

Purshottam N. Amarsay and Another

Vs

The Commr. of Wealth Tax, Bombay

Civil Appeals Nos. 2385 and 2386 of 1969 and 1429 and 1430 of 1971

(K.S. Hegde, A.N. Grover JJ)

16.09.1971

JUDGMENT

HEGDE, J. -

1. Civil Appeals Nos. 1429 and 1430 of 1971 are by special leave and Civil Appeals Nos. 2385 and 2386 of 1969 are by certificate. The latter appeals have become infructuous as the certificates by which they have been brought are not supported by any reason. Hence the appellants had to apply and obtain special leave from this Court for appealing against the judgment of the High Court. Civil Appeals Nos. 1429 and 1430 have been brought on the strength of the special leave granted by this Court. There are the appeals which we have to consider now.

2. All these appeals arise from the decision of the Bombay High Court in a reference under Section 27 of the Wealth Tax Act, 1957. The question referred to the High Court reads :

"Whether on the facts and in the circumstances of the case, and having regard to the terms of Annexure 'A' the Tribunal was justified in holding that the interest of the assessee under the Trust had no value ?"

3. The relevant portion of the Trust deed which came up for consideration by the Tribunal as well as the High Court reads thus :

"2. The Trustees shall hold and stand possessed of the Trust FUND UPON TRUST :

#(a) \* \* \* \*##

(b) To apply the balance of such interest, dividends, profits and income of the Trust Fund (hereinafter for brevity's sake referred to as 'the net income') for the support, maintenance and advancement in life and otherwise for the benefit of the Settlor and his wife (provided such wife is born before the date of these presents) in such manner as to enable the Settlor to live as far as possible with the same comforts and to enjoy life in the same manner as he is accustomed to do and in case of any surplus income at the end of any year to accumulate the same for a period of eighteen years from the date hereof and to add the same to the corpus of the Trust Fund and after the expiration of the said period of eighteen years in case of any surplus income at the end of any year to hand over the same to the Settlor provided further that in applying the net income as aforesaid the Trustees shall not be entitled to take into account any other income from any other source that the Settlor may be received at the time and it

is hereby expressly agreed and declared that the Trustees shall not be liable or accountable to any one for any act bona fide done by them or for any payment bona fide made by them in pursuance of the provisions of this clause and in particular they shall not be accountable or responsible for the amounts expended or applied by them or the manner in which or the purpose for which the same shall be applied and all moneys so expended or applied by the Trustees in their absolute discretion shall not be questioned by any party in any Court of Law or otherwise howsoever."

4. The Tribunal came to the conclusion that the Estate conferred under the above mentioned clause is a personal estate, the same is incapable of being sold in the open market and therefore it should be held that that Estate has no value. The High Court differing from the view taken by the Tribunal came to the conclusion that even though the Estate conferred is a personal estate and it is not possible to sell that estate in an open market yet under the law the same has to be valued on the basis of the principles enunciated in the Wealth Tax Act. The decision in appeal was considered and approved by this Court in *Ahmed G. H. Ariff and Others v. Commissioner of Wealth-tax, Calcutta*. (76 ITR 471) In that decision it was observed :

"The only direct case on the point under consideration is a decision of the Bombay High Court in *Commissioner of Wealth Tax v. Purshottam N. Amarsey* (the decision under appeal). There the deed of settlement provided that the trustee shall apply the net income from the fund for the support, maintenance and advancement in life and otherwise for the benefit of the Settlor and his wife, etc. It was held that the definition of 'assets' in Section 2(e) and that of 'net wealth' in Section 2(m) were comprehensive provisions and all assets were included in the net wealth by the very definition. Therefore, when Section 3 imposed the charge of wealth-tax on the net wealth it necessarily included in it every description of property of the assessee, movable and immovable, barring the exceptions stated in Section 2(e) and other provisions of the Act. We are in entire concurrence with that view. There is no reason or justification to give any restricted meaning to the word 'asset' as defined by Section 2(e) of the Act when the language employed shows that it was intended to include property of every description. On a proper construction of the relevant clauses in the wakf deed we are not satisfied that the aliquot share of the income provided for the beneficiaries was meant merely for their maintenance and support .....

"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 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 *Commissioners of Inland Revenue v. Crossman*. 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."

5. Mr. Chagla, learned Counsel for the assessee contended that in that case this Court did not consider the possibility of an asset not having any value whatsoever. We are unable to accede to that contention. What this Court ruled in Ahmed G. H. Ariff's case (supra) was that even if the property in question is incapable of being sold in the open market, being a personal estate in that event also the interest of the assessee has to be valued by the Wealth Tax Officer. In our opinion, the decision of this Court in Ahmed G. H. Ariff's case (supra) completely covers the issue under discussion.

6. For the reasons mentioned above Civil Appeals Nos. 1429 and 1430 of 1971 fail and the same are dismissed with costs.

7. Civil Appeals Nos. 2385 and 2386 of 1969 by certificates are dismissed as not being maintainable. No costs.

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