
(1992) 03 CAL CK 0027
In the Calcutta High Court
Case No : Matter No. 270 of 1982

J. K. TRUST

APPELLANT

Vs

COMMISSIONER OF WEALTH-TAX.

RESPONDENT

Date of Decision : 06-03-1992

Acts Referred:

Citation : (1993) 205 ITR 524

Hon'ble Judges : J. N. Hore, J;Ajit K. Sengupta, J;Ajit K. Sen Gupta, J

Bench : Full Bench

Judgement

AJIT K. SENGUPTA J. - In this consolidated reference, the Tribunal has referred to us the following question u/s 27(1) of the Wealth-tax Act, 1957, for the assessment years 1973-74 and 1974-75 :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessee-trust was liable (sic) to pay Wealth-tax because of the provisions of section 21A of the Wealth-tax Act, 1957 ?"

Shortly stated, the facts are that the assessee, a charitable trust, was denied the exemption u/s 5(1) (i) of the Wealth-tax Act by the Wealth-tax Officer who held that the assessee made prohibited investment in shares of different concerns which had made substantial contribution to the assessee-trust thereby attracting the provision of clause (e) read with clause (b) of sub-section (3) of section 13 of the Income Tax Act, 1961. The Wealth-tax Officer held that the prohibited investment in the shares of such concerns attracting section 13(3) did not, however, exceed five per cent. of the capital of such companies. Therefore, it was a partial violation of section 13(2) (h) of the Income Tax Act, 1961. The Wealth-tax Officer also noted that the assessee had an unsecured loan investment with several concerns which had given huge donations to the assessee in different years. Though described as deposits, such advances were nothing but loans as defined in section 58A of the Companies Act, 1956, and of the Reserve Bank of India Amendment Act. In these circumstances, the investment by the assessee as unsecured loans with the concerns which are substantial donors infringed the

provisions of section 13(2) (a). The Wealth-tax Officer, therefore, invoked section 21A of the Wealth-tax Act and charged the entire wealth to tax.

Qua the first year, i.e., 1973-74, the assessee went in appeal to the Commissioner of Wealth-tax (Appeals) who was of the opinion that the Wealth-tax Officer was not justified in applying the provisions of section 21A of the Wealth-tax Act. The assessee-trust had filed a statement along with the return of its wealth showing the investment held in the previous year in the concerns in which the persons referred to in section 13(3) had substantial interest. The total market value of these shares came to Rs. 42,57,265. But the value of the shares received by the trust by way of donations as well as accretions was also included therein. The Commissioner of Wealth-tax (Appeals) had already held in the appeal relating to the assessment year 1974-75 that the Wealth-tax Officer was not correct in applying the provisions of section 13(2) (b) to the shares received by way of donations. Therefore, the market value of these shares was to be excluded while computing the Wealth-tax liability of the assessee-trust. He, therefore, directed the Wealth-tax Officer to assess the market value of the shares purchased by the assessee-trust which, according to the statement filed by it, came to Rs. 9,28,227, and further to allow deduction of Rs. 1,50,000 u/s 5(1A) of the Wealth-tax Act.

Qua the later year, the assessee came up in appeal before the Commissioner of Wealth-tax (Appeals) who held that the Wealth-tax Officer was correct in holding that section 21A of the Wealth-tax Act was applicable and that the assessee's entire wealth was liable to be taxed. The appeal against this order was dismissed by the Commissioner of Wealth-tax (Appeals) altogether.

Qua the first year, both the Department as well as the assessee came up in second appeal to the Tribunal and qua the second year, the assessee filed the present appeal. The Tribunal disposed of the matter by a consolidated order in the following terms :

"We have heard the representatives of the parties at length in all these appeals. So far as the interpretation of section 13(2), clauses (a) and (h) is concerned, the concerns in which the assessee had held the shares are not investment companies and, therefore, the deposits made by the assessee in those concerns cannot be said to be in the nature of deposits only they will fall within the ambit of loans and, therefore, apparently clause (a) would be attracted. Similarly, according to sub-section (2) of section 13, the income or the property of the trust or institution or any part of such income or property shall, for the purposes of that clause which means clause (c) of sub-section (1), be deemed to have been used or applied for the benefit of a person referred to in sub-section (3) without prejudice to the generality of the provisions of this clause. This would mean that whenever the case fell within sub-section (2), it automatically fell within the ambit of clause (c) of section 13(1) read with section 13(3) of the Income Tax Act, 1961. Therefore, it was straight-away attracted by the provisions of section 21A of the Wealth-tax Act. According to Mr. Bhattacharjee,

this would imply a double deeming which could not be the which could not be the intention of the framers of the Act, but we do not see any force in this argument.

However, there is another aspect of the matter. So far as the applicability of the clause (h) of section 13(2) is concerned, it has been held in a number of cases that if the funds of the trust or the institution which remained invested in any concern to which the provisions of sub-section (3) of section 13 are applicable but the funds have been acquired by the trust by way of donation or by way of accretion as bonus in respect of shares donated to the trust, the case would not come within the mischief of this clause. This has been so held even in the assessee's own case for the assessment year 1972-73 by the C Bench of the Tribunal in I.T.A. Nos. 3541 and 4010/ (Cal) of 1977-78, decided on April 8, 1980. Similar is the decision in I.T. A. Nos. 1022, 1406 and 1407/ (Cal) of 1979 decided by the C Bench of the Tribunal on May 23, 1980. Similarly, in the later decision relating to the Income Tax assessment for the years 1974-75 and 1975-76, the Bench further found that the Commissioner of Income Tax (Appeals) had noted the fact that the donation made by Messrs. J. K. Steel and Industries Ltd., amounting to Rs. 25,000 constituted only 0.68 per cent. of the total corpus of the trust and in the absence of the definition of the word substantial and on the basis of the popular meaning of the word, he had held that Messrs. J. K. Steel and Industries Ltd. was not a person who had made substantial contribution in terms of section 13(3) (b) of the Income Tax Act, and, therefore, the assessee was still entitled to exemption u/s 11. This reasoning was approved by the Bench in paragraph 8 of the order."

The Revenues case primarily rests on clause (b) of sub-section (3) of section 13. Sub-section (3) enumerates the persons who are prohibited from deriving benefit under clause (c) of sub-section (1) of section 13. The scheme of disqualification in section 13 of the Income Tax Act, 1961, requires to be highlighted for a proper appreciation of the dispute.

Clause (c) of sub-section (1) of section 13 disqualifies a charitable or religious trust from exemption if the income of the trust directly or indirectly is used for the benefit whatsoever of the persons referred to in sub-section (3). In this case, the Revenues allegation is that the assessee-trust holds shares as also investments by way of loans which go to the benefit of certain concerns which fall in the enumeration of such prohibited persons in sub-section (3). Sub-section (3) is extracted below :

"13. (3) The persons referred to in clause (c) of sub-section (1) and sub-section (2) are the following, namely :-

(a) the author of the trust or the founder of the institution;

(b) any person who has made a substantial contribution to the trust or institution, that is to say, any person whose total contribution up to the end of the relevant previous year exceeds twenty-five thousand rupees;

(c) where such author, founder or person is a Hindu undivided family, a member of the family;

(cc) any trustee of the trust or manager (by whatever name called) of the institution;

(d) any relative of any such author, founder, person, member, trustee or manager as aforesaid :

(e) any concern in which any of the persons referred to in clauses (a), (b), (c), (cc) and (d) has a substantial interest."

The contention of the Revenue is that the concerns whose shares the assessee holds are substantial contributors to the assessee-trust, and any person having made a substantial contribution to the trust or institution is brought within the mischief of sub-section (3) of section 13, vide clause (b).

Thus, the first stage in the Revenues case is that the concerns where the assessee made investments are substantial contributors attracting sub-section (3) of section 13. Now the holding of shares of such concerns in turn attracts clause (h) of sub-section (2), while the loan investments with substantial contributors attracts clause (a) of sub-section (2) of section 13. Sub-section (2) illustrates how benefits could possibly be derived by the prohibited persons mentioned in sub-section (3). The provisions of sub-section (2) are extracted below :

"13. (2) Without prejudice to the generality of the provisions of clause (c) and clause (d) of sub-section (1), the income or the property of the trust or institution or any part of such income or property shall, for the purpose of that clause, be deemed to have been used or applied for the benefit of a person referred to in sub-section (3), -

(a) if any part of the income or property of the trust or institution is, or continues to be, lent to any person referred to in sub-section (3), for any period during the previous year without either adequate security or adequate interest or both;

(b) if any land, building or other property of the trust or institution is, or continues to be, made available for the use of any person referred to in sub-section (3), for any period during the previous year without charging adequate rent or other compensation;

(c) if any amount is paid by way of salary, allowance or otherwise during the previous year to any person referred to in sub-section (3) out of the resources of the trust or institution for services rendered by that person to such trust or institution and the amount so paid is in excess of what may be reasonably paid for such services;

(d) if the services of the trust or institution are made available to any person referred to in sub-section (3) during the previous year without adequate remuneration or other compensation;

(e) if any share, security or other property is purchased by or on behalf of the trust or institution from any person referred to in sub-section (3) during the previous year for consideration which is more than adequate;

(f) if any share, security or other property is sold by or on behalf of the trust or institution to any person referred to in sub-section (3) during the previous year for consideration which is less than adequate.

(g) if any income or property of the trust or institution is diverted during the previous year in favour of any person referred to in sub-section (3) :

Provided that this clause shall not apply where the income, or the value of the property or, as the case may be, the aggregate of the income and the value of the property so diverted does not exceed one thousand rupees;

(h) if any funds of the trust or institution are, or continue to remain, invested for any period during the previous year (not being a period before the 1st day of January, 1971) in any concern in which any person referred to in sub-section (3) has a substantial interest."

Here, the contention of the Revenue is that the loans attract clause (a) of sub-section (2) because the loans are advanced without security. Again, the holding of shares attracts clause (h) of the said sub-section because investment of funds of the assessee-trust with any person referred to in sub-section (3) attracts clause (h) of sub-section (2).

In fine, sub-section (3) classifies the persons who are not to be benefited while sub-section (2) illustrates how the benefit could be derived by the prohibited persons. So, for attracting disqualification, the first requirement is that the person benefited must be a person mentioned in sub-section (3) and the benefit should also fall in illustrations of clauses (a) to (h) of sub-section (2), apart from the generality of the contention of the words "deriving benefit directly or indirectly".

The Wealth-tax Officer in this case has pinned down the assessee first to clauses (b) and (e) of sub-section (3) and then to clauses (a) and (h) of sub-section (2) of section 13.

The Tribunal, however, found that the starting premises of the Revenues case is wrong. The Tribunal found the assessee's case well founded on two scores. In the first instances, the contention is that the concern whose shares were held by the assessee-trust could not be a substantial contributor or donor to the assessee-trust because until the insertion by the Taxation Laws (Amendment) Act, 1975, having effect from April 1, 1977, there was no definition of the magnitude of contribution that will render a contributor a substantial contributor. It was only in the insertion by the Amendment Act, 1975, that a monetary amount was fixed by the statute for defining who could be treated as a substantial contributor. The Tribunal in this case observed that the donations made by Messrs. J. K. Steel and Industries Ltd. amounted to Rs. 25,000 and the percentage of this contribution

to the total corpus of the trust was a mere 0.68 per cent. The Tribunal held that, in the absence of the definition of the word "substantial" and, on the basis of the popular notion of the word, it could not be said that such contribution was substantial contribution. Therefore, the first foundation that the concerns whose shares were held were substantial contributors thereby coming within the scope of sub-section (3) of section 13 of the Income Tax Act, 1961, is not tenable.

The Tribunal further found, apart from inapplicability of the provisions of sub-section (3) of section 13, that the share-holding was within five per cent. of the total capital of the concerns. In the view of the Tribunal in computing the ratio of share-holding to the total capital of the concern to which the provisions of section 13(1) (c) read with section 13(2) (h) and section 13(3) apply, the shares received by the trust by way of donation or by way of accretion of bonus in respect of the shares received as donation by the trust should be excluded. Because, where the assessee received shares of a company as donation, it cannot be said that the assessee-trust has made any investment.

This saving from disqualification on account of investment in a prohibited concern where the investment does not exceed five per cent. of the capital is provided for in sub-section (4) of section 13. According to that provision, the disqualification should be partial to the extent of income arising from such investment as is within five per cent. of the capital of the concern in which the investment has been made. Thus the Departments case relating to the assessment year 1973-74, which is principally based on the provisions of section 13(2) (h), is without any foundation. As for the case for the assessment year 1974-75, the assessee is entitled to the benefit to the extent to which the funds of the trust invested in the concerns referred to in sub-section (3) were by way of donation or accretion thereto as bonus shares arising from donated shares and, therefore, the assessee was not hit by section 13(1) (c) of the Income Tax Act, 1961, and consequently section 21A of the Wealth-tax Act, 1957.

It appears to us that the ultimate conclusion which the tribunal arrived at was purely on the basis of its finding of certain facts, namely, that J. K. Steel and Industries Ltd., could not be said to be a substantial contributor to fall u/s 13(3) (b), since the contribution of Rs. 25,000 accounting for only 0.68 per cent. of the corpus of the assessee-trust has very reasonably been considered by the Tribunal as not fit for treatment as a substantial contribution. This cuts across the very root of the Departments case. The Tribunal, in our view, was correct in coming to the inference which is the only reasonable inference that, for the purpose of computing the ceiling of five per cent. as mentioned in sub-section (4) of section 13 of the Income Tax Act, 1961, shares received by way of donation and the accretion thereto by way of bonus shares arising from such donated shares have to be excluded.

The view we have taken has the support of an earlier decision of this court in Commissioner of Income Tax Vs. Birla Charity Trust, . It has been held therein that the expression "investment" in section 13(2) (h) denotes a positive act on

the part of the trust whereby the funds of the trust are laid out or committed in any particular property or business or transaction with the object of earning profit. Therefore, where the assessee-trust receives shares of a company by way of donation, it cannot be said that the assessee-trust has dealt with or committed or laid out any part of its existing assets to acquire the said shares. There is completely passivity on the part of the assessee. Apart from the acceptance of the shares as donation, there is no volition, decision-making or action on the assessee's part. There is, in such a situation, no investment of funds of the assessee within the meaning of section 13(2) (h). Therefore, the income from such shares received as donation cannot lead to any disqualification. The Gujarat High Court has also taken a similar view in Commissioner of Income Tax Vs. Insaniyat Trust (Now merged with Sarabhai Foundation),

For the reasons aforesaid, we answer the question in this reference in the affirmative and against the Revenue.

There will be no order as to costs.

J. N. HORE J. - I agree.