Commissioner of Expenditure-tax, Gujarat Vs. H.H. Thakore Saheb of Lakhtar and ors.

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Court : Gujarat

Decided On : Dec-07-1973

Reported in : [1974]97ITR1(Guj)

Judge : B.J. Diwan and; T.U. Mehta, JJ.

Acts : Expenditure-tax Act, 1957 - Sections 5

Appeal No. : Expenditure-tax Reference No. 1 of 1969

Appellant : Commissioner of Expenditure-tax, Gujarat

Respondent : H.H. Thakore Saheb of Lakhtar and ors.

Advocate for Def. : K.H. Kaji and; P.M. Raval, Advs.

Advocate for Pet/Ap. : J.M. Thakore, Adv.

Judgement :

T.U. Mehta, J.

1. This reference raises the question whether the payment of Rs. 75,000 which the assessee has made to meet the marriage expenditure of his daughter is covered by the exemption clause (j) of section 5 of the Expenditure-tax Act, 1957 (which is

hereinafter referred to as 'the Act'). The payment in question is made by the assessee in S. Y. 2016 which is the accounting period relevant for the assessment year 1961-62. The case of the assessee is that the disputed amount of Rs. 75,000 was impressed with an obligation in the nature of a trust and, therefore, its expenditure is exempted from expenditure-tax under clause (j) of section 5, while the contention of the revenue is that the said clause has no application to the facts of the case.

2. Facts of the case are that the assessee was an ex-Ruler of Lakhtar State. Some time before the year 1952, there were some disputes between him on one side and his senior wife and her children on the other. These disputes seem to have been resolved at the intervention of the Government of India in the year 1952. The record of the case contains a copy of the letter dated 8th May, 1952, addressed to the assessee by the Raj Pramukh of the State of Saurashtra. This letter shows the terms of the settlement of the above referred disputes. One of the terms of this settlement was as regards the provision for the marriage expenditure of the two daughters of the assessee by his senior wife. According to this term of settlement, the assessee was expected to set apart the sum of Rs. 1,75,000 out of the sale proceeds of one of his immovable properties called 'Lakhtar Utara' situated at Rajkot, for meeting the marriage expenditure of his above referred two daughters. This particular direction is found in the said letter of the Raj Pramukh in the following words :

'You should also set apart a sum of Rs. 1,75,000 (Rupees one lakh and seventy-five thousand) from the sale proceeds of the Lakhtar Utara at Rajkot for the marriage of your two daughters.'

3. It appears that by that time the assessee had disposed of his above referred property at Rajkot, and it was from the sale proceeds of this property that the above referred amount of Rs. 1,75,000 was required to be set apart for the marriage of his two daughters. The letter of the Raj Pramukh, above referred to, then concludes as under :

'I have been requested by the Government of India to acquaint you with these decisions and to tell you that they must be implemented. The Government of India

have observed that they are based on a compromise of the conflicting claims of the parties and it is essential that they should be accepted in a spirit of give and take and with goodwill by both parties.'

4. Pursuant to this letter of the Raj Pramukh the assessee paid an amount of Rs. 1,00,000 to his Yuvraj in the year 1952 for the purpose of the marriage of his elder daughter. However, he kept the remaining amount of Rs. 75,000 with himself and parted with this amount in the accounting period when his second daughter was married. It is in this manner that he is said to have made the expenditure of Rs. 75,000 for the purpose of his daughter's marriage. The revenue contends that this payment of Rs. 75,000 by the assessee to his Yuvraj for the purpose of marriage of his second daughter amounts to expenditure and, therefore, is included in the assessment of his total expenditure in the accounting period. As against this, the contention of the assessee is that the payment of Rs. 75,000 is exempted by clause (j) of section 5 of the Act which contemplates exemption from expenditure when the same is incurred by way of or in respect of any gift, donation or settlement on trust or otherwise for the benefit of any other person.

5. The Expenditure-tax Officer as well as the Appellate Assistant Commissioner decided against the assessee with the result that the assessee approached the Appellate Tribunal in appeal. The Tribunal held that the assessee was holding the amount of Rs. 75,000 in trust for his second daughter for the purpose of her marriage and, therefore, the payment of this amount was exempted under clause (j) of section 5. Being aggrieved by this decision of the Tribunal, the revenue has approached us in this reference. The Tribunal has, therefore, referred to us the following question for our opinion :

'Whether, on the facts and circumstances of the case, the view that the sum of Rs. 75,000 paid by the assessee to the Yuvraj does not form part of the assessee's taxable expenditure during the previous year is justified in law ?'

6. Our answer to this question is in the affirmative for the reasons which follow.

7. Before considering the respective contentions of the parties, we may shortly refer to the relevant provisions of the Act. The Act came into force on the first day

of April, 1958. Section 3 of the Act is the charging section which says that, subject to the provisions of the Act, there shall be charged for every financial year commencing on and from the first day of April, 1958, a tax which is hereinafter referred to as 'expenditure-tax' at the rate or rates specified in the Schedule. The word 'expenditure' is given a statutory definition by clause (h) of section 2 as under :

'Expenditure means any sum in money or money's worth, spent or disbursed or for the spending or disbursing of which a liability has been incurred by an assessee, and includes any amount which under the provisions of this Act is required to be included in the taxable expenditure.'

8. From this definition it is evident that if any amount is spent or disbursed or regarding the spending or disbursement of which any liability has been incurred by the assessee, it should be treated as expenditure, which would be includible in the total expenditure liable to tax.

9. Section 4 of the Act points out amounts which should be included in the taxable expenditure of an assessee. This section is made subject to the provisions of section 5 which contemplates exemptions from expenditure-tax. The provisions of section 4, which are relevant for the purpose of this reference, are as under :

'4. Unless otherwise provided in section 5, the following amounts shall be included in computing the expenditure of an assessee liable to tax under this Act, namely :-

(i) any expenditure incurred, whether directly or indirectly by any person other than the assessee in respect of any obligation or personal requirement of the assessee or any of his dependents..... to the extent to which the amount of all such expenditure in the aggregate exceeds Rs. 5,000 in any year .....'

10. Thus, according to this section, if an expenditure is incurred in respect of any obligation of the assessee or any of his dependants, the said expenditure is liable to tax. The word 'dependant' is defined by section 2(g) as under :

'(g) 'dependant' means -

(i) Where the assessee is an individual, his or her spouse or child, wholly or mainly dependent on the assessee for support and maintenance ....'

11. Since the second daughter of the assessee was wholly and mainly dependent on the assessee for her support and maintenance and since the payment of Rs. 75,000 was made by the assessee in respect of his obligation to get her married, it cannot be disputed that unless this expenditure gets an exemption under section 5 of the Act, it becomes liable to tax.

12. Before coming to the provisions of section 5, it would be necessary to note the relevant provisions of section 6, which contemplates deductions to be made in computing the taxable expenditure of an assessee. Before the amending Act No. 5 of 1964 came into force, this section 6 contained clause (c) in sub-section (1) thereof. This clause was in force at the relevant time. Read together with the main provisions of sub-section (1) of section 6, clause (c) was as under :

'6. (1) Taxable expenditure of an assessee for any year shall be computed after making the following deductions and allowances, namely :-.....

(c) any expenditure incurred by the assessee -

(i) if an individual, in respect of his own marriage or the marriage of any of his dependants, and

(ii) if a Hindu undivided family, in respect of the marriage of the karta or any other member of the family,

subject to a maximum of Rs. 5,000 for each marriage.'

13. Thus, under this clause (c), the assessee was entitled to deduction of the maximum amount of Rs. 5,000 for the purpose of marriage of his second daughter. This deduction is in fact given by the Appellant Assistant Commissioner. Therefore, the question which remains to be considered is whether the department was correct in including the remaining amount of Rs. 70,000 in the taxable expenditure of the assessee.

14. It is at this stage that we should refer to the relevant provisions of section 5 under which the assessee claims exemption. These provisions are as under :

'5. No expenditure-tax shall be payable under this Act in respect of any such expenditure as is referred to in the following clauses, and such expenditure shall not be included in the taxable expenditure of an assessee - .....

(j) any expenditure incurred by the assessee by way of, or in respect of, any gift, donation or settlement on trust or otherwise for the benefit of any other person.'

15. Subsequently, a proviso was added to this clause but since the said proviso was not in the statute book at the relevant time, it is not necessary to quote the same.

16. From the above provisions of the Act, it is evident that if the case is not covered by the exemption contemplated by clause (j) of section 5, the payment in question would be liable to expenditure-tax. Therefore, the simple point which requires to be determined is whether the disputed expenditure is exempted by clause (j) or not.

17. On this question it was contended on behalf of the revenue by the learned Advocate-General that the disputed expenditure is not covered by any of the categories of expenditure contemplated by clause (j), because the payment of the amount of Rs. 75,000 was neither by way of a gift nor by way of donation. According to the learned Advocate-General it also did not amount to a 'settlement on trust' nor did it amount to any other settlement which is contemplated by the general category indicated by the words 'or otherwise for the benefit of any other person'.

18. In this connection it was contended that the Tribunal was wrong in holding that the disputed amount of Rs. 75,000 was spent by the assessee in respect of a 'settlement on trust', because, if a trust for this amount was created, the assessee would have paid that amount along with interest accrued thereon. But since he has not done so, and has, on the contrary, continued his dominion and ownership over the same till the date of payment, it would follow that no trust was created

regarding this amount. The same argument was advanced by the learned Advocate-General, to show that the disputed amount did not fall even in the general category suggested by the words 'or otherwise for the benefit of any other person'. According to him the general category suggested by these words should be read ejusdem generis with the genus revealed from the foregoing specified categories suggested by the words 'gift', 'donation' and 'settlement on trust'. This genus, according to the learned Advocate-General, is the transfer of ownership right.

19. It was alternatively contended on behalf of the revenue that the letter of the Raj Pramukh dated 8th May, 1952, shows that the obligation which was incurred by the assessee was of a political nature and not a contractual or a legal one and such an obligation is not contemplated by clause (1) of section 5 of the Act.

20. Taking the above referred alternative argument first for our consideration, we find that the obligation incurred by the assessee at the intervention of the Government of India does not remain merely a political obligation after the assessee's acceptance of the same. There are no facts in the record to show how and under what circumstances the parties had sought the intervention of the Government of India. In fact, this point is raised for the first time during the course of the arguments and hence there is no finding of the Tribunal to show whether the Government of India acted as a conciliator or acted in exercise of its political powers. The only fact found in the record is that the disputes between the assessee and his Yuvraj were settled by the Government of India. This fact, standing by itself, is not sufficient to prove that the decision was a political decision. Be that as it may, once it is found that the parties concerned have accepted the decision of the Government of India and have acted upon the same, they must be held to have incurred all legal obligations and liabilities to carry out the said decision to its full extent. We thus see no force in this alternative contention of the learned Advocate-General.

21. Coming, therefore, to the main contention of the revenue, the point to be considered is whether the expenditure in question is covered by any of the categories of expenditure mentioned in clause (j) of section 5. This clause

contemplates three main categories of expenditure. They are, (i) gift, (ii) donation, and (iii) settlement on trust or otherwise for the benefit of any other person. The last category is the category of settlement, but that settlement may be 'on trust or otherwise' for the benefit of any other person. The first two categories of 'gift' and 'donation' have not application to the facts of this case. Therefore, the question is whether the third category which refers to 'settlements' would cover the facts of the present case. This category of expenditure contemplates two classes of settlements, viz., (i) settlements which are on trust, and (ii) settlements which are otherwise than on trust. However, both these classes of settlements must be for the benefit of some other person. In other words, even if a settlement does not amount to a trust, it would be enough if it is found to be for the benefit of some other person.

22. Considering the facts of this case we have no doubt in our minds that the disputed expenditure is covered by the above referred third category of expenditure contemplated by clause (j). Presuming, for the sake of argument, that the arrangement of setting apart the amount of Rs. 1,75,000 for the marriages of the two daughters of the assessee did not amount to the creation of a trust, it is obvious that this amount was demarcated and set apart for the benefit of these two daughters. The words 'or otherwise' have reference to the preceding words 'on trust' which suggests that the legislature intended to cover the cases which may not come within the meaning of trust. Therefore, if the arrangement is found to be a settlement for the benefit of the two daughters of the assessee, the expenditure in question would be exempted.

23. Let us, therefore, examine whether the arrangement did amount to a settlement for the benefit of the assessee's two daughters. The crucial test on this point is supplied by clause (c) of section 6(1) of the Act which is already quoted above. This clause permits the marriage expenditure up to Rs. 5,000 for any of the dependants of the assessee. Under the provisions of the Act, therefore, the assessee could have avoided the payment of expenditure-tax by incurring the expenditure on the marriage of his second daughter within the limits of Rs. 5,000. But, could he have done that in view of the obligation which he had incurred by accepting the decision of the Government of India as evidenced by the above

referred letter of the Raj Pramukh The answer is only too obvious. It is thus clear that when the marriage of his second daughter took place the assessee had no option but to comply with the provisions of the letter of the Raj Pramukh. His obligation to incur the expenditure of nothing less than Rs. 75,000 was of an overriding character. This obligation was in the nature of a settlement for the benefit of his second daughter. The obligation was confined only to the amount of Rs. 75,000 and nothing more and hence he was not bound to pay the interest which he might have earned on this amount. Thus, even if it is held that the settlement did not amount to a 'trust', as contended by the learned Advocate-General, clause (j) would still be applicable to the facts of this case.

24. We, however, do not see any reason why this settlement would not amount to a trust, because all the known ingredients of a trust are present in this case. The arrangement points out at a specific fund and creates a beneficial interest of the two daughters in that specific amount. It is clear that this beneficial interest is created in the corpus of the fund and not in its produce. A valid trust can be created only in the corpus of a fund without covering its usufruct. Under the circumstances, the argument that there is no trust because only the corpus was paid without accrued interest does not help the revenue in any manner.

25. In view of what is stated above, the principle of ejusdem generis does not arise to be considered.

26. We thus find that the whole of the disputed expenditure of Rs. 75,000 is exempted under clause (j) of section 5 of the Act. Our answer to the question referred to us is, therefore, in the affirmative. This reference is accordingly disposed of. The Commissioner to bear the costs of the respondents in this reference.

27. Question answered in the affirmative.