
(2002) 11 MAD CK 0117

In the Madras High Court

Case No : Tax Case (Reference) No's. 255 to 260 of 1997 18 November 2002

CWT

APPELLANT

Vs

K. Santhanam Trust

RESPONDENT

Date of Decision : 18-11-2002

Acts Referred:

Citation : (2003) 126 TAXMAN 484

Hon'ble Judges : N.V. Balasubramanian, J;K. Raviraja Pandian, J

Bench : Full Bench

Advocate : Mrs. Pushya Sitharaman, for the Revenue J. Narayanaswamy, for the Assessee, for the Appellant;

Judgement

N.V. Balasubramanian, J.

The Income Tax Appellate Tribunal has stated the case and referred the following question of law in relation to the assessment years 1982-83 to 1987-88 of the assessee :

"Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that since the assessee is to be taxed as an "Individual" for the purpose of the Wealth Tax Act u/s 21(4), the benefit u/s 5 of the Act cannot be denied to the assessee

2. The brief facts necessary for the disposal of the case are that the assessee is a Trust and the individual shares of the beneficiaries of the Trust are indeterminate and unknown. It is a discretionary Trust and all the authorities have found that the assessee is a discretionary Trust and the question that arises in the Tax Cases is whether the assessee, the Trust is entitled to the benefit of section 5 of the Wealth Tax Act when the assessment was made invoking section 21(4) of the Wealth Tax Act, 1957 (hereinafter referred to as "the Act").

3. We have gone through the provisions of section 5 and also section 21 of the Act. It is seen that certain deductions u/s 5 of the Wealth Tax Act are available

only to an individual and one such sub-section is section 5(1)(xxiii) of the Act, which grants exemption to the shares held by the individual or Hindu undivided family and section 5(1A) of the Act also provides maximum ceiling limit of exemption. The Wealth Tax Officer held since the assessee-Trust was assessed in the status of Association of Persons, the assessee was not entitled to the exemption available to an individual u/s 5(1) of the Wealth Tax Act. His view was confirmed by the Commissioner (Appeals). The Tribunal, however, held that the provisions of section 21(4) of the Act would apply and the assessee would be entitled to all the exemptions available to an individual and the said order of the Tribunal is the subject-matter of these Tax Case References.

4. Heard Mrs. Pushya Sitharaman, learned senior standing counsel for the revenue and Mr. J. Narayanaswamy, learned counsel for the assessee. The case raises the question on the interpretation to section 21(4) of the Act. Section 21(4) of the Act deals with a case of an assessment in the case of a discretionary Trust and it provides that the tax shall be "levied upon" and recovered from the representative assessee 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. The section, therefore, provides that the assessment on the representative assessee shall be made and the tax shall be levied upon and recoverable in the like manner and to the same extent, as it would be leviable upon and recoverable from an individual and the expression "leviable" in section 21(4) of the Act would rope in all the provisions of the Act applicable to an individual relating to the levy of wealth-tax. Hence, if an individual is entitled to the exemption u/s 5 of the Wealth Tax Act, then correspondingly the exemption would be available to a representative assessee in determining the net wealth. In other words, there will be assessment and determination of net wealth of the representative assessee for the levy of wealth-tax in the like manner and to the same extent as it would be leviable upon an individual. The net wealth in effect has to be determined as if the representative assessee is an individual and thereafter the rate of tax as prescribed u/s 21(4) shall be applied on the net wealth. We find that there is no express exclusion of exemption clauses found in section 5 of the Act in levy of wealth-tax on a representative assessee and section 21(4) cannot also be construed to mean that it will attract only such of these sections, which provide for the levy of tax and exclude sections which grant exemption. We are of the view that the words "to the same extent show that the assessee is entitled to all the exemptions that are granted to an individual and there cannot be any pick and choose in the application of statutory provision in the matter of levy of the tax.

5. This court in Commissioner of Income Tax Vs. Venu Suresh Sheela Trust and others, has considered a similar question, which arose under the Income Tax Act and the question that arose was whether the Trustee of a discretionary Trust was entitled to deduction u/s 80L of the Act which was available only to the individual. This court held the determination of the total income has to be made under the Income Tax Act taking into account the deduction available u/s 80L of

the Income Tax Act and on the income so determined, tax shall be levied. The status of a Trustee of a discretionary Trust has to be adopted as that of an individual and his income has to be considered as an individual income and the assessee would be entitled to deduction u/s 80L of the Income Tax Act. We are of the view that the ratio laid down in Venu Suresh Sheela Trust's case (supra) would apply to the provision of section 21(4) of the Wealth Tax Act as well and the net wealth of the representative assessee has to be determined in the same manner and to the same extent as an individual. We, therefore, hold that the Tribunal was correct in holding that the assessee-Trust was entitled to all the deductions that are available to the individual u/s 5 of the Wealth Tax Act. We find no infirmity in the view of the Tribunal. Accordingly, the common question of law referred to us for various assessment years is answered in the affirmative against the revenue and in favour of the assessee. In the circumstances, there will be no order as to costs.