Commissioner Of Wealth Tax, ... vs Arvind Narottam (Individual) on 9 August, 1988

Equivalent citations: AIR1988SC1824, [1988]173ITR479(SC), JT1988(3)SC423, 1988(2)SCALE401, (1988)4SCC113A, [1988]SUPP2SCR266

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Bench: R.S. Pathak, Sabyasachi Mukharji

JUDGMENT

R.S. Pathak, C.J.

1. These appeals by certificate granted by the Gujarat High Court are directed against the judgment of the High Court disposing of three wealth-tax References.

2. The three trust deeds were executed by Narottam Lalbhai for the benefit of the assessee, his wife and his children and grand children. The deed dated March 19, 1955 created a trust known as the Arvind Narottam Trust. The deed dated April 9, 1955 created a trust called the Arvind Family Trust. And the deed dated March 18, 1961 created a trust described as the Arvind Kalyan Trust. All the three trust deeds are couched in identical terms, except in regard to the minimum amounts payable to the beneficiaries out of the income of each year. There was one further difference in detail. The first two deeds specified a period of 18 years from the date of execution as the period during which the net income could be distributed to the assessee, his wife and children, while the third specified a period of 30 years. The minimum annual payments to be made under the three trust deeds to the assessee by way of maintenance were Rs. 250, Rs. 150 and Rs. 250 respectively. Under each of the trust deeds the settlor specified the interest of the beneficiaries in the trusts. The pertinent terms of one of them, the Arvind Narottam Trust Deed, may be set forth here. Clauses 7 and 8 of that Trust Deed provide:

> 7(a) Whatever income by way of interest or otherwise is received each year by the trustees from the trust fund should be first applied in meeting with the expenses of the management of the trust and the payment of taxes thereof. For a period of 18 years hereafter, the trustees may pay to Arvind or if Arvind gets married during the period to Arvind, his wife and children or to one or more of these persons, such portion of the net income remaining thereafter as the trustees deem fit. However, the trustees shall pay to Arvind, or if Arvind gets married during the period to each Arvind and his wife, at least Rs. 50 every year. After such distribution, if there remains any surplus from the income of any year, it shall be added to the corpus of

the fund, if in any year the net income accuring to the fund is less than Rs. 300 the whole amount should be paid to Arvind and if Arvind gets married during the period to Arvind and his wife in equal shares. If Arvind expires during the period of 18 years hereafter or if Arvind gets married during the period and both Arvind and his wife expire, the whole of the net income of the trust fund should be added to the corpus for a period of 18 years hereafter.

(b) Whatever may be the corpus and the accumulated balance remaining undistributed out of the income of each year, shall be paid (as capital) at the end of 18 years hereafter to Arvind, his wife and his children or survivor or such of them in such proportion as the trustees deem fit. If the trustees are not able to decide upon the persons to whom or the proportion in which the said corpus and accumulated balance of income is to be distributed or it is not possible legally to give effect to the decision of trustees or it is illegal to do so, then the proportion in which the distribution will be made will be an equal share for each of the persons or survivors comprising of Arvind, his wife and his children. If none of the said persons are alive at the time of distribution then the distribution will be made to Niranjan, his wife and children or survivors, all or such of them and in such proportion as the trustees deem fit. If none of the said persons are alive at the time of distribution then the corpus and the balance of income will be given over by the trustees on such conditions as they deem fit as donation to the Gujarat University or any other educational institution or an institution giving medical aid or attending to the health of public in general.

8. If the trustees so think fit the trustees are hereby authorised to distribute as capital even before the expiry of 18 years whatever property and income is at the particular time accumulated in the trust fund to Arvind, his wife and his children or survivor or such of them in such proportion as the trustees deem fit. If the trustees are not able to decide upon the persons to whom or the proportion in which the said corpus and accumulated balance of income is to be distributed or it is not possible legally to give effect to the decision of trustees of it is illegal to do so, then the proportion in which the distribution will be made will be an equal share for each of the persons or survivors comprising of Arvind, his wife and his children. If none of the said persons are alive, at the time of distribution then the distribution will be made to Niranjan, his wife and his children or survivors, all or such of them and in such proportion as the trustees deem fit. If none of the said persons are alive at the time of distribution, then the corpus and the balance of income will be given over by the trustees on such conditions as they deem fit as donation to the Gujarat University or any other educational institution or an institution giving medical aid or attending to the health of public in general. But if Arvind and his wife are the trustees at that time then they have no right to give vote in the above matter. But if the other trustees unanimously agree to allow them to vote then they can.

3. The Wealth Tax Officer made assessment orders for the assessment years 1962-63, 1963-64 and 1964-65 under the Wealth Tax Act, the relevant valuation dates being December 31, 1961, December 31, 1962 and December 31, 1963. He assessed the assessee under Sub-section (2) of Section 21 of the Wealth Tax Act on the entire value of the assets held by the trusts. On appeal the Appellate Assistant Commissioner confined the liability of the assessee to wealth tax on the capitalised value of the

minimum amounts payable under the trust deeds for his maintenance, that is to say say Rs. 250, Rs. 150 and Rs. 250 respectively per year. The Appellate Tribunal, on second appeal, affirmed the view taken by the Appellate Assistant Commissioner. At the instance of the Revenue, the three cases were carried in reference to the High Court for its opinion in each case on the following question of law:

> Whether, on the facts and in the circumstances of the case, the finding that it is only the capitalised value of the interest of the assessee that has to be included in the net wealth of the assessee is in law justified?

4. The High Court answered the question in each case in the affirmative, in favour of the assessee and against the Revenue. And now these appeals.

5. Admittedly, on all relevant dates of these assessment years, the assessee was a bachelor, and was alone entitled therefor to the benefit of the three trusts. It is accepted also that the trusts are discretionary trusts. The controversy between the parties arises on the application of Section 21 of the Wealth Tax Act. Section 21, as it stood at the relevant time provided:

> Section 21. Assessment when assets are held by courts of wards, administrators-general, etc.-
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> (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, official trustee, 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 (or for whose benefit) the assets are held, and the provisions of this Act shall apply accordingly.
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> (2) Nothing contained in Sub-section (1) shall prevent either the direct assessment of the person on whose behalf (or for whose benefit) 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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> (3) xx xx xx xx (4) Notwithstanding anything contained in (the foregoing provisions of) this section, where the shares of the persons on whose behalf or for whose benefit any such assets are held are indeterminate or unknown, the wealth-tax shall be levied upon and recovered from the court of wards, administrator-general; official trustee, receiver, manager, or other person aforesaid, (as the case may be, in the like manner and to the same extent as it would be leviable upon and recoverable from an individual who is a citizen of India and resident in India) for the purpose of this Act.

6. The contention of Dr. V. Gauri Shankar on behalf of the Revenue is that the settlor had specifically made these three trusts for the benefit of his son, Arvind, the assesee, and has declared unequivocally that the settlement is for the benefit of the assessee, and on the assessee's marriage, also for the benefit of his wife and children. It is urged that the High Court has erred in failing to collect the real intention of the settlor from the entire document and has erroneously confined itself to paragraph 7 of the deed. According to learned Counsel, what the High Court should have done was to ascertain the state of affairs existing on the relevant valuation date. It should not have been influenced by what could possibly happen in the indefinite future on the happening of certain contingencies. The submission is that on the valuation dates there was only one beneficiary, the assessee, his share was determined and known, and it extended to the entire interest in the trust properties. It is urged that in the case of a discretionary trust the interest of the beneficiary extends not only to the actual share paid to him but to his right to be considered as a potential recipient of the net income remaining after defraying the management expenses and paying the taxes. It extends, he says, to an interest in the Trust accumulation both before or after the expiry of the stipulated period when the Trustees are empowered to distribute the accumulated balance as capital. Learned counsel urges that the whole deed of settlement in each case should be read and understood comprehensively and only thereupon can a true answer be returned to the question framed in the reference. Considerable emphasis has been placed on the submission that the capital value of the contingent interest in the entire property must be kept in view. I have no difficulty in accepting the submission of Dr. Gauri Shanker that for a proper understanding of a case before us we must consider the entire deed of settlement. That, however, does not lead to the conclusion which learned Counsel wishes us to accept. What is the interest of the assessee under the deed of settlement on the relevant valuation date? We are concerned with the capital value of that interest. It is apparent that the assessee was entitled only to the minimum prescribed in each of the deeds of settlement. Whether or not be received any further amount out of the net income of the Trust Fund was left entirely in the discretion of the Trustees. There was no right in the assessee to any portion of the net income in excess of the minimum guaranteed to him. It is the minimum alone which he could claim as his property. So also, on the distribution of the accumulated balance as capital at the end of the stipulated period there was no right in him to receive any part thereof. It was open to the Trustees to ignore him altogether and they could pay it to such other members of the family as they chose.

7. In support of the proposition that the expression 'property' is a term of the widest amplitude and that every possible interest is includible therein we are referred to Ahmed G.H. Ariff and Others v. Commissioner of Wealth-Tax, Calcutta . I have no doubt that the expression 'property' must bear a comprehensive import. The question remains whether what is conveyed under the three deeds of settlement to the assessee is a right to anything more than the prescribed minimum under each deed. I may reiterate that the interest extends to no more than that minimum.

8. It is contended on behalf of the Revenue that the fact that a beneficiary may change on the happening of certain contingencies will not make the share of the beneficiary un-determined or unknown, and reliance has been placed on Padmavati Jaykrishna Trust and Anr. v. Commissioner of Wealth-Tax, Gujarat ; Commissioner of Wealth-Tax, Bombay v. Trustees of Mrs. Hansbai Tribhuwandas Trust [1968] 68 I.T.R. 527; Commissioner of Wealth-Tax, A.P. v. Trustees of H.E.H.

Nizam's Family (Remainder Wealth) Trust and Commissioner of Wealth-Tax, A.P. v. Trustees of H.E.H. The Nizam's Sahebzadi Anwar Begum Trust . These cases can be of no assistance to us, for, unlike the facts in each of those cases, the instant case is one where beyond the specified minimum the assessee was not entitled to anything more. There must be a right, present or contingent, before it can be said that an assessee has an interest, and I am supported in this by what was said by the House of Lords in Gartside and Anr. v. Inland Revenue Commissioners, LR 1968 Appeal Cases 553 where it was also observed that a mere right to be considered for distribution of the income or of the corpus of the Trust Fund cannot be regarded as an 'interest' since it was not capable of valuation. Dr. Gauri Shanker relies on Leedale (Inspector of Taxes) v. Lewis. [1982] 3 All E.R. 808. But the decision in that case turned on the principle language of the English Statute, where an approximation of the value is permitted by the "just and reasonable" clause and by the words "as near as may be" in Section 42(2) of the Finance Act.

9. It is vehemently urged by Dr. Gauri Shanker that the approach to be adopted in this case is not that which finds favour under the Income-tax law, and different considerations prevail under the Wealth Tax Act. As I am proceeding on the basis of the true construction of the Deeds of Settlement, I fail to see any substance in that contention. Reliance was also placed by learned Counsel for the Revenue on McDowell Co. Ltd. v. Commercial Tax Officer . That decision cannot advance the case of the Revenue because the language of the deeds of settlement is plain and admits of no ambiguity.

10. In the result I endorse the view taken by the High Court and dismiss these appeals with costs.

Sabyasachi Mukharji, J.

11. I agree with the judgment of the learned Chief Justice. There is, however, one aspect of the matter on which some arguments were advanced at the time of hearing of this case, to which I would like to advert.

12. Dr. V. Gauri Shankar appearing on behalf of the revenue made an appeal before us stating that we should really construe the three Trust-Deeds together and see 'the game of the hidden purpose' behind these Trust-Deeds which were, in fact, for the sole and exclusive benefit of the assessee. He drew our attention to the observations of Justice Chinnappa Reddy, with which other learned Judges of the Full Bench agreed in McDowell & Co. Ltd. v. Commercial Tax Officer . He invited us to hold that having regard to me taxing Statute the tax avoidance device should be exposed. Justice Chinnappa Reddy has noticed the change in judicial attitude to the tax avoidance devices. Justice Reddy mentioned that in the country of its birth the principles of Westminster of condoning tax avoidance have been given a decent burial. In that very country the phrase 'tax-avoidance' is no longer condoned or looked upon with sympathy.

13. It is true that tax avoidance in an under-developed developing economy should not be encouraged on practical as well as ideological grounds. One would wish, as noted by Reddy, J. that one could get the enthusiasm of Justice Holmes that taxes are the price of civilization and one would like to pay that price to buy civilization. But the question which many ordinary tax-payers very often in a country of shortages with ostentious consumption and deprivation for the large masses ask, is

does he with taxes buy civilization or does he facilitate the wastes and ostentiousness of the few. Unless wastes and ostentiousness in Government's spendings are avoided or eschewed, no amount of moral sermons would change people's attitude to tax avoidance.

14. In any event, however, where the true effect on the construction of the Deeds is clear, as in this case, the appeal to discourage tax avoidance is not a relevant consideration. But since it was made it has to be noted and rejected. With these observations I agree.