
(1998) 01 GUJ CK 0032

In the Gujarat High Court

Case No : Wealth-tax Reference No. 47 of 1993

Commissioner of Wealth Tax

APPELLANT

Vs

Rekha and Dhanesh Trust

RESPONDENT

Date of Decision : 29-01-1998

Acts Referred:

Income Tax Act, 1961 — Section 164

Wealth Tax Act, 1957 — Section 16(3), 21, 21(4), 27(1), 3

Citation : (1998) 231 ITR 805

Hon'ble Judges : R.K. Abichandani, J;Anil R. Dave, J

Bench : Division Bench

Judgement

R.K. Abichandani, J.—The Income Tax Appellate Tribunal, Ahmedabad Bench "B", has referred for the opinion of this court the following question u/s 27(1) of the Wealth-tax Act, 1957, arising out of the common order of the Tribunal in a group of matters :

"Whether the Appellate Tribunal is right in law and on facts in holding that the assessee-trust is not liable to tax as the return of wealth is below the statutory limit ?"

2. The assessee is a discretionary trust and, therefore, the assessment was required to be made as per the provisions of section 21(4) of the said Act. The relevant assessment year was 1981-82. The assessee filed return of wealth on March 22, 1983, declaring net wealth of Rs. 47,630. The Wealth-tax Officer, Ahmedabad, however, by his order made u/s 16(3) of the said Act, assessed the net wealth at Rs. 57,636 and on the ground that the assessee was a discretionary trust, charged the same at a maximum rate. In the appeal, the Deputy Commissioner of Income Tax (Appeals) held that since the return of wealth of the assessee-trust was below the statutory limit of Rs. 1 lakh which was provided for at the relevant time, the question of levy of wealth-tax on such net wealth did not arise and, consequently, the higher rate prescribed u/s 21(4) of the Wealth-tax Act becomes immaterial in such cases. The Revenue challenged

the said decision of the appellate authority before the Tribunal and the Tribunal, relying upon the ratio of the decision of the Madras High Court in the case of *Haresh Anitha Trust Vs. Commissioner of Wealth-tax*, dismissed the appeal, holding that the higher rate prescribed u/s 21(4) of the Act, became immaterial in cases where the net wealth did not exceed Rs. 1 lakh.

3. It has been contended by learned counsel, Mr. B. B. Naik, Mr. Pranav Desai and Mr. Mihir Joshi, who addressed us in this and all the cognate matters on board, which were heard together, that section 21(4) of the Act was a special provision for recovery of wealth-tax from the representative assessee when the shares of the beneficiaries were indeterminate and unknown and, therefore, the general provisions of section 3 which was the charging section, will yield to the said specific provision and a flat rate of 3 per cent. or the higher rate as may have been prescribed in Schedule I was attracted for the entire net wealth right from the first rupee, irrespective of the initial exemption limit which was applicable in other cases falling in section 3. It was contended that the decision of the Madras High Court in *Haresh Anitha Trust Vs. Commissioner of Wealth-tax*, proceeded on an erroneous footing that there was nothing in section 21(4), which could be construed as a charging provision, just because the word "charge" was not used in section 21(4) of the said Act like section 164 of the Income Tax Act, 1961, and instead, the word "levied" was used. It was then contended that the explanation of the amendment, made in the provisions of section 21(4), as given by the Board, indicated that the intention of the Legislature was to plug the loopholes by providing a minimum flat rate of 3 per cent. in all cases of such representative assessees, which held the assets on behalf of the persons whose shares were unknown or indeterminate. It was contended that the exemption limit up to which wealth-tax was not payable in Schedule I would be a nil" or "zero" per cent. rate of duty which stood substituted by 3 per cent., in view of the special provision contained in clause (b) of sub-section (4) of section 21 of the said Act. Reliance was placed on the decisions in the cases of *PIARELAL SAKSERIA FAMILY TRUST Vs. COMMISSIONER OF Income Tax, M.P.*, *Surendranath Gangopadhyaya Trust Vs. Commissioner of Income Tax*, and *The Commissioner of Wealth Tax, Andhra Pradesh, Hyderabad Vs. Trustees of H.E.H. Nizam's Family Hyderabad*, in support of these contentions. It was then contended by these learned counsel that while interpreting a fiscal statute, the intention of the Legislature could be ascertained from the language of the statute and its provisions should be interpreted keeping in view the object sought to be achieved and by taking note of the fact as to what loopholes were intended to be plugged by such provision. Reliance was placed in support of these contentions on the decisions of the Supreme Court in the cases of *C.A. Abraham, Uppoottil, Kottayam Vs. The Income Tax Officer, Kottayam and Another*, *Motibhai Fulabhai Patel and Co. Vs. R. Prasad and Others*, and *K.P. Varghese Vs. Income Tax Officer, Ernakulam and Another*, It was submitted that if the exemption limit provided in Schedule I is read in the provision of section 21(4) of the said Act, it would lead to absurdity.

4. Section 3 of the said Act which provides for charge of wealth-tax and falls in Chapter II relating to "charge of wealth-tax and assets subject to such charge", reads as under :

"3. Subject to the other provisions contained in this Act, there shall be charged for every assessment year commencing on and from the first day of April, 1957, a tax (hereinafter referred to as wealth-tax) in respect of the net wealth on the corresponding valuation date of every individual, Hindu undivided family and company at the rate or rates specified in Schedule I."

5. Section 21(4) which is in Chapter V - "Liability to assessment in special cases", falls for our consideration and it reads as follows :

"21. (4) Notwithstanding anything contained in 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 that in a case where -

(i) such assets are held under a trust declared by any person by will and such trust is the only trust so declared by him; or

(ia) none of the beneficiaries has net wealth exceeding the amount not chargeable to wealth-tax in the case of an individual who is a citizen of India and resident in India for the purposes of this Act or is a beneficiary under any other trust; or

(ii) such assets are held under a trust created before the 1st day of March, 1970, by a non-testamentary instrument and the Wealth-tax Officer is satisfied, having regard to all the circumstances existing at the relevant time, that the trust was created bona fide exclusively for the benefit of the relatives of the settlor or where the settlor is a Hindu undivided family, exclusively for the benefit of the members of such family, in circumstances where such relatives or members were mainly dependent on the settlor for their support and maintenance; or

(iii) such assets are held by the trustees on behalf of provident fund, superannuation fund, gratuity fund, pension fund or any other fund created bona fide by a person carrying on a business or profession exclusively for the benefit of persons employed in such business or profession,

wealth-tax shall be charged at the rates specified in Part I of Schedule I.

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 ascertainable as such on the date of such order, instrument or deed.

Explanation 2. - Notwithstanding anything contained in section 5, in computing the net wealth for the purposes of this sub-section in any case, not being a case referred to in the proviso, any assets referred to in clauses (xv), (xvi), (xxii), (xxiii), (xxiv), (xxv), (xxvii), (xxviii) and (xxix) of sub-section (1) of that section shall not be excluded."

6. Schedule I, Part I, which is relevant for the purposes of this matter stood as follows at the relevant time :

Rates of wealth-tax

PART I

(1) In the case of every individual or Hindu undivided family, not being a Hindu undivided family to which item (2) of this Part applies, -

Rate of tax (a) where the net wealth does 1/2 per cent. of the net wealth; not exceed Rs. 2,50,000 (b) where the net wealth exceeds Rs. 1,250 plus 1 per cent. of Rs. 2,50,000 but does not the amount by which the net exceed Rs. 5,00,000 wealth exceeds Rs. 2,50,000; (c) where the net wealth exceeds Rs. 3,750 plus 2 per cent. of Rs. 5,00,000 but does not the amount by which the net exceed Rs. 10,00,000 wealth exceeds Rs. 5,00,000; (d) where the net wealth exceeds Rs. 13,750 plus 3 per cent. of Rs. 10,00,000 but does not the amount by which the net exceed Rs. 15,00,000 wealth exceeds Rs. 10,00,000; (e) where the net wealth exceeds Rs. 28,750 plus 5 per cent. of Rs. 15,00,000 the amount by which the net wealth exceeds Rs. 15,00,000 : Provided that for the purposes of this item, -

(i) no wealth tax shall be payable where the net wealth does not exceed Rs. 1,50,000;

(ii) the wealth-tax payable shall, in no case, exceed 5 per cent. of the amount by which the net wealth exceeds (Substituted for "Rs. 1,00,000" by the Finance Act, 1980, w.e.f. 1-4-1980) Rs. 1,50,000."

7. It will thus be seen that as per the provisions of section 3 read with Schedule I created thereunder, in the case of an individual, wealth-tax was not payable where the net wealth did not exceed Rs. 1 lakh which was later on raised to Rs. 1,50,000. The words "no wealth-tax shall be payable" in the proviso to Schedule I, Part I, clearly indicate that an individual was exempted from wealth-tax where

his net wealth did not exceed the prescribed exemption limit. Therefore, since there was no liability to pay tax where the wealth was within the exemption limit no tax could be levied or recovered thereon.

8. Under sub-section (4) of section 21 wealth-tax is to be levied upon and recovered from the representative assessee concerned 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 the Act. The words "for the purposes of this Act" would also include the provisions of section 21(4) of the Act. Therefore, though a representative assessee who holds the assets on behalf of the beneficiaries whose shares are indeterminate or unknown, is required to be assessed as an individual, the provision makes it clear that, that should be done in the same manner and to the same extent as the levy and recovery could be made from an individual. It therefore follows that if an individual is not liable to pay the wealth-tax and the wealth-tax is not recoverable from him, then to that extent it could also not be recovered from such representative assessee who is required to be assessed as an individual. After indicating the extent of liability of the representative assessee, the said provision proceeds to prescribe a higher rate of wealth-tax to be paid by such representative assessee by providing that the wealth-tax should be levied upon and recovered at the rate specified in Part I of Schedule I or at the rate of 3 per cent., whichever course would be more beneficial to the Revenue. The Legislature, by confining the extent of the tax that could be levied upon and recovered from the representative assessee to the same extent as it would be leviable upon and recoverable from an individual in sub-section (4) of section 21, clearly provided that if no wealth-tax was payable from an individual, the further question of applying the higher rate would not arise. Since sub-section (4) of section 21 itself provided the extent of liability of a representative assessee to be that of an individual and thereby preserved the exemption limit there was no conflict between the provision of sub-section (4) of section 21 and section 3 of the Act as regards availability of exemption limit to the representative assessee. It will be noted that as the provision of sub-section (4) of section 21 was originally enacted and remained in operation till substituted by the amending provision with effect from April 1, 1980, the base of charge with extent of liability was "as if the persons on whose behalf the assets were held were an individual for the purpose of the Act". Now, while maintaining the extent of leviability and recoverability of tax from the representative assessee, all that is done is to provide a higher rate where the tax becomes payable on crossing the exemption limit. It would therefore be fallacious to say that the Legislature intended to take away the exemption limit which was applicable in such cases merely because a higher rate came to be prescribed by subsequent amendments.

9. There can be no doubt that where the net wealth exceeded the exemption limit higher rate became payable under sub-section (4) of section 21, which would prevail over section 3 of the Act in view of the opening words of section 3, which made that provision subject to the other provisions contained in the Act.

As held by the Supreme Court in *The Commissioner of Wealth Tax, Andhra Pradesh, Hyderabad Vs. Trustees of H.E.H. Nizam's Family Hyderabad*, section 3 must yield to the special provision of section 21 whenever assessment is made on a trustee. However, since no wealth-tax was payable at all by the representative assessee since the net wealth admittedly fell within the exemption limit referred to in the proviso in Schedule I, Part I, the question of applying the higher rate under clause (b) of section 21(4) did not at all arise. In our view, therefore, the Tribunal was right in holding that the assessee-trust was not liable to tax as the return of wealth was below the statutory limit.

10. It will be noted that we have reached the same Conclusion as has been reached by the Madras High Court in *Haresh Anitha Trust Vs. Commissioner of Wealth-tax*, but for the reasons given by us hereinabove. In *Haresh Anitha Trust Vs. Commissioner of Wealth-tax*, on the net wealth of the assessee-trust being determined at Rs. 71,700 as on March 31, 1975, wealth-tax at the higher rate of 1 1/2 per cent. was levied rejecting the assessee's claim that as the taxable wealth was below rupees one lakh, no wealth-tax was payable having regard to the provisions of section 21(4). The High Court held on a reference, that as the net wealth did not exceed rupees one lakh, the question of levy of wealth-tax on such net wealth did not arise and consequently the higher rate prescribed by section 21(4) had no relevance in such cases. It was held that though section 21(4) refers to two different rates, the question of applying the higher rate of tax will arise only if at the rate prescribed in the Schedule, the Revenue would lose something. Where, however, in terms of the Schedule, no rate was at all applicable as there was an exemption from the applicability of the rate, the question of ascertaining whether the higher rate prescribed in section 21(4) will benefit the Revenue or not will not at all arise. The court distinguished the cases of *PIARELAL SAKSERIA FAMILY TRUST Vs. COMMISSIONER OF Income Tax, M.P.*, and *Surendranath Gangopadhyaya Trust Vs. Commissioner of Income Tax*, which were in the context of the provisions of section 164 of the Income Tax Act, 1961. It will be noted that the words "the wealth-tax shall be levied upon and recovered from ... in the like manner and to the same extent as it would be leviable upon and recoverable from an individual ..." of sub-section (4) of section 21 of the Wealth-tax Act, were not there in the provisions of section 164 of the Income Tax Act, and, therefore, these decisions cannot assist the petitioners. We agree with the opinion of the Madras High Court that there was nothing in section 21(4) of the said Act, which took away the benefit of the exemption of Rs. 1 lakh, which was granted to an individual assessee, while assessing the representative assessee from whom the tax was to be leviable and recoverable to the same extent.

11. The Budget Speech of the Finance Minister and the Notes on Clauses, were referred to by learned counsel for the Revenue to show that the intention of the Legislature was to provide a flat rate of 3 per cent. The Board's explanation to the amendments made in the law were also referred to, in order to contend that the exemption limit of Rs. 1 lakh was done away with. We are unable to resort to

the Budget Speech and the Board's subsequent opinion on amendments, in view of the unambiguous nature of the provision of section 21(4).

12. In our view, the language of the provisions of section 21(4) is unambiguous and it clearly indicates that the wealth-tax which was not payable by an individual was also not payable by the representative assessee. Therefore, only when the wealth-tax was payable by an individual when the net wealth exceeded the exemption limit, would the question of recovering tax at a higher rate, prescribed by clause (b) of sub-section (4) of section 21, from such representative assessee arise. In this view of the matter, the decisions of the Supreme Court in C.A. Abraham, Uppotttil, Kottayam Vs. The Income Tax Officer, Kottayam and Another, holding that in interpreting a fiscal statute, an assumption that the words were used in a restricted sense so as to defeat the avowed object of the Legislature qua a certain class will not be lightly made; and in K.P. Varghese Vs. Income Tax Officer, Ernakulam and Another, holding that speeches by the members of the Legislature on the floor of the House when the Bill was debated can be referred to for ascertaining the mischief sought to be remedied by the Legislature and that the circulars of Central Board of Direct Taxes explaining the amended provisions are in nature of contemporanea expositio furnishing legitimate aid in construction of their provision, cannot assist the Revenue. In fact, in the last mentioned case the Supreme Court in terms held in para 11 of the judgment that the rule of construction by reference to contemporanea expositio "must give way where the language of the statute is plain and unambiguous".

13. In the above view of the matter, we answer the question referred to us in the affirmative, in favour of the assessee and against the Revenue. The reference stands disposed of accordingly with no order as to costs.