

Executors and Trustees of the Vs. Second Wealth-tax Officer

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Court : Income Tax Appellate Tribunal ITAT Mumbai

Decided On : Aug-19-1987

Reported in : (1988)24ITD211(Mum.)

Judge : K Dixit, L Aggarwal, S

Appellant : Executors and Trustees of the

Respondent : Second Wealth-tax Officer

Judgement :

1. This appeal involves a question of inclusion in the net wealth of the value of certain gold bonds which had matured before the valuation date. The assessee was the holder of National Defence Gold Bonds, 1980, and the date of redemption of these bonds was the 27th October, 1980.

The valuation date is 31-3-1981. The assessee had not redeemed them and his contention has been that the value of the Bond is exempt from wealth-tax Under Section 5(1)(xvii). He has pointed out that the Govt.

of India by a Press notification dated 23rd March, 1982, had extended the date of redemption of these Bonds up to 30th September, 1982. The Commissioner has considered the Press notification whereunder the repayment facilities were extended. The said Press Notification inter alia states as follows : Some holders of National Defence Gold Bonds, 1980 have not so far tendered their Bonds at the repayment centres. To avoid any inconvenience to them, facilities for delivery of

Gold in repayment of these Bonds at branches of the State Bank of India and its subsidiary Banks have been extended up to September 30, 1982.

2. The Commissioner has observed that this notification was merely in the nature of an administrative measure to avoid hardship to the holders and that therefore the scope of the said exemption was not extended. Accordingly he confirmed the WTO's order.

3. Before us, the assessee's counsel emphasised that as long as the Gold Bonds had not been redeemed, the assessee continued to be the holder of the Gold Bonds, and that therefore, the exemption must necessarily be available to the assessee. He then pointed out Section 5(1) of the Gift-tax Act whereunder gift of the gold bond was exempt and that this exemption was removed only by the Finance Act, 1986 implying thereby that unredeemed gold bond continues to exist as bonds, He further pointed out the following paragraph from the notes on clauses reported in 158 ITR at p. 100 (sic) : Clause 42 seeks to amend Section 5 of the Gift-tax Act relating to exemption in respect of certain gifts. Under the existing provisions, gift of National Defence Gold Bonds, 1980, not exceeding the value of such bonds for an aggregate weight of five kilograms of gold in any previous year, is exempt under Section 5(1)(iiia) of the Act.

According to him, this further supported his argument that the Gold Bond even after the maturity date continued to exist as such. On the other hand, the learned Departmental Representative argued that the extension of the date by the Notification was merely administrative measure to avoid hardship to the Bond holders. He further pointed that the Govt. had clarified that for the purpose of capital gains the base price of the gold was to be taken as on the maturity date which according to him showed that the assessee was regarded as the owner of the gold. His main argument was that on the maturity date, the assessee was the owner of the gold and that the Reserve Bank was merely its custodian. According to him, on the maturity date, the gold bonds were as good as gold. He also pointed out that after the maturity date, the Gold bonds were no longer transferable and that interest also ceased on that date.

4. It could be seen that the contentions of the two sides are : (a) on behalf of the assessee that the document in his hands was the gold bond, and (b) on behalf of the Revenue, that it is gold or as good as gold. In our view, it is neither. We have to state the real nature of this document on the maturity date. Now, when the gold bond is issued to a person, there is an agreement between him and the Govt. that the gold will be returned on a certain future date called the maturity date ; and during that time, the assessee has the right to interest and he can also assign the bond. Under the terms of the bond, the holder has a right to get back the gold on the maturity date whereupon the interest would cease and it would no longer be assigned. Therefore, on the maturity date, the character of this document which was the bond would change. It would not bear interest and it would lose assignability.

Although it may be called a bond, actually it is no longer a bond. On the maturity date, it is merely a document of title to the gold. Its presentation to the Reserve Bank would entitle the holder of that document to the delivery of the gold. As rightly pointed out by the learned Departmental Representative, the Reserve Bank is merely custodian of the gold, of which the assessee is the owner. Since the gold bond could not be assigned after the maturity date, its exemption from gift-tax would be of no relevance. The notes on clauses regarding the amendment to gift tax on which the assessee's advocate relied cannot be taken into consideration for ascertaining the nature of this document for which only the rights and liabilities of the parties thereto have to be taken into account. We, therefore, hold that the exemption claimed by the assessee is not available. The document of title to the gold is a taxable asset.

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