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**(1987) 04 AP CK 0028**

**In the Andhra Pradesh High Court**

**Case No : Case Referred No. 159 of 1982**

G.A. Parashuram

APPELLANT

Vs

Commissioner of Wealth-tax

RESPONDENT

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**Date of Decision : 14-04-1987**

**Acts Referred:**

Gift Tax Act, 1958 — Section 5  
Wealth Tax Act, 1957 — Section 27(1), 4, 4(1)

**Citation : (1988) 171 ITR 41**

**Hon'ble Judges :** Upendralal Waghray, J; B.P. Jeevan Reddy, J

**Bench :** Division Bench

**Advocate :** S. Parvatha Rao, for the Appellant; M. Suryanarayana Murthy, for the Respondent

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## **Judgement**

Jeevan Reddy, J.—In this reference made under the section 27(1) of the wealth-tax Act, the following question is referred for our opinion by the Income Tax Appellate Tribunal.

"Whether, on the facts and in the circumstances of the case, and on a correct interpretation of the proviso to section 4(1)(a) of the Wealth-tax Act, 1957, the Tribunal was right in including the value of the assets gifted by the assessee to his wife on March 31, 1967, in computing his net wealth ?"

2. The assessee, an individual, advanced certain amounts to his wife, from time to time, which she invested in constructing a house property. Finally, he made a gift of the aggregate amounts advanced to her, on March 31, 1967. By that date, the construction of the house property, in which the wife was investing the said amounts, was completed. For the assessment years 1973-74 to 1976-77, the wealth-tax officer included the market value of the house property in the Wealth of the assessee. The value so included was Rs. 80,000 in the assessment year 1973-74, Rs. 85,000 in the assessment year 1974-75, Rs. 90,000 in the assessment year 1975-76 and Rs. 91,000 in the assessment year 1976-77. This was done negating the contention of the assessee for excluding the said value

from his wealth. An appeal to the Appellate Assistant Commissioner failed in view of the decision of this court in Commissioner of Wealth Tax Vs. Smt. Hashmatunnisa Begum, . The assessee then preferred a further appeal to the Appellate Tribunal and relied upon the decision of other High Courts in the country taking a view contrary to the view taken by this court Commissioner of Wealth Tax Vs. Smt. Hashmatunnisa Begum, . The Tribunal however, dismissed the appeal in view of the decision of this court which was binding upon it. Thereupon, the assessee applied for and obtained the reference.

3. Section 4 of the Wealth-tax Act mentions certain assets which should be included in the net wealth of an individual. The section, in so far it as relevant, reads thus :

"4. Net Wealth to include certain assets. - (1) In computing the net wealth of an individual, there shall be included, as belonging to that individual -

(a) the value of assets which on valuation date are held -

(i) by the spouse of such individual to whom such assets have been transferred by the individual, directly or indirectly, otherwise than for adequate consideration or in connection with an agreement to live apart,....

Whether the assets referred to in any of the sub-clauses aforesaid are held in the form in which they were transferred or otherwise :

Provided that where the transfer of such assets or any part thereof is either chargeable to gift-tax under the Gift-Tax Act, 1958 (18 of 1958), or is not chargeable u/s 5 of that Act, for any assessment year commencing after the 31st day of March, 1964, but before the 1st day of April, 1972, the value of such assets or part thereof, as the case may be, shall not be included in computing the net wealth of the individual."

4. A reading of the above provision shows that the Parliament intended to include in wealth of an individual, the value of the assets transferred by him to his spouse, whether directly or indirectly, otherwise than for adequate consideration or in connection with an agreement to live apart. The proviso, however engrafts an exception to the said principle. It says that where the transfer of such assets is either chargeable to, or is exempted from, tax under the Gift-tax Act, for any assessment year commencing with 1964-65 and ending with the assessment year 1971-72, the value of the said assets shall not be included, it is necessary that the assets transferred are in the same form in which they were transferred.

5. Now, the conflict of opinion between this court on one side and Higher Courts on the other, centres round the question whether the exemption provided for by the proviso is confined to the assessment years 1964-65 to 1971-72 or whether it applies to subsequent years as well, so long as the transfer was chargeable to, or exempted from, gift-tax under the Gift-tax Act for any of the said assessment years. This court observed in the judgment in Commissioner of Wealth Tax Vs. Smt. Hashmatunnisa Begum, , that the proviso was introduced to give wealth-

tax exemption and that exemption is limited to the period referred to in the proviso. We are, however, of the opinion that the said observation does not constitute the ratio of the decision of this court and that it is a mere observation which cannot be treated as a binding decision. We proceed to elaborate.

6. The assessee in that case filed a return of his wealth for the assessment year 1967-78. He died before the assessment was made. The assessment proceedings were accordingly continued in the name of his legal representatives. The legal representatives claimed that the value of the immovable properties gifted by the assessee to his wives prior to April 1, 1964, should be excluded from the computation of the wealth of the assessee. This was rejected by the Wealth-tax Officer on the ground that "the proviso would save only inclusion of such of the gifts as were made in the year relevant to the assessment year 1964-65 and the subsequent years and that the proviso did not apply to gifts made earlier to March 31, 1964." On the relevant date, the proviso read as follows :

"Provided that where the transfer of such assets or any part thereof is either chargeable to gift-tax under the Gift-tax Act, 1958 (18 of 1958), or is chargeable u/s 5 of the Act, for any assessment year commencing after the 31st day of March, 1964, the value of such assets or part thereof, as the case may be, shall not be included in computing the net wealth of the individual."

7. The words "but before the 1st day of April, 1972" were put in later by the Finance (No. 2) Act of 1971 with effect from April 1, 1972. On appeal, the Appellate Assistant Commissioner agreed with the Wealth-tax Officer and dismissed the appeal. On further appeal, however, the Appellate Tribunal took a different view. It held that the intention of Parliament in enacting the proviso was to exclude from the net wealth of an assessee, the assets transferred by an assessee to his spouse where gift-tax is chargeable or where the transfer is exempt under the Gift-tax Act. Accordingly, it held that the assessee is entitled to exclude the total value of the gifts made by the assessee to his wives prior to April 1, 1964. The contention by the Revenue before this court that by enacting the proviso, Parliament could never have intended to exempt the value of the assets gifted prior to April 1, 1964. The amendment of the proviso by the Finance (No. 2) Act of 1971 was also relied upon by as supporting the said contention. The Divisional Bench referred to section 4(1)(a) and observed (p. 100 of 108 ITR) :

"The object of the clauses (i) to (iv) of section 4(1)(a) is to check evasion of wealth-tax by individuals by the device adopted by them by transferring their property, either in whole or in part, to their spouse or minor children as specified in clauses (i) to (iv). The taxing net is, therefore, spread so as to cover transfer of properties by individuals in respect of transfers referred to in clauses (i) to (iv)."

8. The Bench then referred to the proviso, its amendment by the Finance (No. 2) Act of 1971 and, observing that it is not happily worded, posed the question for

consideration before them in the following words (p. 100 of 108 ITR);

"The question here is whether the transferred assets under the clauses (i) to (iv) of section 4(1)(a) can be included in the net wealth of the individual in view of the proviso."

9. and then proceeded to give the answer in the following words (p. 100 of 108 ITR) :

"The proviso was introduced to give wealth-tax exemption and that exemption is limited to the period referred to in the proviso. We are of the view that, in cases of transfer of assets or part thereof, whether chargeable to gift-tax under the gift-tax Act, 1958, or not chargeable u/s 5 of the Act, such assets cannot be included while computing the net wealth on an individual. The words "for any assessment year commencing after the 31st day of March of 1964" are referable to the assessment to be made under the Wealth-tax Act. They render the provisions of section 4(1)(a) inoperative irrespective of the fact whether the transferred asset was chargeable to gift-tax or not chargeable to gift-tax. The proviso specifies the period of exemption up to 31st March, 1964. Irrespective of the year of the gifts when the assets were gifted, they will not be included in the computation of the net wealth of the individual till the assessment year 1964-65."

10. On the above reasoning, the Bench answered the reference in favor of the assessee and against the Revenue. The report of this judgment does not however, show the dates on which gifts were made by the assessee in favour in favour of his wives. It, therefore, cannot be said that the gifts made by the assessee were chargeable to gift-tax or were not chargeable under the section 5 of the Gift-tax Act for any of the assessment years 1964-65 to 1971-72 (both inclusive).

11. It would be evident from the above observations extracted by us that the Bench overlooked the real purport of the proviso. It was of the opinion that the words "for any assessment year commencing after the 31st day of March, 1964" are referable to the assessment to be made under the wealth-tax Act whereas the said words clearly refer to the chargeability or otherwise of the transfer to gift-tax under the Gift-tax Act. Similarly, the Bench opined that the value of the assets transferred prior to April 1, 1964, will not be included in the computation of the net wealth of the individual "till the assessment year 1964-65". The opinion so expressed is clearly not consistent with the language of the proviso. As explained by us hereinbefore, the proviso merely says that where the transfer of the assets is either chargeable to gift-tax under the Gift-tax Act or is not chargeable u/s 5 of the said Act, for the assessment years 1964-65 to 1971-72 (both inclusive), the value of such assets shall not be included in computing the net wealth of the individual. This is the view taken by as many as five High Courts. In Commissioner of Wealth Tax Vs. Smt. Sarala Debi Birla, , the Calcutta High Court held that the words "for any assessment year commencing after 31st March, 1964" occurring in the proviso must be read in conjunction with the

words "is chargeable" and that they indicate that the transfer of the assets must be chargeable to gift-tax under the provisions of the Gift-tax Act for any assessment year commencing after 31st March, 1964, or the transfer is not chargeable u/s 5 of that Act for any assessment year commencing after 31st March, 1964. Similar view was taken by the Madras High court in *T. Saraswathi Achi Vs. Commissioner of Income Tax*, . It held that the words "for any assessment year commencing after 31st March, 1964" in the proviso should be understood as a reference to the assessment year under the Gift-tax Act and not the assessment year under the Wealth-tax Act. In *Commissioner of Wealth-tax Vs. Seth Nand Lal Ganeriwala*, , a Bench of the Punjab and Haryana High Court took a similar view. It held that the assets donated after 31st March, 1964, and before 1st April, 1972, are not included as belonging to the donor for computing his net wealth for all time to come and not merely for the assessment years falling within the said two dates. Similar view was expressed by the Kerala High Court in *M. G. Kollankulam v. CIT* [1978] 115 ACT 160. The Madhya Pradesh High Court too has taken the same view in *Smt. Malti Harshey Vs. Commissioner of Wealth Tax*, . The aforesaid decisions clearly support the construction placed before us upon the said proviso.

12. In the ordinary course, we would have referred the matter to a Full Bench, since we are disagreeing with the Division Bench of our High Court. But, as pointed out by us hereinbefore, the observation made by the Bench, viz., that the benefit of exemption is available only for the assessment years beginning after 31st March, 1964 and ending before April 1, 1972, was not really called for or was necessary in that case. Moreover, in the facts of that case, it was not clear when the gifts were made and whether they were chargeable to gift-tax or exempted u/s 5 of the said Act during the assessment years 1964-65 to 1971-72. The observations must, therefore, be treated as obiter and are not necessary for the purpose of the decision of that case. Further, the observation that the words "for any assessment year commencing after 31st March, 1964" are referable to assessment years under the Wealth-tax Act, is unsustainable on a plain reading of the proviso.

13. For all the above reasons, we think that the decision cannot be said to lay down the principle contrary to what we have stated above or contrary to what the other High Courts said in the decisions referred to above.

14. Coming back to the facts before us, in this case, the gift was made on March 31, 1967, which means that it was either chargeable to gift-tax or was not chargeable to gift-tax u/s 5 of the Gift-tax Act during the assessment year 1967 which falls within the period specified in the proviso.

15. For the above reasons, we answer the question referred to us in the negative, i.e., in favour of the assessee and against the Revenue. There shall be no order as to costs.