

(1980) 10 KL CK 0010

In the High Court Of Kerala

Case No : Income-tax Reference No. 100 of 1978

Commissioner of Wealth-tax

APPELLANT

Vs

V. Thiruvengkata Reddiar

RESPONDENT

Date of Decision : 17-10-1980

Acts Referred:

Wealth Tax Act, 1957 — Section 21(1), 21(2), 21(3), 5(1), 5(1A)
Wealth Tax Rules, 1957 — Rule 2(1)

Citation : (1981) 128 ITR 689

Hon'ble Judges : V. Balakrishna Eradi, C.J.;G. Balagangadharan Nair, J

Bench : Division Bench

Advocate : P.K. Ravindranatha Menon, for the Appellant; K.S. Paripoornan, for the Respondent

Judgement

Balakrishna Eradi, C.J.—The Income Tax Appellate Tribunal, Cochin Bench (hereinafter called "the Tribunal"), has referred to this court u/s 27(1) of the W.T. Act, 1957 (hereinafter called "the Act"), the following questions of law as arising out of its order dated 16th March, 1978, in W.T.A. No. 108(Coch)/76-77 :

"1. Whether, on the facts and in the circumstances of the case, the assessee is entitled to the deduction of the share in the fixed deposit u/s 5(1)(xxvi) of the Wealth-tax Act, 1957, for the assessment year 1973-74?

2. Whether, on the facts and in the circumstances of the case, the assessee is entitled to any exemption u/s 5(1)(iv) of the Wealth-tax Act for the assessment years 1973-74, 1974-75 and 1975-76 ?"

2. The assessment year with which we are concerned is the year 1973-74. The assessee is a minor and she was assessed to wealth-tax through her father as guardian. The minor, assessee, is a beneficiary in a private trust called "Seematti Trust". She is interested to the extent of 18% in the income and assets of the said trust. The Seematti Trust had deposits in various banks amounting to Rs. 3,16,428. In the return filed by the assessee, the assessee had claimed

deduction u/s 5(1)(xxvi) of the Act in respect of 18% of the amounts lying in deposit in various banks as per the books of the trust. The WTO took the view that the assessee was entitled to exemption only to the extent of 18% of Rs. 1,50,000 inasmuch as she had only an 18% share in the assets of the trust. In taking this view the WTO had applied to the case the principle embodied in Rule 2 of the W.T. Rules, 1957. It was on that basis that he had held that the assessee was entitled to get a deduction of only Rs. 27,000 representing 18% of Rs. 1,50,000, which is the ceiling limit specified in Sub-section (1A) of Section 5 of the Act, in respect of the quantum of exemption admissible under Clause (xxvi) of Sub-section (1) of Section 5. Aggrieved by the said decision of the WTO the assessee carried the matter in appeal before the AAC but the said appeal was dismissed. Thereafter, the assessee filed a second appeal before the Tribunal. The Tribunal held that the principle embodied in Rule 2 of the W.T. Rules had no application at all to the instant case since the minor assessee was neither a partner in a firm nor a member of an association of persons. The Tribunal took the view that under Sub-section (1) and (2) of Section 21 of the Act the WTO was bound to treat the beneficiary of a trust like any other assessee and when the beneficiary under a trust is directly subjected to an assessment to wealth-tax u/s 21(2) the assessee would be entitled to claim the full extent of exemption allowed by Clause (xxvi) of Sub-section (1) of Section 5. Accordingly, the Tribunal allowed the appeal filed by the assessee and held that the assessee was entitled to the deduction of her share in the fixed deposits by virtue of the exemption conferred by Section 5(1)(xxvi) of the Act. This reference has been made by the Tribunal at the instance of the revenue.

3. Counsel appearing on behalf of the revenue strenuously argued that Sub-section (3) of Section 5 of the Act, as it stood at the relevant time, made it clear that the assessee would not be entitled to the benefit of exemption under Clause (xxvi) of Sub-section (1) of the said section unless the asset in question was "held by the assessee" for a period of at least six months ending with the relevant valuation date. Counsel contended that since the fixed deposit receipts stood in the name of the trustees and not in the assessee's name, the assets, namely, the deposits with the banking companies, could not be regarded as having been "held by the assessee" during the relevant period specified in Sub-section (3) so as to entitle the assessee to claim the benefit of the exemption under Clause (xxvi) of the said sub-section. In support of the said argument counsel for the revenue relied strongly on a decision of the Gujarat High Court in COMMISSIONER OF WEALTH-TAX, GUJARAT Vs. HARSHAD RAMBHAI PATEL AND ANOTHER., , where the question considered was whether an assessee could claim exemption u/s 5(1)(xvi) of the Act (as it stood prior to its amendment in 1963) in respect of. national savings certificates held by him benami in the names of others. Dealing with the said question a Division Bench of the Gujarat High Court held (p. 750): ".....the exemption under Clause (xvi) was limited to those certificates which were held by the assessee at the relevant time, that is to say, those certificates which stood in the name of the assessee, and not in respect of-

certificates standing in the name of another person, his nominee, though the assessee had beneficial ownership of such certificates". The learned judges further held that the expression "held by the assessee" occurring in Clause (xvi) of Section 5 of the Act has been used by the Legislature as meaning certificates which are registered in the name of the assessee and which stand in his name and not the certificates of which beneficial ownership is vested in him but which stand in the name or names of his nominee or nominees. We consider that the scope of the aforesaid observations has to be restricted to cases where the claim for exemption is put forward in respect of assets allegedly held benami in the names of others. Counsel for the revenue, however, urged that this decision is an authority laying down that an asset in the nature of a bank deposit cannot be regarded as one "held by the assessee" unless the deposit receipt stands in the name of the assessee. It is true that there are some observations in the judgment of the Gujarat High Court which lend support to the aforesaid argument put forward by the counsel for the revenue. With respect, we do not find it possible to subscribe to such a wide and general proposition that in the case of assets like bank deposits the expression "held by the assessee" should be understood in all situations as meaning "registered in the name of the assessee or standing in the name of the assessee". But, it is unnecessary for us to examine this question further, because, in the instant case, the assessment has been made directly against the beneficiary of the trust under the provisions of Sub-section (2) of Section 21. Sub-section (1) of Section 21 lays down, inter alia, that in the case of assets chargeable to tax under the Act held by a trustee appointed under a trust declared by a duly executed instrument in writing, wealth-tax shall be levied upon and recoverable from the trustee in the like manner and to the same extent as it would be leviable upon and recoverable from the person on whose behalf or for whose benefit the assets are held. Sub-section (3) of Section 21 lays down, inter alia, that where the guardian or trustee of any person being a minor holds any assets on behalf of or for the benefit of such beneficiary, the tax under the Act shall be levied upon and recoverable from such guardian or trustee, as the case may be, in the like manner and to the same extent as it would be leviable upon and recoverable from such beneficiary, if of full age, and in direct ownership of such assets. The aforesaid provisions make it clear beyond doubt that the assessment against the trustee in respect of assets held by him on behalf of the beneficiary is to be made on the basis of a statutory fiction that the assets concerned are held by the beneficiary in his direct ownership. The same fiction has to be applied while making an assessment directly against the beneficiary under Sub-section (2) of the section. Hence, when an assessment is made u/s 21 of the Act either against the trustee or directly against the beneficiary in respect of assets which form the subject-matter of a trust, the asset in question, to the extent to which the beneficiary has a beneficial interest therein, is to be deemed to be "held" by the beneficiary.

4. We do not see how Rule 2 of the W.T. Rules gets attracted to a case like the present one where no question of valuation of the interest of a person in a firm

of which he is a partner or an association of persons of which he is a member, is involved. The Tribunal was, therefore, perfectly right in holding that the provisions of the said rule have no applicability at all to the instant case and that the assessee is entitled to the full benefit of the exemption under Clause (xxvi) of Section 5(1) of the Act subject only to the limit specified in Sub-section (1A) of the said section.

5. We, accordingly, answer the first question referred in the affirmative, that is, in favour of the assessee and against the department.

6. With respect to the second question referred by the Tribunal, it was submitted before us by the counsel appearing for the revenue that the department does not wish to pursue the matter any further before this court and hence the said question need not be answered. We have, therefore, not thought it necessary to narrate the facts pertaining to the subject-matter of the said question. In the light of the submission made by the counsel for the revenue we decline to answer the second question.

7. The parties with bear their respective costs.

8. A copy of this judgment under the seal of the court and the signature of the Registrar will be forwarded to the Tribunal as required by law.