

**(1966) 04 PAT CK 0001**

**In the Patna High Court**

**Case No :** Misc. Judl. Case No's. 552 to 555 of 1964

Kripa Shankar D. Worah

APPELLANT

Vs

Commissioner of Wealth Tax

RESPONDENT

**Date of Decision :** 13-04-1966

**Acts Referred:**

Trusts Act, 1882 — Section 3  
Wealth Tax Act, 1957 — Section 21

**Citation :** AIR 1966 Patna 371 : (1967) 65 ITR 520

**Hon'ble Judges :** S.N.P. Singh, J;H. Mahapatra, J

**Bench :** Division Bench

**Advocate :** D. Pal, P. Chatterji and M.M. Gujadhara, for the Appellant; Leila Seth and Tarkeshwar Prasad, for the Respondent

## Judgement

Mahapatra, J.—These four references u/s 27(1) of the Wealth Tax Act relate to assessment years 1957-58, 1958-59, 1959-60 and 1960-61. The valuation dates in respect of those assessments were, respectively, the 2nd of November, 1956, 23rd October, 1957, 11th of November, 1958 and 31st October, 1959.

2. The assessments for those years were made on the 27th of February 1961, by the Wealth-tax Officer, Ward A, Colliery Circle, Dhanbad, u/s 21(4) of the Wealth-tax Act, on the trustee on behalf of the two younger sons of the settlor who were taken to have vested interest in the trust property. The assessee was the trustee of the K.D. Worah Trust, State Jharia, in accordance with a trust deed dated the 19th of July, 1949, executed by the settlor Kripashankar Dayashankar Worah, who appointed himself as trustee of the trust estate. The assessee objected to the assessment and went in appeal to the Appellate Assistant Commissioner of Wealth-tax, Bhagalpur Range, who annulled the assessments. There was an appeal before the Income Tax Appellate Tribunal, Patna Branch, by the Wealth-tax Officer, where the assessments as originally made were restored. The assessee made an application for reference to the Appellate Tribunal u/s 27(1) of the Act and the question framed for consideration of this Court is:

"Whether in the facts and circumstances of the case, the trustee under the Trust deed dated 19th July 1949 executed by Kripashankar D. Worah was assessable to Wealth Tax u/s 21 of the Wealth Tax Act"

3. The trust deed provided that the settlor himself will be trustee. Shares of public limited companies described in Schedules 1, 2, 3 and 4 of the deed had been given absolutely to the two major sons of the settlor and so also the shares given in Schedules 5 and 6 to his two minor sons. They were excluded from the trust estate. Having said that the settlor provided that being desirous of making provisions for the maintenance of his wife, maintenance, education and marriage of his two unmarried daughters and for the maintenance of the two minor sons during their minority, he created and conferred a trust in respect of a further portion of his self-acquired property belonging to him as the absolute owner thereof, consisting of shares and immovable properties described in Schedules 7 and 8 of the deed.

In Para. 3 of that deed, it was stated that the trustee was to apply the income of the trust estate for the maintenance and joint use and benefit of the settlor and his wife and also for the maintenance, education and marriage expenses of his two minor daughters as also for the maintenance and education of his two minor sons, provided always that if the income of the trust estate was insufficient for the purpose of meeting any of the said expenses, the trustee had the liberty to dispose of or otherwise apply sufficient portion of the corpus of the trust estate for the purpose of discharging the trust contained in that paragraph. It was further provided that in the event the settlor predeceased his wife, notwithstanding anything contained in the document, the trustee shall hold and make over possession of the shares mentioned in Schedule 7 to the settlor's wife to be enjoyed by her as the absolute owner thereof with power to alienate the same or any part thereof in such manner as she might think fit.

After the marriage of the two daughters and after the death of the settlor's wife and the attainment of majority by the two minor sons, the trustee was to hold the trust estate for the absolute use and benefit of those two sons in equal shares, "the intention of the settlor being that subject to the trust hereby created the said two minor sons shall take a vested interest in the trust estate". Admittedly, on the valuation dates, with which we are concerned, the settlor, his wife and his two sons who had by that time attained majority were alive. The two daughters had been married. After the settlor's death, one of his elder sons was to be the trustee and the fine of succession to the trusteeship was provided in the deed,

4. We have now to see whether in the background of the aforesaid provisions made in the trust deed, the trustee could be assessed u/s 21 of the Wealth-tax Act, to be referred hereafter as the Act. That section provides as follows:

"21 (1) In the case of assets chargeable to tax under this Act which are held by a court of wards or an administrator-general or an official trustee or any receiver

or manager or any other person, by whatever name called, appointed under any order of a court to manage property on behalf of another, or any trustee appointed under a trust declared by a duly executed instrument in writing, whether testamentary or otherwise (including a trustee under a valid deed of wakf), the wealth-tax shall be levied upon and recoverable from the court of wards, administrator-general, official trustee, receiver, manager 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 the person on whose behalf the assets are held, and the provisions of this Act shall apply accordingly.

2. Nothing contained in Sub-section (1) shall prevent either the direct assessment of the person on whose behalf the assets above referred to are held, or the recovery from such person of the tax payable in respect of such assets.

3. Where the guardian or trustee of any person being a minor lunatic or idiot (all of which persons are hereinafter in this Sub-section included in the term "beneficiary") holds any assets on behalf of such beneficiary, the tax under this 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 any such beneficiary if of full age or sound mind and in direct ownership of such assets.

4. Notwithstanding anything contained in this section, where the shares of the persons on whose behalf any such assets are held are indeterminate or unknown, the wealth-tax may 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 the assets are held were an individual for the purpose of this Act."

It would appear from what has been stated in the provisions aforesaid that any trustee appointed under a trust declared by a duly executed instrument in writing is liable to be levied upon with wealth tax in the like manner and to the same extent as it would be leviable and recoverable from the persons on whose behalf the assets are held by him. Under the Trusts Act, the trustee does not hold the trust property, which is also known as the trust estate, on behalf of the beneficiaries. He is the legal owner of that estate as long as he continues to be the trustee. He, therefore, holds the trust property on his own behalf and not on behalf of the beneficiaries. As regards the income of the trust property, the trust deed provides the directions how that is to be applied. No doubt, the trust estate is for the benefit of the beneficiaries and the trustee holds that for their benefit, but it cannot be said that he holds that estate on behalf of the beneficiaries.

The difference between the two expressions "on behalf of" and "for the benefit of" is well known and recognised in law. In the former case the holder of the property will be only a representative of the real owners and in the latter case the holder is the legal owner himself. Throughout in Section 21 of the Act, the expression that has been used with reference to the trustee as well as people of

other categories such as court of wards, administrator-general, official trustee, receiver, manager or any person appointed under any order of a Court to manage the property, is that such person holds the chargeable assets on behalf of another who is the owner. The way in which wealth tax can be levied in such a case has been indicated to be in the like manner and to the same extent as it would be leviable and recoverable from, the persons on whose behalf the assets are held.

Both the leviability and the recovery are co-extensive. In Sub-section (2), therefore, it has been provided that it would be open to the wealth tax officer to make a direct assessment on the person on whose behalf the assets are held by the persons of different categories mentioned in Sub-section (1) and direct recovery of the tax is permitted. That means, it will be open to the department to levy the tax and recover the same from the person to whom the assets belong; but, if they are held on his behalf by another person, such other person may alternatively be liable to tax, as mentioned in Sub-section (1). The assessment when it is made on the person who holds the assets on behalf of another is really a representative assessment and for the purpose of convenience, this special provision has been made u/s 21, which is found in Ch. V of which the heading is "liability to assessment in special cases". Sub-section (3) gives another indication and we are not concerned with that in the present instance.

Sub-section (4), under which the assessments were made, and which have now been restored by the Appellate Tribunal, contains that where the shares of the persons on whose behalf the assets are held are indeterminate, the assessment can be made and recovered from the person who holds such assets on behalf of others as if the persons on whose behalf the assets are held were an individual for the purposes of the Act. In other words, it means that when a representative assessment is sought to be made, it will have to be split in accordance with the different shares in the assets as belonging to the persons on whose behalf such assets are held and when such determination of the respective shares is impossible, all the assets are to be taken as one unit for the purpose of levy of wealth tax and the person who holds such assets on behalf of them will be assessed accordingly and be made liable to pay the wealth tax on that basis.

5. No doubt, section 21 mentions of a trustee appointed under a trust declared by a settlor under a duly executed instrument in writing, but that is restricted to when he holds the assets on behalf of others. If the trustee does not hold chargeable assets on behalf of another person or persons, he would not come within the fold of Section 21. The other categories stated in Sub-section (1), no doubt, hold the assets on behalf of others. They have no legal ownership over the assets. There is no difficulty in applying the provisions of representative assessment to them. But the position of the trustee is different.

6. According to the Trusts Act, and also according to the terms of the trust deed under examination the trustee in the instant case cannot be said to hold the

assets mentioned in Schedules 7 and 8 of the deed on behalf of the settlor's two younger sons who had attained majority. The assessment proceeded on the basis that he was holding the assets on their behalf on the dates of valuation and that those two sons would have been otherwise liable to wealth-tax on those same assets. But the trustee did not hold the assets of those two schedules on behalf of the two sons. On the relevant dates of valuation, he was holding the trust estate for the benefit of the beneficiaries who were his wife and two sons. Even if it is taken that one of the purpose of the trust, viz., maintenance of the two sons during their minority, had ceased to exist on account of their attaining majority, yet the maintenance of the settlor and his wife was still to be continued out of the income of the trust property in accordance with the terms of the deed.

In that view, the two sons were not at all beneficiaries. With reference to Clause 5, their interest as stipulated therein will only arise when the settlor's wife is dead. As long as that contingency did not happen, no interest accrues to them as provided under that clause. In that view also, it cannot be contended that on the dates of valuation the two sons had any interest either in the trust property or they were beneficiaries in respect of the trust estate. The purpose of the trust, as mentioned in the first paragraph of the document which I have already stated, included the maintenance and education of the settlor's two minor sons during their minority and, what is provided under Para. 3 in regard to the application of the income of the trust estate, that will be governed by the purposes for which the trust was made.

As we read clause five along with the other provisions we understand that the settlor wanted that his two minor sons after attaining majority, and after the death of the settlor's wife, will again become beneficiaries and the trustee will hold the trust estate for their absolute use and benefit. Therefore, on the date of valuation in each of the four cases the two sons were not at all beneficiaries and the trust estate was not being held by the trustee at that time for their benefit. Assuming that this is not the correct position according to the terms of the deed and that the two sons continued to be beneficiaries after attainment of majority by them, still the trustee cannot be said to hold the trust estate on their behalf or on behalf of any other beneficiary along with them. If the settlor's wife is excluded from that category for any reason (I do not see how that can be done at all in view of the purposes of the trust as mentioned in the document) and the two younger sons of the settlor remained as the only beneficiaries, the trustee in that case also cannot be said to be holding the trust estate on their behalf. He held the estate as the legal owner thereof and for the benefit of the beneficiary. In that view, trustee's liability to wealth-tax in regard to the assets comprised of the properties mentioned in Schedules 7 and 8 of the trust deed cannot arise within the meaning of Section 21.

7. The question may be examined from another stand-point. The charging section in the Act is 3 which makes the net wealth of every individual, Hindu undivided family and company liable to wealth tax. As the trust property does

not belong to the beneficiary, he does not become chargeable to tax. Representative liability of the holder of the assets u/s 21 is co-extensive with that of the owner. When the beneficiary cannot be saddled u/s 3, there cannot be representative assessment on another for him. The co-extensive measure of liability will not be available. Provisions under Sub-section (2) equally will not apply to the beneficiaries. Similarly, the consideration under Sub-section (4) will not arise as they have no share, known or unknown, in the trust property. The entire basis of Section 21 is the original liability of the beneficiary; when that cannot be fixed upon him within the meaning of Section 3, aid of the provisions u/s 21 cannot be invoked against another who holds the assets for the time being for his benefit.

8. The position of a trustee in regard to the trust estate was considered by their Lordships of the Supreme Court in the case of *W.O. Holdsworth and Others Vs. The State of Uttar Pradesh*, where the interpretation of Section 11(1) of the U. P. Agricultural Income Tax Act came for examination. The provision of law was that any person who holds land, from which agricultural income is derived, as a common manager appointed under any law for the time being in force or under any agreement or as receiver, administrator or the like on behalf of persons jointly interested in such land or in the agricultural income derived therefrom, the aggregate of the sums payable as agricultural Income Tax by each person on the agricultural income derived from such land and received by him, shall be assessed on such common manager, receiver, administrator or the like, and he shall be deemed to be the assessee in respect of the agricultural Income Tax so payable by each such person and shall be liable to pay the same.

The question that arose there was whether a trustee could be liable to assessment under that provision. Referring to the definition of "person" as given in that Act, their Lordships found that the "liability to pay Income Tax would however be on the trustees as a "person" without anything more". But Section 11 of that Act provided that it is only when a person holds land on behalf of other persons jointly interested in such land or in the agricultural income derived therefrom, he could be assessed to agricultural Income Tax according to the computation made therein. The primary liability for the payment of agricultural Income Tax, their Lordships held, was on the person who was interested in the land or in the agricultural income derived from that. The incidence of the tax was on that: person and the amount of tax was to be determined with reference to the aggregate income derived by him.

When such land is held by some other-person who is a common manager, receiver, administrator or the like on behalf of such person jointly interested in such land or in the agricultural income derived therefrom, the agricultural Income Tax could be assessed on such common manager, receiver, administrator or the like instead of the assessment being made on each of such persons who is jointly interested in such land or in the agricultural income derived therefrom. In that context, their Lordships considered, if a trustee who holds a trust estate

comprised of agricultural land could be said to be holding that land on behalf of the beneficiaries and whether the beneficiaries could be taken to be liable for agricultural Income Tax in respect of the agricultural income derived from that land, and whether the agricultural Income Tax recoverable from them could be assessed in the hands of the trustee. It was held that "trustees do not hold the land from which agricultural income is derived on behalf of the beneficiaries but they hold it in their own right though for the benefit of the beneficiaries". Therefore, the trustees could not be included within the ambit of Section 11(1) of the U. P. Agricultural Income Tax Act.

9. At another place their Lordships observed with reference to the definitions of "trustee", "beneficiary", "beneficial interest" and "trust property" as given in the Indian Trusts Act (Act II of 1882):

These definitions emphasize that the trustee is the owner of the trust property and the beneficiary only has a right against the trustee as owner of the trust property. The trustee is thus the legal owner of the trust property and the property vests in him as such. He no doubt holds the trust property for the benefit of the beneficiaries but he does not hold it on their behalf. The expression "for the benefit of" and "on behalf of" are not synonymous with each other. They convey different meanings. The former connotes a benefit which is enjoyed by another thus bringing in a relationship as between a trustee and a beneficiary or cestui que trust, the latter connotes an agency which brings about a relationship as between principal and agent between the parties, one of whom is acting on behalf of another."

There cannot thus be any doubt that the expression "on behalf of" as used in Section 21 of the Wealth Tax Act cannot be taken as synonymous with "for the benefit of" and, therefore, a trustee who holds the assets for the benefit of the beneficiaries cannot be assessed u/s 21 of the Wealth Tax Act.

10. Learned Counsel appearing for the opposite party, the Commissioner of Wealth Tax, relied upon a decision of the Calcutta High Court in *Suhashini Karuri and Another Vs. Wealth Tax Officer, "D" Ward and Another*, where Section 21 of the Act was under consideration. No doubt, there the learned Judge held, in spite of what was stated by their Lordships of the Supreme Court in the case of *W.O. Holdsworth and Others Vs. The State of Uttar Pradesh*, that the expression "on behalf of" as used in Section 21 of the Wealth-tax Act was synonymous with the expression "for the benefit of" and in that sense brought a trustee under the liability provided under that section. With great respect, if I can say so, that view cannot be taken in regard to the two expressions for two reasons. In law, those two expressions are clearly distinguishable and have all along been understood in different meaning and, secondly, what we consider to be more Important, in the view expressed by their Lordships of the Supreme Court in the case of *W.O. Holdsworth and Others Vs. The State of Uttar Pradesh*, those two expressions can no longer be taken in case of trustee, as synonymous.

A distinction was sought to be made with reference to the decision of the Supreme Court in the Calcutta case that the word "trustee" was not included specifically in Section 11 of the U. P. Agricultural Income Tax Act whereas that expression is included in Section 21 of the Wealth-tax Act. With great respect, if I may say so, this difference appears to be without any distinction. In spite of the fact that the word "trustee" was not included in Section 11 of the U. P. Agricultural Income Tax Act, their Lordships of the Supreme Court took the view that a trustee within the meaning and definition of a "person" as given in that Act should come within the ambit of Section 11, particularly, when the word "the like" as used in that section could have brought in persons other than those mentioned categorically. When a trustee could be taken as included in that section whether his liability under that section could be fixed was considered specifically by the Supreme Court and it was held that because he does not hold the agricultural land (trust estate) on behalf of the beneficiaries, he could not be assessed to agricultural Income Tax. It is clear that the beneficiaries not being the owners of the agricultural land (trust estate) could not be liable for Income Tax and, therefore, the supposed joint liability of such beneficiaries could not be fixed upon the trustee.

11. Learned counsel for the opposite party also referred to two other decisions of the Calcutta High Court, but in my view, they have- no relevancy, because there the consideration was in regard to the provisions u/s 41 of the Indian Income Tax Act. That provision relates to the income and not to the corpus of the estate. Whatever that may be, since we are now concerned with the trust estate and not the income out of the trust estate, the cases dealing with Section 41 of the Indian Income Tax Act cannot have any relevancy for the purposes of our consideration.

12. Our attention was drawn to Act 40 of 1964, Section 20 which has amended in 1964, Section 21 of the Wealth-tax Act by including the expression "for the benefit of" in relation to the trustees in addition to the existing expression "on behalf of." For the years under consideration in the present four reference cases, the amendment has no application. It was suggested that the inclusion of the expression "for the benefit of" by way of an amendment was felt necessary on account of the view expressed by the Supreme Court in the case of W.O. Holdsworth and Others Vs. The State of Uttar Pradesh, , bringing out that a trustee does not hold the trust property on behalf of the beneficiary, but he holds that only for their benefit. Learned Counsel for the opposite party referred us to the aims and objects of Act 40 of 1964 and pointed out that this amendment was made only for the purposes of clarification and not to rectify any flaw in the light of the decision of the Supreme Court. Whatever the reasons for the amendment may be, it is clear that without the new expression as introduced in the amendment in Section 21 of the Act, the trustee holding the trust property for the benefit of the beneficiaries could not be assessed under that section in respect of the assets held by him in trust. We need not consider in this case if a trustee's liability u/s 21 can validly arise, even after the amendment of 1964 in

that section.

13. The question in the reference is--"Whether in the facts and circumstances of the case, the trustee under the Trust deed, dated 19th July 1949 executed by Kripashankar D. Worah was assessable to Wealth-tax u/s 21 of the Wealth-tax Act ?". For the reasons given, the answer will be in the negative, that is, the trustee was not assessable u/s 21. The reference is accordingly disposed of, but there will be no order for costs.

S.N.P. Singh, J.

14. I agree.