

(1998) 02 MAD CK 0068

In the Madras High Court

Case No : Tax Case No. 1520 of 1985 (Reference No. 980 of 1985)

Commissioner of Wealth-tax

APPELLANT

Vs

S.S. Sankaralingam

RESPONDENT

Date of Decision : 25-02-1998

Acts Referred:

Wealth Tax Act, 1957 — Section 21, 24, 5(1)

Citation : (2000) 245 ITR 640

Hon'ble Judges : R. Jayasimha Babu, J;N.V. Balasubramanian, J

Bench : Division Bench

Advocate : C.V. Rajan, for the Appellant; P.P.S. Janarthana Raja, for Subbaraya and Padmanabhan, for the Respondent

Judgement

N.V. Balasubramanian, J.—The Income Tax Appellate Tribunal, Madras, at the instance of the Revenue, referred the following question of

law 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 justified in holding that the assessee is entitled to the

exemption u/s 5(1)(xxxi) of the Wealth-tax Act, a claim which was not made by the assessee before the Wealth-tax Officer, Appellate Assistant

Commissioner ?

2. The assessee in the instant case is a minor. For the assessment year 1976-77, the assessment of wealth-tax, in the case of the assessee, was

made on his father and natural guardian, the respondent herein, in his representative capacity. The father of the assessee claimed exemption before

the Wealth-tax Officer u/s 5(1)(xxxii) of the Act in respect of the interest of the assessee in the firm, amounting to Rs. 57,317. The Wealth-tax

Officer denied the exemption on the ground that the minor assessee was not a

partner of the firm, although his father was a partner in a representative capacity. On appeal, the Appellate Assistant Commissioner held that the assessment was made on the trustee in a representative capacity by virtue of Section 21 of the Act and on the basis of a statutory fiction, created by Section 21 of the Act, the assets are held by the beneficiary in his beneficial ownership and, therefore, the assessee was entitled to exemption u/s 5(1)(xxxii) read with Section 5(1A) of the Act.

The Revenue carried the matter in appeal before the Income Tax Appellate Tribunal. The Income Tax Appellate Tribunal also affirmed the view of the Appellate Assistant Commissioner and held that the right of a beneficiary to the benefits of the exempted provision would be the same as that of the trustee and irrespective of a question whether the assessment was made directly on the beneficiary or on the trustee in a representative capacity, the assessee would be entitled to exemption u/s 5(1)(xxxi) of the Act.

3. It is relevant to mention here that for the first time in the appeal before the Tribunal, it was clarified on behalf of the assessee that the assessee

was not a partner in a firm or a member of the association and the proper provision under which exemption claimed is Section 5(1)(xxxi) of the

Act. The Appellate Tribunal entertained the new plea raised by the assessee and held that the assessee would be entitled to exemption u/s 5(1)

(xxxi) of the Act as he was a beneficiary and the assessment was made on his father in a representative capacity. The Revenue has challenged the

order of the Appellate Tribunal and the reference has been made to this court by the Tribunal on the question of law set out earlier.

4. Mr. C. V. Rajan, learned standing counsel for the Revenue, submitted that under the Indian law, the trustee is a legal owner of the property and,

therefore, the assessee is not entitled to claim exemption u/s 5(1)(xxxi) of the Act. In so far as the new plea entertained by the Appellate Tribunal,

i.e., the claim for exemption u/s 5(1)(xxxi) of the Act is concerned, learned counsel for the Revenue fairly brought to the notice of the court in the

decision of the Supreme Court in the case of National Thermal Power Co. Ltd. Vs. Commissioner of Income Tax, wherein the Supreme Court

held that the Tribunal has wide powers and has the discretion to allow or not to allow a new ground to be raised before it. Mr. P. P. S. Janar-

thana Raja, learned counsel for the assessee, supported the order of the

Appellate Tribunal.

5. The question whether the assessee is entitled to exemption u/s 5(IXxxxi) of the Act, has to be considered with reference to Section 21 of the

Wealth-tax Act under which assessment was made on the father of the assessee in a representative capacity. u/s 21(1) of the Act, where assets

are held by courts of wards, administrators-general or official trustees or any receiver or manager or any other person or firm or trustee appointed

under a trust, the wealth-tax shall be leviable and recoverable from the said trustee or other person as it will be leviable and recoverable from the

person on whose behalf or for whose behalf the assets are held and the provisions of this Act shall apply accordingly. u/s 21(2) of the Act, the

Wealth-tax Officer has the option to make a direct assessment on the beneficiary for whose benefit the assets were held. The provisions of

Sections 21(1) and 21(2) make it clear that the assets belong to the beneficiary and it is only on that basis that option is given to the Wealth-tax

Officer to make an assessment on the trustee in a representative capacity for and on behalf of the beneficiary and the purport of the provision is

that the assets are held by the minor for his own benefit. When the scheme of the Act contemplates that the assets belong to the beneficiary and tax

is levied on that basis, we are of the opinion that the exemption claimed on that basis should also be granted to the beneficiary and cannot be

denied on the ground that the beneficiary is not the legal owner of the trust property.

6. The Supreme Court in the case of The Commissioner of Wealth Tax, Andhra Pradesh, Hyderabad Vs. Trustees of H.E.H. Nizam's Family

Hyderabad, considered the expression ""belonging to"" u/s 21, of the Wealth-tax Act and the observations of the Supreme Court are relevant for the

purpose of this case (page 593) :

This provision obviously can apply only where the trust properties are held by the trustee for the benefit of a single beneficiary or, where there are

more beneficiaries than one, the individual shares of the beneficiaries in the trust properties are determined and known. Where such is the case,

wealth-tax can be levied on the trustee in respect of the interest of any particular beneficiary in the trust properties "in the same manner and to the

same extent" as it would be leviable upon the beneficiary and in respect of such

interest in the trust properties, the trustee would be assessed in a representative capacity as representing the beneficiary. This, of course, does not mean that the Revenue cannot proceed to make direct assessment on the beneficiary in respect of the interest in the trust properties which "belongs to" him. The beneficiary would always be assessable in respect of his interest in the trust properties, since such interest "belongs to" him and the right of the Revenue to make direct assessment on him in respect of such interest stands unimpaired by the provision enabling assessment to be made on the trustee in a representative capacity. Sub-Section (2) makes this clear by providing that nothing contained in Sub-section (1) shall prevent either the direct assessment of the beneficiary for whose benefit the trust properties are held or the recovery from the beneficiary of the wealth-tax in respect of his interest in the trust properties which is assessed in the hands of the trustee.

7. The decision of the Supreme Court makes it clear that where the trust properties are held by the trustee for the benefit of the beneficiary, the wealth-tax can be levied on the trustee in respect of the interest of the beneficiary in the trust properties in the same manner and to the same extent as it would have been leviable on the beneficiary and in respect of such interest in the trust properties, the trustee would be assessed in a representative capacity as representing the beneficiary. No doubt, it is true that the Wealth-tax Officer can make a direct assessment on the beneficiary on the ground that the trust properties belong to the assessee. On the position of law is that the trust property belongs to him and is recognised in Section 21 of the Wealth-tax Act, it cannot be said that the assessee is not entitled to exemption u/s 5(1)(xxxi) of the Act.

8. A similar question whether the beneficiary would be entitled to exemption u/s 5 of the Act, came up for consideration before the Kerala High Court in the case of Commissioner of Wealth-tax Vs. V. Thiruvengkata Reddiar, and the Kerala High Court held that where an assessment is made on a trustee in a representative capacity, it is made on the statutory fiction that the assets concerned are held by the beneficiary in his direct ownership and the same fiction has to be applied while making an assessment directly on the beneficiary u/s 21(2) of the Act. Therefore, when an assessment is made u/s 21 of the Act either against the trustee or directly

against the beneficiary in respect of the assets which form the subject-matter of a trust, the asset, to the extent to which the beneficiary has a beneficial interest therein, must be deemed to be held by him and to that extent the assessee would be entitled to exemption provided for u/s 5 of the Act. More or less, a similar view was taken by the Calcutta High Court in the case of Commissioner of Wealth Tax Vs. Official Trustee of West Bengal for Trust Murshidabad Estate, wherein the Calcutta High Court held that the official trustee would be entitled to exemption u/s 5(1)(iv) of the Wealth-tax Act, 1957, in respect of a part of the building used by the beneficiary for his residential purposes. The basis of both the decisions of the Kerala and Calcutta High Courts is that the assets belong to the beneficiary when the Wealth-tax Officer invokes the provisions of Section 21 of the Wealth-tax Act and makes the assessment on the trustee in a representative capacity or against the beneficiary on the basis of the assets held by him. We are in respectful agreement with the views expressed by the Kerala High Court as well as the Calcutta High Court.

9. We, therefore, hold that the Tribunal was correct in holding that the assessee is entitled to exemption u/s 5(1)(xxxi) of the Wealth-tax Act.

10. So far as the other part of the question regarding the jurisdiction of the Appellate Tribunal to entertain the new plea raised on behalf of the assessee with reference to Section 5(1)(xxxi) which was not made before the lower authority, is concerned, we are of the view that the decision of the Supreme Court in the case of National Thermal Power Co. Ltd. Vs. Commissioner of Income Tax, would apply, wherein the apex court held that the Tribunal has wide powers and discretion to allow or not to allow a new ground to be raised. The Tribunal has exercised its discretion in this case properly to entertain a new ground raised by the assessee. We do not find any infirmity in the order of the Income Tax Appellate Tribunal in entertaining the new ground of appeal raised by the assessee for the first time before it. The Tribunal has exercised its discretion properly and entertained the new ground raised as the contents of exemption prescribed under Sections 5(1)(xxxi) and 5(1)(xxxii) are the same.

11. Accordingly, the question of law referred to us, is answered in the affirmative and against the Revenue and in favour of the assessee. The assessee is entitled to costs of the reference cost Rs. 750.