Commissioner of Wealth-Tax

Vs

Hashmatunnisa Begum. Sarla Debi Birla

Vs

Commissioner of Wealth-Tax.

Civil Appeal No. 1118 of 1975 with Civil Appeals Nos. 1226 and 1227 of 1975

(CJI R. S. Pathak, M. N. Vankatachaliah JJ)

17.01.1989

JUDGMENT

VENKATACHALIAH J. –

1. Civil Appeal No. 1118 of 1975, by special leave, by the Commissioner of Wealth-tax, Andhra Pradesh, and Civil Appeals Nos. 1226 and 1227 of 1975, on a certificate, under section 29(1) of the Wealth-tax Act, 1957 (the "Act"), by the assesee, raise a question as to the proper construction of the proviso to section 4(1)(a) of the Act, which provides for exemption in the wealth of the assessee under section (4)(a) of the Act.

The condition for the grant of the exemption under the proviso is that the transfer of the asset is either chargeable to gift-tax or is not chargeable under section 5 of the Gift-tax Act, 1958. The particular point for consideration is whether, on the language of the proviso, the exemption is attracted only to such gift as were chargeable to tax for any assessment year commencing "after the 31st day of March, 1964," as understood by the Revenue or whether the gifts even made earlier would attract the benefit of the exemption as claimed by the assessees.

There appears to be a divergence of judicial opinion on the point in the High Courts. In CWT v. Sarala Debi Birla [1975] 101 ITR 488 (Cal), T. Saraswathi Achi v. CIT [1976] 104 ITR 185 (Mad), CWT v. Seth Nand Lal Ganeriwala [1977] 107 ITR 758 (P & H), M. G. Kollankulam v. CIT [1978] 115 ITR 160 (Ker), Malti Harshey v. CWT [1980] 121 ITR 676 (MP) and CWT v. Rasesh N. Mafatlal [1980] 126 ITR 173 (Bom), the High Courts have construed the provision in the manner suggested by the Revenue. CWT v. Hashmatunnisa Begum [1977] 108 ITR 98 (AP) has taken the opposite view extending a wider benefit of the exemption.

The opinion of the Calcutta High Court in CWT v. Sarala Debi Birla [1975] 101 ITR 488, which is representative of the view in favour of the Revenue, is under appeal in Civil Appeals Nos. 1226 and 1227 of 1985 and the opinion of the Andhra Pradesh High Court in CWT v. Hashmatunnisa Begum [1977] 108 ITR 98, which is favourable to the assessee is under appeal in Civil Appeal No. 1118 of 1975 preferred by the Revenue.

In Civil Appeal No.1118 of 1975, the assessee, Smt. Hashmatunnisa Begum, the legal representative of the late Nawab Zahir Yar Jung Bahadur, claimed in respect of the assessment year 1967-68, that

the value of the immovable properties gifted by the late Nawab to his wives before April1, 1964, should not be included in the net wealth of the Nawab as on the valuation date, September 30, 1966. The Nawab, under three deeds of gift, one dated May 25, 1962, in favour of Smt. Hashmatunnisa Begam, his first wife, and two other deeds dated August 17, 1962, and April 26, 1962, in favour of Smt. Fareed Jehan Begam, his second wife, gifted in their favour certain lands and buildings of a total value of Rs. 1,96,950. The giftswere chargeable to gift-tax in the assessment year 1963-64. On behalf of the estate of the Nawab, who later died on December 16, 1968, it was claimedin the proceedings for assessment to wealth for the assessment year 1967-68, that though the gifts were otherwise includible as belonging to the Nawab under section 4(1)(a)(i), as the transfers were made to the spouses otherwise than for adequate consideration, however, as the gifts were chargeable to gift-tax, the proviso to section 4(1)(a) was attracted and that the assets so transferred were not includible in the net wealth of the Nawab "for any assessment year commencing after the 31st day of March, 1964". The Wealth-tax Officer rejected this claim. The Appellate Assistant Commissioner, in the assessee's appeal, confirmed the assessment. In the assessee's further appeal before the Appellate Tribunal, the Tribunal, on a particular construction of the proviso, allowed the appeal and held that the assets transferred, which had attracted gift-tax, were not includible in the net wealth of the Nawab from the assessment year 1964-65 onwards. At the instance of the Revenue, the following question of law was referred to the High Court for its opinion (see page 99 of 108 ITR) :

> "Whether, on the facts and in the circumstances of the case, the assessee was entitled to exclude, under the proviso to section 4(1)(a) of the Wealth-tax Act, 1957, the value of the assets gifted to his wives in the wealth-tax assessment for the assessment year 1967-68 ?"

The High Court agreed with the construction placed on the proviso by the Tribunal and answered the question in the affirmative and against the Revenue. The Revenue has come up in appeal by special leave.

In Civil Appeals Nos.1226 and 1227 of 1975, the assessment years concerned are 1964-65 and 1965-66 corresponding to the valuation dates March, 31, 1964, and March 31, 1965. On October 7, 1959, Smt. Sarala Debi Birla, the assessee, made a gift of Rs. 1,00,011, to her minor daughter, Smt. Manju Rani Birla. The asset so transferred was included in the assessee's wealth for the two assessment years 1964-65 and 1965-66 under section 4(1)(a)(ii) of the Wealth-tax Act. The claim of the assessee that the proviso to section 4(1)(a) operated to exclude the asset from the net wealth of the assessee as the transfer was chargeable to gift-tax was not accepted by the Wealth-tax Officer who completed the assessment including the transferred asset in the assessee's net wealth. The assessee's appeal before the Appellate Assistant Commissioner was unsuccessful.

However, the Appellate Tribunal accepted the contention of the assessee and by its appellate order dated May 11, 1970, allowed the assessee's appeal holding that on a true construction of the proviso, so long as the gift was chargeable to or exempt under section 5, from gift-tax, to that extent section 4(1)(a) ceased to have operation and the statutory fiction embodied in it was not attracted and that, as, at the relevant time, the gift was chargeable to gift-tax, the exemption was to operate from the assessment year commencing after March 31, 1964. At the instance of the Revenue, the Appellate Tribunal referred the following question of law for the opinion of the High Court (See page 489 of 101 ITR) :

> "Whether, on the facts and in the circumstance of the case and on a proper

> interpretation of section 4(1)(a) of the Wealth-tax Act as amended by the Wealth-tax (Amendment) Act, 1964 (Act 46 of 1964), the sum of Rs. 1,00,011 gifted by the assessee to her minor daughter would be included in computing her net wealth ?

The High Court of Calcutta, in reversal of the view taken by the Tribunal, answered the question in the affirmative and against the assessee. The assessee has come up in appeal by certificate.

We have heard Shri B. B. Ahuja, learned counsel for the Revenue, and Shri Harish Salve and Shri Subba Rao, for the assessees.

The controversy generated on the point leading to the divergence of judicial opinion on the point is attributable to the somewhat inelegant and inappropriate phraseology of the provision. To appreciate the relevant contentions, it is necessary to notice the words of the proviso :

> "Provided that where the transfer of such assets or any part thereof is either chargeable to gift-tax under the Gift-tax Act, 1958 (18 of 1958), or is not chargeable under section 5 or that Act, for any assessment year commencing after the 31st day of March, 1964, but before the 1st day of April, 1972, the value of such assets or part thereof, as the case may be shall not included in computing the net wealth of the individual;"

The words "but before the 1st day April, 1972," were later introduced by the Finance (No.2) Act, 1971, with effect from April 1, 1972.

The proviso was introduced by the amending Act of 1964, but given effect to from April 1, 1965, by a notification (see [1965] 55 ITR (St.) 179). Under the various clauses of section 4(1)(a), certain transfersof assets made by an individual in favour of, or for the benefit of, the spouse or of a minor child, not being a married daughter, of such individual, are required to be ignored and the transferred assets included in the wealth of the assessee, as belonging to him. Section 4(1)(a) aims at foiling an individual's attempt at avoiding or reducing the incidence to wealth-tax by transferring the assets to or for the benefit of the spouse or the minor child of the individual, by requiring he inclusion of such transferred assets in computing the net wealth of the individual.

However, the proviso makes the provision inoperative where and in so faras the transferred asset is either chargeable to gift-tax under, or is exempt under, section 5 of the Gift-tax Act. The controversy surrounds the question whether the expression "for any assessment year commencing after 31st day of March, 1964", occurring in the proviso should be read with the first part and as referring to the eligibility of the gifts for exemption with reference to the point of time at which the gifts were made or whether that expression does not condition the identity of the eligible gifts but only signifies the starting point for the exemption from wealth-tax. The assessees contend that the date of the gift is immaterial and as long as the transfer is chargeable to gift-tax or is exempt under section, 5, - whatever may be the year in which the gift was made - the exemption from gift-tax must commence "for any assessment year commencing after the 31st day of March, 1964".

If the expression "for any assessment year commencing after the 31st day of March, 1964", is intended to qualify and determine the gifts, the subject-matters of which are eligible for exemption, then the literal construction would be that the gifts made earlier to that period, though chargeable to gift-tax, would not attract the benefit of exemption. But the assesses say that the clause must be read as part of the second part of the proviso which contemplates the exemption. So read, the clause

would qualify the commencement of the benefit of the exemption and not the point of time when the gift is required to be made to be eligible for exemption from wealth-tax. The learned judges of the High Court of Andhra Pradesh, in the course of the judgment under appeal in Civil No. 1118 of 1975 observed (at page 101 of 108 ITR) :

> ".....The words 'for any assessment year commencing after the 31st day of March, 1964' are referable to the assessment to be made under the Wealth-tax Act. They render the provisions of section 4(1)(a) inoperative irrespective of the fact whether the transferred asset was chargeable to gift-tax or not chargeable to gift-tax. The proviso specifies the period of exemption up to 31st March, 1964. Irrespective of the year of the gifts when the assets were gifted, they will not be included in the computation of the net wealth of the individual till the assessment year 1964-65. We are, therefore, of the view that the intention of Parliament was to exempt transfers made under clauses (i) to (iv) of section 4(1)(a) from being computed in the net wealth of the individual up to the wealth-tax assessment year commencing after 31st day of March, 1964..."

Sri Ahuja submitted that the words "for any assessment year commencing after the 31st day of March, 1964" could, in the context, only refer to the gift and gift-tax assessments. The proviso, he said, which was introduced by way of an amendment, was brought into force with effect from April 1, 1965, by a notification which specified the commencement of the operation of the proviso and that, quite obviously, it would be redundant to read the clause under consideration as again referring to the commencement of the operation of the proviso. While the clause under consideration related to and qualified the gift and gift-tax assessments, the commencement of the exemption of the subject-matter of the gifts for purposes of wealth-tax was controlled and determined by the commencement of the operation of the proviso, which, by a notification, was specified as April 1, 1965.

Sri Ahuja submitted that the proviso was intended to effectuate the legislative policy that in respect of certain gifts made in favour of a spouse or a minor child, during a specified period, the assets transferred under the gifts would have the benefit of exemption from the operation of section 4(1)(a). This was because the legislative took into consideration that from April 1, 1964, onwards, there was a sharp ascent in the rates of gift-tax and that the assets which constituted the subject-matter of such gifts attracting such high rates of gift-tax should not also be included in the net wealth of the donor for wealth-tax purposes which would otherwise be the consequence under section 4(1)(a) of the Act. As the proviso originally stood, gifts chargeable to gift-tax for any assessment year commencing after March 31, 1964, attracted the benefit of exemption. The outer limit for the period of such eligible gifts was later fixed by the amendment made by the Finance (No.2) Act, 191, with effect from April 1, 1972, which introduced the words "but before the 1st day of April, 1972". Accordingly, Sri Ahuja contends that only that class of gifts which were chargeable to gift-tax for any assessment year 1964-65 or thereafter (but subject to the limit fixed by the 1971 amendment) which would otherwise fall under section 4(1)(a) were eligible for the benefit of the exemption. According to Sri Ahuja, the plain words of the proviso leave no room for doubt and where the enactment is clear and admits of only one meaning and does not admit of two or more meanings, it would be the plain meaning that should be given effect to. When the meaning is plain, says counsel, no recourse could be had to any rules of construction which would denude the provision of its plain and ordinary meaning.

Sri Harish Salve, presenting the case of the assessees, sought to point out the intrinsic anomaly of

the cases between a gift made, say, on March 31, 1963, and one made the very next day, i.e., the 1st of April, 1963, on the other, to show that while in the first case, even for the assessment year 1965-66, the transferred asset is includible in the wealth of the assessee, in the latter case, it is exempt for all times to come thereafter. Learned counsel pointed out that the criterion of higher rates of gift-tax as justification supporting the classification also fails in view of the fact that under the proviso, it is not only the gifts chargeable to tax but also those exempt under section 5 that attract the exemption with the result that between two gifts which are both exempt under section 5 of the gift-tax Act, one is forever exempt from wealth-tax in the hands of the donor while the other is includible in his wealth for purposes of wealth-tax depending solely on the criterion of the date of gift - whether the gift was made prior to March 31, 1963, or thereafter. Here, the criterion of classification of gifts on the basis of the exigibility to higher ratesof tax, says Sri Salve, collapses and the cut-off date determining the difference in consequences in the two different classes of cases becomes wholly arbitrary. Sri Salve submitted that a construction which promotes its constitutionality has to be preferred to the one which, if accepted, would expose the provision to the vice of discrimination and unconstitutionality.

The essential basis of Sri Salve's suggested construction rests on the requirement that the words "for any assessment year commencing after the 31st day of March, 1964", should not be read as part of the first part of the proviso relating to gift-tax assessments but as part of the second part denoting the commencement of the operation of exemption from wealth-tax.

This, we are afraid, will embog itself in the quagmire of irreconcilable constructional contradictions. The amendment introducing the proviso was brought about by an amending Act of 1964; but the date of the commencement of its operation was left to be fixed by a notification. The effect of the notification issued bringing the proviso into effect from April 1, 1965, would be wholly ignored by the construction suggested by Sri Salve. Secondly, the introduction of the words "but before the 1st day of April, 1972", would, if the construction suggested by Sri Salve is accepted, operate to take away the benefit of the exemption after April 1, 1972, and the exemption would be confined only to the assessment years between 1964-65 and 1972-73. On a reading of the plain words of the proviso, the clause "for any assessment year commencing after the 31st day of March, 1964", can only be read as relating to gift-tax assessments and not to wealth-tax assessments.

But, Sri Salve contends that this literal construction would expose the provision to an attack on its constitutionality on the ground that it brings about a discrimination between two classes of assessees on nothing more than an arbitrary cut-off date. The cases of gifts exempted under section 5, he says, illustrate the point as according to Sri Salve, there could be no rational basis for discriminating between a gift exempted under section 5 made on March 31, 1963, on the hand on April 1, 1963, on the other.

One of the pillars of statutory interpretation, viz., the literal rule, demands that, if the meaning of the statutory provision is plain, the court must apply it regardless of the result.

The very concept of interpretation connotes the introduction of elements which are necessarily extrinsic to the words in the statue. Though the words "interpretation" and "construction" are used interchangeably, the idea is somewhat different. Dr. Patrick Devlin says :

> "...A better word, I think, would be construction, because construction, although one often used it alternatively with interpretation, suggests that something more is being got our in the elucidation of the subject-matter than can be got by strict interpretation

> of the words used. In the very full sense of the word 'construction', the judges have set themselves in this branch of the law to try to frame the law a they would like to have it..." [See Samples of Law Making (Oxford University Press), pp. 70-71.]
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> "A statute", says Max Radin, "is neither a literary text nor a divine revelation. Its effect is, therefor, neither an expression laid on immutable emotional overtones nor a permanent creation of infallible wisdom. It is a statement of situation or rather a group of possible events within a situation and as such it is essentially ambiguous. [See "Statutory Interpretation" : 43 Har. L.R. 863 (868)].

The observations of Lord Russell of killowen in Attorney-General v. Carlton Bank [1899] 2 QB 158, 164, though an early pronouncement, is refreshing for its broad common sense :

> "I see no reason why special canons of construction should be applied toany Act of Parliament, and I know of no authority for saying that a taxing Act is to be construed differently from any other Act. The duty of the court is, in my opinion, in all cases the same, whether the Act to be construed relates to taxation or to any other subject, namely, to give effect to the intention of the Legislature, as that intention to be gathered from the language employed having regard to the context in context in connection with which it is employed...Courts have to give effect to what the Legislature has said".

The rule of construction that if the statutory provision is susceptible to, or admits of, two reasonably possible views, then the one which would promote its constitutionality should be preferred on the ground thathe Legislature is presumed not to have intended an excess of its own jurisdiction, is subject to the further rule that it applies only where two views are reasonably possible on the statutory language. If the words ofthe statute, on a proper construction, can be read only in a particular way, then they cannot be read in another way by a court of construction anxious to avoid unconstitutionality. In a case, where, as here, a reference arises under the Act, the question of the constitutionality of the Act cannotbe examined and pronounced upon. In State of Punjab v. Prem Sukhdas [1977] 3 SCR 408, 410, this court made the point clear (at page 1642 of AIR 1977 SC) :

> "...This amounts to nothing short of legislation. We think that the viewis an impossible one. The principle that, where a provision is capable of one of two interpretations, the interpretation which validated rather than one which may invalidate a provision applies only where two view are possible. It cannot be pushed so far as to alter the meanings of the clear words used in an enactment and to, in effect, repeal statutory by making them useless without holding them to be void."

Even in regard to the constitutionality of the classification, it is not possible to rule out arguments as to the validity of the classification as wholly unstateable. In a taxing measure, the Legislature enjoys a wider latitude and its dispensations are based on an interaction of diverse economic, social and policy considerations. Further, if the proviso is bad for discrimination, it would follow that the converse situation brought about by the later amendment, a discrimination as between gifts made as between the 31st of March, 1972, and on 1st, 1972, might also become bad It is true that we are required to notice the provision as it stood at the relevant time.

We, however, should not be understood to have pronounced on the question of constitutionality. That is the task of the court in a judicial review but the rule of preference of a particular

construction amongst alternatives, in order to avoid unconstitutionality is unavailable here.

Accordingly, while Civil Appeals Nos. 1226 and 1975 preferred by the assessee are dismissed, Civil Appeal No. 1118 of 1975 of the Revenue is allowed and in reversal of the order dated September 18, 1974, of the Andhra Pradesh High Court, the question referred is answered in the negative and in favour of the Revenue.

In the circumstances, the parties are left to bear and pay their own costs in these appeals.

Civil Appeals Nos.1226 and 1227 of 1975 dismissed. Civil Appeal No.1118 of 1975 allowed.

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