
(1998) 06 KL CK 0033

In the High Court Of Kerala

Case No : Income-tax Reference No's. 45 to 48 of 1995

Commissioner of Wealth-tax

APPELLANT

Vs

P. Krishna Warriar

RESPONDENT

Date of Decision : 08-06-1998

Acts Referred:

Wealth Tax Act, 1957 — Section 5(1)

Citation : (1999) 238 ITR 79

Hon'ble Judges : Om Prakash, C.J.; J.B. Koshy, J

Bench : Division Bench

Advocate : P.K.R. Menon and N.R.K. Nair, for the Appellant; C. Kochunni Nair, for the Respondent

Judgement

Om Prakash, C.J.—At the instance of the Revenue, the Income Tax Appellate Tribunal referred the following question relating to the consecutive assessment years 1961-62 to 1964-65 for our opinion :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessee was entitled to exemption u/s 5(1)(i) of the Wealth-tax Act, 1957 ?"

2. The facts, as briefly stated, are that the assessee is a trust. As per the trust deed, 60 per cent, of the income of the trust was to be spent for charitable and religious purposes and the remaining 40 per cent, was to be spent for the descendants of the settlor for a period of 20 years and thereafter, the entire income was to be utilised for charitable purposes. All the relevant assessment years fell during the interregnum period of 20 years, which expired on January 30, 1964.

3. During the relevant assessment years, the assessee claimed exemption u/s 5(1)(i) of the Wealth-tax Act (briefly "the Act"), in respect of the properties, held by the trust. The Wealth-tax Officer (WTO) took the view that inasmuch as only 60 per cent, of the total income was to be spent for charitable and religious

purposes, for the purposes of wealth-tax as well, the property belonging to the trust will be treated to have been held for charitable and religious purposes only to that extent and the remaining part of the property will be brought to wealth-tax. This is how the Wealth-tax Officer apportioned the property and brought the part of the property to the extent of 40 per cent, to wealth-tax for the relevant assessment years. On appeal, the Appellate Assistant Commissioner held that the entire property was exempt.

4. The Appellate Tribunal relying on Trustees of Trustees of K.B.H.M. Bhiwandiwalla Trust Vs. Commissioner of Wealth-tax, Bombay City III, , which was also relied on by the Calcutta High Court in Managing Shebait of Bhukailash Debutter Estate Vs. Wealth Tax Officer, F-Ward and Another, , held that unlike the provisions of the Income Tax Act, for the purpose of wealth-tax, the entire property held by the trust will be treated as exempt u/s 5(1)(i) of the Act, if the predominant object of the trust is charitable and religious in nature. Relying on a Full Bench decision of this court in P. Krishna Warriar Vs. Commissioner of Income Tax, , which related to the assessee-trust itself and in which the Full Bench held that the predominant object of the trust was charitable in nature, the Appellate Tribunal held that the exemption u/s 5(1)(i) shall have to be allowed in respect of the whole property and not only to the extent of 60 per cent.

5. We have carefully gone through the decision of the Bombay High Court in Trustees of K.B.H.M. Bhiwandiwalla Trust Vs. Commissioner of Wealth-tax, Bombay City III, . It proceeds on the footing that there is a difference in the language between the Indian Income Tax Act and Wealth-tax Act. Whereas under the former, the income applied for charitable and religious purposes can be conveniently apportioned, the same is not possible for allowing exemption u/s 5(1)(i) of the Act. It was held that for the purpose of wealth-tax either a property can be said to have been held for charitable and religious purposes or not at all ; apportionment is not possible. The Bombay High Court summed up the distinction in between the two Acts as follows (last paragraph at page 716) :

"It is quite clear that there is change in the language between these two enactments. The question to be decided is whether the change is deliberate and intentional or whether it is just a case, to use Halsbury's expression, of slovenly draftsmanship. If one turns again to Section 4(3)(i) of the Indian Income Tax Act, 1922, under Clause (i) to earn the exemption, income is required to have been derived from property under trust wholly or in part held for religious or charitable purposes. If it was wholly held on trust for religious or charitable purposes, the whole of the income is exempt, and in case of property held in part only for such purposes the income applied or finally set apart for application thereto is exempt. This is of course subject to other requirements mentioned in the Sub-section and in the proviso. Now in the case of the Wealth-tax Act, where a property is held on trust for objects which are partly charitable and partly non-charitable, there cannot be any apportionment as is to be found under the Indian Income Tax Act. Such apportionment is possible only in case of income and is not

possible with respect to the corpus or assets which yield income. In my view, the omission of the word "wholly" in the above section of the Wealth-tax Act and the omission of a similar provision as is to be found in the latter part of the Sub-section in the Indian Income Tax Act was deliberate and intentional and the Legislature advisedly avoided or omitted the said word. The reason for this also is not far to seek. In the case of income, as stated earlier, arising from property held partly on trust for a public charitable purpose and partly for other objects, apportionment was possible and so Section 4(3)(i) of the Indian Income Tax Act provided for exempting a portion of the income. As indicated earlier, this was not possible in respect of the corpus."

6. Before the Bombay High Court, the Revenue contended the same thing which is being contended before us by learned senior standing counsel that unless all the objects of the trust are of public charitable nature, the corpus would not qualify for exemption. However, the contention raised on behalf of the assessee before the Bombay High Court was that if the primary or predominant objects of the trust are of a public charitable nature, the corpus would qualify for exemption u/s 5(1)(i) of the Wealth-tax Act. The Bombay High Court, however, considered the contention raised on behalf of the assessee as a better view and upheld the same. It is this view of the Bombay High Court, which has been followed by the Appellate Tribunal in the case of instant assessee. Similar view was taken by the Calcutta High Court in the case of Managing Shebait of Bhukailash Debutter Estate Vs. Wealth Tax Officer, F-Ward and Another, .

7. This court in Abdul Sathar Haji Moosa Sait Dharmastapanam Vs. Commissioner of Income Tax, , taking the same view held that Section 5(1)(i) extends exemption only to a particular class of property and for considering the question of exemption, what is material is the nature of trust. If it is a public charitable trust, then exemption will be allowed in respect of the entire property held by the trust.

8. The submission of learned senior standing counsel before us is that the interpretation of Section 5(1)(i) will turn up the word "any", occurring in Clause (i) of Section 5(1), which precedes the word "property" and that according to the dictionary meaning the word "any" means "all". The argument of senior standing counsel, therefore, is that unless the whole property is held by the trust for religious and charitable purposes, exemption could not be granted u/s 5(1)(i). This submission runs counter to the view taken by the Wealth-tax Officer. The Wealth-tax Officer has not rejected the case in entirety, but exemption has been allowed u/s 5(1)(i) to the extent of 60 per cent, on the parity of the provisions of the Income Tax Act and the exemption was refused for the remaining 40 per cent. only.

9. The Appellate Tribunal has recorded a finding of fact that the assessee-trust was primarily and predominantly a public charitable trust. That being so, applying the ratio of the decision of the Bombay High Court in Trustees of K.B.H.M. Bhiwandiwalla Trust Vs. Commissioner of Wealth-tax, Bombay City III, ,

we agree with the view taken by "the Appellate Tribunal that the assessee will be entitled to exemption u/s 5(1)(i) of the Act in respect of the entire corpus of the trust. It is to be made clear that this view we have taken on the basis of the finding of fact recorded by the Appellate Tribunal that the assessee-trust is predominantly a public charitable trust. It will depend on the facts and circumstances of each case whether a trust is predominantly a public charitable and religious trust. 60 per cent, and 40 per cent, ratio, as it is in this case, will not always be regarded as a norm for coming to the conclusion that a trust is predominantly of charitable and religious nature.

10. In the result, we answer the aforementioned question in the affirmative, that is, in favour of the assessee and against the Revenue.