
(2004) 12 AHC CK 0261

In the Allahabad High Court

Case No : WT Reference No's. 121, 127 and 231 TO 236 of 1987 and 127 of 1988 22 December 2004

S.N. Agrawal

APPELLANT

Vs

Commissioner of Wealth Tax

RESPONDENT

Date of Decision : 22-12-2004

Acts Referred:

Citation : (2005) 144 TAXMAN 733

Hon'ble Judges : R.K. Agrawal, J;Prakash Krishna, J

Bench : Full Bench

Advocate : V.K. Upadhyay, for the Appellant;

Judgement

R.K. Agrawal, J.

In the Wealth Tax Reference No. 121 of 1987 which relates to the assessment years 1978-79, 1979-80 and 1980-8 1, the Income Tax Appellate Tribunal, Delhi has referred the following question of law u/s 27(1) of the Wealth Tax Act, 1957 (hereinafter referred to as "the Act) for opinion to this Court:

"Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the amounts under the Compulsory Deposit Scheme (Income Tax Payers) Act, 1974 constituted an asset within the meaning of section 2(e) of the Wealth Tax Act and were includible in the net wealth of the assessee for assessment to wealth tax?"

2. In the Wealth Tax Reference No. 127 of 1987 which relates to the assessment years 1979-80 and 1980-8 1, the Income Tax Appellate Tribunal, Delhi has referred the following question of law u/s 27(1) of the Wealth Tax Act, 1957 (hereinafter referred to as "the Act) for opinion to this Court:

"Whether the Tribunal was right in holding that the amounts standing to the credit of the assessee in deposit account under the Compulsory Deposit Scheme (Income Tax Payers) Act, 1974 constituted an asset within the meaning of

section 2(e) of the Wealth Tax Act and the same were includible in the net wealth of the assessee?"

3. In the Wealth Tax Reference No. 231 of 1987 which relates to the assessment years 1981-82 and 1982-83, the Income Tax Appellate Tribunal, Delhi has referred the following question of law u/s 27(1) of the Wealth Tax Act, 1957 (hereinafter referred to as "the Act) for opinion to this Court:-

"Whether on the facts and in the circumstances of the case, the Appellate Tribunal was justified in law in holding that the amounts of Rs. 5,93,833 and Rs. 8,08,094 standing to the credit of the assessee in deposits under the Compulsory Deposit Scheme (Income Tax Payers) Act, 1974 were includible in his net wealth for the assessment years in question?"

4. In the Wealth Tax Reference No. 232 of 1987 which relates to the assessment years 1979-80 and 1980-81, the Income Tax Appellate Tribunal, Delhi has referred the following question of law u/s 27(1) of the Wealth Tax Act, 1957 (hereinafter referred to as "the Act) for opinion to this Court:

"Whether the Tribunal was right in holding that the amounts standing to the credit of the assessee in deposits under the Compulsory Deposit Scheme (Income Tax Payers) Act, 1974 were not annuities within the meaning of section 2(e)(2)(ii) of the Wealth Tax Act, 1957 and were to be treated as deposits with a bank?"

5. In the Wealth Tax Reference No. 233 of 1987 which relates to the assessment years 1981-82 and 1982-83, the Income Tax Appellate Tribunal, Delhi has referred the following question of law u/s 27(1) of the Wealth Tax Act, 1957 (hereinafter referred to as "the Act) for opinion to this Court:

"Whether on the facts and in the circumstances of the case, the Appellate Tribunal was justified in law in holding that the amounts of Rs. 4,23,213 and Rs. 5,52,533 standing to the credit of the assessee in deposits under the Compulsory Deposit Scheme (Income Tax Payers) Act, 1974 were includible in his net wealth for the assessment years in question?"

6. In the Wealth Tax Reference No. 234 of 1987 which relates to the assessment years 1983-84 and 1984-85, the Income Tax Appellate Tribunal Delhi has referred the following question of law under- section 27(1) of the Wealth Tax Act, 1957 (hereinafter referred to as "the Act") for opinion to this Court:

"Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the amounts standing to the credit of" the assessee in deposits under the Compulsory Deposit Scheme (Income Tax Payers) Act, 1974 were includible in the net wealth of the assessee for assessment to wealth tax?"

7. In the Wealth Tax Reference No. 235 of 1987 which relates to the assessment years 1980-81 and 1982-83, the Income Tax Appellate Tribunal, Delhi has referred the following question of law u/s 27(1) of the Wealth Tax Act, 1957

(hereinafter referred to as "the Act") for opinion to this Court:-

"Whether on the facts and in the circumstances of the case, the Appellate Tribunal was justified in law in holding that the amounts of Rs. 3,66,783 and Rs. 5,02,738 standing to the credit of the assessee in deposits under the Compulsory Deposit Scheme (Income Tax Payers) Act, 1974 were includible in his net wealth for the assessment years in question?"

8. In the Wealth Tax Reference No. 236 of 1987 which relates to (lie assessment years 1979-80, 1980-81,1983-84 and 1984-85 the Income Tax Appellate Tribunal, Delhi has referred the following question of law u/s 27(1) of the Wealth Tax Act, 1957 (hereinafter referred to as "the Act") for opinion to this Court:

"Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the amounts standing to the credit of the assessee in bank account in respect of deposits made under the Compulsory Deposit Scheme (Income Tax Payers) Act, 1974 were not annuities within the meaning of section 2(e)(2)(ii) of the Wealth Tax Act, 1957 and were to be treated as deposits with a banking company?"

9. In the Wealth Tax Reference No. 127 of 1988 which relates to the assessment year 1981-82, the Income Tax Appellate Tribunal, Delhi has referred the following question of law u/s 27(1) of (lie Wealth Tax Act, 1957 (hereinafter referred to as "the Act") for opinion to this Court:-

"Whether on the facts and in the circumstances of the case, the Appellate Tribunal erred in law in holding that the deposit of the amount of Rs. 1,55,717 under the Compulsory Deposit Scheme (Income Tax Payers) Act, 1974 constituted an asset within the meaning of section 2(m) of the Wealth Tax Act, 1957 and was, therefore, includible in the net wealth of the assessee for assessment year in question?"

10. As all the aforementioned references related to various members of the same family and raise similar controversy, they are being decided together by a common Judgment.

11. All the applicants had made deposits during the assessment years in question under the Compulsory Deposit Scheme (Income Tax Payers) Act, 1974 (hereinafter referred to as "the 1974 Act"). They had claimed that these deposits are not liable to be included in the assets as they are More in the nature of annuity and are excluded u/s 2(e) of the Act. The Assessing Authority did not accept the claim of the applicants and treated these deposits as assets and included them in the net wealth. The Commissioner of Income Tax (Appeals) had allowed the claim of the applicants and had held that these amounts could not be included in the net wealth which order has been reversed by the Tribunal.

12. We have heard the learned counsel for the parties.

13. The learned counsel for the applicants submitted that the deposits made by

the applicants under the 1974 Act was repayable in 5 equal annual instalments after the expiry of two years from the end of the financial year in which the deposit has been made. Thus, it was an annuity which (the applicant received every year. It is, therefore, excluded from the definition of the word "assets" as defined u/s 2(e)(1)(iv,) of the Act. According to him, the word "annuity" in the New International Webster's Comprehensive Dictionary, Encyclopedic Edition, 2003 Edition, has been defined as follows:

"1. An annual allowance or income; also, the right to receive such an allowance or the duty of paying it.

2. The return from an investment of capital, with interest, in a series of Yearly payments; especially, an agreed amount paid by an insurance company at stated intervals, usually monthly, in consideration of either a single premium or premiums paid over a period of years."

14. He referred to a decision of the Apex court in the case of The Commissioner of Wealth Tax, Rajasthan Vs. Her Highness Maharani Gayatri Devi of Jaipur, , wherein the Apex court has held that the question whether a particular income is an annuity or not does not depend on the amount received in a particular year. What has to be seen is what exactly was the intention of the settler in creating the trust. Did he intend to give the assessee a pre-determined sum every year or did he intend to give her an aliquot share in the income of a fund? On that question, there can be only one answer and that is that he intended to give her an aliquot share in the income of the trust fund. An income cannot be an annuity in one year and an aliquot share in another year. It cannot change its character year after year.

15. He has further referred to a decision of the Apex court in the case of Commissioner of Wealth-tax Vs. P.K. Banerjee (decd., by legal representatives), . He submitted that in order to constitute an annuity, the payment to be made periodically should be a fixed or pre-determined sum 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 is charged for such payment. He, thus, submitted that in the present case as the applicants received the amount of the compulsory deposits in equal annual instalments, the amount was fixed and it could not be varied upon any ground. Thus, it was an annuity.

16. He also relied upon a decision of the learned Single Judge of this court in the case of Udai Chand Jain and Others Vs. Commissioner of Wealth-tax and Another, , of the Madras High Court in the case of V.M. Rao Vs. Commissioner of Wealth Tax, and of the Calcutta High Court in the case of Parameshwar Nath Rai Vs. Chief Commissioner of Income Tax and Others, .

17. The learned Standing counsel for the revenue submitted that under the Act during the relevant assessment years "assets" have been given an inclusive definition u/s 2(e) of the Act. It is of the widest import and is subject to any limitation which the context may require. It signifies that every payable interest

which a person clearly holds as annuity. Relying upon a decision of the Apex court in the case of Ahmed G.H. Ariff and Others Vs. Commissioner of Wealth Tax, Calcutta, , he submitted that there is no Justification to give any restricted meaning to word "assets", as defined by section 2(e) of the Act when the language employed shows that it was intended to include the property of every description. He further submitted that merely because the amount of deposit made under the compulsory deposit scheme was repayable in 5 equal annual instalments after the expiry of two years, would not mean that it is an annuity or it is right to an annuity and, therefore, it cannot be treated as excluded from the assets. He submitted that the various High Courts have already held that the amount deposited under the compulsory deposit scheme is an asset and not an annuity. He referred to the following decisions:

- (i) CWT v. Master Ashutosh K. Mahadevia (1995) 215 ITR 2001 ;
- (ii) Commissioner of Wealth-tax Vs. Smt. Ratnamala Agarwalla, ;
- (iii) Commissioner of Wealth Tax Vs. Seth Lalit Modi and Others, ;
- (iv) Smt. Sunanda Devi Singhania Vs. Commissioner of Wealth Tax, ;
- (v) A.H. Dalmia Vs. Commissioner of Wealth Tax, New Delhi, ;
- (vi) Commissioner of Wealth-tax Vs. L.G. Balakrishnan, ;
- (vii) CWT v. Dal Chand Jain (1996) 85 Taxman 453 (M.P.); and
- (viii) Y.M. Rao (supra).

18. Having heard the learned counsel for the parties, we find that under the 1974 Act, section 3 enjoins upon every person who is assessable under the Income Tax Act in respect of the total income of an individual or a Hindu Undivided Family or a trustee to make compulsory deposit at the specified rate in section 4 of the 1974 Act. The amount, the time limit as also the rate of interest and its repayment had been specified. Section 7A of the 1974 Act, which was inserted by the Finance (No. 2) Act of 1980 with effect from 1-4-1981, had granted exemption u/s 5 of the Act by treating the amount of compulsory deposit to be a deposit with a banking company to which the Banking Regulation Act, 1949 applies. Thus, a deposit made under the 1974 Act is to be treated for all purpose as a deposit with a banking company and is to be reckoned with other bank deposits u/s 5 of the Act.

19. The word "assets" has been defined u/s 2(e) of the Act. The definition, as it stood during the relevant assessment years in question and is relevant for the purposes of the present references, are reproduced hereinbelow:

2. Definitions.-In this Act, unless the context otherwise requires,

(a) to (d)**

(b) "assets" includes property of every description, movable or immovable, but

does not include,

(1) in relation to the assessment year commencing on the 1-4-1969, or any earlier assessment year

(i) agricultural land and growing crops, grass or standing trees on such land;

(ii) any building owned or occupied by a cultivator of, or receiver of rent or revenue out of, agriculture land:

Provided that the building is on or in the immediate vicinity of the land and is a building which the cultivator or the receiver of rent or revenue by reason of his connection with the land requires as a dwelling house or a store-house or an out-house;

(iii) animals;

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

(v) any interest in property where the interest is available to an assessee for a period not exceeding six Years from the date the interest vests in the assessee;

(2) In relation to the assessment year commencing on the 1-4-1970, or any subsequent assessment year but before the 1-4-1993-

(i) animals;

(ii) a right to any annuity (not being an annuity purchase 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 portion thereof into a lump sum grant."

20. From a reading of the aforesaid provision, it will be seen that from the assessment year commencing 1-4-1970, which is respect of the assessment years in question, only that annuity has been excluded from the assets which has not been purchased by the assessee or purchased by any other person in pursuance of a contract with the assessee and where the terms and conditions preclude the commutation or any portion thereof into a lump sum grant.

21. Admittedly, in the present case the deposits have been made under the 1974 Act by the applicants themselves. Without going into the question as to whether the deposits made under the 1974 Act is an annuity or not, even if it is assumed that it is an annuity, it having been purchased by the applicants themselves, would not be excluded from the definition of the word "assets" u/s 2(e)(2)(ii) of the Act.

22. We may observe that the learned counsels for the parties have proceeded to make their submissions on the basis of the provision of section 2(e)(1)(iv) of the Act which we find was applicable only up to the assessment year 1969-70 and

not thereafter.

23. In view of the clear provision of section 2(e)(2)(ii) of the Act we, are not going into the various decisions cited by learned counsel for the parties at the Bar.

24. In view of the foregoing discussion, we answer the questions referred to us in the affirmative, i.e., in favour of the revenue and against the assessee. There shall be no order as to costs.