

BOMBAY HIGH COURT

Commissioner of Wealth-Tax

Vs

Kishanlal Bubna

(R Kantawala, C.J. V Tulzapurkar, J.)

21.03.1975

JUDGMENT

Kantawala, C.J.

1. This reference involves a nice question as regards the interpretation of the of the provisions of the section 4(1)(a)(iii) of the Wealth-tax Act, 1957. The question refers to the assessment year 1962-63, for which the relevant valuation date is March 31, 1962. By the two trusts created by the assessee respectively on February 18, 1957, and November 11, 1957, two respective amounts of Rs. 25,101 and Rs. 21,201 were respectively settled upon trusts and transferred to the trustees for the benefit of his two minor daughters. After the trustees were created the trustees out of the trust funds purchased shares. On the valuation date the trusts funds were held in shares of which the valuation was Rs. 75,610. In determining the wealth tax payable by the assessee who is the settlor, the Wealth-tax Officer took the view that it is the market value of the shares on the valuation date that was to be included in the net wealth of the assessee and he accordingly included the sum of Rs. 75,610 being the market value of the shares as part of the net wealth held by the assessee. The contention on behalf of the assessee that merely the original sum of Rs. 46,302 which was settled upon trust under the two trusts is to be taken into account, was rejected by him. The decision of the Wealth-tax Officer was confirmed in the appeal by the Appellate Assistant Commissioner. On a further appeal before the Tribunal, the Tribunal held that upon interpretation of the provisions of section 4(1)(a)(iii) it was the value of the assets when they were transferred to the trustees that was to be included in the net wealth of the transferor, although the form of the assets transferred may have undergone a change since the date of the transfer and the value thereof on the valuation date was different. According to the Tribunal, since the assets transferred by the assessee were the cash amount of Rs. 46,302 the value of these cash assets, viz., Rs. 46,302, should alone be included in the net wealth of the assessee, the transferor, who was the settlor. On these facts, the following question has been referred at the instance of the revenue, viz. :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in

holding that under section 4(1)(a)(iii) of the Wealth-tax Act, 1957, it is the value of the assets which have been actually transferred by the assessee that should be included in the net wealth of the assessee, the transferor, although the form of the assets transferred has undergone a change since the date of transfer, and the value thereof, on the valuation date is different ?"

2. Mr. Joshi, on behalf of the revenue, contended that under section 4(1)(a) it is the value of the assets which on the valuation date are held that is to be included in the net wealth of the assessee irrespective of the fact that the assets may have been converted after the transfer was effected by the assessee, the settlor. He submitted that whatever the assets transferred are converted into a different kind of property it is the value of the converted type of property that is to be taken into account as on the valuation date and not the value of the assets transferred as on the valuation date.

3. Under the charging section 3 tax is to be levied in respect of the net wealth of the assessee on the corresponding valuation date. Under that section, subject to the other provisions contained in the Act, there shall be charged for every assessment 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 at the rate or rates specified in the Schedule. "Net wealth" is defined in section 2(m) and the material part of the definition for our present purpose is that the expression "net wealth" 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 the 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 as on the valuation date other than those specified therein. Thus, net wealth is determined by computing the aggregate value of the assets in excess of the aggregate value of all the debts owed by the assessee. The word "assets" defined in section 2(e) normally includes property of every of every description, movable or immovable. It is quite clear from the definition of the expression "net wealth" in section 2(m) that not only the aggregate value of the assets belonging to the assessee is to be taken into account but the aggregate value of the assets which are required to be included in the net wealth under the Act are also to be taken into account as on the valuation date. Assets not actually belonging to the assessee but which are to be computed as part of his wealth are enumerated in section 4 and we are concerned with the provisions of section 4(1). They are as under :

"4. (1) In computing the net wealth of an individual, there shall be included, as belonging to that individual -

(a) the value of assets which on the valuation date are held -

(iii) by a person or association of persons to whom such assets have been transferred by the individual otherwise than for adequate consideration for the immediate or deferred benefit of the individual, his or her spouse or minor child (not being a married daughter) or both, or..... whether the assets referred to in any of the sub-clauses aforesaid are held

in the form in which they were transferred or otherwise....."

4. Great emphasis is held by Mr. Joshi upon the expression "the value of assets which on the valuation date are held" and he submits that, as such value of the assets is to be included, regard is to be had not to the form of the assets in which they were transferred but to the form of the assets as they existed on the valuation date. If an asset transferred has undergone a change after the date of the transfer then his submission is that for purposes of section 4(1)(a) it is the converted asset that has to be looked at and the value of such converted asset on the valuation date is to be determined. His submission is that it is merely the valuation of the converted assets on the valuation date that has to be included in the net wealth of the assessee under section 4(1). The section, according to his submission, does not contemplate the value of the original assets that were transferred nor is the value of such original assets to be determined as on the valuation date. In a taxing statute the intention of the legislature has to be gathered from the words used in the section. Mr. Joshi is undoubtedly right that under section 4(1)(a), the value of the assets which on the valuation date are held is to be included in computing the net wealth of an individual but such a provision is not to be seen in isolation but must be read in conjunction with the other provisions. Such other provisions are contained in sub-clauses (i), (ii) and (iii) of clause (a). Sub-clause (i) deals with the assets transferred to the spouse of an individual and there also reference to "such assets have been transferred by the individual". The use of the expression "such assets" really indicates that it is the assets in the original form that are to be taken into account because those are the only assets which are transferred by the assessee as the transferor. Identical language is used in sub-clauses (ii) and (iii). We are concerned in the present case with sub-clause (iii). It should not be overlooked that there is no article used before the word "assets" in clause (a) in the expression "value of assets which on the valuation date or transferred". The identification of "such assets" is to be found from the language used in the sub-clause (iii). The assets which are contemplated in clause (a) are the assets held by a person or association of persons to whom such assets have been transferred by the assessee in the manner indicated therein. The words "such assets" really indicate and pinpoint the specific assets which have been transferred. That such was the intention is made very clear by the latter part of this section because it says "whether the assets referred to it in any of the sub-clauses aforesaid are held in the form in which they were transferred or otherwise". The object of this latter part of the section is that regard is to be had to the valuation of the original assets irrespective of the fact whether the original assets are retained in the form in which they are transferred or they are converted into different types of assets. In either case it is the value of the assets that are transferred that is to be determined as on the relevant valuation date. There can be no controversy as regards the value of the assets transferred when the assets so transferred are in the form of money. In the present case, the two trusts the trust is created for the cash amount of Rs. 46,302. Thus, the value of the assets like cash amount on the valuation date would remain the same unless devaluation of money has taken place by reducing the value of a rupee. Such a case does not arise in the present case. When the original assets transferred is cash in the form of rupees, then naturally irrespective of the fact whether the transferees like the trustees retain the same assets transferred in the form in

which they were settled upon trust or invest them in other properties, still for the purposes of section 4(1)(a)(iii) it is the value of the original assets that has to be taken into account and not the value of the assets into which it is converted. If the legislature intended the value of the converted assets which came into existence after the original transfer, the appropriate language would have been used by the legislature especially when under this section the property is deemed to be included in the net wealth of the assessee. In the absence of clear and explicit provisions it is not possible for us to accept the contention of Mr. Joshi merely by reason of the fact that he emphasizes the expression "the value of assets which on the valuation date are held". The value on the valuation date is to be determined of the original assets which are transferred, and, in our opinion, the provisions of section 4(1)(a)(iii) have been correctly construed by the Tribunal.

5. Thus, our answer to the question referred to us is in the affirmative.

6. The revenue shall pay the costs of the assessee.

