

H. H. Yeshwant Rao Ghorpade

Vs

The Commissioner of Wealth Tax, Bangalore

Civil Appeals Nos. 1133 and 1134 of 1965

(K. N. Wanchoo, J. C. Shah, S. M. Sikri JJ)

05.05.1966

JUDGMENT

SIKRI, J.-

These appeals by special leave are directed against the judgment of the Mysore High Court in a reference under s. 27(1) of the Wealth Tax Act (27 of 1957) - hereinafter referred to as the Act - answering the question "whether the sums of Rs. 4,30,684 and Rs. 4,13,353 being the value of the shares transferred by the assessee to the Sandur Ruler's Family (Second) Trust could be included in the net wealth of the assessee for the assessment years 1958-59 and 1959-60 under the provisions of Section 4(1)(a)(iii) of the Wealth Tax Act" in favour of the Revenue.

The question arose in the following circumstances : The appellant. His Highness Yeshwant Rao Ghorpade, hereinafter referred to as the assessee, held 12,750 shares in Sandur Manganese & Iron Ores Ltd. on March 31, 1957. On August 24, 1957, he created two Trusts; one may be called the Charitable Trust and the other the Sandur Rulers Family (Second) Trust - may hereinafter be referred to as the Second Trust. The assessee transferred some shares to the Second Trust under conditions contained in the Trust Deed. The Wealth Tax Officer and the Appellate Assistant Commissioner, in computing the net wealth of the assessee on March 31, 1958, and March 31, 1959, the valuation dates respectively for the assessment years 1958-59 and 1959-60, included the value of these shares held by the Trustees under the Second Trust. On appeal, the Appellate Tribunal reversed the decisions of the authorities below and came to the conclusion that the values of the shares could not be taken into consideration in computing the net wealth of the assessee. The Tribunal, however, at the instance of the Department referred the question of law already set out above for the opinion of the High Court. The High Court, as mentioned earlier, answered the question against the assessee. The assessee having obtained special leave, the appeals are not before us.

The short question that arises is whether the shares in question held by the Trustees under the Second Trust are held for the benefit of the three minor children mentioned in the Second Trust deed. The answer to this question depends, first, on the interpretation of the words "for the benefit of.....minor child" in s. 4(1)(a)(iii) of the Act, and secondly, on whether on the true interpretation of the Second Trust, these assets are held for the benefit of the minor children. Section 4(1)(a)(iii) reads as follows :

"4. (1) In computing the net wealth of an individual, there shall be included, as belonging to him.....

(a) the value of assets which on the valuation date are held.

(iii) by a person or association of persons to whom such assets have been transferred by the individual otherwise than for adequate consideration for the benefit of the individual or his wife or minor child or".

The learned Solicitor-General, Mr. Gupte, on behalf of the Revenue, contends that the word "benefit" in this section means the immediate or deferred benefit. He says that the amendment of the section made by the Wealth Tax (Amendment) Act, 1964 (46 of 1964), which came into force on April 1, 1965, is in effect declaratory. Section 4 of the Amending Act substituted a new clause for the clause set out above. The new clause is :

"(iii) by a person or association of persons to whom such assets have been transferred by the individual otherwise than for adequate consideration for the immediate or deferred benefit of the individual, his or her spouse or minor child (not being a married daughter) or both, or".

We are unable to regard the new amendment as declaratory. The amendment makes a deliberate change and the addition of the words "the immediate or deferred benefit" before the words "of the individual", apart from other changes, cannot be called a mere declaratory legislation, and we must construe the word 'benefit' apart from the amendments made by Act 46 of 1964.

It seems to us that the word 'benefit' in the context means for the immediate benefit of the individual or his wife or minor child. If a property is transferred to Trustees to hold in trust for the life of A and then for B, we cannot hold that the property is held for the benefit of B, during the life time of A. As will appear later, under the Second Trust, the Trustees hold the trust property for the benefit of the Charitable Trust for a number of years before they start holding it for the benefit of the minor children. It is difficult to say that while the property is being held for the benefit of the Charitable Trust, it is also being held for the benefit of the minor children.

Coming to the second point, namely, whether the trust property is held for the benefit of the minor children within s. 4(1)(a)(iii), it is necessary to carefully consider the terms of the Second Trust Deed, because the High Court has differed from the interpretation placed upon it by the Income Tax Appellate Tribunal.

It is common ground that the Trust Deed must be considered as a whole. The preamble to the deed reads as follows :

"This Deed of Settlement and Trust is made this 24th day of August 1957 between His Highness Maharaj Shri Yeshwant Rao Hindu Rao Ghorpade, Ruler of Sandur, now residing at Sandur House, Palace Road, Bangalore, hereinafter call the SETTLOR, of the one part, and His Highness Maharaj Shri Yeshwant Rao Hindu Rao Ghorpade, Ruler of Sandur, and Captain Sardar Dattaji Rao Chander Rao Ranavare, both of whom are hereinafter collectively called the TRUSTEES, of the other part :

Whereas the SETTLOR is absolutely entitled to the shares, set out and described in Schedules A, B and C hereto as sole and absolute owner thereof;

Whereas the SETTLOR had been and is desirous of making a settlement on his two minor sons namely, Rajkumar Shri Shivarao Yeshwantrao Ghorpade, aged 16 years and Rajkumar Shir Venkatrao Yeshwantrao Ghorpade, aged 6 years hereinafter referred to as the First and the Second Beneficiary and on his minor daughter Rajkumari Shri Vijayadevi Yeshwantrao Ghorpade, aged 10 years, hereinafter referred to as the Third Beneficiary, out of natural love and affection toward them of the shares set out in Schedules A, B and C hereto respectively, and with a view to make provision for them;

Whereas the SETTLOR intends and desires to give to his aforesaid minor sons and minor daughter, from time to time, further shares or other assets, with the intention that such further shares or other assets be given, should be held in Trust for the said minor sons and minor daughter in the manner in which they have respectively taken the shares set out and described in Schedules A, B and C hereto, as if the further shares or other assets had formed part of the said Schedules."

It is not necessary to set out the last para in the preamble. The learned Solicitor-General attaches importance to the recitals in the preamble, but, in our view, the recitals do not assist us in any manner. There is no doubt that the intention of the settlor who to make a settlement on his minor children, but the whole question which arises in this case is whether the settlement made by him is for the benefit of the minor children within s. 4(1)(a)(iii). The word "settlement" is neutral, and the question is what has been settled on the minor children. But there is no doubt that the assessee out of natural love and affection for his minor children created the Trust in question, and that the minor children are the beneficiaries under the Trust.

Clauses 1, 2 and 3 of the Trust Deed grant, transfer and convert the shares mentioned in the Schedules A, B and C to the Trustees. Clause 1 deals with the shares settled for the ultimate benefit of the first beneficiary; clause 2 deals with the shares settled for the ultimate benefit of the second beneficiary, and clause 3 deals with the shares settled for the ultimate benefit of the third beneficiary. These clauses are couched in the same language and it is only necessary to set out clause 1, which is in the following terms :

"The Settlor both hereby grant, transfer and convey upon the Trustees the shares set out and described in Schedule A thereto, to have and to hold the same in Trust, both as to the corpus and income therefrom, for a period of two years from the date of this Indenture of the benefit of Shri Yeshwantrao Maharaj Charitable Trust and on the expiry of the period of two years, to have and to hold the shares set out and described in Schedule A thereto in Trust both as to the corpus and income received after the expiry of the aforesaid periods of two years from the date of this Indenture, for the benefit of Rajkumar Shri Shivarao Yeshwantrao Ghorpade, the First Beneficiary herein, as the full absolute and beneficial owner thereof, but subject to the terms and conditions hereinafter set forth.

Clause 1 thus purports to vest the shares in the Trustees and directs, first, that they shall hold the same in trust, both as to corpus and income therefrom, for a period of two years from August 24, 1957, for the benefit of the Charitable Trust, and secondly that on the expiry of the said period of two years to hold the shares in trust, both as to corpus and income received after the expiry of the aforesaid period of two years from August 24, 1957 for the benefit of the first beneficiary. It seems to us clear from

reading this clause in isolation from the other clauses, which will be referred to later, that for the first two years the beneficiary is the Charitable Trust and not the Rajkumar, the first beneficiary. For the first two years there is an express direction that the corpus and the income should be held for the benefit of the Charitable Trust. There was some discussion as to why both the corpus and income are mentioned. The word "income" has been defined in clause 31 of the Deed as follow :

"In these presents, the expression 'income' with reference to any Beneficiary shall mean the income derived from the shares set out and described in the Schedule appropriate to such beneficiary and any income that may be derived from the investment of such income including any income that may be derived from any further shares or other assets that may be transferred either by the Settlor or by any other persons for the benefit of any such beneficiary, including bonus shares, if any."

It appears to us that in view of this definition it was perhaps necessary to mention the word "income" in Clause 1 because the idea of the settlor was that income accruing in the first year should be invested and further returns secured from it. But it is manifest that the Rajkumar, the first beneficiary, had no interest whatsoever in the income accruing during the first two years from the trust properties. It is true that clause 1 does not direct that the income during the first two years should be handed over to the charitable Trust, but this is made clear in clause 21, which we shall presently consider.

The next relevant clause is clause 9 which reads as under :

"This Settlement and Trust is hereby declared to be irrevocable and shall take effect immediately and all trusts, settlements and interests granted or created by these presents shall vest in the respective beneficiaries immediately."

Mr. Gupte relied on this clause to show that the interest of the minor children was a vested and not a contingent interest. Assuming that it is so, it still does not assist us in answering the question which we have posed above. Assuming the interest to be vested we still have to consider whether the Trustees hold the shares for the benefit of the minor children as on the valuation dated, i.e., March 31, 1958 and March 31, 1959.

Clause 21 to which reference was made a short while ago, and the provisos thereto, are as follows. We may mention that the High Court thought that the provisos were irrelevant but in our view they throw a great deal of light on the question before us.

"21. The Trustees may, in their absolute discretion, accumulate the income accruing under this settlement to the benefit of Shri Yeshwantrao Maharaj Charitable Trust for a period of two years from the date of this Indenture as respects the shares set out and described in Schedule A hereto and for a period of twelve years from the date of this Indenture as respects the shares set out and described in Schedule B hereto and for a period of eight years from the date of this Indenture as respects the shares set out and described in Schedule C hereto.

Provided that :

(a) The Trustees may, at any time and from time to time, during the aforesaid period of two years from the date of this Indenture, pay to the Trustees of Shri Yeshwantrao

Maharaj Charitable Trust the whole or any part of the income accruing under this settlement in respect of shares set out and described in Schedule A hereto, during the said period of two years as the Trustees may, from time to time, deem fit and on the expiry of the said periods of two years, the Trustees shall pay over to the Trustees of the said Shri Yeshwantrao Maharaj Charitable Trust the whole or the balance of the said income as the case may be, and thereupon the Trustees shall stand discharged of all their obligations to the aforesaid Charitable Trust and thereafter the said Charitable Trust shall have no right or claim whatsoever either to the income or the corpus of the said shares set out and described in Schedule A hereto."

Provisos (b) and (c) are in similar terms and deal with the shares set out in Schedule B and Schedule C, respectively, the only difference being about the period during which the income accruing could be paid to the Charitable Trust and the period after which the Trustees were under an obligation to pay to the Charitable Trust the whole of the balance of the said income.

It seems to us quite clear from clause 21 that the intention of the settlor was that the income from the shares mentioned in Schedule A should be either paid over to the Charitable Trust during the period of two years, or if it is not paid over during the two year, it should be paid over to the Charitable Trust on the expiry of the said two years.

Now reading clause 1 and clause 21 with proviso (a) it seems to us that it is the charitable trust which is entitled to the income of the shares in Schedule A during the first two years. Reading clause 2 and clause 21 which proviso (b) it is equally clear that it is the charitable trust which is entitled to the income from the shares set out in Schedule B for a period of 12 years. Further it is manifest that reading clause 3 and clause 21 with proviso (c) it is the charitable trust which is entitled to the income from the shares set out in Schedule C during the first eight years. During these periods the first, second and third beneficiary had to interest whatsoever in that income.

The learned Solicitor-General says that this may be so if we only consider clauses upto 21, but if we consider clauses 22, 23, 24, 25 and 26, they override the intention manifested until now. Clauses 22, 23 and 24 enable the Trustees to accumulate the income accruing under the settlement to the first, second and the third beneficiary respectively till July 31, 1975. We may only set out clause 22 which deals with the first beneficiary. Clause 22 reads as follows :

"The Trustees may in their absolute discretion accumulate the income accruing under this Settlement and Trust to the First Beneficiary herein until the 31st July 1975 and on the aforesaid date shall make over to him all the Trust funds in the possession of the Trustees as may belong to the said Beneficiary."

In our view, clause 22 enables the Trustees to accumulate only the income accruing to the first beneficiary; does not say what income accrues to the first beneficiary. For that we have to look to the other clauses. It is only under the latter part of clause 1 of the Trust Deed that income accrues to the first beneficiary. Clause 25 deals with the eventuality of the first, second or the third beneficiary dying before July 31, 1975. It does not really throw much light on the question. The next clause, clause 26, is important, and Mr. Gupte strongly relies on this clause. This clause reads as follows :

"Notwithstanding anything contained in clause 21 to 25 supra, the Trustees shall have full power during the currency of this Settlement and Trust to expend from out of the income accruing under this Settlement to each of the Beneficiaries herein such

amount as the Trustees may in their discretion deem fit for the maintenance, education, health, marriage and advancement of each of the Beneficiaries herein."

Mr. Gupta says that this clause shows that all the previous clauses are a smoke-screen to enable the Trustees to spend the money for the benefit of the beneficiaries even during the aforementioned periods of 2, 12 and 8 years, and he says that the non-obstante clause overrides everything contained in clauses 21 to 25. There is no doubt that clause 21 is mentioned in the non-obstante clause, but we agree with Mr. Venkataraman, the learned counsel for the assessee, that the mention of clause 21 seems to be a typographical mistake, for the meaning of the clause is quite clear that the Trustees cannot under this clause expend from out of the income accruing under the settlement to the charitable trust for their power to spend is limited to the income accruing under the settlement to each of the beneficiaries, and as we have mentioned before while dealing with clause 21, the only income that accrues to the three beneficiaries under the settlement is after it ceases to be accumulated for or given to the Charitable Trust. If we were to accept Mr. Gupta's argument we would have to omit the words "to each of the Beneficiaries herein" occurring in the clause. Mr. Gupta contends that the word 'beneficiary' would include the Charitable Trust. We are unable to agree because the latter portion of the clause deals with education, marriage, etc., and these can have reference only to the first, second and the third beneficiary, i.e., his minor children. Mr. Gupta urges that it would be natural on the part of the settlor to provide for the maintenance, education, health, marriage and advancement of each of the beneficiaries during their minority, and it would be unnatural to attribute intention to him to leave them without any means of sustenance during their minority. There is no force in this contention. The settlor may well have thought that he would look after the minor children during their minority, and what he wanted to provide was for their expenses after they had attained the age of about 18. It would be recalled that the effect of the earlier provisions is that income starts accruing under the settlement to each of the minor children when they reached the age of about 18. We are accordingly of the opinion that clause 26 does not cut down the interest which had been settled on the Charitable Trust.

We may mention that in this connection Mr. Venkataraman drew our attention to the rule of construction laid down by this Court in *Sahabzada Mohammed Kamgar Shah v. Jagdish Chandra Deo Dhabal Deo* [[1960] 3 S.C.R. 604, 611] and *Ramkishore Lal v. Kamal Narain*. [[1963] Supp. 2 S.C.R. 417, 425]. In the latter case *Das Gupta, J.*, speaking for the Court, observed as follows :

"Sometimes it happens in the case of documents as regards disposition of properties, whether they are testamentary or non-testamentary instruments, that there is a clear conflict between what is said in one part of the document and in another. A familiar instance of this is where in an earlier part of the document some property is given absolutely to one person but later on other directions about the same property are given which conflict with and take away from the absolute title given in the earlier portion. What is to be done where this happens ? It is well settled that in case of such a conflict the earlier disposition of absolute titled should prevail and the later directions of disposition should be disregarded as unsuccessful attempts to restrict the title already given. (See *Sahabzada Mohd. Kamgar Shah v. Jagdish Chandra Deo Dhabal Deo* [[1960] 3 S.C.R. 604, 611]). It is clear, however, that an attempt should always be made to read the two parts of the document harmoniously, if possible. It is only when this is not possible, e.g., where an absolute title is given in clear and unambiguous terms and the later provisions trench on the same, that the later provisions have to be held to be void."

In our opinion these observations would apply to the facts of this case if it is held that there is conflict between clauses 1 and 21 on the one hand and clause 26 on the other. But, in our view, all these clauses can be read harmoniously by holding that the mention of clause 21, in clause 26 is a typographical mistake, and clause 26 deals only with the income which accrues to the first, second and third beneficiary after the interest of the Charitable Trust has ceased.

In conclusion we hold that considering the document as a whole the shares were not held for the benefit of the three minor children as on March 31, 1958 and March 31, 1959. Accordingly the answer to the question referred by the Appellate Tribunal and set out above must be against the Revenue.

The appeals are accordingly allowed, judgment of the High Court set aside and the question referred to the High Court answered in the negative. The assessee will be entitled to costs here and in the High Court. One hearing fee.

Shah, J. The High Court of Mysore answered the following question referred under s. 27(1) of the Wealth Tax Act 27 of 1957 in the affirmative :

"Whether the sums of Rs. 4,30,684 and Rs. 4,13,353 being the values of the shares transferred by the assessee to the Sundur Ruler's Family (Second) Trust could be included in the net wealth of the assessee for the assessment years 1958-59 and 1959-60 under the provisions of s. 4(1)(a)(iii) of the Wealth Tax Act ?"

The Wealth Tax Bill was moved before the Parliament on May 15, 1957, and was enacted as law after receiving the assent of the President on September 12, 1957. The two trust deeds which fall to be construed in these appeals were executed on August 24, 1957. The object of the settlor of the two deeds of trust was to evade the charge of wealth tax on the properties covered thereby. It was so found by the High Court, and that was not denied before us. But it is open to a taxpayer to so order his affairs that incidence of tax may lawfully be avoided. Attempts at evading incidence of taxation though not commendable are not illegal. In each case the Court must take the taxing statute as it stands, subject to all its imperfections : If a transaction does not fairly fall within the letter of the law, the Court will not seek to put a strain construction to bring it within the law. The Court will not also stretch a point in favour of the taxpayer to enable him to get by his astuteness the benefit which other taxpayers do not obtain.

The two trust deeds were executed on August 24, 1957. One is a trust deed styled "Shri Yeshwant Rao Maharaj Charitable Trust" - hereinafter called 'the Charitable Trust' - and the other is styled "The Sandur Ruler's Family (Second) Trust" - hereinafter called 'the Family Trust'. Of both these Trusts, Yeshwant Rao Ghorpade, Ruler of Sandur, is the settlor and the trustees are the settlor and Captain Sardar Dattaji Rao Chender Rao Ranavare. Under the Charitable Trust the income and all the assets of the Trust funds are liable to be utilised for advancement of knowledge, education, health, safety or any other object of general public utility or beneficial to mankind. The settlor is to be the Chairman of the Board of Trustees during his lifetime and he has power to fill up the vacancy in the office of a trustee. In case of his death, the Ruler of Sandur for the time being, is entitled to fill the vacancy of the office of trustee. Under this deed no property is settled for the Trust. By cl. 3 the assets and the funds of the Trust are to be such sums as the Founder Trustees may contribute or in any manner provide to the Trust, such sums or assets as may be contributed, gifted or donated by any person or company to the Trust, all interest or income arising out of the said sums and assets, all assets that may be purchased or acquired from out of the said funds or otherwise acquired for the

Trust, all investments and realisations therefrom out of the said funds, and assets, and all sums and assets which have by any means become the property of the Trust. By cl. 4 the trustees are authorised to accept any donation or other sums of money or other assets from any person or company subject to any special conditions as may be agreed upon, but not so as to be inconsistent with the intent and purposes of the Trust.

Simultaneously with the Charitable Trust, the Family Trust was executed. Initially the settlement was to operate in respect of 30 ordinary shares of the Sandur Manganese and Iron Ores (Private) Ltd., ten shares described in Sch. A to be held in trust for the benefit of Rajkumar Shivarao, the First Beneficiary, ten shares described in Sch. B to be held in trust for the benefit of Rajkumar Venkatrao, the Second Beneficiary and the remaining ten shares described in Sch. C to be held in trust for the benefit of Rajkumari Vijayadevi, the Third Beneficiary. By paragraph-2 of the preamble it is declared that the settlor was desirous of making a settlement "on his two minor sons, namely Rajkumar Shri Shivarao Yeshwantrao Ghorpade, aged 16 years, and Rajkumar Shri Venkatrao Yeshwantrao Ghorpade, aged 6 years.....and on his minor daughter Rajkumari Shri Vijayadevi Yeshwantrao Ghorpade, aged 10 years,.....out of natural love and affection towards them.....and with a view to make provision for them", and by the third paragraph of the preamble it was declared that the settlor intended and desired to give to his minor sons and daughter from time to time further shares or other assets, with the intention that such further shares or other assets should be held in trust for the minor sons and daughter to be taken by them as set out and described in Schedules A, B and C, as if such shares or other assets had formed part of the said Schedules. The primary intention disclosed by the preamble of the deed of trust was that the settlor settled properties described in Schedules A, B & C and declared his intention to settle other properties in future with the object of making provision for his three named children. The quantum of the estate settled must undoubtedly be determined by the habendum clause, but the preamble may in case of ambiguity be resorted to for ascertaining the object of the deed and the intention of the executant. By the first clause the settlor conveyed to the trustees the shares described in Sch. A, and to hold the same in trust "both as to the corpus and income therefrom for a period of two years from the date of this Indenture for the benefit of" the Charitable Trust "and on the expiry of the said period of two years, to have and to hold the shares set out and described in Schedule A.....in Trust both as to the corpus and income received after the expiry of the.....period of two years.....for the benefit of" the First Beneficiary "as the full, absolute and beneficial owner thereof, but subject to the terms and conditions hereinafter set forth". Similarly the shares described in Sch. B were conveyed for twelve years for the benefit of the Charitable Trust and thereafter for the benefit of the Secondary Beneficiary, and by cl. 3 the settlor conveyed the shares described in Sch. C for a period of eight years for the benefit of the Charitable Trust and thereafter to the Third Beneficiary. By cl. 4 it is declared that other shares or assets given to all or any of the beneficiaries and transferred to the trustees will be held in trust for all or any of the beneficiaries as may in accordance with the settlement and trust be specified, and subject to the same limitations, interests and conditions as relate to the shares specified in Schedules A, B & C, as if those other shares or assets so transferred had formed part of the Schedule A, B & C as may be specified by the settlor or such other person. Clause 31 of the deed of trust defines the expression "income" with reference to any beneficiary as meaning income derived from the shares set out and described in the Schedule appropriate to such beneficiary and any income that may be derived from the investment of such income including any income that may be derived from any further shares or other assets that may be transferred for the benefit of any such beneficiary.

The scheme of cls. 1, 2, 3 & 4 of the Family Trust may first be examined. The shares initially settled and any other shares or assets subsequently settled for the benefit of the beneficiaries or any of them

are by cl. 4 to be dealt with as if they formed part of the three Schedules. The Charitable Trust is to obtain the benefit of the property in Schs. A, B & C both as to the corpus and income, approximately for the periods during which the three beneficiaries do not attain their respective ages of eighteen years, and income therefrom is to be held for the benefit of the Charitable Trust and on the expiry of the periods mentioned, the shares and the assets are to be held in trust both as to the corpus and income therefrom for the benefit of the First, Second or the Third Beneficiary. The scheme devised by the settlor is that during the minority of each beneficiary the property in Schedules A, B & C qua each beneficiary is to remain vested in the trustees for the benefit of the Charitable Trust, and after expiry of the period specified the corpus and income is to be held for the full, absolute and beneficial ownership of the respective beneficiaries. By cls. 6, 7 & 8 provision is made for appointment of trustees. It may suffice to mention that the settlor during his lifetime is to be the trustee and has in case of vacancy power to appoint new trustee by writing or by will, and by cl. 10 the custody of the Trust assets and every portion thereof is to remain with the settlor and the trustees have full power to alter the investments in the absolute discretion. Clause 9 reads as follows :

"This Settlement and Trust is hereby declared to be irrevocable and shall take effect immediately and all trusts, settlements and interests granted or created by these presents shall vest in the respective beneficiaries immediately."

It is not clear whether in cl. 9 the charity is intended to be designated as a beneficiary. From the Schedules and Cls. 1, 2 & 3 it appears that the beneficiaries were to be the three children of the settlor. Even granting that charity was intended to be a beneficiary within the meaning of cl. 9, the instrument vests the interests granted or created in the respective beneficiaries immediately on execution, and therefore the interest which enures to the three children of the settlor under the instrument vests in them immediately. By cl. 21 it is directed that the trustees may, in their absolute discretion, accumulate the income accruing under the settlement for the benefit of the Charitable Trust for a period of two years from the date of the indenture as respects the shares set out and described in Sch. A, for a period of twelve years as respects the shares set out and described in Sch. B and for a period of eight years as respects the shares set out and described in Sch. C. The direction is not obligatory, but permissive. By the first proviso the trustees are authorised to pay at any time, and from time to time, during the period of two years, to the trustees of the charity the whole or any part of the income accruing under the settlement in respect of shares set out in Sch. A, and on the expiry of the said period the trustees are enjoined to pay over to the trustees of the charity the whole or the balance of the income as the case may be, and thereupon the trustees stand discharged of all their obligations to the charity. Similar provision is made by provisos (b) & (c) with regard to payment of income from the shares during the period of twelve years in respect of shares set out in Sch. B and during the period of eight years in respect of shares described in Sch. C. Prima facie this may indicate that the income to be received from the shares is to be applied for the benefit of charity in respect of the shares set out in Schedules A, B & C during the specified periods and that the children of the settlor are not to have any interest in that income. By cls. 22, 23 and 24 an absolute discretion is conferred upon the trustees to accumulate the income until July 31, 1975 in respect of the shares mentioned in each of the Schedules and on the expiry of that period to make over to the Trust funds as may belong to the beneficiaries. This is clearly intended to maintain the control of the settlor over the properties settled in trust till July 31, 1975. By cl. 25 it is directed that the trustees shall have control over the trust funds and the income, even if any of the beneficiaries dies before July 31, 1975. Clause 26 provides :

"Notwithstanding anything contained in clauses 21 to 25, supra, the Trustees shall

have full power during the currency of this Settlement and Trust to expend from out of the income accruing under this Settlement to each of the Beneficiaries herein such amount as the Trustees may in their discretion deem fit for the maintenance, education, health, marriage and advancement of each of the Beneficiaries herein."

Clause 26 confers upon the trustees full power during the currency of the settlement and trust to expend the income accruing under the settlement to each of the beneficiaries therein for the maintenance, education, health, marriage and advancement of the beneficiaries. This power is exercisable notwithstanding any provision to the contrary made in cls. 21 to 25. It may be recalled that cl. 21 confers upon the trustees power either to use the income accruing under the trust for the benefit of Trust during the period prescribed, or to accumulate the income and deliver it on the expiry of the period specified to the trustees of the Charitable Trust. But by cl. 26 the trustees under this trust are competent to expand the income not for charity, nor to pay it over to the trustees of the Charitable Trust, but for maintenance, education, health, marriage and advancement of the beneficiaries.

The relevant provisions of the Wealth Tax Act may now be summarised. By s. 3 wealth tax is charged or every financial year commencing on and from April 1, 1957, or the net wealth on the corresponding valuation date, on every individual, Hindu undivided family, and company. By s. 4, net wealth is to include certain assets. Clause (1)(a)(iii) of s. 4 provides that :

"In computing the net wealth of an individual, there shall be included, as belonging to him -

(a) the value of assets which on the valuation date are held.

(iii) by a person or association of persons to whom such assets have been transferred by the individual otherwise than for adequate consideration for the benefit of the individual or his wife or his minor child."

Section 5 provides for exemption of certain assets in the computation of net wealth. It provides insofar as it is material that :

"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 -

(i) any property held by him under trust or other legal obligation for any public purpose of a charitable or religious nature in India."

Under the instrument of Family Trust the assets included in the Schedules A, B & C were on the valuation date held by an association of persons and those assets were transferred by the settlor otherwise than for adequate consideration. But says the settlor, on the valuation date the assets were not held for the benefit of himself, his wife or minor children, since, they were held both as to corpus and income for the benefit of charity during the minority of his children. If on a true interpretation of the deed this plea be correct, the assets are not liable to be included in the net wealth of the settlor for the levy of wealth tax.

I agree with counsel for the settlor that the amendment made in s. 4(1)(a)(iii) by Act 46 of 1964 which sought to include in the computation of net wealth, assets transferred for "the immediate or deferred benefit of the individual, his or her spouse, or minor child" is not declaratory of pre-

existing law. Under the clause as originally enacted, assets transferred for the immediate benefit of the individual, his wife or minor children alone may be included in the net wealth of the individual, and the liability of the settlor must be determined under the provision as it stood enacted in 1957. The question then is : Are the assets transferred by the settlor under the Family Trust instrument for the immediate benefit of his minor children ? That question can only be answered on a determination of the total effect of the instrument in the light of the diverse clauses.

By the Family Trust the primary intention of the settlor as disclosed in the preamble is to make provision for his children, and for that purpose property is set apart by the Schedules read with cls. 1, 2 & 3. By cl. 4 it is contemplated that other property will also be settled for the benefit of the children of the settlor. By cl. 9 the interest created under the deed vests immediately in the beneficiaries and by cl. 26 notwithstanding the provisions made in cls. 21 to 25 directing application of the income from property set out in Schedules A, B & C for limited periods in favour of charity, the trustees have the power during the currency of the settlement to expend from out of the income occurring under the settlement to each of the beneficiaries such amount as the trustees may in their discretion deem fit for their maintenance, education health, marriage and advancement of each of the beneficiaries therein. If by this clause power is conferred upon the trustees to direct the income of the property in Schedules A, B & C for the benefit of the children even during the periods specified in cls. 1, 2 & 3 the assets are unquestionably transferred for the immediate benefit of the children. But it was urged that the inclusion of figure "21" in cl. 26 is the result of a typographical error and it should have read as cl. 22. But even cl. 25 refers to the application of the income for limited periods in the event of death of any of the beneficiaries and thereafter for the heirs of the beneficiary, and that is not said to be an error - typographical or otherwise. Again the argument that reference to cl. 21 was due to an error was never raised before the High Court : if there was any substance in that agreement, the settlor would have executed a deed of rectification correcting the error after setting out the circumstances in which that error came to be made.

It was urged that the power which the trustees could exercise is to expend the income accruing under the settlement for each of the beneficiaries under the Trust, and since no income accrued to the beneficiaries during the periods for which the income was to be applied or accumulated for the benefit of charity, reference to cl. 21 and cl. 26 had no meaning. It is implicit in this submission that the settlor intended that the income arising from the Trust property was to be utilized after the children attained the age of majority for their maintenance, education, health, marriage and advancement and not during their minority. The children stood in greater need of provision for maintenance, education, health and advancement during their minority than after they attain their majority, but it is said contrary to the plain terms of cl. 26 that the interest was intended to be given to them after they attained the age of majority, and not during their minority.

In the deed of settlement charity is not directly mentioned as one of the beneficiaries, and the income is directed to be given for limited periods to charity and thereafter to the beneficiaries named therein. Clause 26 in terms confers power upon the trustees to expend from out of the income accruing under the settlement to each of the beneficiaries, such amounts for the maintenance, education, health, marriage and advancement of the beneficiaries or any of them as the Trustees deem fit, and there is nothing in that clause which implies that this power is to be exercised after expiry of the periods specified in cls. 1, 2 & 3. The expression "beneficiary" in cl. 26 clearly refers not to charity, but to the three children of the settlor, because the trustees are invested with power to expend from out of the income accruing under the settlement for the maintenance, education, health, marriage and advancement of each of the beneficiaries therein.

Reading cls. 9 & 26 together it appears that the settlor intended that the trustees shall have power, notwithstanding other provisions in the deed of Trust, that the income of the property settled may be applied during the currency of the settlement for the benefit of the beneficiaries named therein, and in the event of death of any of the beneficiaries, for the benefit of his or her heirs. There was therefore a vested interest immediately arising on the execution of the instrument, and the children of the settlor were the real beneficiaries. In seeking to evade the application of the Wealth Tax Act, clumsy and inconsistent directions are made in the Family Trust : The trustees are initially directed to apply the income accruing from the shares for certain specified periods to charity, and if the income is not so applied during the periods the accumulated income is directed to be handed over to charity, but the direction is immediately followed by the clause that the trustees may apply the income, notwithstanding the provision relating to the application of the income in favour of charity, for the benefit of the minor children of the settlor. The High Court has held that the case fell clearly within s. 4(1)(a)(iii) of the Wealth Tax Act and during the periods specified in cls. 1, 2 & 3 the property mentioned in Schedules A, B & C was liable to be included in the computation of wealth tax of the appellant, and in my view the High Court is right in so holding.

The appeals fail and are dismissed with costs.

ORDER

In accordance with the opinion of the majority, the appeals are allowed with costs here and in the High Court. One hearing fee.

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