
(1986) 10 RAJ CK 0050
In the Rajasthan High Court
Case No : W.T. Reference No. 3 of 1977

Sushila Devi

APPELLANT

Vs

Commissioner of Wealth-tax

RESPONDENT

Date of Decision : 23-10-1986

Acts Referred:

Wealth Tax Act, 1957 — Section 2, 5(1), 5(3)

Citation : (1986) 10 RAJ CK 0050

Hon'ble Judges : J.S. Verma, C.J;Kanta Bhatnagar, J

Bench : Division Bench

Advocate : Rajesh Balia, for the Appellant; B.R. Arora, for the Respondent

Judgement

Kanta Bhatnagar, J.—The Income Tax Appellate Tribunal, Jaipur Bench, Jaipur (for short " the Tribunal "), has referred the following question for the opinion of this court u/s 27(1) of the Wealth-tax Act, 1957 (hereinafter to be referred to as "the Act "):.

" Whether, on the facts and in the circumstances of the case, the Tribunal was legally correct in rejecting the claim of the assessee for exemption in respect of the fixed deposit of Rs. 50,000 u/s 5(1)(xxvi) read with Section 5(3Xb) of the Wealth-tax Act, 1957 ? " The facts of the case giving rise to this reference are as under : Smt, Sushila Devi, assessee, had taken out a Fixed Deposit Receipt (for short "the FDR") of Rs. 50,000 on April 21, 1972, from the State Bank of Bikaner and Jaipur, Bikaner. On April 22, 1972, the assessee pledged the aforesaid FDR with the State Bank of Bikaner and Jaipur in order to facilitate advance of loan of Rs. 47,000 to M/s. Fibre Trading Company, Bikaner (for short " the Company " hereinafter). By a letter the assessee discharged the FDR and directed that on its maturity, the amount may be credited to the account of the company. While filing the return for the assessment year 1973-74 the assessee claimed exemption of the amount of the aforesaid FDR u/s 5(1)(xxvi) of the Act. The Wealth-tax Officer rejected that claim on the ground that the pledging of the FDR was for consideration of the amount of Rs. 47,000 to be advanced to the company and

as such the assessee cannot be said to have held the FDR for six months ending on the valuation date as required by Section 5(3) of the Act. The assessee went in appeal before the Appellate Assistant Commissioner of Income Tax, Bikaner Range, Bikaner. The Appellate Authority agreed with the findings of the Wealth-tax Officer and rejected the appeal. The assessee approached the Income Tax Appellate Tribunal for redressal of her grievance against the order of the Assistant Commissioner but was unsuccessful. The assessee then filed an application u/s 27(1) of the Act before the Tribunal. The Tribunal agreed with the assessee that a question of law arises out of the order of the Tribunal and, therefore, made a reference for the opinion of this court on the question of law stated earlier.

2. Mr. Rajesh Balia, learned counsel for the assessee, strenuously contended that the amount of the Fixed Deposit Receipt fell in the definition of the net wealth of the assessee, that she had only pledged the Fixed Deposit Receipt by way of security for the loan to be advanced to the company and that she had control over the amount of the Fixed Deposit Receipt till the date of its maturity, i.e., April 21, 1973. Mr. Balia emphasised that the interpretation of the term "held by the assessee" appearing in Section 5(3) of the Act, by the Tribunal confirming the orders of the Wealth-tax Officer and the Appellate Assistant Commissioner cannot be said to be correct in view of the principle enunciated in various decisions on the point.

3. According to Mr. Balia, the word "held" is to be interpreted as "owned". Referring to the amendment of Clause (xxvi) of Section 5 with effect from April 1, 1975, Mr. Balia submitted that in order to avoid the controversy regarding the interpretation of the term "held by the assessee", the words "owned by the assessee" have been substituted and, therefore, even prior to the aforesaid amendment, the word "held by the assessee" should not have been taken to mean actual physical possession and that at the relevant time the assessee was constructively holding the fixed deposit receipt and exemption under Clause (xxvi) of Section 5(1) has rightly been claimed by her and wrongly refused by the concerned authorities.

4. Mr. B. R. Arora, appearing for the Revenue, justified the findings of the Tribunal affirming the orders of the Wealth-tax Officer and the Appellate Assistant Commissioner on the ground that the assessee had parted with the fixed deposit receipt for valid consideration on April 22, 1972. According to Mr. Arora, the concept of ownership is distinct from the concept of possession and the term "held by the assessee" appearing in Section 5(3) of the Act means real and not constructive possession. That the circumstances of the case clearly reveal the intention of the assessee to part with the possession of the fixed deposit receipt as she had also directed that the profits of the fixed deposit receipt on its maturity may be credited to the account of the company.

5. Mr. B. R. Arora contended that the fact that on maturity the amount of the fixed deposit receipt along with the interest was credited in the account of the

company is sufficient to justify the order of the Tribunal that the assessee, while pledging the fixed deposit receipt, had given up her control over its value.

6. The assessee wanted the amount of Rs. 50,000 of the fixed deposit receipt to be excluded from her wealth u/s 5(1)(xxvi) of the Act which reads as under :

5. Exemptions in respect of certain assets.--(1) Subject to the provisions of Sub-section (1A), wealth-tax shall not be payable by an assessee in respect of the following assets, and such assets shall not be included in the net wealth of the assessee--...

(xxvi) any deposits with a banking company to which the Banking Regulation Act, 1949 (10 of 1949), applies (including any bank or banking institution referred to in Section 51 of that Act), or with a co-operative society engaged in carrying on the business of banking including a cooperative land mortgage bank or a co-operative land development bank)."

7. Sub-section (1A) of Section 5 of the Act imposes a ceiling on the amount claimed to be exempt under the various clauses mentioned therein and Clause (xxvi) is one of them. The limit fixed is a sum not exceeding in the aggregate one hundred and fifty thousand rupees.

8. The value of the fixed deposit "receipt in the present case being Rs. 50,000 only, this sub-section will not be a hurdle for the assessee in chiming exemption. The important provision having a bearing on the matter is Section 5(3) which at the relevant time read as under :

" Notwithstanding anything contained in Sub-section (1), wealth-tax shall be payable by an assessee in respect of assets referred to in Clauses...(xxvi)...of Sub-section (1) or in Sub-section (2) for any assessment year unless the assets are held by him. "

9. It is to be noted that by the Finance Act, 1975, the word "held" has been substituted by the word "owned". By the Finance Act of 1975, made effective from April 1, 1975, the exemption under Clause (xxvi) has been made available to an assessee on proving the ownership of the assets on the valuation date.

10. The contention of Mr. Arora is that by the amendment brought by the Finance Act, 1975, the assessee is not required to hold the assets and it would be sufficient for claiming exemption if he owns the assets on the valuation date but while deciding the matter relating to the assessment of property prior to 1975, the term "held by the assessee" would operate. In other words, the constructive possession of the assessee, as in the present case, would not bring her claim within the ambit of Section 5(1)(xxvi) read with Section 5(3) of the Act.

11. In order to properly understand the implications of the matter, the material provisions of the Act relating to the exemption will have to be looked into.

12. Section 3 of the Act is the charging provision. The net wealth of an individual is liable to be taxed for every assessment year at the rate or rates specified in

the Schedule. The term " net wealth " has been defined in Section 2(m). The relevant portion of it reads as under :

" 2. (m) "net wealth" means the amount by which the aggregate value computed in accordance with the provisions of this Act of all the assets, wherever located, belonging to the assessee on the valuation date, including assets required to be included in his net wealth as on that date under this Act, is in excess of the aggregate value of all the debts owed by the assessee on the valuation date... "

13. Section 4(1) of the Act creates a legal fiction by which assets enumerated in that section are deemed to be the assets belonging to the assessee for the purpose of computing his net wealth.

14. Section 5(1) of the Act provides that, in respect of certain assets, exemption is to be made and they are to be excluded while computing the net wealth of the assessee.

15. The correct conclusion in the matter on hand would depend on the interpretation of the word "held". This word has been the subject-matter of construction in a number of decisions dealing with the provisions of this Act as well as certain other Acts.

16. In the case of *Manohar v. G.G. Desai*, AIR 1951 Nag 33, the question before their Lordships was as to whether C. P. & Berar Accommodation (Requisition) Act, 1948, had been rendered unconstitutional because of articles 19 and 31 of the Constitution. The argument advanced was that the word "held" means to "possess" and as the act of requisitioning interferes with that right, it is unconstitutional. According to their Lordships, the word " held " has several meanings, one of which is no doubt " possess " but then it also means " be the owner of " (property). It was further observed that whether to give the word the meaning contended for by counsel or some other meaning would depend upon the context. Taking in the context of the preceding word " acquire " under Article 19 of the Constitution and the following word "dispose of", their Lordships were of the opinion that the word " held " can have no other meaning other than " own " or " be the owner of".

17. While interpreting the particular phraseology used in some provision of law, it should be kept in view that the meaning of the word would always depend upon the context, i.e., the interpretation should be given taking in view the aim and object of the ingredients and the expression it gives.

18. Interpreting the term " holds " in sections 12 and 13 of the Assam Agricultural Income Tax Act (9 of 1939), their Lordships of the Supreme Court in the case of *K.K. Handique Vs. Member, Board of Agricultural Income Tax, Assam*, observed that the expression " holds " includes 2 twofold idea of the actual possession of a thing and also of being invested with a legal title.

19. In the case of *COMMISSIONER OF WEALTH-TAX, GUJARAT Vs. HARSHAD RAMBHAJI PATEL AND ANOTHER.*, , the question calling for determination was one

of interpretation of Clause (xvi) of Section 5(1) of the Act and, in particular, of the words " held by the assessee " occurring in that clause. According to their Lordships, the Legislature has used the expression " held by the assessee " purposely and in order to bring out a meaning of a connotation different from the meaning that would be given to the words " belonging to ". Importance was attached to the expression " held by the assessee " used in reference to certain cases referred in that Clause and it was held that the Legislature has used the expression " held by the assessee " as meaning certificates which are registered in the name of the assessee and which stand in his name and not the certificates of which beneficial ownership is vested in it, but which stand in the name or names of his nominee or nominees. In that view of the matter, their Lordships agreed with the conclusion of the Wealth-tax Officer and the Appellate Assistant Commissioner and it was only those documents which stood in the names of the two assessees, and in one case in the name of the assessee and his wife, which were held entitled to exemption under Clause (xvi) and not the rest of the certificates. As such, the interpretation of Clause (xvi) of Section 5(1) by the Tribunal that the assessees were entitled to exemption in respect of the value of all the certificates and that no distinction could be made between the certificates standing in the name of the assessee and those standing in the name of his nominees, was held to be erroneous.

20. However, a different interpretation to the words "held by the assessee" was made in the case of Commissioner of Wealth-Tax, Bombay City-I, Bombay Vs. C. Rai, . The subject of discussion in that case was the interpretation of the words "held by the assessee" appearing in Section 5(1)(xx) of the Act. The question referred for the opinion of the High Court was whether the Tribunal erred in law in holding that the 400 shares of "Colour Chem Ltd." transferred to the name of the assessee's wife were exempt u/s 5(1)(xx) read with Section 4(1)(a)(i) of the Wealth-tax Act. Reliance was placed by the Department upon the decision of the Gujarat High Court in the case of COMMISSIONER OF WEALTH-TAX, GUJARAT Vs. HARSHAD RAMBHAI PATEL AND ANOTHER., and it was argued that Section 5(1) (xx) means shares standing in the name of the assessee in the company's register. It was argued that the assessee could not claim exemption in respect of those 400 shares which admittedly stood in the name of the assessee's wife and that the expression " held by the assessee " could not be equated with the expression " belonging to " or " owned by the assessee " within the meaning of the former expression as used in Section 4(1)(a)(i) of the Act. Reference was made to the meaning of the expression " hold " in the Concise Oxford Dictionary. Therein the expression " hold " has been assigned the meaning " possess " or " be the owner " or " holder " or " tenant of (property, stocks, land)". It was further observed in the case that on a reading of the other clauses of Section 5(1), it does appear that various expressions like " hold ", " belonging to ", " standing to the credit of " have been indiscriminately used. Their Lordships, therefore, declined to accept the contention that the expression " held by the assessee " occurring in Clause (xx) of Section 5(1) of the Act should be

interpreted to mean standing in the name of the assessee in the company's register. According to their Lordships, the expression " any share held by the assessee " should, according to the dictionary meaning, be interpreted as shares possessed of, or owned by, or belonging to the assessee. The question referred was, therefore, answered in favour of the assessee.

21. The case of Narsibhai Patel Vs. Commissioner of Wealth-tax, related to the exemption claimed u/s 5(1)(xx) of the Act. The question for determination was whether a partner is entitled to exemption u/s 5(1)(xxvi) in proportion to his share in the firm in which he is a partner when the relevant property is a partnership asset. After discussing the material provisions of law on the point, their Lordships held that the deposits made by the partnership in a bank are in law held by the partners in proportion to their shares in the partnership and each partner is entitled to the benefit of the exemption contained in Section 5(1)(xxvi) of the Wealth-tax Act in his individual assessment to the extent of the maximum prescribed by Section 5(1A).

22. In the case of Jagdish Chandra Grover v. CWT [1985] 156 ITR 561, deciding the question regarding the claim of exemption u/s 5(1)(iv) of the Act, it was held that the partner of a firm is entitled to exemption u/s 5(1)(iv) of the Wealth-tax Act, 1957, in respect of the value of his interest in the house property owned by the firm in accordance with Rule 2 of the Wealth-tax Rules, 1957, read with Section 2(m) of the Act.

23. From the aforesaid decisions on the point, it is evident that the meaning of a word is to be understood in the context of the provisions of the Act or the section it appears in. To interpret the meaning of the term "held by the assessee" appearing in Section 5(3) of the Act, it would be profitable to have an idea of the object and purpose of enacting Clause (xxvi) of Section 5(1) of the Act.

24. In order to widen the area of investment in financial assets qualifying for exemption from levy of wealth-tax, six types of investments enumerated in Clauses (xxii) to (xxvii) were inserted in Section 5(1). One type of investment amongst them, such as deposits in bank, falls in Clause (xxvi) of Section 5(1) of the Act. In order to enable the assessee to have the benefit of Clause (xxvi), it is required that the property, i.e., the fixed deposit receipt, remains in her name till its maturity and she must have control over the same. The admitted position is that the fixed deposit receipt was in her name. It is also not in dispute that the assessee pledged the fixed deposit receipt to facilitate the advance of loan to the tune of Rs. 47,000 to the company.

25. The Department has based its case mainly on the letter dated April 22, 1972, by the assessee mentioning therein that she had discharged the fixed deposit receipt and the bank was to hold it as security and the proceeds of the same, on maturity, to be credited to the account of the company.

26. The contention of Mr. Arora is that so long as the loan of Rs. 47,000 advanced to the company on the security by way of fixed deposit receipt

remained unpaid, there was a hurdle for the assessee to take back the fixed deposit receipt in that in case of contravention of the terms of advance of loan to the company, the bank was entitled to deal with the fixed deposit receipt in the way it chose. It has been emphasised that in such a situation, the assessee was not holding the fixed deposit receipt for a period of at least six months ending with the relevant valuation dates as required by Section 5(3)(b) of the Act and that the amount of the fixed deposit receipt, along with the interest accrued thereon, was credited to the account of the company after the maturity of the fixed deposit receipt.

27. It is pertinent to note that in the certificate issued by the bank, it was mentioned that the bank treated the amount of Rs. 50,000 as fixed deposit till its maturity date, i.e. April 20, 1973, and interest on that amount was also allowed for one full year.

28. Till the date maturity, the fixed deposit receipt remained in the name of the assessee, and the fact of the fixed deposit receipt remaining as security with the bank only up to the extent of Rs. 47,000 advanced to the company as loan was taken into consideration by the Wealth-tax Officer and exemption was allowed to the assessee for the remaining 3,000 rupees. The amount of the fixed deposit receipt cannot be bifurcated in that way. If the letter of the assessee dated February 22, 1972, is taken to mean as the Department did, it would have deprived the assessee of her control over the fixed deposit receipt as a whole and on the property passing to the company, there was no question of allowing exemption for Rs. 3,000 even. However, if the date of maturity is to be considered, which, in our opinion, should be, and it is held that till the date of maturity, the fixed deposit receipt belonged to the owner and she was in constructive possession of the same, and also in view of the fact that the account of the fixed deposit receipt and the loan advanced to the company were separately maintained, the assessee would be entitled to exemption under Clause (xxvi) of Section 5(1) of the Act.

29. It is noteworthy that the fixed deposit receipt was pledged as security to facilitate the advancing of loan to the company and till the date of its maturity, the fixed deposit receipt remained in the name of the assessee. On repaying the amount of Rs. 47,000 at any time before the maturity of the fixed deposit receipt, the bank was bound to release the fixed deposit receipt and in that situation, the assessee would have held it physically till the date of its maturity. The right of the company to have the amount credited to its name did not accrue till the date of maturity of the fixed deposit receipt. It is also relevant to note that the interest of Rs. 3,000 accrued on the amount of the fixed deposit receipt was also credited in the account of the assessee and remained so till the date of its maturity, i.e., April 20, 1973. It was only thereafter, i.e., on April 26, 1973, that this amount was credited to the current account of the company.

30. Section 5(3) required holding by an assessee of such an asset for a period of at least six months ending on the valuation date. Valuation date, as defined in

Section 2(q) of the Act, would in relation to any year for which an assessment is to be made mean the last day of the previous year as defined in Section 3 of the Income Tax Act, if an assessment were to be made under that Act for that year.

31. In the instant case, the assessment year is 1973-74. The last date of the previous year in which the assessment was made was March 31, 1973. As discussed above, the date of the maturity of the fixed deposit receipt in question was April 20, 1973. On that date, as discussed above, the fixed deposit receipt was in the name of the assessee. She had control over it in the sense that she could have got it released by getting repaid the loan of Rs. 47,000 advanced to the company. Till the date of maturity, interest in the fixed deposit receipt had not passed to anybody. The pledging of the fixed deposit receipt with the bank by way of security for advancing loan to the company would not amount to the account of the assessee regarding the fixed deposit receipt being merged with the account of the company relating to its loan.

32. The words " assets wherever located belonging to the assessee on the valuation date " occurring in Section 2(m) denning " net wealth " are of significance. If a property belonging to the assessee, wherever located, can be computed as an asset for the purpose of the definition of net wealth, then on the same analogy, the fixed deposit receipt belonging to the assessee, though lying with the bank for a particular purpose would be taken as property held by the assessee on the relevant date of valuation which occurred before the date of maturity of the fixed deposit receipt entitling him to the exemption under Clause (xxvi) of Section 5(1) of the Act.

33. Consequently, the reference is answered in the negative, i.e., in favour of the assessee and against the Revenue as under ;

On the facts and circumstances of the case, the Tribunal was not legally correct in rejecting the claim of the assessee for exemption in respect of the fixed deposit receipt of Rs. 50,000 u/s 5(1)(xxvi) of the Act.

34. In the circumstances of the case, costs are made easy.