

(1981) 08 GUJ CK 0001
In the Gujarat High Court
Case No : Wealth-tax Reference No. 2 of 1980

K.S. Digvijaysinhji

APPELLANT

Vs

Commissioner of Wealth-tax, Rajkot

RESPONDENT

Date of Decision : 12-08-1981

Acts Referred:

Wealth Tax Act, 1957 — Section 25(2), 27(1), 5, 5(1), 5(1A)

Citation : (1983) 141 ITR 313

Hon'ble Judges : R.C. Mankad, J;M.P. Thakkar, J

Bench : Division Bench

Advocate : J.P. Shah, for the Appellant; S.N. Shelat, for the Respondent

Judgement

Mankad, J.—This reference made at the instance of the assessee involves an interpretation of s. 5(1A) of the W.T. Act, 1957 (hereinafter referred to as "the Act"), in the light of the following facts.

2. Assessment years under reference are the assessment years 1971-72 and 1973-74. The assessee's net wealth for these years included the assets which were exempt from payment of wealth-tax under cls. (xv), (xvi), (xxiii) and (xxv) of s. 5(1) of the Act. The value of the assets covered by cls. (xv) and (xvi) of s. 5(1) was Rs. 1,16,600, Rs. 1,27,338 and Rs. 1,28,548 for the assessment years 1971-72, 1972-73 and 1973-74, respectively. These assets were owned by the assessee from a date prior to March 1, 1970. The assessment year 1971-72 and Rs. 3,28,134 in the assessment year 1972-73. The assessee also owned units worth Rs. 5,000 in the Unit Trust of India in the assessment years 1971-72 and 1972-73. The value of the shares held in the Indian companies and units in the Unit Trust of India for the assessment year 1973-74 is not available, but we are told that the value of Rs. 3,87,945 shown for "movables" in the assessment order for the assessment year 1973-74 includes the value of the above shares and units. The shares in the Indian companies are the assets covered by clause (xxiii) and units in the Unit Trust of India are covered by clause (xxv) of sub-s. (1) of s. 5. In other words, both these are exempt from payment of tax under s.

5(1). Sub-section (1A) of s. 5, however, prescribe the limit of Rs. 1,50,000 for exemption in respect of the assets covered by the various clauses including cls. (xv), (xvi), (xxiii) and (xxv) of sub-s. (1) of s. 5. The proviso to s. 5(1A) lays down the if the value of the assets referred to in cls. (xv) and (xvi) of s. 5(1) which have been owned by the assessee continuously from a date prior to the 1st day of March, 1970, exceeds the limit of one hundred and fifty thousand rupees, the limit value of these assets exceeds Rs. 1,50,000. The contention of the assessee, however, was that the assets covered by cls. (xv) and (xvi) of s. 5(1) were totally exempt from payment of wealth-tax and the limit of Rs. 1,50,000 prescribed by sub-s. (1A) of s. 5 applies to the assets covered by the other clauses specified in the said sub-section. The WTO accepted the contention of the assessee and did not include the value of the assets covered by cls. (xv) and (xvi) of s. 5(1) in the net wealth of the assessee for the assessment years under references. He also deducted Rs. 1,50,000 out of the value of the shares and units in the Unit Trust of India in each of the years under reference.

3. The CWT on examining the records of the assessment proceedings for the assessment years under reference found that the WTO had committed an error in granting exemption in respect of the value of the assets covered by cls. (xv) and (xvi) of s. 5(1) in addition to the exemption to the extent of Rs. 1,50,000 in respect of assets other than those covered by cls. (xv) and (xvi). According to the Commissioner, sub-s. (1A) of s. 5 prescribes an overall limit of Rs. 1,50,000. This limit was raised only in cases where the value of the assets referred to in cls. (xv) and (xvi) of s. 5(1) exceeds Rs. 1,50,000. Since the value of the assets of the assessee covered by cls. (xv) and (xvi) of s. 5(1) did not exceed Rs. 1,50,000 the question of raising the limit under the proviso to sub-s. (1A) of s. 5(1) did not arise. The Commissioner, therefore, in exercise of his power under s. 25(2) of the Act, set aside the assessment order passed by the WTO and directed him to recompute the net wealth of the assessee in accordance with law in each of the assessment years under reference.

4. The Tribunal having confirmed the view taken by the Commissioner, at the instance of the assessee, the following questions have been referred to us for our opinion under s. 27(1) of the Act ;

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in not allowing the claim of further exemption under the provisions of the proviso to section 5(1A) in spite of the fact that the proviso contemplates the raising of the overall limit of Rs. 1,50,000 of the assets u/s. 5(1A), when assets included the assets referred to in clause (xv) or clause (xvi) which have been owned prior to March 1, 1970 ?

2. Whether the Tribunal was justified in not allowing the claim of raising the overall limit of Rs. 1,50,000 by the value of the assets falling in clause (xv) and in clause (xvi) which are owned prior to March 1, 1970, by raising the limit of Rs. 1,50,000 under the provisions of the proviso even though the Tribunal having conceded that "the limit" has reference to the aggregate limit referred to in the

provisions of section 5(1A) of the Wealth-tax Act ?

3. Whether the interpretation of the Tribunal of para. 58 of the memo to the Finance Bill, 1970 is correct, in spite of the fact that the memo refers to the overall limit of Rs. 1,50,000, which limit is the limit of all assets contemplated in the provisions of section 5(1A) and not merely the limit of the assets referred to in clauses (xv) and (xvi) ?

4. Whether the Tribunal was justified in ignoring the rule that the object of the proviso to section 5(1A), being in the nature of an incentive or concession, it should have been liberally construed ?

5. Whether the Tribunal was justified in not considering the rule of construction that there is no surplusage or tautology in the enactment by the Legislature and each word has a meaning and when two interpretations are possible, the interpretation which is favourable to the subject should prevail ?"

5. The controversy in this reference is as regards the interpretation to be placed upon sub-s.(1A) of s. 5. Sub-section (1A) of s. 5. reads as under :

"(1A) Nothing contained in sub-section (1) shall operate to exclude from the net wealth of the assessee any assets referred to in clauses (iva), (xv), (xvi), (xxii), (xxiii), (xxiv), (xxv), (xxvi), (xxvii), (xxviii), (xxix), (xxxi), and (xxxii) [not being deposits under the Post Office Savings bank (Cumulative Time Deposits) Rules, 1959], to the extent the value thereof exceeds, in the aggregate, a sum of one hundred and fifty thousand rupees :

Provided that where the assets include any assets referred to in clause (xv) or clause (xvi) [not being deposits under the Post Office Savings Bank (Cumulative Time Deposits) Rules, 1959], which have been owned by the assessee continuously from a date prior to the first day of March, 1970, and the value of the assets so included exceeds the limit shall be raised by the said amount."

6. Sub-section (1A) was inserted by the Finance Act, 1970, with effect from April 1, 1971. Along with this sub-s. (1A), cls. (xxii) and (xxv), with which we are concerned, were also inserted along with other clauses in sub-s. (1) of s. 5 by the said Finance Act, with effect from April 1, 1971. Before sub-s. (1A) was inserted, the value of the assets covered by cls. (xv) and (xvi) of s. 5(1) were totally exempt from payment of wealth-tax. With the insertion of cls. (xxii) and (xxv) along with other clauses, additional assets came within the exempted category. However, while adding assets within the category of exempted assets, the Legislature put a limit or a ceiling on the exemption which was to be granted in respect of such assets. Such a limit was placed by the insertion of sub-s. (1A). Sub-section (1A) makes that the exemption in respect of the assets referred to in cls. (iva), (xv), (xvi), (xxii), (xxiii), (xxiv), (xxv), (xxvi), (xxvii), (xxviii), (xxix), (xxxi) and (xxxii) shall not be available to the extent, the value thereof exceeds in the aggregate, a sum of Rs. 1,50,000. In other words, the exemption is restricted to Rs. 1,50,000 so far as value of those assets are concerned. Sub-

section (1A) thus restricts and puts a limitation on the value which is exempt. The assets covered by the clauses mentioned in sub-s. (1A) would be exempt only to the extent their value does not exceed Rs. 1,50,000. Proviso to sub-s. (1A), however, carves out an exemption in so far as the assets referred to in clause (xv) or (xvi) concerned. It provides that where the assessee's assets include any assets referred to in cls. (xv) and (xvi) which have been owned by the assessee continuously from a date prior to March 1, 1970, and the value of such assets which are included in the net wealth of the assessee exceeds Rs. 1,50,000 the limit prescribed by the substantive provisions of sub-s. (1A) shall stand raised to the extent of the excess. The overall limit of Rs. 1,50,000 prescribed by sub-s. (1A) applies to all assets including those falling under cls. (xv) and (xvi), but this limit stands raised in case the value of the assets referred to in cls. (xv) and (xvi), which are owned by the assessee continuously from a date prior to March 1, 1970, exceeds Rs. 1,50,000 to the extent the value exceeds Rs. 1,50,000. This provision was made for the obvious reason that before the insertion of sub-s. (1A), the assets covered by cls. (xv) and (xvi) were totally exempt from payment of wealth-tax. It was to protect the assessee who, relying on the provisions made for total exemption in respect of the value of such assets, had made investment in such assets, that an exception was carved out and the limit of Rs. 1,50,000 was raised in case the value of such assets which were owned by the assessee prior to March 1, 1970, exceeded Rs. 1,50,000. However, the question of raising this limit would arise only in a case where the value of assets referred to in cls. (xv) and (xvi) exceeds Rs. 1,50,000. Where the value of the assets does not exceed Rs. 1,50,000, the question of raising the limit under the proviso to sub-s. (1A) would arise at all. The assessee's contention is that in a case where the assessee owns assets covered by cls. (xv) and (xvi) the limit of Rs. 1,50,000 prescribed by sub-s. (1A) stands raised to the extent of the value of the such assets. In other words, according to the assessee the value of the assets covered by cls. (xv) and (xvi) is totally exempt from payment of wealth-tax and the exemption limit of Rs. 1,50,000 applies to the value of the assets other than those covered by cls. (xv) and (xvi). The assessee's contention is devoid of any substance. We are unable to read anything in sub-s. (1A) which supports the assessee's contention. We would be re-writing sub-s. (1A) if we were to read it in the manner suggested on behalf of the assessee. Clauses (xv) and (xvi) are mentioned in the substantive provision of sub-s. (1A) and, therefore, the overall limit of Rs. 1,50,000 applies to these assets also but exception is made only in case of such assets which are owned by the assessee prior to March 1, 1970, and if the value of such assets exceeds Rs. 1,50,000, the limit prescribed by sub-s. (1A) is raised to the extent of the excess. No other view is possible on a plain reading of sub-s. (1A). Similar view has taken by the Kerala High Court in Commissioner of Wealth Tax Vs. H.H. Sethu Parvathi Bayi and H.H. Lekshmi Bayi, . In the instant case, admittedly the value of the assets falling under cls. (xv) and (xvi) of s. 5(1) did not exceed Rs. 1,50,000 in any of the years under reference and, therefore, the question of raising the limit under the proviso to sub-s. (1A) does not arise. We, therefore,

uphold, the view taken by the Commissioner which was confirmed by the Tribunal.

7. In the result, we answer all the questions in the affirmative and against the assessee with no order as to costs.