ANDHRA PRADESH HIGH COURT

Commissioner of Wealth-Tax

Vs

Nawab Fareed Nawaz Jung

(G Ramachandra Ekbote and R Raju, JJ.)

03.09.1969

JUDGMENT

G Ramachandra Ekbote, Raju, J.

1. This case was referred under Section 27(1) of the Wealth-tax Act of 1957 (hereinafter referred to as "the Act") with regard to wealth-tax assessment of one Nawab Farced Nawaz Jung for the assessment years 1957-58 and 1958-59 and the question we are called upon to decide is as follows :

> "Whether the sums of Rs. 44,394 and Rs. 42,415 representing the capital value of the annual payments made to the assessee under the five trust deeds executed by him on May 28, 1951, February 18, 1952, August 8,1952, December 9, 1952, and May 13, 1953, for the assessment years 1957-58 and 1958-59, respectively, constituted part of the net wealth of the assessee ?"

2. The assessee is now dead and his legal representatives were brought on record. The assessee owned movable and immovable properties. With regard to some of his movable properties consisting of Government securities the assessee created five different trusts under the trust deeds dated May 28, 1951, February 18, 1952, August 8, 1952, December 9, 1952, and May 13, 1953. Under the terms of these trust deeds the assessee, namely, the settlor himself was to receive payments every year during his lifetime. This interest of the assessee in the trusts was claimed by the assessee as in the nature of "annuity" within the meaning of the provision contained in Section 2(e)(iv) of the Act and, therefore, the right of the assessee in the trust properties has to be exempted from his assets and, therefore, from his net wealth for the purpose of charging wealth-tax as provided under Section 3 of the Act. The Wealth-tax Officer negatived this contention of the assessee and valued the right of the assessee, which was for life, in the trust properties at Rs. 53,769 and Rs. 51,790, respectively, for the two assessment years 1957-58 and 1958-59 on the basis of the life expectancy of the assessee arid included those amounts in the assets of the

assessee for the purpose of computing the net wealth of the assessee and - assessed the assessee to wealth-tax on that basis. On appeal by the assessee, the Appellate Assistant Commissioner took a similar view and confirmed the order of the Wealth-tax Officer. When the matter was taken before the Appellate Tribunal, the Tribunal agreed with the contention of the assessee and ordered deletion of a sum of Rs. 44,394 for the assessment year 1957-58 and a sum of Rs. 42,415 for the assessment year 1958-59. It may be mentioned here that the Wealth-tax Officer in arriving at the amounts of Rs. 53,769 and Rs. 51,790, respectively, for the two assessment years 1957-58 and 1958-59, took into consideration also an yearly income of Rs. 1,500 which the assessee was getting under a trust created by H.E.H. the Nizam of Hyderabad, besides the moneys he was to get under the five trust deeds created by him. Before the Appellate Assistant Commissioner, the assessee did not dispute the inclusion of the capitalized value of that sum of Rs, 1,500, After deducting that capitalized value the sums of Rs. 44,394 and Rs. 42,415 referred to above were arrived at and they were ordered by the Appellate Tribunal for deletion.

3. Under these circumstances, the present question was referred for decision at the instance of the department.

4. Before proceeding further, it is convenient to examine the Clauses (iv) and (v) of Sub-section (e) of Section 2 of the Act:

"In this Act, unless the context otherwise requires,-- . .

(e) 'assets' includes property of every description movable or immovable but does not include,--...

(iv) a right to any annuity in any case where the terms and conditions relating thereto preclude the commutation of any portion thereof into a lump sum grant;

(v) any interest in property where the interest is available to an assessee for a period not exceeding six years."

5. Obviously exemption cannot be claimed under Clause (v) because it cannot be said that the interest of the assessee in the properties in question was for a period not exceeding six years. As a matter of fact the assessee did not claim any exemption under this clause. The exemption claimed was only under clause (iv). Clause (iv) is in two parts. To get the benefit of that clause it must be shown : (1) that the asset in question is only a right to annuity, and (2) that the terms and conditions relating thereto preclude the commutation of any portion thereof into a lump sum grant.

6. At this stage it is convenient to consider the nature of the trust properties and the relevant terms of the trust deeds. The following are the particulars of the trust properties.

S. No. Trust deed Nature of property Value of corpus Annual income Rs.

Rs.

1. Trust created on 23-5-51 with Central Bank of India 3% conversion loan 47,000 1,410 3% Mysore loan 2,500 3% Victory loan 1,600

2. Trust created on 18-2-52with Central Bank of India 3% conversion loan 30,600

3. Trust created on 8 - 2 - 52with Imperial Bank ofIndia (S.B.I.) 3% N.G.P. notes O.S.

31,000 3% N.G.P. notes O.S.

69,000 1,331

4. Trust created on 9-12-52 with I.B.I.

21/2% N.G.P. notes 11,000 3% N.G.P. notes 31,000 3% G.O.I, loan 7,100

5. Trust created on 13 - 5-53 with I.B.I.

3% N.G.P. note 10,600 21/2 N.G.P. notes 25,600 21/2% N.G.P. notes 28,200 3% conversion loan 1,500

7. In all the five trusts the settlor, namely, the assessee himself, was one of the two trustees. In the first two trusts the 9ther trustee is the Central Bank and in the last three trusts the other trustee is the Imperial Bank of India. The first trust deed consists of four schedules of properties. As provided under Clauses 3, 4, 5, 6 and 7 of the trust deed the, net income derived from the properties mentioned in the schedules 1 and 2 should be paid to the settlor (assessee) for his life and thereafter the net income should go to his daughters and grand-children and with regard to the properties mentioned in schedules 3 and 4 the net income thereof should be paid to the settlor for a period of 14 years and after 14 years or the death of the settlor whichever event happens first the trustees should hand over those properties (securities) mentioned in schedules 3 and 4, respectively, to his two daughters for the purpose of utilising the same for the marriages of their daughters and if any of his daughters happens to die during the lifetime of the settlor the trustees should hand over the trust properties to the settlor himself or if he be not alive to the fathers of the grand-daughters of the settlor on the condition of their employing the same for the purposes of the marriages of the grand-daughters.

8. In the second trust deed dated February 18, 1952, there are two schedules in which the trust properties were mentioned. It was provided under Clauses 3, 4 and 5 of the trust deed that the

trustees should pay the net income on the properties to the settlor during his lifetime and thereafter to his daughters and grand-children.

9. In the third trust deed dated August 8, 1952, the trust properties were described in three schedules. It was similarly provided under Clauses 2, 3, 4 and 5 that the net income on the trust properties should be paid to the settlor during his lifetime and thereafter to his daughters and grandchildren. It was also provided under Clause 5 that in case the daughters of the settlor should die without leaving any issues at the time of their death, the trust property should be held by the trustees for the benefit of the settlor, his heirs, executors, administrators and assigns absolutely.

10. In the fourth trust deed dated December 9, 1952, the trust properties were described in four schedules. With regard to the properties in schedules 1 and 2 the benefit was created in favor of the grand-children of the settlor. There is also a revertible provision as mentioned in Clauses 2 and 3 with regard to the trust properties of these schedules to the effect that in case all the beneficiaries are to die without leaving any issue at the time when the beneficiaries are entitled to the payment of the trust properties as provided therein, the trustees shall stand possessed of the properties in trust for the settlor, his heirs, executors, administrators and assigns absolutely. With regard to the trust properties specified in schedules 3 and 4 it was provided under Clause 4 that the net income should be paid to the settlor during his lifetime and after his death to his daughters and grand-children. It was also provided under Clause 7 that if both the daughters of the settlor were to die without leaving any issue at the time of their deaths, the trust properties in the hands of the trustees should go to the benefit of the settlor, his heirs, executors, administrators and assigns absolutely.

11. In the fifth and last trust dated May 13, 1953, the trust properties were described in two schedules. It was provided in Clause 2 of the trust deed that the trustees should pay the net income from the trust properties to the settlor during his lifetime and thereafter to his daughters and grandchildren. There is a similar revertible clause in this deed also in case both the daughters of the settlor were to die without leaving any issue at the time of their deaths.

12. In all the five trust deeds, there is a clause to the effect that during the lifetime of the settlor the trustees shall sell the trust properties and re-invest the sale proceeds as the settlor may from time to time in writing direct.

13. The Wealth-tax Officer came to the conclusion that the right of the assessee created in the trusts is not an annuity on the ground that the payments to be received by the assessee under the trusts are not fixed payments as they have direct bearing on the corpus of the relevant trusts because the relevant clauses in the first deed gave the assessee unrestricted powers to vary the investments of the trust funds at his sweet will and whenever the investments are varied there

will be variation in the income of the trusts also. Therefore, according to the Wealth-tax Officer, as per the terms contained in the trust deeds there is a possibility of variation in the income of the trusts and therefore the payments to be made to the assessee and it is not possible to contend that the right created is an annuity so long as it is not a fixed payment. It may be noticed even here, as shown above in the table, that the properties settled on the trusts in question as they stand are Government securities getting fixed incomes at some rates of interest. The Appellate Assistant Commissioner took a similar view in the appeal by holding that the assessee was to receive the net income earned from the" trust properties and that income may be varied as the assessee was empowered, to direct the change of the investments which might in turn change the yield of incomes, and, therefore, it cannot be said that what the assessee was to receive from the trusts are fixed amounts and that apart in the event of all the beneficiaries pre-deceasing the assessee leaving no heirs, the trustees were to stand possessed of the corpus of the various trusts in trust for the settlor, his heirs, etc, and that in such an event the trust properties would form part of the estate of the settlor and, therefore, it could not be said that the corpus of the trust properties was irretrievably lost to the assessee forever. On this premise the Appellate Assistant Commissioner held that the assessee cannot claim the benefit of Section 2(e)(iv) of the Act. We fail to understand how the question of genuineness or otherwise of the creation of the trusts would arise. Anyway it is not before us. What is to be considered is the nature of the right created in favour of the assessee under the trusts as they stand.

14. After considering the matter in all its details, the Appellate Tribunal held that the payment receivable by the assessee was of a revenue nature and bears income character and what the assessee was entitled to receive under the various trusts is only an annual sum and the corpus from which it flowed vested only in the trustees. The Appellate Tribunal also held that nowhere the trust deeds provided that the payment made to the assessee could be commuted into a lump sum payment. Accordingly, the Tribunal held that the assessee is entitled to claim exemption as provided under Section 2(e)(iv) of the Act.

15. As provided under Section 2(e)(iv) of the Act for the assessee to claim exemption it must be shown in the first instance that the right of the assessee in the various trusts in question is an annuity and the conditions relating thereto preclude the commutation of any portion thereof into a lump sum grant. Therefore, the two points that arise for our consideration in this case are the following :

(1) The right of the assessee created in the five trust deeds, namely, the payments he was to receive from the trusts can be said to be an annuity.

(2) Whether from the conditions of the trusts as laid down in the trust deeds can it be said that there is preclusion to commute the payments to be received by the assessee or any portion

thereof into a lump sum grant ?

Point No. I.

16. The term "annuity" is not defined in the Act. According to the Oxford Dictionary "annuity" means "sums payable in respect of a particular year; yearly grant; investment of money entitling investor to series of equal annual sums". According to Halsbury's Laws of England, third edition, volume 32, as mentioned in paragraph 888 (page 529), annuity is a right created by an instrument (whether deed, will, codicil or statute) to receive a definite sum of money. As mentioned in paragraph 899 (page 534) annuity is a certain sum of money payable yearly. Therefore, according to Halsbury, the annual payment to become an annuity should be either a definite sum or a certain sum. The Oxford Dictionary meaning for the word "definite" is given as follows : "With exact limits ; determinate ; distinct, precise, not vague." For the word "certain" the Oxford Dictionary meaning is given as "settled, unfailing, unerring, reliable, sure to happen".

17. In this connection it is necessary to consider some of the reported cases on the point. The Calcutta High Court in Ahmed G.H. Ariff v. Commissioner of Wealth-tax, [1966] 59 I.T.R. 230 and Commissioner of Wealth-tax v. Mrs. Dorothy Martin, [1968] 69 I.T.R. 586 took the view that where the right of the assessee is to receive an aliquot share in the general income of the trust properties it is not an annuity. In the first case what happened was that one Golam Hossain Cassim Ariff, a Mohammedan, created a wakf on November 19, 1928, of certain lands, hereditaments and premises whereby he appointed himself the sole mutawalli of the property during his life; after his death his sons and his widow were to be mutawallis jointly. The mutawalli or mutawallis were to retain a proper establishment to look after the property and keep proper accounts thereof. After payment of all necessary outgoings including revenue, taxes, repair charges, etc., the mutawallis were to divide the income of the wakf property in the manner stated, that is to say, pay the wakif Rs. 700 per month, Ibrahim Golam Hossain Ariff Rs. 600 per month for his life, a similar sum to each of his other sons and a sum of Rs. 400 per month to his wife. On the death of any of the beneficiaries the money payable to him was to be paid to and distributed amongst persons entitled to the same according to the Mohammedan law as heirs to the beneficiaries so dying. There was a deed of rectification of the wakf executed on July 5, 1930, by which the payment to the wakif and the first mutawalli as also the other beneficiaries, was to be made in a different manner. The wakif was to get for the term of his life 1/5th of the net income of the property by monthly instalments, his sons were each to get l/6th of the net income for their lives, respectively, and the wife was to get 1/10th of the net income.

18. In the second case the right of the assessee was based on the will of her father. Under Clause 7 of the will there was a residuary trust fund established by the testament consisting of the properties of the testator not otherwise disposed of or bequeathed under the will with a direction

to the trustees to invest Rs. 7,00,000 out of that in securities and pay the income therefrom to his widow so long as she did not marry again and if she shall marry again then from and after her second marriage to set aside so much of the said securities as to yield a net income of Rs. 6,000 annually and pay Rs. 500 per month to her for the remainder of her life and the remainder of the residuary trust fund including the balance of the securities, if any, as mentioned in the will directed to be held upon the trust to divide the same into as many equal shares as the testator had children surviving him and 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 :

(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 oiled) 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 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.

19. On the above terms in the will relating to the trusts in question the learned judges of the Calcutta High Court following the earlier case of that High Court mentioned above came to the conclusion that the right of the assessee is not an annuity as it is an aliquot share in the general income of the residuary trust fund and not a fixed sum payable periodically as "annuity". In these two decisions' the Calcutta High Court placed reliance on some English decisions in coming to the conclusion that where the right of the assessee created under the trust is an aliquot share of the general income of the trust properties it cannot be termed as "annuity".

In *Commissioner of Wealth-tax v. Arundhati Balkrishna*[1], the Gujarat High Court came to consider the nature of the right of an assessee under three deeds of settlement where the assessee claimed exemption under Section 2(e)(iv) of the Act. Their Lordships of the Gujarat High Court in that case considered the distinction between a life interest and an annuity. Their Lordships held in that case that the distinction between the life interest and annuity depends upon the

determination of the question whether the amount receivable by the beneficiary is dependent upon or related to the general income of the estate and an annuity as well as a life interest may vary from year to year but, whereas in the case of a life interest the variation is dependent on or related to the variation in the general income of the estate, in the case of an annuity the variation does not depend upon, nor is it related to the variation in the general income of the estate. The assessee was the beneficiary under three deeds of trust. Under each of the three deeds, the costs and expenses incurred by the trustees in connection with the administration of the trust were to be deducted from the total income of the trusts and the whole of the residue to be handed over to the assessee from year to year. The assessee claimed that The life interest she had in the three trusts were annuities and their value must have been excluded in the determination of her net wealth. The Gujarat High Court held that the income of the assessee under the three deeds was solely dependent on and related to the general income of each of the trusts and the life interest of the assessee under the trusts could not, therefore, be designated as annuity and the right to receive that income could not be excluded in computing the net wealth of the assessee.

20. In an earlier case, *Commissioner of Wealth-tax v. Dr. E.D. Anklesaria*[2], the Gujarat High Court held that annuity is a right to receive a certain sum whether it is to be given for life or for a series of years or during any particular period or in perpetuity. This case will be more relevant for the second point and it will be discussed in more detail under the second point. The dispute in that case was not so much whether the particular right in question was annuity or not but whether on the terms and conditions relating thereto there is a prohibition for a commutation.

21. From the foregoing discussion of law, it appears that, prima facie, an annuity is a right to receive a certain or a fixed sum. In the two Calcutta cases the right was not found to be an annuity on the ground that it is an aliquot share in the general income of the trust properties. In the first Calcutta case, Ahmed G.H. Ariff v. Commissioner of Wealth-tax, though the right in question was a definite share in the net share income of the trust properties, from the nature of the trust properties the income would be a variable one. Therefore, the net income from the trust properties will not be fixed, but variable. Thus though the right in question was a definite share in the net income necessarily it would be a variable amount and not a fixed or certain amount as the net income itself would vary. In the second Calcutta case, Commissioner of Wealth-tax v. Mrs. Dorothy Martin, from the terms it appears that the right which the assessee was to get was not a definite share in the income whether the income itself was variable or not. In the Gujarat case, Commissioner of Wealth-tax v. Mrs. Arundhati Balkrishna, the trust properties were shares in companies, the income from which would necessarily be variable. Therefore, though the. net income on the trust properties was made the subject-matter of the right in question it would be a variable one. Therefore, the right created was not to receive a certain or definite sum.

22. It is true in that case the Gujarat High Court also held that the amount of annuity may also vary from year to year provided it is not dependent upon the variation of the general income of the estate. But for the facts of this case we do not think it will be necessary to consider that aspect of the matter. In the present case on an examination of the nature of the trust properties and the income they, were yielding it appears that the trust properties were getting a fixed income and the payments the assessee was getting also were fixed amounts. A perusal of the list of properties given in the schedules of the trust deed show that they are 3 per cent. and 2 1/2 per cent. Government conversion loans of N. G. P. notes. They were fetching a fixed annual income as shown in Clause 5 of the table given above. Though the assessee was to get the entire income from the trust properties for his life what payments the assessee was getting were fixed or certain amounts and they were not variable amounts.

23. But Sri Ananta Babu, the learned counsel for the department, has strenuously argued before us that according to the terms of the deeds, which have already been mentioned above, the settlor, namely, the assessee, reserved to himself the right to direct the change of the investments of the trust properties and any change in the investments could also change the yield of income, therefore, it is not possible to say that as per the terms of the trust deeds the assessee was only to receive certain sums and not variable sums. It is true that the assessee reserved such a right to change the nature of the investments and also even otherwise the trustees may have a general right to bring about a change in the nature of the investments if they think that it would be in the interest of the beneficiaries and if the investments are to be changed the income of the trusts may vary. That contingency was there, but on account of the existence of such a contingency can it be said that the assessee was not to get fixed or certain amounts ? We do not think that by the mere existence of such a contingency it can be said that the assessee was not to get fixed amounts under the trusts which alone he was getting from the income of the trust properties as then existing. But Sri Ananta Babu argued that the nature of the right has to be decided taking into consideration all the contingencies and its nature cannot change from time to time and if any of the contingencies take place the right cannot be an annuity. It cannot also be an annuity at any time. To put it in other words if it is an annuity once, it should be an annuity throughout and where there is a chance of its becoming not an annuity at some future time it cannot also be an annuity at any time earlier also. We do not think so at any rate when the contingency of the trust properties getting a variable income is not certain to happen and only it may or may not happen as in the present case. As a matter of fact the variation in the investments of the trust property did not happen with regard to any of the properties of the trusts and the assessee was receiving only fixed amounts throughout till the time of his death including the period of the assessment years in question.

24. It was also argued by Sri Ananta Babu that as there are terms in the trust deeds to the effect

that on the happening of certain contingencies the trust properties are either to be reverted to the assessee or they are to be held in trust for his estate as the case may be and it would amount to his retaining interest in the corpus and this circumstance also would detract from the right of the assessee in question being an annuity. Under the terms of the trust as mentioned in the trust deeds there is no circumstance which is certain to happen under which either the assessee or his, estate was to get back the corpus of the trust properties. It is no doubt true there are provisions under which the trust properties are either to revert to the assessee or to be held in trust for the benefit of his estate on the happening of certain contingencies. When those contingencies are not certain to happen, it is not possible to say that the assessee retained any interest in the corpus of the trust properties. Therefore, we do not think there is any substance in this argument also of the learned counsel.

As the investments of the trust funds stand as on the dates of the creation of the trusts the payments to be received by the assessee were certain amounts and he did not retain for certain any interest in the corpus of the trust funds and under no contingencies which were certain to happen there was a possibility either of a variation in the amounts of the payments to be received by the assessee or the assessee or his estate getting an interest in the corpus of the trust funds. Under these circumstances we hold that the payments which the assessee was receiving under the five trusts in question were annuities. Accordingly we hold the point No. 1 in favour of the assessee and against the department.

Point No. 2.

25. As already seen above, for the assessee to claim exemption under Section 2(e)(iv) of the Act, it must not only be shown that the asset in question is not only an annuity but also the conditions under which it was created preclude the commutation of any of its portions into a lump sum grant. The prohibition may be specific or may be implied.

26. In this case the net income from the trust properties was given to the assessee for life and thereafter to his daughters and grand-children. There is an essential distinction in principle between a case where a sum of money is provided for being laid out in purchase of an annuity or there is a direction for purchase of an annuity of a certain amount and a case where there is a single obligation to pay an annuity out of the estate or - out of any particular portion of the estate. With regard to bequests of annuities it was provided under Section 174 of the Indian Succession Act that:

> "Where the will directs that an annuity shall be provided for any person out of the proceeds of property, or out of the property generally, or where money is bequeathed to be invested in the purchase of any annuity for any person, on the testator's death, the legacy

vests in interest in the legatee, and he is entitled at his option to have an annuity purchased for him or to receive the money appropriated for that purpose by the will."

27. A reading of the section shows that the case contemplated under that section is that where a sum of money is to be utilised for providing an annuity to an annuitant either by a direction that an annuity of a particular amount shall be provided for the annuitant or by a bequest of that sum of money for being laid out in the purchase of an annuity for the annuitant. In either case the sum of money is to be utilised or exhausted for the benefit of the annuitant by providing an annuity to him. Therefore, the annuitant at his option may either have that sum of money utilised for purchasing an annuity or have that sum of money absolutely in a sum. Section 174 of the Indian Succession Act has no application where there is a single bequest of an annuity without any bequest of the sum of money necessary to purchase the annuity.

28. Applying the same rule of law adopted in Section 174 of the Indian Succession Act to our present case in which the right was created by the trust deed, the right created is the annuity itself without grant of a sum of money or property for providing the annuity. There is no question of exhausting any money or property granted for the purpose of providing the annuity. Under the terms of the trust deeds the trustees were not to provide the annuity to the assessee by utilising or exhausting any portion of the trust funds. The income of the trust funds only was created as an annuity. The corpus of the trust funds is to remain untouched. According to the scheme envisaged in the trust deeds after the death of the assessee the income of the trust funds or the corpus thereof as the case may be is to be paid to the daughters and grand-children of the assessee. As the terms and conditions of the trusts created involve a gift over, there is no question of utilising any portion of the trust funds for paying any cash value of the annuity to the assessee.

29. Impossibility of commutation may arise out of a specific prohibition made by the grantor or it is inherent in the terms and conditions of the grant. Therefore, we are of the opinion that the terms and conditions relating to the annuities created under the trust deeds are such that they preclude the commutation thereof into a lump sum grant.

30. In this connection the decision of the Gujarat High Court in Commissioner of Wealth-tax v. Dr. E.D. Anklesaria which had already been referred to above has to be examined. There the assessee was the recipient of an annuity granted under a testamentary disposition. There certain annuities were created to be paid out of the net income of the trust property and the trustees to hold the balance of the income and utilise the same for certain objects mentioned therein. The annuity is given to the assessee for his life, and thereafter, to his children in equal shares. The assessee claimed exemption from payment of wealth-tax under Section 2(e)(iv) of the Act. The Wealth-tax Officer rejected the claim holding that the assessee has a right to have the annuity commuted into a lump sum grant. This view was found against by the High Court holding that

neither Section 174 of the Indian Succession Act, nor any rule of English law (after considering some English decisions) applied to the facts of the case so as to entitle the assessee to call upon the trustees to commute the annuity into a lump sum grant having regard to the terms and conditions relating to the annuity. In that case also as there is a gift over the trustees cannot touch any part of the corpus of the trust fund and they are to utilise the net income only. Having regard to those terms their Lordships of the Gujarat High Court held that the assessee is precluded from calling upon the trustees to pay him the value of the annuity in a lump sum and if the assessee calls upon the trustees to do any such thing the trustees can immediately rejoin by saying that they are not permitted by the trust to do that and they would be guilty of breach of trust if they apply any part of the corpus of the trust fund for payment of the commuted value of the annuity.

31. We respectfully follow the above decision of the Gujarat High Court.

32. Accordingly, we hold the second point also against the department.

33. The net result is that the right to payments to be made to the assessee as provided in the five trust deeds are, annuities answering the description as mentioned in Section 2(e)(iv) of the Act, and therefore, the assessee could claim exemption from including the capitalised value of these payments in his net wealth for the purpose of levying wealth-tax.

34. Accordingly, we answer the question in the negative. The respondents are entitled to their costs. Advocate's fee is fixed at Rs. 250.

Cases Referred.

1[1968] 70 I.T.R. 203
2[1964] 53 I.T.R. 393