

Commissioner of Wealth-tax Vs. Dr. David Joseph, Executor of Trust No. 1.

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Court : Kerala

Decided On : Oct-11-1994

Reported in : (1995)123CTR(Ker)302; [1995]213ITR156(Ker);
[1995]80TAXMAN385(Ker)

Appeal No. : Original Petitions Nos. 9469, 7285, 8917, 10238, 10754, 10762, 10949, 11968, 11972, 11973, 11977, 12

Appellant : Commissioner of Wealth-tax

Respondent : Dr. David Joseph, Executor of Trust No. 1.

Judgement :

T. L. VISWANATHA IYER J. - We shall state the facts in Income-tax Reference No. 143 of 1985 as it is agreed that our answer to the reference has only to be implemented in the other petitions which are all under sub-section (3) of section 27 of the Wealth-tax Act, 1957 (hereinafter referred to as 'the Act').

The Income-tax Appellate Tribunal, Cochin Bench, has referred the following questions of law for the determination of this court under section 27(1) of the Act :

'1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the shares of the beneficiaries of the trust are definite and ascertainable ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the family members who were allowed to reside in the properties free of rent are not beneficiaries of the trust ?'

The trust in question is one created by one M. George Joseph by a deed of trust dated May 22, 1972, (a copy of which is annexure 'D' to the statement of the case), in respect of certain immovable properties owned by him. Therein George Joseph stated that he was getting old and was desirous of imparting education 'as high as possible' to his three grandchildren, namely, Pradeep George Joseph, Promod John Joseph and Praveena Elizabeth Joseph, who were aged 7 years, 5 years and 1 year respectively, on the date of annexure 'D'. The object with which the trust was created as to enable these children to receive the education by giving them 'all facilities and training'. The eldest son of the author of the trust, Dr. David Joseph was appointed as the trustee for the proper and due execution of the trust. He was to keep possession of the properties, manage them, collect the income and apply the net income for the education of the three named grandchildren, till the youngest of them Praveena Elizabeth Joseph attained the age of 21. The deed further stipulated that if there was any surplus, that shall be dealt with in the same manner as the corpus. The trustee was given the discretion to incur the necessary expenditure for purposes of the trust and for the upkeep of the properties and their development for which he was not accountable to any person. Clause 5 of the deed is important. It provided that on the expiration of the period mentioned, namely, on the youngest child, Praveena Elizabeth Joseph attaining the age of 21, the trustee shall deliver the properties equally to the beneficiaries with all funds, if any, remaining with him, and the beneficiaries were at liberty to use the properties and funds at their discretion. The trustee was not entitled to alienate the properties but he had the power to terminate the existing tenancies, and to grant fresh leases, i.e., he could collect the income in whatsoever way he pleased. The last clause, namely, clause 8, is one which gave room for much controversy between the parties. It recited that all the properties except items Nos. 2, 3 and 5 have been rented out, that the family members of George Joseph were residing in items Nos. 2 and 3, and that their residence free of rent shall be continued. These are the salient features of the deed of trust with which we are concerned in this case.

In the assessment year 1975-76, corresponding to the valuation date March 31, 1975, the question arose as to how the assets of the trust should be assessed, whether it should be under sub-section (1) or sub-section (4) of section 21 of the Act. The Wealth-tax Officer took the view that the shares of the beneficiaries were not 'definite and ascertainable' and assessed the net value of the assets in the hands of the trustee under sub-section (4) of section 21. The Commissioner (Appeals), however, accepted the contention of the assessee that the assessment had to be under sub-section (1), as in his view, the shares of the beneficiaries were determinate. The Appellate Tribunal confirmed this view of the Commissioner, and on the motion of the Revenue, referred the aforesaid questions of law for the opinion of this court under section 27(1) of the Act.

One of the contentions strongly pressed by the Revenue before the Tribunal was that the members of the family of the author of the trust who were residing in items Nos. 2 and 3 and were allowed to continue the residence free of rent were beneficiaries of the trust, and since their shares were not determinate, the assessment could only be under sub-section (4) of section 21. The Tribunal did not accept this plea. It held that the mere provision for the continued residence of the family members on the same terms and conditions as on the date of creation of the trust, would not make them beneficiaries for the purpose of section 21.

Before us, learned counsel for the Revenue repeated this contention to attract sub-section (4) to the case. He urged further that the income of the trust accruing year after year had to be utilised for the education of the three grandchildren which necessarily had to be unequal, varying from person to person, depending on the type of education, the place of education and the like. This again, according to him, rendered the shares of the admitted beneficiaries indeterminate, attracting sub-section (4).

The answer to the question turns essentially on the terms of the deed of trust. Sub-section (1) of section 21 states that where assets are held in trust declared by a duly executed instrument in writing, wealth-tax shall be levied upon and be recoverable from the trustee, in the like manner and to the same extent as it would be leviable upon, and recoverable from, the person on whose behalf, or for whose

benefit the assets are held. Sub-section (4) provides for the cases where the shares of the beneficiaries are indeterminate or unknown in which case the wealth-tax shall be levied upon and be recovered from the trustee, in the like manner and to the same extent, as it would be leviable upon and be recoverable from an individual who is a citizen of India and resident of India. Therefore, in cases where the shares of the beneficiaries are indeterminate or unknown, the assessment has to be on the trustee as an individual on the total value of the assets. On the other hand, if the shares are determinate or known, the assessment has to be made on the trustee on behalf of the beneficiaries in the like manner and to the same extent as it would be leviable on them. The Supreme Court had occasion to deal with the nature of the assessment to be made under section 21 in CWT v. Trustees of H. E. H. Nizams Family (Remainder Wealth) Trust : [1977]108ITR555(SC) of the report, their Lordships pointed out with reference to sub-section (1) that 'the Revenue has two modes of assessment available for assessing the interest of a beneficiary in the trust properties; it may either assessee such interest in the hands of the trustee in a representative capacity under sub-section (1) or assess it directly in the hands of the beneficiary by including it in the net wealth of the beneficiary. In either case, what is taxed is the interest of the beneficiary in the trust properties, and not the corpus of the trust properties.' In cases where the number of beneficiaries is more than one, and their shares are indeterminate or unknown, the trustees would be assessable in respect of their total beneficial interest in the trust properties. Obviously, in such cases, it is not possible to make direct assessment on the beneficiaries in respect of their interest in the trust properties, because their shares are indeterminate or unknown and that is why it is provided that the assessment may be made on the trustee as if the beneficiaries for whose benefit the trust properties are held were an individual. The beneficial interest is treated as if it belonged to one individual beneficiary and assessment is made on the trustees in the same manner and to the same extent as it would be on such fictional beneficiary.

The Supreme Court has thus explained the difference between an assessment under sub-section (1) and one under sub-section (4). The court then held that the question in regard to the applicability of sub-section (1) or sub-section (4) has to be determined with reference to the relevant valuation date. So long as it is

possible to say on the relevant valuation date that the beneficiaries are known and their shares are determinate, the possibility that the beneficiaries may change by reason of subsequent events such as birth or death would not take the case out of the ambit of sub-section (1) of section 21. The position has to be seen on the relevant valuation date as if the event which leads to the expiration of the trust took place on the date, and if, on that hypothesis, it is possible to determinate who precisely would be the beneficiaries and on what determinate shares, sub-section (1) must apply and not sub-section (4). The court approved the ratio of the decisions of the Calcutta High Court in *Suhashini Karuri v. WTO* : [1962]46ITR953(Cal) , the Bombay High Court in *Trustees of Putlibai R. F. Mulla Trust v. CWT* : [1967]66ITR653(Bom) and *CWT v. Trustees of Mrs. Hansabai Tribhuwandas Trust* : [1968]69ITR527(Bom) and the Gujarat High Court in *Padmavati Jaykrishna Trust v. CWT* : [1966]61ITR66(Guj) .

We shall examine the facts of this case in the light of these principles. It is evident from the preamble to the deed of trust itself that the trust was created for the benefit of the three grandchildren of M. George Joseph. He has categorically stated that the trust was being created for imparting these grandchildren education 'as high as possible'. The income of the trust was to be utilised for that purpose and whatever surplus was left was to be added to the corpus to be dealt with in the same manner as the corpus. The trust was to expire when the youngest child, Praveena Elizabeth Joseph, attained the age of 21, and at the same time, the assets of the trust were to be divided equally among the beneficiaries meaning thereby the three grandchildren. This is clear from clause 5 of the deed of trust where reference is made to the three grandchildren as the beneficiaries of the trust. The primary purpose of construction of a document is to ascertain the intent of its executant. We shall extract clause 5 :

'5. On the expiration of the said period mentioned in paragraph 2, the trustee shall deliver the properties to the beneficiaries with all funds, if any, remaining in his hand equally and the beneficiaries can put the properties and funds to any use at their discretion till all time to come and transfer Patna in the name of the beneficiaries.'

There can thus be no doubt that according to the author of the trust only the three grandchildren were the beneficiaries and none else.

The next question is whether their shares are determinate or known. Each of them takes equally when the properties are divided on the expiration of the trust. Applying the test enunciated by the Supreme Court, if the trust expires on the 31st March of any particular year, there cannot be any doubt that the properties will have to be divided among the three grandchildren in the proportion of one-third to each of them. If that be the case, the assessment has to be made under sub-section (1) and not on the trustee in a representative capacity under sub-section (4). The question of assessing the entire assets in the hands of the trustee as an individual does not therefore arise.

We shall now deal with the contention raised by counsel for the Revenue based on the fact that the income from the properties is likely to be utilised unequally among the three beneficiaries, having regard to the nature of their education, the place where the education is undergone and the like. We do not find any difficulty on this point. Sub-section (1) applies when the shares of the beneficiaries in the assets are determinate or known. Under the terms of the deed of trust, whatever is in the hands of the trustee has to be divided equally among the beneficiaries, including the surplus left after meeting the expenses. The stress is on the share in the assets and not on the income. We do not therefore find any merit in this contention.

The other plea to be considered is the one based on clause 8 of the deed of trust under which the family members of the author of the trust are allowed to continue to reside in items Nos. 2 and 3 without payment of rent. This, according to counsel for the Revenue, spells in the realm of indeterminations of the shares of the beneficiaries. We are unable to agree for more than one reason. Clause 8 relates to the tenancies over items Nos. 2, 3 and 5 which may or may not be determinate. But so far as items Nos. 2 and 3 are concerned, the residence of members of the family free of rent is allowed to be continued without payment of rent. This is direction regarding the manner of administration of the trust, viz., that the trustee shall permit the continued residence of these persons in the assets mentioned. It

does not confer any further right on these persons. They are not beneficiaries of the trust, as already pointed out, particularly, in the light of clause 5 of the deed of trust. The contention is, therefore, without any merit.

Reliance was placed on two decisions, one of the Calcutta High Court in *CWT v. Administrator-General of West Bengal* : [1971]79ITR154(Cal) , and the other of the Supreme Court in *CWT v. Kripashankar Dayashanker Worah* : [1971]81ITR763(SC) , but they do not carry the case any further for the Revenue. The second of these cases in which the author of the trust reserved a right of residence for himself was one, in which, on the facts, a beneficial interest continued to vest in him. It was in that context that the assessment under sub-section (4) was sustained. We do not find anything in these cases which is of relevance to the case on hand.

The various original petitions have been filed by the Commissioner of Wealth-tax for reference of the question of applicability of sub-section (1) or sub-section (4) of section 21. The applications filed by the Revenue for making reference were dismissed from time to time by the Appellate Tribunal and these application have been filed under sub-section (3) of section 27. While the cases up to the assessment year 1980-81 are directly covered by the decision on the reference, counsel for the Revenue attempted to make a distinction for the subsequent period in view of Explanation 1 added to sub-section (4) with effect from April 1, 1980, to the effect that the shares of the persons on whose behalf or for whose benefit the assets are held will be deemed to be indeterminate unless the shares are expressly stated in the instrument of trust and are ascertainable as such on the date of such instrument. The plea is that there is no express statement of the shares in the deed of trust. The Explanation does not, however, advance the case of the Revenue in any manner for the reason that as per clause 5 of the deed of trust which we have extracted earlier the shares of the beneficiaries are equal, that is one-third to each of them. Of course, it is only stated that the shares are equal and not that the shares of each is one-third. But insistence on such verbal loyalty or exactitude will undermined the very meaning of the Explanation. When the deed of trust says the share are equal, it means equal among all the persons entitled. The rest is only an arithmetical process. There cannot be a clearer specification of

the shares as in clause 5. This plea is only to be overruled.

An additional question has been sought to be raised in Original Petition Nos. 8917, 9469 and 10949 of 1992, which relate to the assessment years 1983-84, 1984-85 and 1985-86. The assessee had declared the value of six cents of land in Vazhuthacaud at Rs. 18,000 in the year 1976. The Wealth-tax Officer assessed the value of the land at Rs. 1,20,000. The Tribunal reduced it to Rs. 10,000 per cent. The Revenue pleads that the Tribunal has fixed the value without any material. We do not agree. Having regard to the value declared in 1976, it cannot be stated that the decision of the Tribunal is arbitrary or perverse or unsupported by material giving rise to any question of law.

The original petitions are, therefore, dismissed. The reference is answered in the affirmative, in favour of the assessee and against the Revenue. No costs.

Communicate a copy of this judgment under the seal of this court and the signature of the Registrar to the Income-tax Appellate Tribunal Cochin Bench, for information.

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