

(1988) 02 MAD CK 0033
In the Madras High Court
Case No : Tax case No. 350 of 1979

Haresh Anitha Trust

APPELLANT

Vs

Commissioner of Wealth-tax

RESPONDENT

Date of Decision : 15-02-1988

Acts Referred:

Income Tax Act, 1961 — Section 164, 164(3)

Wealth Tax Act, 1957 — Section 19, 19(1), 2, 20, 21

Citation : (1988) 69 CTR 86 : (1988) 173 ITR 103

Hon'ble Judges : M.N. Chandurkar, C.J; M. Srinivasan, J

Bench : Division Bench

Advocate : S.A. Balasubramaniam, for the Appellant; Nalini Chidambaram, for the Respondent

Judgement

M.N. Chandurkar, C.J.—The question which has been referred to this court u/s 27(1) of the Wealth-tax Act, 1957 (hereinafter referred to

as "the Act"), is as follows :

Whether, on the facts and in the circumstances of the case, the assessee is liable to be taxed under the Wealth-tax Act, 1957, for the assessment

year 1975-76 notwithstanding the fact that the taxable wealth is computed at Rs. 71,600 ?

2. The assessee is a private trust constituted under a settlement deed dated December 16, 1974. For the assessment year 1975-76, as on the

relevant valuation date March 31, 1975, the net wealth of the trust was determined at Rs. 71,700. The Wealth-tax Officer levied wealth-tax at the

rate of 1.5% on the taxable wealth and assessed the tax payable at Rs. 1,076.

3. In appeal, the Appellate Assistant Commissioner accepted the contention of the assessee that the taxable wealth being below Rs. 1 lakh, no

wealth-tax was payable.

4. However, when the Department took the matter in appeal to the Tribunal, the Tribunal took the view that having regard to the provisions of

section 21(4), the assessee was not entitled to contend that the taxable wealth having been computed at less than Rs. 1 lakh, no wealth-tax was

payable. The Tribunal having set aside the order of the Appellate Assistant Commissioner, the question reproduced above has been referred to this

court at the instance of the assessee.

5. Learned counsel on behalf of the assessee contends that under Schedule I, Part I, Paragraph A of the Act as in force at the material time,

namely, assessment year 1975-76, it was expressly provided that no Wealth-tax shall be payable where the net wealth in the case of an individual

not exceed Rs. 1 lakh. Thus, according to learned counsel, the net wealth of the assessee being less than Rs. 1 lakh, the net wealth was exempted.

It was contended that since the net wealth was less than Rs. 1 lakh, there is no question of any levy of tax at the higher rate of 1.5% as

contemplated by section 21(4) of the Act.

6. Learned counsel appearing on behalf of the Revenue has, however, contended that the charging provision in section 3 of the Act is subject to

other provisions of the Act, that section 21(4) is one such provision and that section 3 must, therefore, yield to the provision in section 21(4).

Learned counsel contended that section 3 will not be applicable in a case when its applicability is excluded by the provision u/s 21(4) which

independently provides for rates of wealth-tax Learned counsel pointed out that section 21(4), therefore, permitted an assessment to be made in a

case to which that provision is applicable irrespective of the net wealth being less than Rs. 1 lakh. Section 3 of the Act reads as follows :

3. Subject to the other provisions contained in this Act, there shall be charged for every assessment year commencing on and from the first day of

April, 1957, a tax (hereinafter referred to as wealth-tax) in respect of the net wealth on the corresponding valuation date of every individual, Hindu

undivided family and company at the rate or rates specified in the Schedule.

7. In the case of an individual or Hindu undivided family, the rates were prescribed in Paragraph A of Part I of the Schedule. The relevant part of

Paragraph A reads as follows :

(1) In the case of every individual or Hindu undivided family, not being a Hindu undivided family to which item (1A) of this Paragraph applies -

Rate of tax

(a) Where the net wealth does not exceed Rs. 5,00,000
(b)..... (c)..... (d).....

Provided that for the purposes of this item, - (i) no wealth-tax shall be payable where the net wealth does not exceed the following

limit, namely : -

(A) Rs. 1,00,000, in the case of an individual; (B) Rs. 2,00,000, in the case of a Hindu undivided family;.."" Section 21 finds a place in Chapter V

which deals with"" liability to assessment in special cases"". Section 19 deals with the procedure with regard to the payability of wealth-tax of a

deceased person. Section 19(1) deals with assessment in the case of executors. Section 20 deals with assessment after partition of a Hindu

undivided family. Section 21 deals with assessment when assets are held by court of wards, administrator-general, etc.

We are concerned in this case with section 21(4), the relevant part of which reads as follows :

21. (4) Notwithstanding anything contained in this section, where the shares of the persons on whose behalf or for whose benefit any such assets

are held are indeterminate or unknown, the wealth-tax shall be levied upon and recovered from the court of wards, administrator-general, official

trustee, receiver, manager, or other person aforesaid as if the persons on whose behalf or for whose benefit the assets are held were an individual

who is a citizen of India and resident in India for the purposes of this Act, and - (a) at the rates specified in Part I of the Schedule; or (b) at the rate

of one and one-half per cent.; whichever course would be more beneficial to the Revenue :..

8. Section 21(4) refers to levy of wealth-tax and the legal entity on whom the levy is to be made in a case where the shares of the persons on

whose behalf or for whose benefit any such assets are held are indeterminate or unknown. The assessment is to be made as if the persons on

whose behalf or for whose benefit the assets are held were an individual who is a citizen of India and resident in India. Apart from providing for the

mode and manner of levy of wealth-tax, section 21(4) also provides for the rate

at which the levy is to be made. There are two rates provided and the Income Tax Officer is required to levy the tax at the rate which would be more beneficial to the Revenue. One rate is the rate which is specified in Part I of the Schedule, which at the material time was 1 per cent. of the net wealth where the net wealth does not exceed Rs. 5,00,000. The other rate was the rate of 1.5% of the net wealth.

9. The short question which falls for consideration is whether section 21(4) can be construed as a charging provision, so as to bring to charge wealth in respect of which no wealth-tax is payable in the case of an individual on the ground that the net wealth does not exceed the limit of Rs. 1 lakh as provided in Paragraph A of Part I of the Schedule.

10. The argument of the Revenue which seems to have been accepted by the Tribunal is that so far as the case provided by section 21(4) is

concerned, irrespective of the fact that the net wealth does not exceed the limit of Rs. 1,00,000 which is provided in Paragraph A of the Schedule,

wealth-tax will be leviable on the net wealth of the assessee. There can be no doubt that while section 3 refers to the fact that it is made subject to

the other provisions contained in the Act, section 21(4) will be one such provision and in respect of the matter which is provided by section 21, the

case will have to be governed by section 21. That does not convert section 21 into a charging provision. As is clear from the provisions of the Act,

it deals only with liability to assessment in special cases. The question of assessment will arise only if the charge can be validly levied, i.e., if wealth-

tax can be validly levied. When section 3 refers to the levy of wealth-tax at the rate or rates specified in the Schedule, it is clear that if under the

Schedule, no wealth-tax is payable, wealth-tax cannot be made payable by a non-charging provision like section 21(4). The Wealth-tax Act

makes a distinction between a charging provision and the provision relating to the rates of tax. The Schedule, which for all intents and purposes

must be treated as a part of section 3, refers merely to the rates. While prescribing the rates, certain exemption has been given to small assesseees

who do not hold net wealth of any significant value and it is provided that no wealth-tax shall be payable if the assessee's wealth does not exceed

Rs. 1 lakh in the case of an individual. Therefore, before wealth-tax is levied, it will have to be ascertained whether, notwithstanding the charging

provision, the assessee is not entitled to the benefit of the exemption which is given by the proviso in the Schedule.

11. Section 21(4) undoubtedly refers to two different rates. But it has to be appreciated that the question of applying the higher rate will arise only

if at the rate prescribed in the Schedule, the Revenue stands to lose something. Where, however, in terms of the Schedule, no rate is applicable

and indeed there is an exemption from the applicability of the rate and consequently a case which is exempted is not brought within the charging

provision, the question of ascertaining whether the higher rate prescribed by section 21(4) will benefit the Revenue or not will not really arise.

Before ascertaining whether wealth-tax should be levied at the rate of 1.5 per cent., the question of chargeability will have to be ascertained. The

effect of the charging provision referring to the rate of tax and the Schedule of the rate of tax making provision for non-levy of wealth-tax in a case

where the net wealth does not exceed Rs. 1 lakh is that net wealth which is less than Rs. 1 lakh is taken out of the purview of the charging

provision. Consequently, notwithstanding the specific provision in section 21(4), if the net wealth does not exceed Rs. 1 lakh, the question of levy

of wealth-tax on such net wealth does not at all arise. As a natural corollary, the higher rate prescribed by section 21(4) becomes immaterial for

the purpose of such a case. We may also point out that a comparison between clauses (1) and (2) of the Schedule will reinforce our conclusion

that what was intended to be done by the proviso in clause (1) of Part I was to treat net wealth below Rs. 1 lakh as exempt from the levy of

wealth-tax. This exemption is not like the exemption which is contemplated by section 5. The figure of net wealth is undoubtedly arrived at after

giving effect to the items excluded in sections 2(e) and 5. In clause (2) of Part I of the Schedule, when the Legislature provided for cases of an

individual or a Hindu undivided family whose net wealth includes the value of any asset, being building or land (other than business premises) or any

right in such building or land, situated in an urban area (such asset being referred to as ""urban asset""), while prescribing the rates of tax, the rate of

tax was prescribed as ""nil"" where the total value of urban assets determined in accordance with the rules in Paragraph B did not exceed Rs.

5,00,000. There is a difference in the terminology used in clauses (1) and (2) of Part A. In one case, it is expressly provided that no wealth-tax

shall be payable where the net wealth does not exceed Rs. 1 lakh in the case of an individual, while in the other case, the rate of tax is prescribed as ""nil"".

12. Learned counsel, appearing on behalf of the Revenue, has invited our attention to the object with which section 21 was incorporated in the statute book. Section 21 was introduced by the Finance Bill of 1970 and the memo explaining provisions in that Finance Bill is to be found in

[1970] 75 ITR 81. The relevant paragraph dealing with taxation of the net wealth of a private discretionary trust is paragraph 63. It is undoubtedly

stated in that paragraph that the flat rate of 1.5% will be applied, under this provision (section 21(4)), to the whole of the net wealth without the

initial exemption of Rs. 1 lakh which is available under the rate schedule of ordinary wealth-tax in the case of individuals.

13. The argument is that it was clearly the intention of the Legislature when section 21(4) was enacted and the rate of 1.5 per cent. was prescribed

that the exemption of Rs. 1 lakh should not be made available in the case of a discretionary trust. It is undoubtedly true that the intention which

appears from the memo, was not to make available the initial exemption of Rs. 1 lakh to a private discretionary trust. But, what we are, however,

concerned with is the construction of the relevant provisions as they stand. If, on a construction of the relevant provisions as they stand, it appears

to us that section 21(4) cannot be treated as a charging provision and must be treated only as a provision intended to facilitate the assessment,

notwithstanding the fact that it prescribes two different rates of tax, the question as to whether the second rate which is the higher and a rate more

beneficial to the Revenue will be attracted in a given case, depends upon the construction of the charging provision in section 3 and the impact of

the charging provision on the proviso which is intended to give benefit to persons owning net wealth less than Rs. 1 lakh. We are not able to find

anything in section 21(4), so as to construe it as a charging provision and unless there was clear provision in section 21(4) taking away the benefit

of the exemption of Rs. 1 lakh, we are not inclined to expand the scope of section 21(4), so as to convert it into a charging provision.

14. Two decisions have been cited before us on behalf of the Revenue under the provisions of section 164 of the Income Tax Act.

15. In *PIARELAL SAKSERIA FAMILY TRUST Vs. COMMISSIONER OF Income Tax, M.P.*, the question which arose before the

Madhya Pradesh High Court was whether the income of the assessee which was a trust being below Rs 5,000 was exempt from tax and it could

not be taxed under the provisions of section 164 of the Act. Rejecting this contention on behalf of the assessee, the Division Bench of the Madhya

Pradesh High Court observed as follows (p. 588) :

If the provisions of section 164 of the Act are attracted, power is given to the Income Tax Officer to charge the tax as if the relevant income or

part of the relevant income were the total income of an association of persons or at the rate of sixty-five per cent. whichever course would be more

beneficial to the Revenue. As in the present case it was beneficial to the Revenue to charge the tax at the rate of 65%, it has been so charged and it

cannot be said that any error of law has been committed by the taxing authorities in doing so.

16. It is important to bear in mind the fact that the wording of section 164 clearly indicates that it was not merely a machinery provision but also a

charging provision because the words used in section 164 are "tax shall be charged". In section 21(4), the word used is "levied". When the word

charged" is used in the charging provision u/s 3 of the Act and in another provision the word used is "levied", the two words cannot be treated as

synonymous.

17. The other decision in *Surendranath Gangopadhyaya Trust Vs. Commissioner of Income Tax*, takes a similar view that u/s 2(3) of the Finance

Act, 1973, while levying tax u/s 164(3)(b) of the Income Tax Act, 1961, on a trust, the shares of the beneficiaries of which are indeterminate, tax

should be levied at the rate of 65 per cent. as laid down in the Income Tax Act itself without allowing the basic exemption as laid down in the

Finance Act.

18. Both the decisions mentioned above are not of any assistance to the Revenue because they turn on the construction of a provision entirely

worded differently. We are, therefore, of the considered view that the Tribunal was in error in holding that wealth-tax could be levied in respect of

the net wealth of the assessee trust notwithstanding that the net wealth was less than Rs. 1 lakh.

19. In the view which we have taken, the question referred has to be answered in the negative and in favour of the assessee. Revenue to pay the costs of the assessee. Costs Rs. 500.