BOMBAY HIGH COURT

Trustees of Putlibai R.F. Mulla

Vs

Commissioner of Wealth-Tax

(Kotwal, C.J. V Desai, J.)

07.02.1967

JUDGMENT

Kotval, C.J.

1. We are concerned in this reference with the assessment of the trustees of the Putlibai R. F. Mulla Trust to wealth-tax for years 1957-58, 1958-59 and 1959-60. The relevant valuation dates are March 31, 1957, March 31, 1958, and March 31, 1959.

2. The trust was declared on the 14th of September, 1931, by Putlibai R. F. Mulla for the benefit of herself, her children and their spouses and her grandchildren. The relevant clauses of that trust are clauses (c) to (g), both inclusive, and are, for convenience of reference, reproduced below :

> "(c) During the lifetime of the settlor and her husband to divide the net rents, profits, interest dividend and income (hereinafter for brevity's sake referred to as the net income) into six equal parts and to pay one equal part to the settlor and to divide the remaining five parts amongst the settlor's children in equal shares until the time hereinafter mentioned.
>
> (d) In case the settlor predeceases her husband, then on the death of the settlor to hand over the trust properties to the settlor's husband absolutely and as the absolute owner thereof.
>
> (e) In case the settlor survives her husband to pay the whole of the net income to the settlor from the date of the death of the settlor's husband for and during the term of her natural life.
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> (f) In case the settlor survives her husband, then on death of the settlor to hold the trust properties upon TRUST to divide the same into as many parts as may represent the number of children left by the settlor and to pay the income of one equal part thereof to

each of them during his or her life PROVIDED THAT if any child of the settlor shall have predeceased the settlor leaving a widow or widower and or issue him or her surviving the share of such predeceased child shall be counted in the same manner as if such child had been living at the time of the settlor's death and had died immediately after her and the share of such child shall be divided in the same manner as is hereafter directed for the division of the share of the settlor's children dying after the death of the settlor.

(g) On the death of any child of the settlor to hold his or her share in the corpus UPON TRUST to set apart half of such corpus and to pay the net income thereof to the widow or widower as the case may be of any child so dying (provided such widow or widower is born before the date of these presents) until the death or remarriage of such widow or widower as the case may be whichever event shall first happen and to divide the remaining half of the corpus amongst such of his or her children as shall attain the age of majority or marry before that age in equal shares the share of any such children dying without attaining the age of majority or without marrying before that age to be divided amongst the brothers and sisters of such child so dying in equal shares and to similarly divide amongst them the half share of the corpus set aside as aforesaid when the said life interest therein of the widow or widower if any ceases PROVIDED FURTHER that if such deceased child of the settlor shall have died without leaving any issue or leaving issue who shall have all died after him or her without having attained the age of majority, or without having married before that age then and in such case the trustees shall hold his or her share in the corpus subject to the provision for the benefit of the widow or widower of any such child of the settlor as in hereinbefore in that behalf contained UPON TRUST to divide the same amongst his or her brothers and sisters in equal shares the share of any brother or sister who may have predeceased such child of the settlor leaving issue him or her surviving to be counted in the same manner as if such brother or sister has been then alive at the time of his or her death and to divide it amongst his or her issue in equal shares....."

3. On that date the settlor, Putlibai's husband, Rustomji Fardunji Mulla, was alive. He passed away some time in 1936. The settlor had five children as follows :

1. Piroja,

2. Nadirshah,

3. Nariman,

4. Jal, and

5. Mrs. Hilla J. R. Vimadalal

4. Of these five children, Nariman passed away some time in 1950, before the Wealth-tax Act came into force. Thus there are four children of Mrs. Putlibai today. Of these the eldest daughter, Piroja is unmarried and the remaining three surviving children have two children each. Nadirshah has two sons, Fardun and Naval, Jal has a son, Rustom, and a daughter, Freny, and Mrs. Hilla Vimadalal has two daughters, Pervin and Kamal.

5. In view of the death of her husband in the year 1936, clause (d) can now no longer be operative. The provisions of the trust deed, which we have just reproduced above, show that during her lifetime of the property was to be divided into six equal parts and one equal part was to be given to the settlor and to each of her five children then alive. In case the settlor survived her husband by virtue of clause (e), the whole of the net income of the property was to be paid to the settlor during her lifetime from the date of the death of her husband. That is the position in effect today for the settlor's husband having passed away, the entire income is today payable to her.

6. But by clause (f) and (g) the settlor has created certain interests in favour of her children and grandchildren. Clause (f) makes provision for her own children, and it in substance provides that in case the settlor survives her husband, then on her death the trust properties are to be divided into as many parts as may represent the number of children left by the settlor and the income of one equal part thereof being paid to each of them during his or her life. In other words, the income from the property is to be equally divided among the surviving children, Then there is a proviso added to clause (f), which says that if any child of the settlor has predeceased her leaving a widow or widower or an issue surviving, the share of such predeceased child should be counted as if such child had been living at the time of the settlor's death and had died immediately after her and the share of such a child should be divided in the same manner as is directed in clause (g). In substance the provision is that the share of the predeceased child shall, in respect of one moiety go to his, or her widow or widower and the other moiety to his child or children equally, with this difference that the widow or widower gets only an interest in the income for life while the settlor's grandchild or grandchildren get the corpus itself.

7. The share of the settlor's children is liable to be argumented under the conditions laid down in clause (g). So far as clause (g) is concerned, it provides firstly that, on the death of any child of the settlor half the income from the share of such child shall be payable to the widow or widower of the child so dying until the death or remarriage of such widow or widower and the remaining half of the corpus shall be divisible in equal shares amongst each of the children of such widow or widower as shall attain the age of majority or marry before that age. If any such child (i.e., the grandchild of the settlor) dies before attaining majority or marrying, then his or her share shall be

equally divided amongst his or her brothers and sisters and the interest of their mother or father shall be similarly divisible amongst the grandchildren in the event of the death of the surviving spouse. The second proviso to clause (g) provides that if a predeceased child of the settlor dies without leaving any issue or leaving issue who shall have died without attaining majority or being married, then the trustees shall hold his or her share in the corpus subject to the same provision for the benefit of the widow or widower of any such child of the settlor as is mentioned in clause (f) to be divisible amongst his or her brothers and sisters in equal shares, if alive, and if not alive, but having children then as if he or she were alive.

8. The matter had previously come before this court upon a reference and at that stage all the tax authorities and the Tribunal had taken the view that the assessment of the wealth in the hands of the trustees should be made under the provisions of section 21(4) of the Wealth-tax Act, 1957, and it could not be made under section 21(1) as the assessees desired it to be. The relevant provisions of section 21 are as follows :

> "(1) In the case of assets chargeable to tax under this Act which are held by a court of wards or an administrator-general or an official trustee or any receiver or manager or any other person, by whatever name called, appointed under any order of a court to manage property on behalf of another, or any trustee appointed under a trust declared by a duly executed instrument in writing, whether testamentary or otherwise (including a trustee under a valid deed of wakf), the wealth-tax shall be levied upon and recoverable from the court of wards, administrator-general, office trustees, receiver, manager or trustee, as the case may be, in the like manner and to the same extent as it would be leviable upon and recoverable from the person on whose behalf the assets are held, and the provisions of this Act shall apply accordingly.
>
> (2) Nothing contained in sub-section (1) shall prevent either the direct assessment of the person on whose behalf the assets above referred to are held, or the recovery from such person of the tax payable in respect of such assets.....
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> (4) Notwithstanding anything contained in this section, where the shares of the persons on whose behalf any such assets are held are indeterminate or unknown, the wealth-tax may be levied upon and recovered from the court of wards, administrator-general, official trustee, receiver, manager or other person aforesaid as if the persons on whose behalf the assets are held were an individual for the purposes of this Act."

9. It will be clear from sub-section (1) that the levy of wealth-tax upon the trustee and its recovery from his is to be in the like manner and to the same extent as it would be leviable upon and recoverable from the person on whose behalf the assets are held. In other words, if sub-

section (1) were to apply, the levy of tax would be on the share of each individual beneficiary in the total assets in the hands of the trustees and the tax would be recoverable from the trustees on behalf of the individual beneficiary to that extent. Under sub-section (4), however, the wealth-tax would be leviable upon and recovered from the trustees as if all the beneficiaries on whose behalf the assets are held were one individual for the purposes of the Act. The result would be that, though in either case the tax will be levied on and recovered from the trustees in a representative capacity, the tax would be levied and be payable under sub-section (1) on the individual share of each beneficiary, while under sub-section (4) the tax would be levied and be payable upon the total valuation of the wealth and would, therefore, necessarily be at a much higher rate.

10. Upon this dispute arising between the assessees and the department, two questions were referred to this court when the reference was originally made and they were as follows :

> "1. Whether the assessment of the trustees under section 21(4) of the Wealth-tax Act is valid in law ? and
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> 2. Whether in making the assessment under section 21 the value of the assets liable for wealth-tax should be calculated in accordance with the actuarial valuation of the respective interest of the beneficiaries under the trust and at the rate at which it would be leviable in the hands of the beneficiaries ?"

11. When the original reference came up for hearing before this court it was pointed out that in order that sub-section (4) of section 21 could at all apply, the initial condition to its applicability had to be fulfilled. That condition as stated in the sub-section is that the shares of the persons on whose behalf the assets are held should be found to be "indeterminate or unknown" within the meaning of those words in sub-section (4) and it was pointed out that that finding had not been given by the Tribunal in the order dated November 29, 1961, out of which the reference arose. The Division Bench accepted this contention and sent back the case to the Tribunal directing it to make a further statement relating to the said contentions. It observed :

> "It is clear from the statement of the case as well as from the questions which are Tribunal has referred to us that it was contended by the assessee before the Tribunal that the provisions of section 21(4) were not attracted in the present case since the beneficiaries under the trust deed were definite, ascertained and ascertainable. It was contended that the assessments had to be made under the provisions of section 21(1), in which case the tax had to be levied in the like manner and to the same extent as it would be leviable upon the several beneficiaries under the trust according to their respective interests.....
>
> Although it is clear that these contentions were raised on behalf of the assessees before the Tribunal, we do not find that any of them have been dealt with by it."

12. Upon this view the Division Bench sent back the case for a further statement and a supplementary statement has now been made by the Tribunal. On the question whether the shares held on behalf of the beneficiaries were definite, ascertained and ascertainable the Tribunal has held as follows :

> "It seems to us, having regard to the clause (c) to (g) of the trust deed, the shares of the persons on whose behalf the assets were held by the trustees were determinate and known for the purposes of section 21(4) of the Wealth-tax Act on any of the valuation dates relevant to the assessment years in question..... It is true that the relative interests might he varied in course of time according to the births and deaths in the family. But we were concerned with the situation as it prevailed on the valuation dates and on those dates the beneficiaries were identifiable and the extent of their interest in the properties held under trust was also clearly definable."

13. The Tribunal has relied upon a decision in Suhashini Karuri v. Wealth-tax Officer, Calcutta, and on the remarks of the Patna High Court in Khan Bahadur M. Habibur Rahman v. Commissioner of Income-tax. Turning to the relevant provisions of the Act, section 2(m) defines "net wealth" and it means "the amount by which the aggregate value computed in accordance with the provisions of this 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 this Act, is in excess of the aggregate value of all the debts owed by the assessee on the valuation date other than...." With the except debts we are not here concerned. Section 3 is the charging section and it provides :

> "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 (hereinafter referred to as wealth-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."

14. The charge of wealth-tax, therefore, is in respect of the net wealth and with reference to the corresponding valuation date. "Valuation date" is defined in section 2(q) : "in relation to any year for which an assessment is to be made under this Act, means the last day of the previous year as defined in clause (11) of section 2 of the Income-tax Act if an assessment were to be made under that Act for that year." The proviso to the definition of the "valuation date" does not apply in the present case. According to this definition, therefore, the material valuation dates in the present case would be March 31, 1957, March 31, 1958, and March 31, 1959.

15. Now, the contention of Mr. Joshi is that the finding reached by the Tribunal that the shares of

the persons on whose behalf the assets were held by the trustees were determinate and known is incorrect, because of the provisions of the trust deed itself. He first of all points to the provisions contained in clause (g). We have already set forth the provisions of that clause and in substance the clause shows the intention of the settlor first of all to give to each of her children an equal share in the income of the trust property after her lifetime. It is clear that the shares are determined and known. After the death of any child his or her share is to be divided into two parts - the income of one moiety being given to the surviving spouse and the corpus of the other moiety being divisible equally among all the children of that child. Here again, the shares as well as the nature of the interest in the shares are definite, determinate and known. The other provisions are merely incidental and only made in order to effectuate to the principal intention of the settlor.

16. When Mr. Joshi has urged is that, upon a proper construction of clause (g) of the deed of trust, it should be held that the provision as in favour of a class of grandchildren of the settlor existing or to be born and that class is a fluctuating class and necessarily indeterminate. The shares of the grandchildren would be liable to variation, if some would die and new ones may be born.

17. We are unable to construe the provision of clause (g) in that light. None of the provisions of the trust deed show that there is any benefit conferred upon a class as a whole without reference to individuals. On the other hand, the provisions of clauses (f) and (g) clearly indicate that they create benefits either for the children of the settlor or her grandchildren, and even assuming that the share of one or more of the grandchildren is susceptible of being argumented by the death of one of her own children and/or their spouses or her unmarried daughter as it was urged before us, none the less the class for whom the benefits have been created is a determinate and known class and the shares given to each one of those persons is a specific, determinate and known share.

18. It was further urged that, so long as the shares themselves are liable to alteration or fluctuation, it cannot be said that those shares are determinate. No doubt it is possible upon the terms of the trust deed that even after becoming entitled to a share in the trust property after the lifetime of their parents, the share of the grandchildren may in certain contingencies be argumented, as for instance at the death of the unmarried daughter. Such a contention cannot be sustained because, so far as the incidence of the wealth-tax is concerned, it is the incidence on the "relevant date" that we have to consider. The question whether the shares of the beneficiaries are determinate or known has to be judged as on the relevant date in each respective year of taxation. Therefore, whatever may be the position as was urged by Mr. Joshi as to any future date, so far as the relevant date in each year is concerned, it is upon the terms of the trust deed always possible to determine who are the shares and what their shares respectively are.

19. Almost the same contention was raised in a case before the Gujarat High Court in Padmavati Jaykrishna Trust v. Commissioner of Wealth-tax. In that case one Mahalaxmibai, a widow, had made two trusts in favour of her two daughters-in-law and after their lifetime in favour of their children by her sons. It was urged that the deed in that case created a vested interest in each of the male children in the trust properties and though at the time of the assessment one of the sons had himself two sons, both of them being alive, the possibility of the sons having more sons in future could not be eliminated, and, therefore, it would not be possible to say how many sons there would be at the time of the death of the settlor. This point was answered by the Division Bench at page 83 as follows :

> "Even assuming that there was a possibility of Jaykrishna having another male child in future, the only effect of such an event would be to diminish the share of each of the two sons and to divest to that extent their interest in the properties. But, as we have already stated, the revenue is not concerned with what would take place in future. It was concerned with the actual position on December 31, 1957, and on that day there being only two male children of Jaykrishna, each of them under clause (b) had a vested and transmissible interest in the corpus, though its distribution was postponed till the event set out in the deed.... Thus, on the relevant date, i.e., December 31, 1957, the number of beneficiaries was definite and their shares being equal there was no question of their shares being indeterminate or unknown and, consequently, the provisions of sub-section (1) and not of sub-section (4) of section 21 would apply."

20. Though the facts here are slightly different, it seems to us that the principle of this decision would none the less be attracted. No doubt, in the present case also there is a possibility of the number of grandchildren being added to by births or reduced by deaths. But in computing he net wealth and having regard to the provisions of section 3, which lays the charge for wealth-tax on the relevant date, we have no doubt that the shares of each one of the children and grandchildren were determinate and known. The question whether the shares of the persons on whose behalf the assets are held are indeterminate or unknown within the meaning of sub-section (4) of section 21 has to be determined with reference only to the relevant date, i.e., the end of the previous year, and looking at it from that point of view, we do not think that the provisions of the trust deed in the present case gave shares to any of the beneficiaries, which were indeterminate or unknown.

21. Another distinction was sought to be made by Mr. Joshi by urging that what was really given to the grandchildren by clause (g) of the trust deed was not a share but only an interest. So far as their share is concerned, it can only become determinate or known when the vesting actually takes place and until the settlor is alive all that the grandchildren have is not a share in the property but merely an interest. For that reason he urged again that the shares must be held to be indeterminate or unknown and they would become determinate are known only when they

actually vest in the grandchildren. The word "shares" in sub-section (4) of section 21 does not, in our opinion, exclude the interest which the beneficiaries have been given in the trust property in the present case even though that interest may be contingent upon the happening of a certain event, as for instance, the death of an ancestor. The word "shares" is used in the composite expression "the shares of the persons on whose behalf the assets are held." Therefore, the word "shares" must be understood in the context of the assets held and we can see no reason why the word "shares" should be limited only to a vested interest and not include a contingent interest. It would, in our opinion, include the interest such as the grandchildren were given under clause (g) of the trust deed. Moreover, we may point out that both in clauses (f) and (g) the word used is "share" or "shares" and not "interest."

22. The principle, to which we have just referred, viz., that the question whether the shares are determinate and known is to be judged as on the relevant date, was adverted to in a Calcutta case in Suhashini Karuri v. Wealth-tax Officer, Calcutta. In that case there was a provision made in the trust deed for the setting apart of a reserve fund according to the discretion of the trustees, and from this it was argued that the share of each beneficiary was indeterminate. The point was thus answered at page 963 by the learned judge :

> "The share of a beneficiary can be said to be indeterminate if at the relevant time the share cannot be determined. Merely because the number of beneficiaries varies from time to time, one cannot say that it is indeterminate."

23. In the Gujarat case, a parallel was drawn between the provisions of section 21 and the provisions of section 41(1) read with the first proviso thereto of the Indian Income-tax Act. Mr. Joshi urged that this was not a correct approach, because according to him there is a crucial difference between the incidence of wealth-tax and the incidence of income-tax. He urged that, so far as income-tax is concerned, it is upon the income received by the trustee, whereas so far as the wealth-tax is concerned, it is on the assets held by the trustees. So far as the assets are concerned, they are held for all time; whereas so far as the income is concerned it is received only within the year of assessment. We are unable to appreciate this rather subtle distinction. At any rate, it seems to us unnecessary to go into this fine distinction, for the words of section 21 read with section 3 of the Wealth-tax Act are clear enough. The charge of wealth-tax is to be computed on the relevant date and whether the shares of the beneficiaries under section 21(4) are indeterminate or unknown has to be judged as on the relevant date. Looked at from this point of view, we do not think that there was any error (and we say so with respect) in the decision in Padmavati Jaykrishna Trust v. Commissioner of Wealth-tax. We may also add that even so far as section 41 is concerned the same view has prevailed. It was first taken in M. Habibur Rehman v. Commissioner of Income-tax, and approved by a Division Bench of this court in Income-tax Reference No. 15 of 1946, decided on March 12, 1948. Referring to Habibur Rehman's case,

Chagla C.J. said :

> "Therein a question arose as to the construction of a deed of wakf, which provided that the beneficiaries should be benefited concurrently and in the same proportion and in the year of account the beneficiaries were 24 in number. The court held that the first proviso to section 41 did not apply. With great respect that is the only conclusion to which the Patna High Court could have come, because although the beneficiaries may vary from time to time as some would die and new ones may be born at any particular time, it could be stated that each beneficiary would get a specific share and that would depend on the number of beneficiaries who were then in existence. That is not the position in the case before us....."

24. For these reasons we are of opinion that the finding reached by the Tribunal in their supplementary statement on 10th June, 1966, was the correct finding. It must be held that the shares of the persons on whose behalf the assets were held by the trustees were, upon the terms of the trust deed, not indeterminate nor unknown on each of the valuation dates relevant to the assessment years in question. Therefore, the case would be governed by the provisions of section 21(1) and not by the provisions of section 21(4). The assessments should be made under section 21(1) of the Act. Accordingly we answer the first question in the negative.

25. So far as the second question is concerned, it only arose because of the answer given to the first question, viz., that the assessments should be made under section 21(4) of the Wealth-tax Act. Since we have now negatived that question, we do not think that the second question arises and it is not necessary to answer it. The Commissioner shall pay the costs of the assessees.