

CALCUTTA HIGH COURT

Ahmed G. H. Ariff

Vs

Commissioner of Wealth-Tax

(Mitter J.)

04.12.1964

JUDGMENT

Mitter J.

1. The question referred to this court under section 27 of the Wealth-tax Act is :

"Whether on the facts and the circumstances stated the right of the assessee to receive a specified share of the net income from the wakf estate is an asset the capitalised value of which is assessable to wealth-tax ?"

The facts are very short : 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 wakf property during his life and 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 wakf property and keep proper accounts thereof. After payment of all necessary outgoing 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 the 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 to 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 1/6th of the net income for their lives respectively, and the wife was to get 1/10th of the net income. The assessee failed to convince the revenue authorities that wealth-tax could not be levied in respect of his right to receive a definite share of the net income from the wakf property. Before us it was contended :

(1) That such right was not property which could be described as an "asset" for the purpose of the Act.

(2) If the above contention was not accepted the asset in this case was excluded from the operation of the Act by reason of section 2(e) (iv) of the Act.

(3) In order to fall within the definition of "net wealth" given in section 2(m) of the Act the asset must be one which belonged to the assessee and could be dealt with or disposed of by him.

(4) If the asset was such as could not be sold in the open market its capitalised value was nil for the purpose of the Act, To appreciate the argument raised it is necessary to refer to the relevant provisions of the Wealth-tax Act. Under section 2(c) "assessee" means a person by whom wealth-tax or any other sum of money is payable under the Act. Under section 2(d) "assessment year" means the year for which the tax is chargeable under section 3. "Assets" have not been defined comprehensively in the Act, but under section 2(e) "asset" includes property of every description, movable or immovable, but does not include –

"(i) agricultural land and growing crops, grass or standing trees on such land;

(ii) any building owned or occupied by a cultivator or receiver of rent or revenue out of agricultural land;

(iii) animals;

(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."

"Net wealth" under section 2(m) means the amount by which the aggregate value computed in accordance with the provisions of the 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 Act, is in excess of the aggregate value of all the debts owed by the assessee on the valuation date other than, -

(i) debts which under section 6 are not to be taken into account; and

(ii) debts which are secured on, or which have been incurred in relation to, any asset in respect of which wealth-tax is not payable under this Act."

Under section 2(q) "valuation date", in relation to any year for which an assessment is to be made under the Act, means the last day of the previous year as defined in clause (ii) of section 2 of the Income-tax Act if an assessment were to be made under that Act for that year.

Section 3, the charging section, runs as follows :

"3. Subject to the other provisions contained in this Act, there shall be charged for every financial year commencing on and from the first day of April, 1957, a tax... in respect of the net wealth on the corresponding valuation date of every individual, Hindu undivided family and company at the rate or rates specified in the Schedule."

Under section 5(1) 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 -

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

(v) the rights under any patent or copyright belonging to the assessee :

Provided that they are not held by him as assets of a business, profession or vocation and no income or benefit accrues to him therefrom;

(vii) the right of the assessee to receive a pension or other life annuity in respect of past services under an employer."Under section 7(1) 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 Wealth-tax Officer it would fetch if sold in the open market on the valuation date. It was first argued that in order that any asset might be held to be property for the purpose of the Act the same must either be movable or immovable and an intangible right was not meant to be included within the definition of "assets". It was said that the expression "property of every description, movable or immovable" went to show that other classes of property, neither movable nor immovable, were left out of the purview of the Act. In my opinion the argument is untenable. The expression movable or immovable occurring after the words "property of every description" does not limit the ambit of property sought to be included in the computation of net wealth but is only illustrative. Section 4 of the Act read with section 2(e) (iv) shows that certain annuities not covered thereby would come within the description of "property". In very many cases annuities do not create any charge on any property and are personal rights which cannot be called either movable or immovable property. Besides section 5(1) (v) goes to show that right under patents or copyrights would also fall within the description of property. It is well known that a patent is a chose-in-action and "copyright is the sole right to produce or reproduce a work which is capable of being the subject of copyright protection or any substantial part thereof in any material form whatsoever, and to perform, or in the case of a lecture to deliver, the work or any substantial part thereof in public" : see 8 Halsbury, second section, article 773. "The right is merely a negative right to prevent the appropriation of the labours of an author by another." The Indian Copyright Act of 1914 makes the English Copyright Act, 1911, applicable to India with the modifications mentioned. The contention that the right of the assessee was in truth a right to an annuity which under the Mohammedan law could not be commuted into a lump sum grant requires to be examined in some detail. It is not disputed that the right of the assessee in this case was incapable of being commuted into a lump sum grant either by the terms of the wakfnama or Mohammedan law. The question still arises as to whether it is an annuity. According to the Shorter Oxford Dictionary "annuity" means, (1) "a yearly allowance or income". (2) "(Law). The great of an annual sum for a term of years, for life or in perpetuity, chargeable primarily upon the grantors person and his heirs if named." According to Halsburys Laws of England, volume 28 (second edition), article 312, "the right created by an instrument (whether deed, will, codicil or statute) to receive a definite annual sum of money is an interest which may be, strictly, speaking, either a rent charge or an annuity". The learned author states in article 321 : "An annuity is a sum of money payable yearly, or at any rate periodically, from a source which is exclusively or at any

rate primarily personal estate". It would therefore appear that to lawyers an annuity means a fixed sum of money payable every year while used in a popular sense the term may also mean a yearly allowance or income in which case perhaps it need not be of a fixed sum. We, therefore, have to see whether the word "annuity" in the Act is to receive the meaning given to it by lawyers or the other which is said to be its popular sense. According to Craies on Statute Law, 5th edition, page 153, "there are two rules as to the way in which terms and expressions are to be construed when used in an Act of Parliament. The first rule is that general statutes should prima facie be presumed to use words in their popular sense." At page 155 the learned author states that "the second rule is that if the statute is one passed with reference to a particular trade, business or transaction, and words are used therein which everybody conversant with that trade, business or transaction knows and understands to have a particular meaning in it, then the words are to be construed as having that particular meaning which may differ from the ordinary or popular sense". As regards legal technology the author states at page 158, "there is a well known principle of construction, that where the legislature uses in an Act a legal term which has received judicial interpretation, it must be assumed that the term is used in the sense in which it has been judicially interpreted... The same rule applies to words with well known legal meanings, even though they have not been the subject of judicial interpretation." The right of the assessee in this case is to receive an aliquot share of the net income of the properties which were made the subject-matter of the wakf. That there is a clear distinction between an aliquot share of income and an annuity is illustrated by the observations of the Court of Appeal in England in the Case of *In re Duke of Norfolk : Public Trustee v. Inland Revenue Commissioners*, where a question arose in respect of estate duty payable in the case of grant of an annuity to A and after his death to B. Referring to the cases of *In re Northcliffe* and *Christie v. Lord Advocate* Evershed M. R. said : "Both the two last mentioned cases were instances of dispositions of aliquot shares of the general income of an estate to be enjoyed in succession, as distinct from an annuity or yearly sum, which, even though variable... is in no way dependent upon or related to the general income of the estate". Instances of annuity are given in the illustration to section 173 of the Indian Succession Act and it will be noticed that in each a specified sum is mentioned. So far as the English law is concerned "an annuity is a right to receive de anno, in annum, a certain sum that may be given for life, or for a series of years; it may be given during any particular period, or in perpetuity" : Per Kindersley V. C. in *Bignold v. Giles*. Where the sum mentioned was pounds 100, Lord Cottenham C.J. said in *Blewitt v. Roberts*, that "it is the gift of an annual sum of pounds 100; that is of as many sums of pounds 100 as the donee shall live years." This meaning of the word "annuity" was adverted upon in *Commissioner of Wealth-tax v. E. D. Anklesaria*. The further contention that even if the right of the assessee in this case was an asset within the meaning of section 2(e) of the Act, it could not be taken into account in computing net wealth as defined in section 2(m) because the property out of which the right to receive the income arose did not belong to the assessee, is of no substance. If the right to receive the income is an asset it belongs to the assessee no matter whether the right is dependent on the existence of some property and springs out of it. It is the asset of the assessee which has got to be taken into account. If the asset disappears by reason of the non-existence of something to which it is

attached or appurtenant, it may cease to belong to the assessee when the tangible property out of which it arises ceases to exist. Consequently, the fact that the ownership of the property rested or vested in God is a matter of no moment. It is not the ownership of the wakf properties which can be made taxable for the purpose of the Wealth-tax Act; it is only the right of the assessee to receive some benefit out of the income of the property which is exigible. I find myself unable to accept the contention of the assessee that because his right in this case cannot be transferred or sold for a consideration no value can be given to it under section 7(1) of the Act. No doubt section 7(1) shows how the value of an asset is to be determined but it only indicated that the value of an asset for the purpose of the Act is to be estimated as the price which it would fetch if sold in the open market on the valuation date. As the asset in this case is a non-transferable one it cannot be sold in the open market but that does not establish that it has no value. For the purpose of the Act the Wealth-tax Officer must proceed to value it as if it was an asset which could be sold in the open market. This would depend on actuarial valuation. An actuary would probably value it taking into account the age of the person who is in respect of it and his estimated length of life. If the property is of a wasting nature probably that too would be considered but these are not matters with which we are concerned in this case. All that we have to see is whether it is one which is capable of being given in a capitalised value. In the result, the answer to the question must be in the affirmative and against the assessee who will pay the costs of this reference.

Masud J. - I Agree.

Question answered in the affirmative.