
(1991) 03 CAL CK 0032
In the Calcutta High Court
Case No : Matter No. 5571 of 1987

Smt. Sunanda Devi Singhania

APPELLANT

Vs

Commissioner of Wealth Tax

RESPONDENT

Date of Decision : 12-03-1991

Acts Referred:

Finance Act, 1980 — Section 7A
Wealth Tax Act, 1957 — Section 2, 5, 7

Citation : (1993) 204 ITR 842

Hon'ble Judges : Shyamal Kumar Sen, J;Ajit K. Sengupta, J

Bench : Division Bench

Advocate : D. Pal and R.K. Murarka, for the Appellant; A.C. Moitra and D.K. Shome, for the Respondent

Judgement

Ajit K. Sengupta, J.—In this reference u/s 27(1) of the Wealth-tax Act, 1957, for the assessment years 1979-80, and 1980-81, the following questions have been referred to this court :

"1. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the assessee was not entitled to deduction of the estimated amount of capital gains tax ?

2. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in law in holding that "compulsory deposit" should be taken into consideration for the purpose of computing net wealth of the assessee?"

2. In view of the judgment delivered on February 18, 1991, in Matter No. 1158 of 1984 Smt. Vinita Devi Singhania Vs. Commissioner of Wealth Tax, the first question in this reference is answered in the affirmative and in favour of the Revenue.

3. The facts leading to the second question are that the assessee claimed that the amount deposited under the Compulsory Deposit Scheme should not be included in her wealth. The deposit made by the assessee under the Compulsory

Deposit Scheme stood at Rs. 4,600 and Rs. 9,950 for the two assessment years, respectively. The claims were disallowed by the Commissioner of Wealth-tax (Appeals).

4. The matter was agitated by the assessee before the Tribunal. Following the order of the Special Bench of the Tribunal in the case of *Sushilaben A. Mafatlal v. WTO*, the Tribunal rejected the assessee's claim for exclusion of the amounts deposited under the Compulsory Deposit Scheme from her net wealth.

5. The question is whether the repayment of compulsory deposit may be treated as an annuity for the purpose of Section 2(e) of the Wealth-tax Act. Dr. Pal, the learned advocate for the assessee, has contended that Section 2(e) lays down that an annuity is not an asset within the meaning of the aforesaid provision; the expression "annuity" has not been defined in the Act; in the absence of any such statutory definition, one has to consider the said expression as understood in its ordinary meaning. "Annuity" has been defined in the Shorter Oxford Dictionary to mean, *inter alia*, "an investment of money, entitling the investor to receive a series of equal annual payments, made up of both principal and interest". It is his contention that the Supreme Court in *Late Nawab Sir Mir Osman Ali Khan Vs. Commissioner of Wealth Tax, Hyderabad*, referred to and relied upon the above definition of "annuity" given in the Oxford Dictionary. According to the Supreme Court, "an annuity is a certain sum of money payable yearly either as a personal obligation of the grantor or out of property". The hallmark of an annuity, is (1) it is money; (2) paid annually; and (3) in fixed sum. In the case of an annuity under a will, it may be also a charge personally on the grantor. Dr. Pal has also referred to a decision of the Supreme Court in *Commissioner of Wealth-tax Vs. P.K. Banerjee (decd., by legal representatives)*, . Relying on the said decision of the Supreme Court, Dr. Pal contends that, in order to constitute an annuity, the payment to be made periodically should be a fixed or pre-determined one, and it should not be liable to any variation depending upon any ground relating to the general income of the fund or estate which is charged for such payment. He has drawn our attention to the relevant provisions of the Compulsory Deposit Scheme (income tax Payers) Act, 1974. Section 8 of the Compulsory Deposit Scheme (income tax Payers) Act, 1974, lays down that the amount of compulsory deposit made by or recovered from a depositor in any financial year shall be repayable in five equal annual instalments commencing from the expiry of two years from the end of that financial year, together with the interest due on the whole or, as the case may be, part of the amount of the compulsory deposit which has remained unpaid. Section 7 provides that every compulsory deposit made by or recovered from a depositor shall carry simple interest at a rate equal to the bank deposit rate. Therefore, so far as the rate of interest is concerned, this is also a fixed one, viz., at the bank rate of interest such interest is to be paid.

6. According to Dr. Pal, the compulsory deposit made under the aforesaid Act is repayable in five equal annual instalments after the expiry of two years from the

date of the deposit. The repayment in five equal annual instalments, according to the said dictionary meaning, constitutes an annuity and, therefore, it will not come within the exceptions provided in the section.

7. On the other hand, the contention of learned counsel for the Revenue is that the compulsory deposit has no similarity with the annuity. Annuity has a different meaning and accordingly this cannot be equated with the compulsory deposit which is made under the specific provision of the Act.

8. We have considered the contentions of learned counsel. Section 2(e)(2)(ii) provides a right to any annuity (not being an annuity purchased by the assessee or purchased by any other person in pursuance of a contract with the assessee) in any case where the terms and conditions relating thereto preclude the commutation of any portion thereof into a lump sum grant.

9. Annuity has not been defined under the Compulsory Deposit Scheme (income tax Payers) Act, 1974. Under the Annuity Deposit Scheme, 1964, annuity was defined as in Section 280B(4) of the Income Tax Act, 1961, as follows;

""Annuity" means any annual instalment of principal and interest thereon payable by the Central Government under the provisions of Section 280D."

10. This definition, in our view, cannot determine the question whether the compulsory deposit under the Compulsory Deposit Scheme (income tax Payers) Act (hereinafter referred as the "CDS Act") is an annuity or not. It is not a sound principle of construction to interpret the words used in one Act with reference to the same words used in another Act. The definition given for one word in one statute cannot automatically be imported for interpreting the same word in another statute. It is well-established that, in the absence of the definition in the statute, the words occurring in a statute will have to be understood with reference to the objects of the Act and in the context in which they occur. It is also equally settled that interpretation of a provision of one Act with reference to provision of another enactment is permissible only when the two Acts are in *pari materia*. The two Acts differed widely in their scope, even when they happen to deal with the same subject. Their wording is not the same. The intention of Parliament in enacting the Compulsory Deposit Scheme Act was only to treat the amount as a deposit. On the contrary, the Annuity Deposit Scheme used the nomenclature "annuity" itself. The deposit under the Compulsory Deposit Scheme Act was credited in a pass book in the name of the depositor in the bank and the repayment was made specifically of the instalment and of the accrued interest, both amounts being separately worked out but paid together. The rate of interest was also variable from time to time and it was notified and gazetted every year under the Annuity Deposit Scheme. There was no provision in the Annuity Deposit Scheme as in the Compulsory Deposit Scheme Act to credit a deposit to the name of the depositor. Section 7 clearly mentions the words "standing to the credit of any depositor", while there was no credit in the name of the depositor under the Annuity Deposit Scheme. The deposit under the Compulsory Deposit

Scheme was clearly a deposit. There are substantial differences between the two Schemes regarding deposit, commutation and repayment of the deposit. It would, therefore, be evident that the two Acts are not in pari materia although, to some extent, they pertain to the same subject-matter or have the same purpose or object.

11. The object of the Compulsory Deposit Scheme (income tax Payers) Act, 1974, was to augment the resources for economic development of the country and with that object in view, it required certain categories of Income Tax payers to deposit a portion of their income in accordance with the scheme. It is the income of the depositor which is refunded by instalments. An annuity means where an income is purchased with a sum of money and the capital has gone and has ceased to exist, the principal having been converted into an annuity (sir). Ordinarily, an annuity is a money payment of a fixed sum annually made and is a charge personally on the grantor. Thus, it is a right to receive a specified sum and not an aliquot share in the income arising from any fund or property. In order to constitute an annuity, the payment to be made periodically should be a fixed or pre-determined one, and it should not be liable to any variation depending upon any ground relating to the general income of the fund or estate which is charged for such payment. In order to constitute an annuity, it is not essential that the payment must be made once a year only and not monthly or quarterly. What is necessary is that the payments made must constitute a certain sum payable in a year to the annuitant. For the assessment years 1957-58 to 1974-75, the definition of the term "assets" in Section 2(e) specifically excluded any right to any annuity in any case where the terms and conditions relating thereto preclude the commutation of any portion thereof into a lump sum grant. For and from the assessment year 1975-76, the exclusion is in respect of a right to any annuity (not being an annuity purchased by the assessee or purchased by any other person in pursuance of a contract with the assessee) in any case where the terms and conditions relating thereto preclude the commutation of any portion thereof into a lump sum grant. In other words, the value of the assessee's right to receive any annuity purchased by him or purchased by another person in pursuance of a contract with the assessee is to be regarded, for and from the assessment year 1975-76, as his asset for the purpose of the levy of wealth-tax, irrespective of whether such annuity is commutable or not.

12. We may now refer to several decisions where the meaning of the word "annuity" under the Wealth-tax Act has been considered. In COMMISSIONER OF WEALTH-TAX Vs. MRS. DOROTHY MARTIN., , the Division Bench of this court considered the meaning of "annuity" as used in the Wealth-tax Act. There the Division Bench observed as follows (at page 592) :

"We need, therefore, see what is the real character of an annuity. According to the Shorter Oxford Dictionary, "annuity", means (1) a yearly allowance or income, (2) (law) the grant of an annual sum for a term of years, for life or in perpetuity, chargeable primarily upon the grantor's person or heirs if named.

According to Halsbury's Laws of England (2nd Edition), volume 28, Article 312 :

"the right created by an instrument (whether deed, codicil or statute) to receive a definite annual sum of money is an interest which may be strictly speaking either a rent, charge or an annuity."

Also in the same volume in Article 321, it appears :

"An annuity is a sum of money payable yearly or at any rate periodically from a source which is exclusively or at any rate primarily personal estate."

Thus, in legal parlance, annuity means a fixed sum of money payable yearly or periodically while, in the popular sense, it may also mean a yearly or periodical allowance which need not be a fixed sum.

We have next to see in which of the two senses, the word "annuity" has been used in the Wealth-tax Act. According to Crates on Statute Law (5th edition), at page 153 :

"There are two rules as to the way in which terms and expressions are to be construed when used in an Act of Parliament. The first rule is that general statutes should prima facie be presumed to use words in their popular sense."

At "page 155, the learned author further says :

"The second rule is that if the statute is one passed with reference to a particular trade, business or transaction, words are used therein which everybody conversant with that trade, business or transaction knows and understands to have a particular meaning in it, the words are to be construed as having that particular meaning which may differ from the ordinary or popular sense."

As regards "legal terms", the learned author observes at page 158:

"There is a well-known principle of construction, that where the Legislature uses in an Act a legal term which has received judicial interpretation, it must be assumed that the term is used in the sense in which it has been judicially interpreted ... The same rule applies to words with well-known legal meanings, even though they have not been the subject of judicial interpretation."

Now, "annuity" is a well-known legal term. Instances of annuity appear in the illustration to Section 173 of the Indian Succession Act and it is interesting to notice that in each a specified sum is mentioned. Thus, it is possible to hold that the word "annuity", a well-known legal term, has been used in the Wealth-tax Act, in its well-known legal meaning, namely, a fixed sum of money payable annually or periodically."

13. This decision was affirmed by the Supreme Court in Commissioner of Wealth-tax, Gujarat Vs. Arundhati Balkrishna, .

14. In Ahmed G.H. Ariff and Others Vs. Commissioner of Wealth Tax, Calcutta, , the Supreme Court has made a reference to Halsbury's Law of England, volume

32, third edition, page 534, where it is stated that an annuity (which is a certain sum of money payable yearly either as a personal obligation of the grantor or out of property not consisting exclusively of land) can be an item of property separate and distinct from the beneficial interests therein and from the funds and other property producing it. There, the Supreme Court held that the word "annuity" in Clause (iv) of Section 2(e) must be given the signification which it has assumed as a legal term owing to judicial interpretation and not its popular and dictionary meaning. The Supreme Court observed as follows (at page 478);

"A faint attempt was made to invoke the exception contained in Section 2(e) by suggesting that the right to receive a share of the income was a mere right to an annuity where the terms and conditions relating thereto precluded the commutation of any portion thereof into a lump sum grant. The High Court in the judgment under appeal dwelt at length on the true meaning and import of the expression "annuity" and negatived that suggestion. The burden of the argument was and is that the word "annuity" should be given its popular and dictionary meaning and not the signification which it has assumed as a legal term owing to judicial interpretation. Such a contention has only to be stated to be rejected because it is well-settled that where the Legislature uses a legal term which has received judicial interpretation, the courts must assume that the term has been used in the sense in which it has been judicially interpreted."

15. The Supreme Court in *Commissioner of Wealth-tax, Gujarat Vs. Arundhati Balkrishna*, considered the meaning assigned to the word annuity. In that case, under the trust deed executed by the assessee's mother-in-law on December 30, 1945, the husband of the assessee and her two brothers-in-law were constituted as the trustees. Under Clause (a) of that deed, the trustees were required to pay the income of the trust fund after deducting the expenses to the assessee during her lifetime. The rest of the clauses in that trust deed relate to disposition of the corpus to different beneficiaries after the lifetime of the assessee.

16. It is clear from the terms of the three trust deeds referred to earlier that the assessee had a life interest in each of those funds. Further, under the trust deeds executed by her father, she was also entitled to a portion of the corpus under certain circumstances. The question for decision is, whether benefits obtained by the assessee under those deeds can be held to come within Section 2(e)(iv). The Supreme Court observed (at page 508);

"The expression "annuity" is not defined in the Act. In Halsbury's Laws of England, third edition, volume 32, at page 534 (paragraph 899), the meaning of the word "annuity" is explained thus :

"An annuity is a certain sum of money payable yearly either as a personal obligation of the grantor or out of property not consisting exclusively of land."

In *Jarman on Wills*, at page 1113, "annuity" is defined thus :

"An annuity is a right to receive de anno in annum a certain sum; that may be

given for life, or for a series of years; it may be given during any particular period, or in perpetuity; and there is also this singularity about annuities, that, although payable out of the personal assets, they are capable of being given for the purpose of devolution, as real estate; they may be given to a man and his heirs, and may go to the heir as real estate".

In Williams on Executors and Administrators, "annuity" is described as a yearly payment of a certain fixed sum of money granted for life or for years charging the person of the grantor only.

In Bignold v. Giles [1859] 4 Drew 343; 113 R R 390, Kindersley V. C. described "annuity" in these words :

"An annuity is a right to receive de anno in annum a certain sum; that may be given for life, or for a series of years; it may be given during any particular period, or in perpetuity; and there is also this singularity about annuities, that although payable out of the personal assets, they are capable of being given for the purpose of devolution, as real estate; they may be given to a man and his heirs, and may go to the heir as real estate; so an annuity may be given to a man and the heirs of his body; that does not, it is true, constitute an estate tail, but that is by reason of the Statute De Donis, which contains only the word "tenements", and an annuity, though a hereditament is not a tenement; and an annuity so given is a base fee".

Proceeding further, the learned judge observed :

"But, it appears to me at least clear; that if the gift of what is called an annuity is so made, that, on the face of the will itself, the testator shows his intention to give a certain portion of the dividends of a fund, that is a very different thing; and most of the cases proceed on that footing. The ground is, that the court construes the intention of the testator to be, not merely to give an annuity, but to give an aliquot portion of the income arising from a certain capital fund."

Illustrations of annuity given in Section 173 of the Indian Succession Act also show that it is a right to receive a specified sum and not an aliquot share in the income arising from any fund or property. Ordinarily, an annuity is a money payment of a fixed sum annually made and is a charge personally on the grantor.

On an analysis of the relevant clauses in the three trust deeds, it is clear the assessee was given thereunder a share of the income arising from the funds settled on trust. Under those deeds, she is not entitled to any fixed sum of money. Therefore, it is not possible to hold that the payments that she is entitled to receive under those deeds are annuities."

17. In Commissioner of Wealth-tax Vs. P.K. Banerjee (dec'd., by legal representatives), , the Supreme Court, after considering several decisions including the decisions in Ahmed G.H. Ariff and Others Vs. Commissioner of Wealth Tax, Calcutta, , Commissioner of Wealth-tax, Gujarat Vs. Arundhati Balkrishna, and COMMISSIONER OF WEALTH-TAX Vs. MRS. DOROTHY MARTIN.,

held that, in order to constitute an "annuity", the payment to be made periodically should be a fixed or pre-determined one, and it should not be liable to any variation depending upon or on any ground relating to the general income of the fund or estate which was charged for such payment. The Supreme Court again considered the meaning of the word "annuity" in *Late Nawab Sir Mir Osman Ali Khan Vs. Commissioner of Wealth Tax, Hyderabad*, . In that case, the question was whether the sum of Rs. 25,00,000 paid annually to the assessee in lieu of the income, from certain properties was an annuity. There the Supreme Court observed as follows (at page 901) :

"It is necessary to refer to Section 2(e) which provides for the definition of assets by stating that " "assets" includes property of every description, movable or immovable, but does not include,--

(iv) a right to any annuity in any case where the terms and conditions relating thereto preclude the commutation of any portion thereof into a lump sum grant."

Therefore, in order to be excluded from the assets of the assessee, the right, being the sum which was annually to be paid under the agreement or letter mentioned hereinbefore, must by the terms and conditions preclude commutation of any portion thereof into a lump sum grant. The question, therefore, is : Could this lump sum grant of Rs. 25 lakhs be commuted by the Nizam and the capital value of the commutation be received ? Furthermore, the next question that arises was whether that commutation was precluded by the terms and conditions relating to that right. It may be that preclusion might be either by express terms and conditions of the right or as an inference from the terms and conditions of the payment.

We need not go into the rights of the erstwhile princes before the abolition of the privy purse, whether the privy purse could be commuted or not.

The term "annuity" is not defined in the Act. According to the Oxford Dictionary, "annuity" means sums payable in respect of a particular year; yearly grant. An annuity is a certain sum of money payable yearly either as a personal obligation of the grantor or out of property. The hallmark of an annuity, according to Jarman on Wills (page 1113) : (1) it is money; (2) paid annually; (3) in a fixed sum; and (4) usually it is a charge personally on the grantor.

Whether a particular sum is an annuity or not has been considered in various cases. It is not necessary, in the facts and circumstances of the case and in view of the terms of the payment indicated, to examine all these cases."

18. The Supreme Court held in that case that, in view of the background of the terms of payment and the circumstances under which the payment was made, there cannot be any doubt that Rs. 25 lakhs paid annually was an "annuity". It was a fixed sum to be paid out of the income from the property of the Government of India in lieu of the previous income of the assessee from Sarf-e-khas. Therefore, it was an annuity.

19. In the light of the aforesaid decisions, we have to consider whether the deposit under the Compulsory Deposit Scheme is an annuity, not purchased by the assessee and is, therefore, exempt. It is not disputed that, unless exemption can be claimed as an annuity u/s 2(e)(2)(ii), it would clearly be includible in the net wealth of the assessee for the simple reason that it is a deposit in the name of the assessee in a bank with only the restriction on the right of withdrawal thereof for two years absolutely and, thereafter, the right to withdraw one-fifth thereof for the next five years. Interest runs on the amount in deposit at more or less the higher rate of interest. It has all the attributes of a deposit in a bank because the assessee, when he makes a deposit, gets a pass book in which an entry is made as is made in the case of any other deposit in a bank. Interest is calculated on the balance due every year by the bank and credited in the pass book. The assessee has a right of withdrawing it subject to the restrictions noted earlier.

20. An annuity is generally a fixed sum of money payable periodically and not subject to variation. An annuity cannot be related to a fixed proportion of capital. When an assessee deposited out of his income under the Compulsory Deposit Scheme Act, it remains invested in the bank and income is transferred into capital. Deposit is no doubt made out of the earned income, but it does not retain the character of income thereafter when invested. A fixed deposit in a bank is a capital asset.

21. When the assessee receives one-fifth of the amount deposited by him in each year for a period of five years, after the lapse of two years of deposit, it cannot be treated as an annuity because it is related to a fixed proportion of capital.

22. Further, the rate of interest is fixed every year and not only that there is a right to vary the rate of interest but also as a fact the rate of interest has been varied from year to year. Therefore, the only fixed part of the Compulsory Deposit Scheme repayment is the one-fifth of the deposits actually made by the assessee and that is not variable though the interest part is a variable sum and is actually varied from year to year. Therefore, on the ratio of this ruling, the deposit in the Compulsory Deposit Scheme cannot be called an annuity. That apart, the repayment of the instalment due on April 1, 1985, on both principal and interest was postponed by one year by the statute. That indicates that Parliament did not treat it as an annuity because the very fact that repayment for one year was denied to the recipients would be against the concept of the annuity itself.

23. It may be mentioned that by the Finance (No. 2) Act, 1980, Section 7A was inserted in the Compulsory Deposit Scheme Act, 1974, with effect from April 1, 1975. Section 7A provides that, for the purposes of exemption u/s 5 of the Wealth-tax Act, 1957, the amount of compulsory deposit shall be deemed to be a deposit with a banking company to which the Banking Regulation Act, 1949, applies.

24. The introduction of Section 7A in the Compulsory Deposit Scheme Act, granting exemption u/s 5 of the 1957 Act to the compulsory deposits is another indication of the intention of the Legislature to treat the deposit as an asset and grant exemption because the deposits under the Compulsory Deposit Scheme would not otherwise be entitled to any exemption under the Wealth-tax Act. If the deposit is an annuity and is, therefore, not includible in the wealth, Section 7A would be rendered redundant.

25. The insertion of Section 8(2) entitling a depositor not to withdraw any amount of instalment or interest which has become repayable and providing that such deposit could continue to carry interest further shows that this is not an annuity because there is no such option available in the case of an annuity. That the instalment falling due would be treated as a deposit clearly shows that it was akin to an ordinary deposit and not to an annuity.

26. There is another aspect of the matter. Assuming the right to receive the instalment in terms of the Compulsory Deposit Scheme Act is an annuity, a further question still remains as to whether the terms and conditions relating to such annuity preclude the Commutation of any portion thereof into a lump sum grant. Section 8(1) of the Compulsory Deposit Scheme Act provides as follows :

"The amount of compulsory deposit made by or recovered from a depositor in any financial year shall be repayable in five equal annual instalments commencing from the expiry of two years from the end of that financial year, together with the interest due on the whole or, as the case may be, part of the amount of the compulsory deposit which has remained unpaid :

Provided that nothing in this section shall prevent earlier repayment of the deposit or any instalment thereof together with the interest due in any case in which the Income Tax Officer is satisfied that extreme hardship will be caused unless such repayment is made."

27. Section 8(2) runs as follows (see [1980] 124 ITR 91) :

"Where any amount has become repayable or payable under Sub-section (1), the depositor may, at his option, not withdraw such amount after it has become so repayable or payable, and if he does so, such amount shall carry interest for the period it is not withdrawn as if it were a compulsory deposit, and the provisions of this Act shall, so far as may be, apply in relation to such amount or interest thereon as they apply in relation to a compulsory deposit or, as the case may be, interest on such deposit."

28. From a reading of the aforesaid provisions, it would be considered that the Income Tax Officer can make a payment of the deposit in case of extreme hardship. It is not a provision for commutation because Parliament did not see it as an annuity but only as a deposit and provided that, in case of extreme hardship, the Income Tax Officer could authorise early repayment. Provision for or against commutation would have been made if it was an annuity. Since a

deposit under the Compulsory Deposit Scheme Act is not an annuity, no provision for commutation as such was made. On the contrary, the Annuity Deposit Scheme of 1964, as well as Annuity Deposit Scheme for 1966, contained provisions for commutation of annuities. Appendix 2 of the Annuity Deposit Scheme of 1964 contained a table of the commuted value of annuities. The commuted value depended on the date when the commutation was made.

29. According to Black's Law Dictionary, commutation, in civil law, is conversion of the right to receive a variable or periodical payment into a right to receive a fixed or gross payment. In the context of an annuity, it may be said that an annuity is commutable, if the annuitant is entitled to ask the payer to pay him the value of the annuity in a lump sum.

30. The commutation of the value of the annuity must necessarily imply that, in lieu of the right to receive an annuity, the annuitant claims a lump sum payable to him and he gives up his right to receive the annuity. Commutation is, therefore, a bilateral transaction in which the grantee of the annuity gives up his right to receive a sum annually in return for a lump sum and the grantor gets rid of his recurring liability to pay an annuity annually. This question does not arise in the case of compulsory deposits. Whatever is deposited is refunded with interest. The Income Tax Officer can, on the ground of hardship, refund the entire amount of deposit with accrued interest thereon. There is no question of any discounting of the value of the annuity.

31. For the reasons aforesaid, we answer the second question in the affirmative and in favour of the Revenue.

32. There will be no order as to costs.

Shyamal Kumar Sen, J.

33. I agree.