

Commissioner of Wealth-tax Vs. K.A.G. Aratoon (Executor to the Estate of Mrs. Iris Aratoon (Decd.)) and Trustees to Estate a Stephen (Decd.) (Representing Estate of Mrs. Ripsy Gaulstan (Decd.))

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Court : Kolkata

Decided On : Feb-25-1994

Reported in : [1994]210ITR346(Cal)

Judge : Ajit K. Sengupta and ;Shyamal Kumar Sen, JJ.

Acts : [Wealth Tax Act, 1957](#) - Section 2; ;[Transfer of Property Act, 1882](#) - Section 6

Appeal No. : Matter No. 932 of 1992 (Wealth-tax) and Income-tax Reference No. 1165 of 1984 (Wealth-tax)

Appellant : Commissioner of Wealth-tax

Respondent : K.A.G. Aratoon (Executor to the Estate of Mrs. Iris Aratoon (Decd.)) and Trustees to Estate a Stephe

Advocate for Def. : D. Pal, Adv.

Advocate for Pet/Ap. : D.K. Bagchi and ;Sunil Mukherjee, Adv.

Judgement :

Ajit K. Sengupta, J.

1. In this reference, under Section 27(3) of the Wealth-tax Act, 1957, made at the instance of the Revenue, the following questions are referred by the Tribunal for the opinion of this court :

'(1) Whether, on the facts and in the circumstances of the case, the Tribunal misdirected itself in law in holding that the assessee though vested with power of appointment by the will left by the testator could have been assessed only in respect of the value of her life interest in the income of the trust for the purpose of wealth-tax assessment ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the power of appointment vested with the assessee by the will of the testator does not constitute an asset within the meaning of Section 2(e) of the Wealth-tax Act ?

(3) Whether, on the facts and in the circumstances of the case and on a correct interpretation of the will in question, the Tribunal was right in law in directing the Wealth-tax Officer to value the assessee's life interest on the respective valuation dates in accordance with law and to substitute the same for amounts included in the relevant assessments and in directing the Wealth-tax Officer to pass fresh assessment orders on the limited issue in accordance with law and to allow appropriate relief to the assessee ?'

2. The facts as found by the Tribunal are as under :

The assessee along with her three sisters, being daughters of the late Aratoon Stephen (hereinafter referred to as 'the deceased') had been enjoying certain benefits from several trusts created by the deceased by his will dated August 15, 1925. The deceased settled certain properties in several trusts and appointed three gentlemen as trustees. He appointed his wife as the guardian of his infant children during her lifetime and after death the trustees were to act as guardians of the said children.

3. Particulars of settlement in trust made in favour of the children are set out in paragraphs 7, 8, 9 and 10 of the said will. These very clauses came up for consideration before this court in CWT v. Mrs. Dorothy Martin : [1968]69ITR586(Cal) . On a construction of the various clauses in the will, this court held that the assessee, as a daughter of the testator, was entitled to an aliquot share in the general income of the residuary trust fund and not to a fixed sum payable periodically as annuity and, therefore, the value of her share was properly assessable to wealth-tax as the net wealth of the assessee.

4. In the course of the wealth-tax proceedings for the assessment years 1962-63 to 1972-73, the Wealth-tax Officer took the view that 1/4th of the value of the assets in the estate and not merely the life interest of each of the beneficiaries was assessable to wealth-tax in their respective hands. The Wealth-tax Officer noticed that the assessee had two children. Referring to Clause 9 of the said will, the Wealth-tax Officer was of the view that the assessee had the right to dispose of her share in the trust fund to any of her children and her rights in the trust property were coextensive with the legal and equitable ownership of the trust fund. Consequently, the assets of the trust were valued by the Wealth-tax Officer and 1/4th of the gross value of such assets was included in the respective wealth-tax assessments made by the Wealth-tax Officer in the hands of the assessee for those years.

5. On appeal, the Appellate Assistant Commissioner also held that the assessee had more than a life interest in the income of the trust and, therefore, he upheld the assessments made by the Wealth-tax Officer.

6. The assessee filed a further appeal to the Income-tax Appellate Tribunal. The Tribunal considered the arguments of the Revenue as well as the assessee and held that the assessee had been enjoying only a life interest in the income of the trust. She had no right in the trust corpus inasmuch as she had no authority to dispose of the same.

7. According to the Tribunal, the power of appointment which was given to the assessee by the testator did not enlarge her right in the trust so far as its corpus was concerned. The Tribunal further observed that by Clause 9 of the will, the

testator had assigned the corpus of the trust to his grandchildren. There was no provision in the will whereby the testator's children, namely, life interest holders could deprive any of the remaindermen of their right in the trust property. Even the trustees could not deprive the grandchildren of their due share. As per Clause 9 of the will, the widow of the testator and, in her absence, the trustees could cut off or deprive any of the testator's children of his or her interest in the trust if he or she was found guilty of misbehaviour. Therefore, with the power of appointment vested in her, the deceased assessee in this case, according to the Tribunal, could not have any right to dispose of the trust fund to the detriment of her children. The power of appointment given to the assessee was a limited one inasmuch as she had only the authority to vary the shares of her children in the 1/4th share of the trust fund. Such a power does not give rise to any asset to the assessee. The Tribunal, therefore, held that the power of appointment vested in the assessee under the said will did not enlarge her interest in the trust so as to empower her to assume full ownership of the trust fund.

8. We may, at the outset, set out Clause 9 of the will dated August 15, 1925 (at page 588 of 69 ITR) :

'9. I direct that my trustees shall hold such equal shares of and in my residuary trust funds upon trust to apply the income or so much thereof as may be necessary of one of such shares for the support and maintenance of each of my children until such child shall attain the age of twenty-one years or if a daughter marry under that age and on the happening of either event to pay the said income to him or her for his/ her life but so that during coverture no daughter of mine shall have power to anticipate her share of income and subject also as to all such shares to the power of revocation and appointment and settlement hereinafter given to my said wife and my trustees respectively, and from and after the decease of each of my children, I direct my trustees to stand possessed of one of each equal shares both original and accruing in trust for the children of such deceased child of mine in such shares (if more than one) and in such manner as such deceased child of mine by any deed or deeds or by his or her last will or any codicil thereto shall appoint and in default of such appointment and so far as any such appointment shall not extend in trust for the children of such deceased child

who being male shall attain the age of eighteen years or being female shall attain that age or marry in equal shares and if there shall be one such child the whole to be in trust for that one child but so nevertheless that no child who shall take a share under any such appointment shall (in the absence of appointment to the contrary) take any part of the trust funds remaining unappointed without bringing the share appointed to him or her into hotchpot and accounting for the same accordingly and in case there shall be no child who being male shall attain the age of eighteen years or being female shall attain that age or marry in trust for my other children living at my death and the children of my deceased child of mine per stirpes and not per capita in equal shares upon the trusts and subject to the powers and provisions herein declared in their favour and so that such shares shall be added to their respective original shares in the residuary trust funds and shall follow the destination of such original share.'

9. As already stated hereinabove, Clauses 7, 8, 9 and 10 of the said will were considered by this court in CWT v. Mrs. Dorothy Martin : [1968]69ITR586(Cal) . The relevant observations of their Lordships, as are relevant for our present purposes, are quoted hereinbelow (at page 594) :

'We have, therefore, to see if the assessee became entitled to an annuity or to an aliquot share in the general income of a residuary trust fund. Under Clause (7) of the will, there was a residuary trust fund established by the testament consisting of his properties, not otherwise 'disposed of or bequeathed under the will, with direction to the trustees to invest rupees seven lakhs out of that in securities and pay the income therefrom to his widow so long as she did not marry again and thereafter to set aside so much out of the said securities as would yield an income of Rs. 6,000 annually and to pay Rs. 500 per month to her for the remainder of her life. The remainder of the residuary trust fund, including the balance of the securities hereinbefore mentioned, if any, were directed to be held upon trust to divide the same into as many equal shares as the testator had children surviving him so that for the purposes of such division all the children of each deceased child of the testator shall represent and be entitled to one such equal share. There were the following further directions upon the trustees of the fund :

(a) to apply the income or so much thereof as may be necessary of one of such shares for the support and maintenance of each of the children of the testator until such child would attain the age of twenty-one years or if a daughter would marry under that age ;

(b) on the happening of either event to pay the said income to him or her for his or her life but so that during the coverture no daughter of the testator shall have power to anticipate her share of income ;

(c) from and after the decease of each of the testator's children to stand possessed of one of equal shares both original and accruing in trust for the children of the deceased child of the testator in such shares (if more than one) and in such manner as the deceased child of the testator, by any deed or deeds or by his or her last will or any codicil thereto shall appoint and so far as any such appointment shall not extend in trust for the children of such deceased child who being male shall attain the age of eighteen years or being female shall attain that age or marry, in equal shares.

The above clauses clearly go to show that the assessee, as a daughter of the testator, was clearly entitled to an aliquot share in the general income of the residuary trust fund and not to a fixed sum payable periodically as annuity. . . .'

10. In the present case, the question for consideration is whether by the limited power of appointment which is given in Clause 9 of the said will of the testator, the assessee being the deceased daughter of the testator could be said to have acquired an interest in the corpus of the trust in addition to the life interest which she was entitled to in terms of the will. In other words, could it be said that the assessee's interest in the trust property was enlarged so as to empower her to assume full ownership of the trust estate in respect of her share On a reading of Clause 9 of the will, it appears to us that none of the life interest holders under the said will had any general power of appointment so as to disinherit any of their children, i.e., grandchildren of the testator, who are the remaindermen under the said trust from the assets held under the trust. The Tribunal has also recorded that out of four such life interest holders, two of them did not exercise their respective power of appointment during their lifetime, even though each of them had two

children. Mrs. Dorothy Martin, one of the children of the testator died issueless and, therefore, there could have been no question of exercising the limited power of appointment by her. The remaining fourth life interest holder, Mr. Ripsy Gaulstan, did not exercise the limited power of appointment because she had only one issue.

11. It has, however, been contended on behalf of the Revenue that the decision in CWT v. Mrs. Dorothy Martin : [1968]69ITR586(Cal) is on a different issue. The opinion of the High Court in that case was sought for on fundamentally a different aspect of the matter where the Revenue in its reference application assailed the Tribunal's order as to non-charge-ability of the life interest of the assessee therein (a co-beneficiary of the deceased) to wealth-tax by virtue of the exemption under Section 2(e)(iv) of the Wealth-tax Act. The Tribunal considered that the assessee's interest under the testament, the same one now under consideration by us, did not constitute a life interest. Her beneficial interest was in the nature of annuity. So, on this limited question of whether the interest under the testament was a life interest or annuity, the court was to give its opinion and the court held that the interest being an aliquot part of the income and not consisting in any right to receive a periodic fixed sum the Tribunal went wrong in holding the interest an annuity. According to the Revenue's counsel the issue that has arisen in the present case, was not at all a point at issue before the High Court in the said decision.

12. It is true that the entire controversy in Dorothy Martin's case : [1968]69ITR586(Cal) went over the question whether the interest which the said assessee, a co-beneficiary of the deceased in our case, could be of the nature of annuity and the assessee was an annuitant and not a life tenant. The court did not directly examine whether the super-added power to appoint the remaindermen could lend to such interest the character and colour of an absolute interest. We have to look for an answer to this question and we cannot at once say whether the power of appointment is totally ineffectual and creates no absolute interest.

13. But the answer is not far to seek ; it is furnished by Section 6 of the Transfer of Property Act, which enumerates property that cannot be transferred. Clause (d) of Section 6 of the Transfer of Property Act says that the interest in property

restricted in its enjoyment to the owner personally cannot be transferred by him.

14. It is a contradiction in terms to say that an interest restricted to personal enjoyment which cannot be transferred, could be an absolute interest.

15. But even if the interest cannot be transferred, a hypothetical market has to be assumed. In fact, the Supreme Court in *Ahmed G.H. Ariff v. CWT* : [1970]76ITR471(SC) has held that the beneficial interest in the net income of a wakf is an assessable asset. In that case it was not the value of the absolute interest in the property that was sought to be taxed. Taxability was in respect of the beneficial interest limited to life. The value of such interest has necessarily to be determined on the basis that the value can be not of the full value of the property in the hands of an absolute owner. The assessee could not be exigible to tax on the hypothesis of his being the absolute owner. The hypothesis that is to operate in terms of the ratio in Ariff's case : [1970]76ITR471(SC) is with regard to existence of a market even where the asset is not transferable. The following passage from the judgment of the Supreme Court would make it clear (at page 477) :

'Mr. Sen has laid emphasis on the language of Section 7(1) of the Act and has contended that the right to a share in the income is not capable of any valuation and the price which it would fetch, if sold in the open market, could not possibly be ascertained. Such an argument was fully examined in the Bombay case (*CWT v. Purshottam N. Amersey* : [1969]71ITR180(Bom)) in which the High Court referred to the provisions of the English statutes, which were in *pari materia* as also decisions given by the English courts including the one by the House of Lords in *IRC v. Crossman* [1937] AC 26. It has been rightly observed by the High Court that when the statute uses the words 'if sold in the open market', it does not contemplate actual sale or the actual state of the market, but only enjoins that it should be assumed that there is an open market and the property can be sold in such a market and, on that basis, the value has to be found out. It is a hypothetical case which is contemplated and the tax officer must assume that there is an open market in which the asset can be sold.'

16. In any case, a life interest cannot be treated as absolute interest and there is no hypothesis in law to that effect. Even the right to appoint in the sense that the deceased life tenant could vary the interest inter se of such remaindermen cannot be said to be any super-added interest to life interest. Such discretion to be exercised with respect to the children who are the remaindermen cannot be held to have vested in her any property right. She was essentially a life tenant and her said life interest could not be said to have been augmented by this power of appointment. Moreover, in the case, the deceased life tenant under the will, in fact, did not exercise the power of appointment. Thus, the deceased could be held to have merely the life interest and the value of such interest alone could form part of her estate.

17. To sum up, the children of the testator had only a limited power of appointment under Clause 9 of the said will of the testator. None of them had any power to disinherit any of their children. They could have only varied their shares by such power of appointment. This limited power of appointment given to the life interest holders, in our view, is nothing but a mere personal right. The four daughters of the testator had no right in the corpus of the trust estate. None of the life interest holders had any authority to dispose of the trust estate. By such power of appointment, the interest of the life interest holders in the trust estate is not in any way enlarged. It is clear on a reading of Clause 9 of the said will that the testator had assigned the corpus of the trust estate to his grandchildren, i.e., the children of the life interest holders. In the absence of any provision in the will entitling the life interest holders to deprive any of the remaindermen of their right in the property, it cannot be said that such power of appointment gave rise to any separate asset assessable to wealth-tax in the hands of the children within the meaning of Section 2(e) of the Wealth-tax Act, 1957.

18. In this view of the matter, we find that the Tribunal correctly decided the issue involved in this case.

19. We, therefore, answer the first question in the negative and in favour of the assessee.

20. Questions Nos. 2 and 3 are answered in the affirmative, and in favour of the assessee.

21. There will be no order as to costs.

Shyamal Kumar Sen, J.

22. I agree.

23. Income-tax Reference No. 1165 of 1984 (Wealth-tax) :

(CWT v. Trustees to Estate of A. Stephen (decd.)) :

Ajit K. Sengupta, J.

24. In this reference under Section 27(5) of the Wealth-tax Act, 1957, the following questions of law have been referred to this court :

'1. Whether, on the facts and in the circumstances of the case, the Tribunal misdirected itself in law in holding that the assessee though vested with a power of appointment by the will left by the testator could have been assessed only in respect of the value of her life interest in the income of the trust for the purpose of wealth-tax assessment ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the power of appointment vested with the assessee by the will of the testator does not constitute an asset within the meaning of Section 2(e) of the Wealth-tax Act ?

3. Whether, on the facts and in the circumstances of the case and on a correct interpretation of the will in question, the Tribunal was right in law in directing the Wealth-tax Officer to value the assessee's life interest on the respective valuation dates in accordance with law and to substitute the same for the amounts included in the relevant assessment and in directing the Wealth-tax Officer to pass fresh assessment order on the limited issue in accordance with law and to allow appropriate relief to the assessee ?

4. Whether, on the facts and in the circumstances of the case and on a correct interpretation of the will in question, the Tribunal's finding and/or conclusions, i.e., (i) the assessee had no right in the trust corpus, (ii) the power of appointment given to the assessee by the testator did not enlarge her right in the trust so far as the corpus was concerned, (iii) the power of appointment did not enlarge the assessee's interest in the trust so as to empower her to assume full ownership of the trust fund with the power of appointment vested in her and the deceased assessee could not have any right to dispose of the trust fund to the detriment of her children nor could she exercise the right of full ownership over the trust fund, (iv) the power of appointment given to the assessee was limited inasmuch as she had only the authority to vary the shares of her children in the 1/2 (half) share of the trust fund as on the date of her death are vitiated in law and/or otherwise unreasonable and/or perverse ?'

25. Shortly stated, the facts are as under :

The assessee along with her three sisters, being daughters of the late Aratoon Stephen had been enjoying certain benefits from several trusts created by the deceased by his will dated August 15, 1925. The deceased settled certain properties in several trusts and appointed three gentlemen as trustees. He appointed his wife as the guardian of his infant children during her lifetime and after death the trustees were to act as guardians of the said children. Particulars of the settlement in trust made in favour of the children are available from paragraphs 7, 8, 9 and 10 of the will. It would be relevant to mention here that these very clauses came up for consideration in the case of Mrs. Dorothy Martin in respect of the wealth-tax assessment years 1957-58 to 1959-60 and the matter went up to the Calcutta High Court for opinion. The case of CWT v. Mrs. Dorothy Martin is available in : [1968]69ITR586(Cal) .

26. During the course of the wealth-tax proceedings for the year under consideration, on the question of assessment of the assessee's share in the assets of the estate of late A. Stephen, the assessee contended that since the assets of the estate are held by the trustees and the assessee is only the life-tenant, the assessee should be assessed in respect of the capitalised value of the

life interest in the estate. The Wealth-tax Officer on the ground that the Department was considering to take the Tribunal's decision in the cases of the beneficiaries to the High Court under Section 27(3) of the Act did not accept the contention of the assessee and, accordingly, included the assessee's proportionate share in the value of the assets of the estate in the net wealth of the assessee.

27. The Appellate Assistant Commissioner found that the Wealth-tax Officer rejected the contention of the appellant that the assets of the estate were held by the trustees and the appellant was only the tenant and should be assessed in respect of the capitalised value of the life interest in the estate along with other personal assets on the ground that the decision of the Tribunal in this regard was not accepted by the Department. He also found that the Tribunal in the case correctly held that the appellant had only a life interest in the assets and was not the owner. In view of this, the Appellate Assistant Commissioner directed the Wealth-tax Officer to value the appellant's life interest on the valuation date in accordance with law and to substitute the same for the amount included in the relevant assessment. The Wealth-tax Officer should also, while calculating the value of the movable assets, deduct the liabilities including the amount due on capital account to the children of late Mrs. Anna Martin and to the remaining persons as contended on behalf of the appellant and he should also value the jewellery of the appellant correctly. The Appellate Assistant Commissioner set aside the order of the Wealth-tax Officer and directed him to make a fresh assessment on the limited issues in accordance with law and to allow appropriate relief to the appellant.

28. The Tribunal, following the earlier order of the Tribunal in Wealth-tax Appeals Nos. 810 to 819/(Cal) of 1977-78 in the case of the assessee, disposed of the appeal in favour of the assessee by confirming the decision of the Appellate Assistant Commissioner.

29. An identical question came up for consideration before this court in Matter No. 932 of 1992 (CWT v. K.A.G. Aratoon) where the judgment was delivered on February 25, 1994 [see at page 346 (supra)].

30. There it has been held that despite the power to appoint, the assessee could not be taxed in respect of the full value of the assets. Following the said decision, we answer the questions as follows ;

Question No. 1 -- In the negative.

Question No. 2 -- In the affirmative.

Question No. 3 -- In the affirmative.

Question No. 4 -- In the negative.

30. All the questions are thus answered in favour of the assessee and against the Revenue.

There will be no order as to costs.

Filing of paper book is dispensed with.

Shyamal Kumar Sen ,J.

31. I agree.

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