

BOMBAY HIGH COURT

Commissioner of Wealth-Tax

Vs

Trustees of Mrs. Hansabai

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

20.02.1968

JUDGMENT

Kotwal, C.J.

1. The question referred for our decision is :

"Whether, on the facts and in the circumstances of the case, the provisions of section 21(4) of the Wealth-tax Act are applicable to the trusts dates May 17, 1954, and July 13, 1956, executed by Nanalal Haridas for the assessment years 1958-59, 1959-60 and 1960-61."

2. The corresponding valuation dates were December 31, 1957, December 31, 1958 and December 31, 1959. The assesseees are the trustees of the Messrs. Hansabai Tribhuwandas Trust. Two trusts were created by one Nanalal Haridas on the 17th May, 1954, and 13th July, 1956. So far as the first of the 17th May, 1954, is concerned, the relevant clauses upon which a decision of the question referred depends are clauses 2(a) to 2(e) which were as follows :

"(a) To recover the dividends, interests, and income of the trust fund and to pay out of the same the charges for collection and all other outgoings, if any.

(b) To pay the balance of such interest, dividends and income hereinafter called 'the net income' of the trust fund to the said Hansa so long as the said Hansa continues to be and remains the wife or widow of the said Tribhuwandas Haridas.

(c) In the events of a son or sons being born to the said Hansa then on the said Hansa ceasing to be the wife or widow of the said Tribhuwandas Haridas, to divide the corpus of the trust fund amongst all the sons of the said Hansa, if more than one, in equal shares.

(d) In the event of no son or sons being born to the said Hansa and in the event of a

daughter or daughters being born to the said Hansa, then on the said Hansa ceasing to be the wife or widow of the said Tribhuwandas Haridas to divide the corpus of the trust fund amongst all the daughters of the said Hansa, if more than one, in equal shares.

(e) In the event of no child being born to the said Hansa then on the said Hansa ceasing to be the wife or widow of the said Tribhuwandas Haridas to divide the corpus of the trust fund amongst the heirs of the said Tribhuwandas Haridas husband of the said Hansa according to the law."

3. Tribhuwandas is the brother of Nanalal and Hansabai is the wife of the Tribhuwandas. On the respective valuation dates no children were born to Hansabai and Tribhuwandas but Nanalal has one son. It may be mentioned that both by the first as well as by the second trust deeds the income from the trust properties, after the deduction of charges for collection of the trust funds and other outgoings, was to be paid to Hansabai "so long as the said Hansa continue to be and remains the wife or widow of the said Tribhuwandas Haridas" as so long as she had no son or sons. In the event of the son or sons being born to her and her continuing to be the wife or widow of Tribhuwandas Haridas, the son or sons had not any present interest but lifetime the corpus was to go the son or sons. In the relevant years the income from the trust property was, in fact, paid to Hansabai and had been assessed in her hands. The other terms of the second trust deed were slightly different and we shall refer to it a little later. We are, in this reference, not concerned with the income from the trust properties but only with the valuation of the corpus thereof.

4. Now, according to the department, the shares in the trust property would be governed by the provisions of section 21(4) and, therefore, the assessee, who are the trustees, would be liable to be assessed as an individual. That was the stand taken on behalf of the department in this case. On behalf of the assessee it was urged that the shares are determinate and known and, therefore, section 21(4), would not apply and each of the beneficiaries to the extent of his share would be liable to be assessed.

5. The Wealth-tax Officer applied the provisions of section 21(4) and held that "the expression 'shares' used in section 21(4) should be deemed to mean not the shares in the income but the shares in the corpus of the trust fund, since wealth-tax deals with wealth of the assessee..." He relied on clauses 2(c), (d) and (e) of the trust deed and held that it was clear upon the provisions of the trust deed that the beneficiaries in the corpus were not known or determine on the date of valuation, and that it all depended upon "certain contingencies happening". The Appellate Assistant Commissioner upheld this decision. He held that "Hansa Tribhuwandas has no right in the corpus which is only distributable on her death and the shares of the persons who would be entitled to the corpus are clearly indeterminate. Section 21(4), therefore clearly applied to the facts of the case". He also held that "the consideration in the assessment of the beneficiary of the

value of her life interest is not any way improper as it is one of her assets whose present value or benefit has to be evaluated and included". He, therefore, held that "the sum of Rs. 5,24,941 considered as the value of the life interest of the beneficiary is allowed as a deduction in the appellants hands". So far as this part of the Appellate Assistant Commissioner's order is concerned, it was not subsequently challenged. The assessee appealed to the Tribunal and the Tribunal has reversed the decision of the Wealth-tax Officer and the Appellate Assistant Commissioner. The view which the Tribunal took was that, having regard to the provisions of the two deeds, "it would be clearly possible by any competent actuary to determine the interest of these persons as on respective valuation dates quite precisely. The property held under that deed, therefore, should have been charged in the hands of the respective beneficiaries in respect of the value of respect of the value of interest which each one of them had in the corpus either in the hands of the trustees or in their own hands." They relied upon the decision of the Calcutta High Court in *Suhashini Karuri v. Wealth-tax Officer, Calcutta*. They further found that the interest of Hansabai and each of the legal heirs of her husband in the property of the trust as on valuation dates could be ascertained with certainty and could be valued by actuaries. Therefore there was no justification for making composite assessment on the trustees in respect of the interest of the different beneficiaries under two separate trusts.

6. Now, the Commissioner and on his behalf Mr. Joshi has strenuously contended that the shares of the beneficiaries are indeterminate and unknown. He first of all urged that Hansabai herself must be deemed to have a share in the corpus of the trust property along with the contingent interest of the other beneficiaries under the trust deeds. Therefore, it is not possible to determine what is her interest and what is the interest of the other beneficiaries. Secondly, he urged that, even assuming that Hansabai had no interest in the corpus of the trust properties, still the other beneficiaries, the heirs of Tribhuwandas in the case of the first deed and Nanalal himself in the case of the second deed, had interests which are not capable of being determinate or capable of being known. He urged that in any event these interests are dependent upon a number of events which may or may not happen and it was only contingent upon those events that the shares could come into being and, therefore, they are indeterminate and unknown.

7. Now, it seems to us that it is unnecessary to go into the provisions of section 21(4) in any great detail, because we had occasion recently to construe the provisions of that section in a recent decision in *Trustees of Putlubai R.F. Mulla Trust v. Commissioner of Wealth-tax*. In that case the provisions of section 21(1), (2) and (4) also fell to be considered. One of the provisions in the trust deed in that case was in favour of a class of beneficiaries who were the grandchildren of the settlor - a class which was liable to be increased by births and deaths and an argument similar to the one which has been advanced by Mr. Joshi that "upon a proper construction of clause (g) of the deed of trust, it should be held that the provision is 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 a grandchildren would be liable to variation, if some would die and new ones may be born." We negated that contention by holding :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 the share in the trust property after the lifetime of their parents, the share of the grandchildren may in certain contingencies be augmented, 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 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 sharers and what their shares respectively are."

8. In coming to this conclusion we had also referred to the same decision to which the Tribunal has referred, namely, Suhashini Karuri's case. The decision clearly lays down the principle that the question whether the shares of the beneficiaries are indeterminate or unknown has to be judge as the facts on the relevant date in each assessment year. In the light of this principle we turn to consider upon the facts in the present case whether the shares were indeterminate or unknown on the relevant dates in the present case.

9. Now, the provisions of the first trust deed are clear. After deducting the expenses for the management of the trust funds including the collection charges and other outgoings the balance of the income in the hands of the trustees which is called "the net income" of the trust fund is to be paid to Hansabai "so long as the said Hansa continues to be and remains the wife or widow of the said Tribhuwandas Haridas". The words in the inverted commas would certainly include the contingency of Hansabai dying. After her lifetime, in the event of a son or sons being born to her, sub-clause (c) of clause 2 provides that the corpus of the trust fund is to go to her son or sons being divisible by equally between them if more than one. Clause (d) provides that in the event of a daughter or daughters being born to Hansa and Tribhuwandas, then on Hansa "ceasing to be the wife or widow of the said Tribhuwandas Haridas" the corpus of the trust fund was to be divisible amongst all the daughters of Hansa and, if more than one, in equal shares. Lastly clause (e) provides that if there is no child born to Hansa than the corpus of the trust fund is to be divided amongst the heirs of the said Tribhuwandas Haridas, husband of the said Hansa, according to law. Since Hansa had on the relevant date no child, it is only clause (e) that will apply and, therefore, having regard to the facts of the present case under clause (e) on the relevant date Hansa would be entitled to the entire income of the trust fund and the heirs of

Tribhuwandas according to law would have a contingent interest in the corpus of the trust property. There was only one heir of Tribhuwandas on that date, namely, the son of Nanalal, and he, therefore, had the contingent interest in the entire corpus.

10. We do not see what was indeterminate or unknown in this trust deed as regards the shares. Hansa clearly had only the interest given to her in the net income and had no right in the corpus of the property whereas the son of the Nanalal had on the relevant date a contingent interest in the corpus of the trust property, contingent upon Hansa "ceasing to be the wife or widow of the said Tribhuwandas", which as we have said, in our opinion, would also cover the case of her death.

11. Mr. Joshi attempted to argue that Hansabai also must be deemed to have an interest in the corpus of the trust fund, because without being interested in the corpus she could not be interested in the income from the trust fund. Now, it is no doubt true that the income from the trust property was to come out of the corpus, but the holder of the share in the income could not, because of that, be held to have an interest in the corpus itself. No doubt, it was necessary for the income to arise that the corpus must be intact, but the necessity for keeping the corpus intact does not necessarily imply that the holder of the interest in the income also interested in the corpus. We are clear that upon the terms of this trust deed as also the one of the 13th July, 1956, in which so far as Hansa is concerned her interest is identical, Hansa had no interest in the corpus of the trust property.

12. The position with regard to the second trust deed is as follows : The first three sub-clauses of clause 2, namely, (a), (b) and (c) are identical with sub-clauses (a), (b), and (c) of clause 2 of the first trust deed, but the interest after Hansabai "ceasing to be the wife or widow of the said Tribhuwandas created by the second trust deed is different. After that event happens, if Tribhuwandas is alive at the time, the property or the corpus was to be handed over to Tribhuwandas absolutely, but if Tribhuwandas were not alive the corpus of the trust fund was to be transferred and handed over to "the sons of Nanalal Haridas, if more than one, in equal shares absolutely." Therefore, in the case of the second trust deed, the principal beneficiary for life was Hansa, but her interest was limited only to the income from the trust fund and after she ceased to be the wife or widow of Tribhuwandas, the property that is to say , the corpus itself handed over to Tribhuwandas if he was alive or to the son or sons of Nanalal, if more than one in equal share absolutely. Here again the settlement is very specific and the shares clearly are determined and made known. No doubt, Nanalal had only one son at that time and if more sons were born the class would be increased thereby decreasing the interest in the corpus of his only son at that time, but as we have said, the computation is to be made in each year as on the relevant date and, therefore on the relevant date there being only one son of Nanalal. The beneficiary was clearly

determinate and known. So far as Tribhuwandas is concerned, there cannot be even an argument raised that in his case the beneficiary was indeterminate or unknown.

13. Mr. Joshi urged that the expression used in sub-section (4) is "shares of the persons on whose behalf or whose benefit any such assets are held" and having regard to that expression it was impossible to say whether the shares of Hansabai or of Tribhuwandas and/or the sons of Nanalal were determinate or known. No doubt it would be perhaps a difficult thing to compute and determine the share in the case of a life interest or in the case a contingent remainder but the difficulty of computation should not come in the way of the application of the law which speaks of "the shares of the person on whose behalf or for whose benefit any such assets are held" being indeterminate or unknown. It is always possible by actuarial calculation to assess the present worth of a life interest such as Hansabai had or a contingent remainder such as the heirs of Tribhuwandas have under the first deed or a contingent interest as Tribhuwandas himself had under the second deed or a contingent interest which the sons of Nanalal have under the second deed. What is, therefore, pointed out is more a difficulty of computation or ascertainment and not that the share itself was indeterminate or unknown. In our opinion, the case is clearly covered by the principles which we have accepted in Trustees of Putlibai R.F. Mulla Trust v. Commissioner of Wealth-tax and in Suhashini Karuri's case, and upon those principles the decision which the Tribunal reached was a correct decision. We must hold that the shares of the persons on whose behalf the trustees under the two trust deed were holding the assets were determine and known in the present case. The question referred will, therefore, be answered in the negative. The Commissioner will pay the costs of the assessee.

14. Question answered in the negative.