SUPREME COURT OF INDIA

COMMISSIONER OF WEALTH TAX

Vs.

PRINCE MUFFAKHAM JAH BAHADUR CHAMLIJAN

12/12/2000

(Y.K.Sabharwal, S.P.Bharucha, S.N.Hegde)

Appeal (civil) 2388 1994
Appeal (civil) 2394 1994

JUDGMENT

BHARUCHA, J.

These are appeals that relate to the same assessee, Prince Muffakham Jah; they are in respect of the Assessment years 1969-70 to 1975-76 and 1977-78. They raise the same question. That question was referred on the application of the Revenue by the Income Tax Appellate Tribunal to the Andhra Pradesh High Court under Section 27(1) of the Wealth Tax Act. The question reads thus : Whether on the facts and in the circumstances of the case the Appellate Tribunal was right in law in upholding the Commissioner of Income-Tax (Appeals) order who directed the Wealth Tax Officer to exclude the amount for the assessment year 1977-78 relating to the life interest of the assessee added by the Wealth Tax Officer in accordance with Rule 1B of the Wealth Tax Rules, 1957.

The principal judgment of the High Court was delivered in the case of Commissioner of Wealth-Tax vs. Prince Muffakkam Jah Bahadur [186 I.T.R. 421], which is challenged in Civil Appeal Nos. 2388-2394 of 1994, and it was followed in the orders which are challenged in Civil Appeal No.3603 of 1997.

The assessee is a member of the family of the late Nizam of Hyderabad. One of the several trusts created by the late Nizam for the benefit of his heirs, relations and others was the Prince Mukaram Jah, Prince Muffakkam Jah and Princess Dur-Re- Shewar Trust. The trustees thereof, pursuant to the directions contained therein, constructed a house on specified land. The assessee was entitled under the terms of the trust to live in that house during his life time without being required to pay any rent.

In his wealth tax return for the assessment years in question the assessee did not include the value of the life interest so created in his favour for the reason that he had no alienable interest in the house. The Wealth-Tax Officer, however, added the value of the said life interest in the assessees wealth, applying for the purpose the provisions of Rule 1B of the Wealth Tax Rules. The appellate authority in first appeal held to the contrary, and the Tribunal in further appeal agreed. From out of the order of the Tribunal the question aforestated was referred to the High Court.

The High Court, in the impugned judgment, took the view that the said life interest could not be called an asset for the purposes of the Wealth-Tax Act, inasmuch as the assessees interest was only to live in the house as a licensee and he could not dispose of his interest or deal with it in any

manner for his benefit. He had also no proprietary interest therein.

The High Court followed its decision in R.C. No.69 of 1969, disposed of on 5th November, 1971. In that matter, the Shahebzadi Anwar Begum Trust created by the late Nizam was in issue. It provided that the trustees thereof would allow the Shahebzadi to wear and use specified jewels on ceremonial or festive occasions and other specified jewels for ordinary everyday use. The trustees were empowered to convert any part of the jewellery fund into an income yielding investment, the income whereof was to be paid to the Shahebzadi. In the event of the death, divorce or remarriage of the Shahebzadi, the trustees were required to sell the jewels and invest the sale proceeds and pay out the income to the children and other remote issue of the Shahebzadi and Prince Muazzam Jah. The question before the High Court was whether the right to wear the jewellery was an asset and whether its value could be included in the Shahebzadis wealth for the purposes of wealth tax. The High Court concluded that the Shahebzadis interest was of a permissive nature and could not be called property, however widely the expression was interpreted. This was for the reason that the Shahebzadi had no proprietary interest of any sort in the jewellery and she could not lend it. Besides, the trustees were given the right to withdraw the jewellery from her and sell it without her consent. Her interest in the jewellery was limited to being allowed to wear it if the trustees did not withdraw it from her.

It was common ground before the High Court that Rule 1B was not workable in the circumstances of the present case because the formula therein could not be applied if income did not accrue to an assessee from his life interest. The High Court agreed, therefore, with the Tribunal that Rule 1B could not be applied for determining the value of said life interest. It added, This of course does not mean that an asset should be excluded altogether from computation. Even if the said rule does not apply, an asset must still be valued and must be included in the wealth of the assessee if it satisfies Section 7(1).

Section 2 of the Wealth Tax Act sets out the definitions of the expressions used therein. Clause (e) thereof defines assets to include property of every description, movable or immovable. Clause (m) thereof defines net wealth to mean the amount by which the aggregate value, computed in accordance with the provisions of the Wealth Tax Act, of all the assets, wherever located, belonging to the assessee on the valuation date, including assets required to be included in his net wealth as on that date under the Wealth Tax Act, is in excess of the aggregate value of all the debts owed by the assessee. Section 7 sets out how the value of assets is to be determined. So far as it is relevant here, it says :

S.7. Value of assets how to be determined- (1) Subject to any rules made in this behalf, the value of any asset, other than cash, for the purposes of this Act, shall be estimated to be the price which in the opinion of the Assessing Officer it would fetch if sold in the open market on the valuation date.

Our attention was drawn by learned counsel for the Revenue to several judgments of this Court and the High Court at Bombay in support of his contention that the said life interest was an asset of the assessee and it had to be taken into account in assessing his net wealth.

In Ahmed G.H. Ariff & Ors. Vs. Commissioner of Wealth-Tax, Calcutta [(1970)76 I.T.R. 471], this Court was concerned with the right of a beneficiary to receive an aliquot share of the net income of properties comprised in a wakf-alal- aulad created by a Muslim governed by the Hanafi school of Mohammedan law. It was held to be property covered by the definition of assets in the Wealth-Tax Act, so that the capitalized value of that right was assessable to wealth-tax. This Court said that

property was a term of the widest import and signified every possible interest which a person could hold or enjoy. It had been held to extend even to a mahantship or shebaitship which combined the elements of office and property. This Court referred to the judgment of the Bombay High Court in Commissioner of Wealth-tax, Bombay City II vs. Purshottam N. Amersey and anr. [(1969)71 I.T.R. 180]and expressed its concurrence with the view that the charge of wealth-tax under Section 3 of the Wealth Tax Act on net wealth included every description of property of the assessee, movable and immovable, barring exceptions expressly stated. The High Court had rightly observed that when the statute used the words if sold in the open market it did not contemplate actual sale or the actual state of the market but only enjoined that it should be assumed that there was an open market and the property could be sold in such market and, on that basis, its value had to be found out. It was an hypothetical case which was contemplated.

The judgment of the Bombay High Court in the case of Purshottam N. Amersey was upheld by this Court in Purshottam N. Amarsay & Anr. vs. Commissioner of Wealth-Tax, Bombay City II [(1973) 88 I.T.R. 417] and observations of the kind set out above were repeated. In response to the argument on behalf of the assessee that the Court had not considered the possibility of an asset not having any value whatsoever, it was said that what this Court had ruled in Ariffs case was that even if the property in question was incapable of being sold in the market for the reason that it was a personal asset, the interest of the assessee had to be valued by the Wealth-Tax Officer.

On behalf of the assessee the view taken by the High Court was commended, namely, that the said life interest was not an asset because it only conferred a personal, inalienable right to reside on the assessee. It was only a licence and, therefore, not an asset.

It is difficult, having regard to what has been laid down by this Court in Ariffs case and Amerseys case, to uphold the decision of the High Court. The assessee has, by reason of the said life interest, a right to reside in the house in question for the duration of his life. There can be no question but that such a right to reside, though it be personal and inalienable, is property which would have a market in an assumed market place; in other words, that an assumed somebody would acquire this personal right to reside in the property during the lifetime of the assessee and pay a price for it.

The alternative contention advanced before this Court on behalf of the assessee was as follows: When a rule provides a method of valuation of an asset, it is only that rule that can be applied and no further recourse to Section 7 is permissible. Rule 1B in the instant case indicated how a life interest was to be valued. It had been applied by the Wealth-Tax Officer. That application was correct. Because the said life interest yielded no actual income to the assessee, the value of the said life interest so calculated was zero.

Rule 1B, in so far as it is relevant, reads thus :

(1) For the purposes of sub-section (1) of Section 7, the market value of the life interest of an assessee shall be arrived at by multiplying the average annual income that accrued to the assessee from the life interest by 1/14141 = 1 where I represents the annual premium for a whole-life insurance without profits on the life of the life tenant for unit sum assured as specified in the Appendix to those rules, and d is equal to 1/1 plus, i being the rate of interest.

As has been noted, it was agreed by learned counsel appearing on behalf of both the assessee and the Revenue before the High Court that Rule 1B was not workable in the circumstances of the present case, which is clearly correct for it is applicable only to an income yielding life interest. It

is, therefore, difficult to see how it can now be argued on behalf of the assessee that Rule 1B was correctly applied. In any event, we are in agreement with the High Court, and indeed, with the Tribunal before it, that even if Rule 1B did not apply, the said life interest, if an asset, had still to be valued and be included in the wealth of the assessee, which is what Section 7 required. In the absence of a rule which can apply to the valuation of a particular asset, that asset must be valued in the ordinary way, by determining what it would fetch if it were sold in an assumed market; the value being what an assumed willing purchaser would pay for it. This is how the said life interest must be assessed, upon the assumption that the assessees personal right to reside in the property during his life time is salable. For the reasons aforestated, the judgment and orders under challenge are set aside. The question aforequoted is answered in the negative and in favour of the Revenue. The said life interest shall now be valued for each of the Assessment Years in question in the manner set out above. No order as to costs.