

(1981) 04 CAL CK 0036
In the Calcutta High Court
Case No : Matter No. 471 of 1971

Commissioner of Wealth Tax

APPELLANT

Vs

Sardar Surjit Singh

RESPONDENT

Date of Decision : 27-04-1981

Acts Referred:

Trusts Act, 1882 — Section 5
Wealth Tax Act, 1957 — Section 4

Citation : (1982) 138 ITR 186 : (1982) 11 TAXMAN 159

Hon'ble Judges : Sudhindra Mohan Guha, J;Sabyasachi Mukharji, J

Bench : Division Bench

Advocate : B.L. Pal, for the Appellant;None, for the Respondent

Judgement

Sabyasachi Mukharji, J.—In this reference u/s 27(3) of the W.T. Act, 1957, as directed by this court, the following three questions have been referred to this court :

"(1) Whether, on the facts and in the circumstances of the case, and in view of the facts that the deed of declaration of trust was executed on 8th July, 1959, the Tribunal was justified in holding that the transfer of 300 shares of the assessee in M/s. Indra Singh & Sons Pvt. Ltd. in favour of Sardar Baldev Singh Charitable Trust became effective on the 18th February, 1959, prior to the date of valuation for the assessment year 1959-60 and not from 8th July, 1959, being the date of execution of the said deed ?

(2) Whether, on the facts and in the circumstances of the case, the assessee was competent to create charitable trust revokable by him after 10 years and whether the trust purported to be created was a valid trust in law ?

(3) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in not including the value of 300 shares of the assessee in M/s. Indra Singh & Sons Pvt. Ltd. transferred in favour of Sardar Baldev Singh Charitable Trust in the assessee's wealth for the assessment year 1959-60?"

2. In order to appreciate the questions it will be necessary to refer to certain facts. The assessment year involved is 1959-60, with its date of valuation being 31st March, 1959. The assessee, Sardar Surjit Singh, had 850 shares in M/s, Indra Singh & Sons Pvt. Ltd. He transferred 50 shares to Smt. Baljit Kaur by a deed executed on the 10th January, 1959, and 300 shares to Sardar Baldev Singh Charitable Trust on the 27th February, 1959. By means of a letter dated 20th January, 1959, the assessee wrote to the trustees of the trust that as discussed with them about his decision to set up a public charitable trust and/or a public religious trust and in view of their kind acceptance of the office of trustees to the trust, he was anxious to execute the transfer of sufficient amount of security to the trust and offered "immediate transfer to you and delivery of possession to you of 300 fully paid up equity shares of Rs. 1,000 each at par in the share capital of M/s. Indra Singh & Sons Pvt. Ltd." He requested the trustees to consider his request and offer and communicate to him the result of the decision as soon as possible. The trustees held a meeting on the 6th of February, 1959, and accepted the said offer. The trustees communicated the result of the meeting to the assessee on the 9th February, 1959, and the assessee wrote back to them on 10th of February, 1959, that he was anxious to give effect to his desire and the decision to set up a public charitable and/or religious trust as well as to transfer the 300 shares that he had offered to them and also tendered the 3 separate instruments of transfer, each of 100 shares, together with the corresponding certificates of shares in original and requested the trustees to accept the offer and tender. The trustees received this letter and three instruments of transfer duly stamped, signed and witnessed, for the transfer of 300 fully paid-up equity shares in the share capital of the company for the purpose of and for and on behalf of the trust of which they had agreed with the assessee to serve as trustees. A meeting of the trustees was held on 27th February, 1959, for the consideration of the transfer of the shares and the transfer was approved. The deed of declaration of the trust was, however, executed on 8th of July, 1959.

3. Our attention was drawn to a copy of the said deed of trust which, inter alia, provided as follows :

"19. The trustee or trustees for the time being under these presents, shall be respectively chargeable only for such moneys as they shall respectively actually receive notwithstanding their respectively signing any receipt or receipts for the sake of conformity and shall be answerable and accountable for his or their own acts, receipts, neglects or defaults and not for those of the others or other of them or for any banker or other person with whom or into whose hands any trust moneys may be deposited or come for any loss unless the same shall happen through their or his own wilful default respectively.

20. It is hereby expressly declared that this Trust shall operate for a period of 10 (ten) full calendar years, with effect from the date of the tender and offer and delivery of possession by the Truster of the instrument or instruments of transfer

of the said 300 shares together with the corresponding certificates of the 300 shares to the Trustees, namely, the 10th day of February, 1959, expiring on or about the 9th day of February, 1969, and the Truster shall have a right to revoke the transfer and settlement of any part or all the said 300 shares to the Trustees hereto provided always that the right of revocation and recall shall hereto be exercised by the Truster before the expiry of the last mentioned year of the said period of 10 years by serving full clear 6 months notice expiring with the last day of the said period of 10 years on the Trustees as then may be functioning as such and unless it is so done, this Trust shall continue the transfer and settlement of the said 300 shares to this trust for the purpose of this Trust shall continue and the entirety of the Trust Fund as may be then have been built up with the yields or produce or income, profits or gains earned from time to time by and of and/or with the help of the said 300 shares shall continue to merge in the Trust Fund, vest in the Trustees and to be utilised only and solely for the purpose of this Trust. In the event of the Truster recalling any part and/or all the said 300 shares or so many of them as may by these be available to the Trust from this Trust and recalling this Trust in the manner hereinbefore provided for, the entire balance of the accretions to the Trust Fund initially made up of the said 300 shares together with the balance of the further properties, movable and/or immovable acquired by or with the help of the said Trust Fund, shall nevertheless continue to vest in and belong to this Trust, and be deemed to compose the Trust Fund, to be utilised, appropriated, disposed and administered only and solely for the public charitable and/or public religious objects of this Trust in accordance with the terms of this Trust and/or any further rules as may from time to time and until then may have been made by the Trustees administering this Trust until then. Truster shall on the occasion of any such recall or revocation not to be entitled to claim, own or possess any further accretion to or income or profit yielded, earned or produced by and/or any assets acquired with the help of or by the said 300 shares (three hundred shares) and he shall be entitled to recall and revoke his entrustment of, and the corpus of only one (1) up to the said maximum 300 (three hundred) shares alone..... "

4. The company made an application to the Central Govt. for approval of change in the constitution of a body corporate acting as managing agents and also secretaries and treasurers of the public companies u/s 346 of the Companies Act, 1956, on 31st March, 1959. The approval was given by the Central Govt. by a letter dated 13th July, 1959. The date of valuation for the assessment year 1959-60 was 31st March, 1959. The WTO accepted the transfer of 50 shares to Sm. Baljit Kaur but the transfer of 300 shares to the Trust was not accepted on the ground that as the declaration of Trust was made on the 8th July, 1959, there was no valid gift made before the date of valuation. He, therefore, treated the entire lot of 800 shares in the company as the assessee's wealth and determined the value of the same according to the break-up method at Rs. 33,88,800 at the rate of Rs. 4,236 per share and added this amount to the wealth of the assessee. For the assessment year 1960-61 also, the WTO treated these, shares as the

assessee's wealth and added their value to his total wealth. For both these years the assessee had claimed liability for Income Tax and other taxes but that also was not allowed by the WTO.

5. The assessee appealed to the AAC against these assessments. The AAC decided the two appeals by a consolidated order. For the assessment year 1959-60, he agreed with the WTO and held that the Trust actually took effect from the 8th July, 1959, and, hence, the value of the 300 shares was rightly included in the assessment of the assessee as forming part of his assets. But for the year 1960-61, he took a different view and held that the transfer of these shares had been effected by an irrevocable transfer and, hence, the value of the said shares had to be excluded from the computation of the net wealth.

6. As regards the valuation of these shares, following the decision of the Calcutta Bench " A " of the Appellate Tribunal in the case of Mrs. Prakash Kaur v. WTO, where the value per share for the assessment year 1959-60 was worked out at Rs. 3,416 and for the year 1960-61, at Rs. 3,391, the AAC directed the WTO to value the shares of the assessee accordingly.

7. As regards the liability for Income Tax and other taxes for each of these years, the AAC merely observed that the first ground had not been elaborated and so he passed it over.

8. Against this order the assessee filed an appeal regarding the assessment year 1959-60 only; and he challenged the findings of the AAC regarding the transfer of 300 shares, the value of these shares and, lastly, the deduction of the liabilities for Income Tax and other taxes from the computation of the net value. For the same year, however, the Revenue had filed an appeal challenging the order of the AAC regarding the valuation of these shares. For the assessment year 1960-61 as well, the Revenue had filed an appeal disputing the value of these shares as directed to be taken by the AAC and further against his finding holding that the transfer of these shares was valid and irrevocable. The points of dispute in these three appeals are :

- (1) transfer of 300 shares ;
- (2) valuation of these shares ; and
- (3) deduction of tax liabilities.

Now, so far as the transfer of 300 shares is concerned, the facts have been set out hereinbefore. Therefore, the question that the Tribunal had first decided was that with effect from which date the transfer of these shares became effective and, secondly, what was the nature of the transfer. The assessee was admittedly a Sikh. The Hindu law applied to the Sikhs as well and for this, reference was made to Mulla's Hindu Law, 13th edn., para. 6 at p. 73. Section 5 of the Indian Trusts Act lays down that no trust in relation to immovable property is valid unless declared by a non-testamentary instrument in writing signed by the author of the trust or the trustee and registered, or by the will of the author of

the trust or of the trustee. This Act is applicable to the Hindus but Section 1 of the Act expressly saves from its operation all religious and charitable endowments either public or private. The operation of Section 5 of the Act, therefore, is specifically excluded for all religious and charitable endowments of public or private nature. It was, therefore, held by the Tribunal that it was not necessary to enter into the controversy whether it was a public or private trust. We are of the opinion that the Tribunal was right in this approach. The Tribunal found that it was a charitable endowment and, hence, Section 5 of the Indian Trusts Act did not apply to it. In our opinion, the Tribunal was right on this aspect. No writing, therefore, was necessary to create such an endowment. The Tribunal referred to Mulla's Hindu Law, para. 407, at p. 438, of the said edition, where the learned editor has stated that a Hindu who wished to establish a religious or charitable institution, might, according to law, express his purpose and endowment, A trust deed was not required for that purpose. In this connection, reference may be made to the Hindu Law of Religious and Charitable Trusts, 2nd edn. at p. 90 by Dr. B. K. Mukherjee, which was as follows :

"No express words of gift either directly or indirectly in the shape of a trust are required to create a valid dedication all that is necessary is that the religious purpose or object of the donor shall be clearly specified and that the property intended for endowment should be set apart and dedicated to those purposes."

9. Therefore, the essentials for making a charitable endowment by a Hindu were that he should express his purpose either directly or indirectly to create a dedication clearly. Secondly, he should set apart the intended property for the endowment and, lastly, he should dedicate the property to such purpose or object. In other words, he should divest himself of all right and title in that property. In this connection, reference may be made to the observation in the case of Deoki Nandan Vs. Murlidhar, . Reference may also be made to the observation of the Judicial Committee in the case of AIR 1938 73 (Privy Council) .

10. In the above background of the principles and the facts found by the Tribunal, in our opinion, the Tribunal was right in holding that, there could be no doubt that the transfer of the shares became effective with effect from 27th February, 1959. In this connection, reference may be made to the correspondence, which we have mentioned hereinbefore. The transfers of the shares were also registered in the books, of the company on 27th February, 1959. Thus, the assessee transferred these shares on 10th February, 1959, and divested himself of the ownership thereof. The transfer became effective from the date of the acceptance of these transfers by the Trustees on 27th February, 1959, on which date in the books of the company as well this transfer was registered. We are of the opinion that the Tribunal was right in holding that it was not at all necessary for the settlor to execute any formal deed of trust and the document executed by him on 8th July, 1959, was a declaration of trust. The preamble of the document contained the events which had preceded. The trust was created for a period of ten years. Within this period of ten years complete

rights of the disposition were vested in the trustees. This period was to be counted from the 10th of February, 1959. This is a very significant fact and it shows the intention of the assessee. Further, after the expiry of the period of ten years, the assessee retained for himself the right to recall or revoke the entrustment of the corpus only. The Trust, therefore, was, according to the Tribunal, an irrevocable trust within the meaning of Expln. (b) to Section 4 of the W.T. Act. It is necessary to set out the terms of Expln. (b) to Section 4 of the W.T. Act, 1957, which reads as follows :

"(b) The expression "irrevocable transfer" includes a transfer of assets which, by the terms of the instrument effecting it, is not revocable for a period exceeding six years or during the lifetime of the transferee, and under which the transferor derives no direct or indirect benefit, but does not include a transfer of assets if such instrument-

(i) contains any provision for the re-transfer, directly or indirectly, of the whole or any part of the assets or income therefrom to the transferor, or

(ii) in any way gives the transferor a right to re-assume power, directly or indirectly, over the whole or any part of the assets or income there from"

11. The conditions were set out in Clauses (19) and (20) of the declaration of trust. It was not revocable and no question of retransfer--directly or indirectly--of the whole or any part of the assets or income or it did not give to the transferor any right to reassume power directly or indirectly over the whole or any part of the assets or income therefrom as contemplated under the aforesaid clause of the section. The power that was reserved was only with respect to the corpus and that was not until after the expiry of ten years from the date of declaration of the trust. The trust, therefore, was an irrevocable trust within the meaning of Expln. (b) to Section 4 of the W.T. Act, 1957. The Tribunal has so held and we are in agreement with the said view of the Tribunal, It also appears that the Tribunal has referred to a decision of the Calcutta High Court. The Tribunal has observed as follows :

"A similar question was involved in the case of Sardar Ajaib Singh who was the owner of 640 ordinary shares of the same company and he too had created a trust of the same by means of a letter dated January 23, 1959, which offer was accepted by the Trustees by a resolution dated February 5, 1959, and March 4, 1959. The question for decision was as to whether the transfer of the shares was an irrevocable transfer within the meaning of the Explanation to Section 4. The hon"ble High Court of Calcutta answered this question in the affirmative."

12. On behalf of the Revenue our attention was not drawn to this decision on the identical question and we must, therefore, proceed that the Tribunal's reading of the said decision must be correct. The Tribunal states that the question for decision was as to whether the transfer of the shares was an irrevocable transfer within the meaning of Explanation to Section 4. The Tribunal further observed that the High Court of Calcutta answered this question in favour of the assessee

and held it to be an irrevocable transfer. If that is the position, then, in our opinion, it must be held that there was an irrevocable transfer. The Tribunal accepted the submission made on behalf of the assessee. Section 5 of the Trusts Act did not apply to public or private charitable trusts and the trusts created in this case by transfer dated 19th February, 1959, fulfilled all the three conditions necessary for the creation of a valid Hindu charitable trust.

13. The Tribunal, therefore, held that the transfer, in the facts and circumstances of the case, became effective from the 10th February, 1959, i. e., before the date of valuation relevant to the assessment year 1959-60. We are of the opinion that the Tribunal was correct in so holding. It may be further noted that the assessee had submitted before the Tribunal in writing that during the first accounting period of the trust, which ended on 31st December, 1959, no dividend was declared or received on these shares and the first dividend was declared on the 28th March, 1960, and; was assessed in the hands of the trust. In the following years as well, the dividend received on these shares was assessed in the hands of the trust. The Tribunal, therefore, was right in holding that there was a transfer before the valuation date.

14. On the second aspect of the matter, that is to say, the valuation of the shares in respect of 800 shares, only 500 shares were to be included in the assets of the assessee for the two years under appeal. The WTO determined the value of these shares at the rate of Rs. 4,236 per share while the AAC, relying on the decision of the Tribunal in some other matter, took the value at Rs. 3,418 for 1959-60 and Rs. 3,391 for 1960-61. The CWT induced the Tribunal to the further question of valuation to the High Court at Calcutta and to the reference decided on the 17th August, 1967. It was agreed before the Tribunal by both the sides that after this decision the value of the shares should be taken at Rs. 3,618 for 1959-60 and Rs. 3,741 for 1960-61 per share. The Tribunal, after considering these aspects, directed the WTO to adopt the break-up value method subject to an allowance of 15% therefrom in the light of the observations made by the order of the Tribunal.

15. So far as the question of tax liabilities are concerned the ground related only to 1959-60 and the liabilities for Income Tax and other taxes "as claimed by the assessee were a "debt owed" within the meaning of Section 2(m) of the W.T. Act on the valuation date and as such deductible in computing the net wealth as was held by the Supreme Court in the case of Kesoram Industries and Cotton Mills Ltd. Vs. Commissioner of Wealth Tax, (Central) Calcutta, as well as the decision in the case of H.H. Setu Parvati Bayi Vs. Commissioner of Wealth Tax, Kerala, .

16. Before we conclude, we must observe that our attention was drawn to certain observations in the decision of the Judicial Committee in the case of Juggut Mohini Dossee v. Sokheemoney Dossee [1871] 14 MIA 289 . Reliance was placed on the observations at page 203 of the report. In view of the facts and the context, these observations are of little relevance. Our attention was also drawn to Mulla's Hindu Law, 14th Edn. at p. 498 for the same purpose and reliance was also placed on the Hindu, Law of Religious and Charitable Trusts by Dr. B.K.

Mukherjee 3rd edn. Our attention was drawn to page 103 where the learned editor has discussed about the question of charitable trusts. In the context of the transfer involved in this case, no support can be had from the said observations.

17. In those circumstances three questions as indicated before have been referred to the Tribunal as directed by this court. Having regard to the points that we have discussed we must, therefore, answer question No. 1 in the affirmative and in favour of the assessee. It is difficult to appreciate question No. 2. We will answer question No. 2 by saying that there was a valid trust created in law. So far as question No. 3 is concerned it follows automatically after the decision of the first two questions, and must be answered in the affirmative and in favour of the assessee. So all the questions are answered in favour of the assessee. Questions Nos. 1 and 3 both are answered in the affirmative and question No. 2 is answered by saying that there was a valid trust created in law. The parties will pay and bear their own costs.

Sudhindra Mohan Guha, J.

18. I agree.