

Maulik Trust Vs. Wealth-tax Officer

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Court : Income Tax Appellate Tribunal ITAT Ahmedabad

Decided On : Apr-03-1982

Reported in : (1982)1ITD973(Ahd.)

Judge : P Mehta, Y Meena

Appellant : Maulik Trust

Respondent : Wealth-tax Officer

Judgement :

1. This is a wealth-tax appeal of the assessee for the assessment year 1980-81. The assessee is a discretionary trust which is taxed under Section 21(4) of the Wealth-tax Act, 1957. We may point out at the outset that in this assessment, the WTO has acted under Section 21(4), as amended by the Finance (No. 2) Act, 1980, with effect from 1-4-1980, and he brought to tax the value of entire corpus of the trust. The taxing of the value of entire corpus of the trust is the bone of contention between the revenue and the assessee and, hence this appeal.

2. The contention urged on behalf of the assessee is that the WTO erred in bringing to tax under Section 21(4), the value of whole of the corpus of the trust instead of aggregate value of life interest and remainderman's interest arrived at by actuary. In support of this proposition reliance was placed on the ratio of the Supreme Court decision in the case of CWT v. Trustees of H.E.H. Nizam's Family (Remainder Wealth) Trust [1977] 108 ITR 555. The argument of the assessee's counsel Shri J.P. Shah was the same which was urged before the WTO on behalf of the assessee, namely, new Sub-section (1A) provided for bringing to tax the difference between the total value of assets and the value of the life interest plus remainderman's interest but similar provision was not made after Sub-section (4) and that Sub-section (1A) refers to Sub-section (1) only. He based his argument on the aforementioned judgment of the Supreme Court wherein it was held that both under Sub-sections (1) and (4) of Section 21, it is the beneficial interests which are taxable in the hands of the trustees in a representative capacity and the liability of the trustees cannot be greater than the aggregate liability of the beneficiaries. Attention was invited to the observations of the Supreme Court from page 590 onwards and particular mention was made to observations at pages 594 and 595.

3. On behalf of the revenue, Shri C.S. Harne, relied on the orders of the WTO and the A AC and he pointed out to the Budget Speech of the Finance Minister while introducing the Finance (No. 2) Bill, 1980, particularly to the observations reported in [1980] 123 ITR (St.) 18.

It was submitted that the Finance Minister in the last para had clearly stated that the

Finance Minister had made several other provisions in relation to taxation of private discretionary trusts with a view to plugging some loopholes which had come to the notice of the Government.

Shri Harne went on to say that as a result of the amendment made in Section 21(4) by the Finance (No. 2) Act, 1980, the position has been brought on par with Section 21(1) wherein Section 21(1 A) was inserted, though the methods used in respect of the two sections are different.

He also submitted that the intention to make the amendment was quite relevant and he cited the Supreme Court authority in the case of Sole Trustee, Lokashikshana Trust v. CIT [1975] 101 ITR 234.

4. Prima facie, the contention of Shri J.P. Shah which was based on the logic of analogy was quite attractive but on a closer examination of the provisions considered by the Supreme Court in Nizam's Family Trusts case (supra) and the amendments made, it became apparent that the view taken by the WTO and sustained by the AAC is quite correct. The provisions of Section 21, which were considered by the Supreme Court, are extracted at pages 591-92. In that, Section 21(4) reads as under: (4) Notwithstanding anything contained in 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 if the persons on whose behalf or for whose benefit the assets are held were an individual who is a citizen of India and resident in India for the purposes of this Act.

The Supreme Court interpreted the words "as if the persons on whose behalf or for whose benefit the assets are held were an individual for the purposes of this Act at pages 594-95 and on the reasoning on those pages was based, the Supreme Court's conclusion that under Sub-sections (1) and (4) of Section 21 it is the beneficial interests which are taxable in the hands of the trustees in a representative capacity.

5. In the intervening period there was another amendment in Section 21(4) which is reproduced by the WTO in para 6 of the assessment order under the head "Before amendment" and which we quote below : (4) Notwithstanding anything contained in 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 if the persons on whose behalf or for whose benefit the assets are held were an individual who is a citizen of India and resident in India for the purposes of this Act, and- (b) at the rate of one and one-half per cent, whichever course would be more beneficial to the revenue.

The sub-section after amendment by the Finance (No. 2) Act, 1980, applicable in this assessment, year reads as under : (4) Notwithstanding anything contained in 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 purposes of this Act, and- In other words, we are concerned with the question for the purpose of deciding

this appeal, namely, as to what is the import of the amendment made, particularly, the words underlined in amended Section 21(4).

6. To us it is clear that the scheme of Section 21(4) as considered by the Supreme Court in the provision quoted in the judgment and the scheme of the same section prior to amendment by the Finance (No. 2) Act, 1980, was the same but a material change has been affected by the Finance (No. 2) Act, 1980. The concept of the persons on whose behalf or for whose benefit the assets are held being treated as an individual as interpreted by the Supreme Court has been given a go-by, instead the amended provision applicable in this assessment year emphasises the fact that wealth-tax shall be levied upon and recovered from the trustees in the like manner and to the same extent as it would be leviable upon and recoverable from an individual, who is citizen of India and resident in India for the purposes of this Act. The trustees, thus, have been made liable to be assessed in the like manner and to the same extent as if their status for wealth-tax assessment would be that of an individual. The word "individual" here signifies the taxable status for the trustees and it is no longer being used in the context of beneficiaries being treated as an individual as was the case in the unamended provision and the provision considered by the Supreme Court.

We also notice that the technique of amendment applied for Section 21(4) is different from that used for amending Section 21(1) by introducing Section 21(1A) which was to override that subsection. In the case of Section 21(4) what was considered appropriate was to do away with the fiction in relation to the status of indeterminate or unknown beneficiaries and instead make the trustees liable to wealth-tax in the like manner and to the same extent as any wealth-tax assessee liable to be taxed in the status of an individual would be. If the corpus of the trust was to belong to an individual as enacted by this amendment, there will be no question of any part of value of corpus remaining outside the taxation net. It is clearly provided in Section 21(4), as amended, that the wealth-tax shall be levied upon the trustees in the like manner and to the same extent as it would be leviable upon an individual.

7. In view of the above discussion, we uphold the action of the WTO in bringing to tax the entire corpus of the trust as per amended Section 21(4) by the Finance (No. 2) Act, 1980, and dismiss the appeal of the assessee.