for a period of ten years. Clause IV of the document provides that each of the miners shall be deemed to be a beneficiary only after the respective minor has attained majority, that is when the minor completed the age of 18 years. Clause VI of the document provides for accrual of the net profit for each year and as to how the same has to be shared by the beneficiaries. As per this clause no minor gets any benefit in the income of the property during his or her minority. The net profit of a particular year is allotted only to such of those majors who are specified in the clause as the recipients of the net profit for that particular year. In like manner clause VI specifies the recipients of the income for each of the ten years and all such recipients are only majors. Clause XIV provides for extinction of the trust. It provides that the trust shall stand determined on March 31, 1984, or even earlier provided that the trustees are satisfied that it should be so extinguished. It further provides that the immovable properties shall on the extinction of the trust be owned by the beneficiaries as co-owners and tenants-in-common according to the ratio of the beneficial interest of the beneficiaries.

11. According to the assessee, since no benefit was provided for the minor during his or her minority, it could not be said that the trust was for the immediate or deferred benefit of any minor child. According to the Department, the benefits of the miners are deferred and, therefore, the miners'' benefits are includible in the hands of the assessee. According to clause VII, if any of the beneficiaries dies, his or her share of the beneficial interest shall devolve upon his or her legal heirs. Only the major children are provided with the beneficial interest in the trust properties. The miners are not provided with any beneficial

interest during their minority. Therefore, if a minor child dies, nothing will devolve upon his or her legal heirs. If only a major beneficiary dies it is only his or her share that will devolve upon his or her legal heirs. Clause XIV relates to termination of the trust. The trust should come to an end on March 31, 1984, or even earlier provided the trustees are unanimously satisfied that the interest of the beneficiaries requires the determination of the trust earlier than the aforesaid date. On the determination of the trust, the assets of the trust shall be distributed in accordance with the shares held by the beneficiaries. This does not mean that the miners were also provided the beneficial interest during their minority. If the trust came to an end before the appointed day, if the beneficiaries are miners they would get nothing. In view of this factual position it is not correct to state that the deferred interest of the miners is includible in the hands of the assessee u/s 4(1)(a)(iii) of the Wealth-tax Act.

12. A similar question came up before the Supreme Court of India in the case of Commissioner of Income Tax, Gujarat Vs. M.R. Doshi (Dead) by Lrs., . According to the facts arising in that case, the assessee as an individual had executed two deeds of trust and a supplementary deed, the cumulative effect of which was that the income from the trusts was to be accumulated until the attainment of majority by his three sons and the accumulated income was then to be divided into three equal shares and the respective one-third share of each son was to be paid to him. The question was whether the income from the trusts could be included in the total income of the assessee u/s 64(v) of the Income Tax Act, 1961, for the assessment years 1965-66 to 1969-70. On these facts, the Supreme Court while considering the provision of section 64(v) of the Income Tax Act, 1961, prior to amendment in 1971, held that the specific provision of law u/s 64(v) (as it stood before amendment in 1971) was that the immediate or deferred benefit should be for a minor child. As the deferment of benefit in that case was beyond the period of minority of the assessee''s three sons, and the payment was to be made after each of the sons attained majority, the provisions of section 64(v) had no application and the income of the trusts was not to be included in the total income of the assessee.

13. A similar question also came up before this court in the case of Commissioner of Income Tax Vs. T.G.K. Raman (Deceased) by Legal Representatives, . According to the facts arising in that case in the accounting year relevant to the assessment year 1975-76, the assessee had transferred some shares to a discretionary trust created on March 27, 1974, for the benefit of his minor son. The trust deed made it clear that the benefit of the trust would reach the son only after he attained majority. The trustees had no power to pay any money or transfer any asset or confer any benefit on the beneficiary before the minor attained the age of 21. The deed stated that the corpus and the interest accrued thereon did not vest in the minor during his minority. Relying upon section 64(1)(v) of the Income Tax Act, 1961, the Income Tax Officer included the income arising out of the shares in the hands of the assessee. On a reference, this court held that a plain reading of the trust deed showed that the

benefit was not given to the minor during his minority, but upon his attaining majority. Section 64(1)(v) was not, therefore, applicable. The Tribunal was right in excluding the dividend from the shares from the total income of the assessee. Thus, in view of the facts arising in these cases, that the miners were not given any beneficial interest during the time of their minority, there cannot be any deferred beneficial interest as contemplated u/s 4(1)(a)(iii) of the Wealth-tax Act so as to warrant inclusion of the same in the total wealth of the assessee. Thus, considering the facts arising in these cases and in the light of the decisions cited supra, we hold that the order of the Tribunal is in order, in excluding the miners beneficial interest from the hands of the assessee and in that view of the matter we answer the question referred to us in the affirmative and against the Department. There will be no order as to costs.