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COMMISSIONER OF WEALTH TAX, RAJASTHAN

v.

HER HIGHNESS MAHARANI GAYATRI DEVI OF JAIPUR

September 14, 1971

B [K. S. HEGDE AND A. N. GROVER, JJ.]

Wealth Tax Act (27 *of* 1957), *s.* 2(*e*)(*iv*)—*Assessee entitled to half share of income of trust fund—Trust fund capable of being augmented—If assessee entitled to annuity or interest in property assessable to wealth-tax.*

The trust deed executed by the husband of the respondent-assessee provided that the trustees should pay to the assessee during her life time C 50 per cent of the income of the trust fund. The settlement was irrevocable and the properties mentioned in the schedule to the trust deed stood transferred to the name of the trustees. Under the clauses of the deed the trust fund was not a fixed sum but was capable of being augmented.

On the question whether the assessee was entitled only to an annuity within the meaning of that expression in s. 2(e)(iv) of the Wealth Tax Act or had an interest in the corpus of the trust which could be brought D to tax under the Wealth-tax Act.

HELD : The intention of the husband was that the assessee should get 15/30 share from out of the income of the trust fund. Since neither the trust fund nor the amount payable to the assessee was a fixed sum, what the assessee was entitled to was not an annuity but an allquot share in the income of the trust fund. The fact that in the particular assessment year there was no change in the trust fund was irrelevant because the E question whether a particular income is an annuity or not does not depend upon the amount received in a particular year. [712 D-H]

Hence the assessee had a life interest in the trust fund which could be brought to tax under the Wealth-tax Act. [713 A-B]

Ahmed G. H. Ariff & Ors. v. *Commissioner of Wealth-tax,* 76 I.T.R. 471 and *Commissioner of Wealth-tax, Gujarat Arundhati Balkrishna,* 77 I.T.R. 505, followed.

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2149 of 1968.

Appeal from the judgment and order dated January 3, 1967 of the Rajasthan High Court in D. B. Wealth Tax Reference No. 6 of 1963.

G *S. Mitra, O. P. Malhotra, R. N. Sachthey* and *B. D. Sharma,* for the appellant.

M. C. Setalvad, H. P. Gupta and *B. R. Agarwala,* for the respondent.

The Judgment of the Court has delivered by

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Hegde, J. This appeal by certificate arises out of the wealth-tax assessment of the assessee-respondent, an individual, for the year 1959-60, the corresponding valuation date being March

31, 1959. The assessee is the wife of Maharaja of Jaipur. On September 9, 1953, the Maharaja made a settlement at London. Under the deed of settlement, he appointed Sir Harold Augustus Warner as the trustee of the property detailed in the deed of settlement. The settlement is an irrevocable one and the properties mentioned in the schedule to the trust deed stood transferred to the name of the trustee. The trust deed provides that the trustee should pay to the assessee during her life time 50 per cent of the income of the trust fund. The question arose whether the assessee can be held to have any share in the corpus of the trust and whether the same can be brought to tax under the provisions of the Wealth Tax Act, 1957 (to be hereinafter referred to as the Act). The Wealth-tax Officer came to the conclusion that the assessee's interest in U.K. Trust amounting to Rs. 15,75,694/- plus the income-tax reserve thereon Rs. 1,75,401/- have to be included in the assessee's total wealth. This decision was confirmed by the Appellate Assistant Commissioner in appeal. Thereafter the assessee took up the matter in second appeal to the Income-tax Appellate Tribunal. The Tribunal for reasons set out in paragraphs 6 to 10, 12 and 13 of its order held that the assessee did not get any life interest in the corpus but it held that her interest was an interest which was an asset under the Act, but for s. 2(e)(iv) of the Act. In other words, it held that the assessee had only a right to get annuity from out of the trust fund and as such her right is exempt from wealth tax in view of s. 2(e)(iv) of the Act. In the view it took, the Tribunal considered that it was not necessary to ascertain the proper and correct method of valuation of the assessee's right. It directed that if and when its conclusion on the interpretation of the clauses were set aside, the appeal should be posted again before it for further hearing for ascertaining the correct method of valuation.

At the instance of the Department, the Tribunal stated the case and referred the following two questions to the High Court of Rajasthan for its opinion.

> "(1) Whether on a proper construction of the deed of settlement the assessee has any interest in the corpus of the deed of settlement.
>
> (2) Whether in the facts and circumstances of this case, the right of the assessee derived under the deed of settlement is exempt from wealth-tax by virtue of the provisions of sec. 2(e)(iv) of the Act."

A Division Bench of that High Court answered the first question in the negative and the second question in the affirmative both against the Department. The High Court held :

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1. that the assessee was not given any interest in the corpus of the property.

2. that the income that the assessee was receiving on account of the 15/30 parts of the trust fund was in the nature of an annuity, and

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3. that the terms and conditions relating to the assessee's right to annuity preclude commutation of any portion thereof into a lump sum grant.

The only question that arises for decision in this appeal is whether the share of income to which the assessee is entitled to C receive under the trust deed executed by her husband can be considered as annuity within the meaning of that expression in s. 2(e)(iv). If it is considered as an annuity, there is no dispute that the terms and conditions relating to the assessee's right relating to annuity precluded commutation of any part thereof into a lump sum grant. Therefore all that we have to see is D whether the income received by the assessee was an annuity or an aliquot share in the income arising from the fund. As seen earlier, the High Court has taken the view that the income in question was an annuity. In arriving at that conclusion, it has referred to various decisions of the English courts as well as the courts in this country. But in view of the two recent decisions E of this Court, it is not necessary for us to examine those decisions.

In *Ahmed G. H. Ariff and Ors.* v. *Commissioner of Wealth-tax*(1) one of us (Grover, J.) speaking for the Court observed that the right of a beneficiary to receive an aliquot share of the net income of properties comprised in a *wakf-alal-aulad* created by a Muslim governed by the Hanifi school of Mohamedan law F is "property" and is covered by the definition of "assets" in section 2(e) of the Wealth Tax Act, 1957 and the capitalised value of that right is assessable to wealth tax.

In Commissioner of Wealth Tax, Gujarat v. *Arundhati Balkrishna*,(2) this Court accepted as correct the distinction brought G out between an annuity and an aliquot share in the income of a fund by Kindersley V. C. in *Bignold* v. *Giles*(3). Therein the learned judge stated the law thus :

> "An annuity is a right to receive *de anno* in annum a certain sum; that may be given for life, or for a series of years; it may be given during any particular H period or in perpetuity and there is also this singularity

(1) 76, I.T.R. 471. (2) 77 I.T.R. 505.

(3) (1859) 4, Drew 345; 113 Revised Reports 390.

about annuities, that although payable out of the personal assets, they are capable of being given for the purpose of devolution, as real estate; they may be given to a man and his heirs, and may go to the heir as real estate; so an annuity may be given to a man and the heirs of his body, that does not, it is true, constitute an estate tail, but that is by reason of the Statute De Donis, which contains only the word 'tenements' and an annuity, though a hereditament is not a tenement, and an annuity so given is a base fee."

Proceeding further the learned judge observed :

"But this appears to me at least clear, that if the gift of what is called an annuity is so made, that, on the face of the will itself, the testator shows his intention to give a certain portion of the dividend of a fund, that is a very different thing; and most of the cases proceed on that footing. The ground is, that the court construes the intention of the testator to be, not merely to give an annuity, but to give an aliquot portion of the income arising from a certain capital fund."

Applying the principles laid down in these decisions, we have now to see as to what was the nature of the right conferred on the assessee under the trust deed ?

The trust deed starts by saying that "the settlor is absolutely entitled to the investments specified in the Schedule hereto (hereinafter called "the Scheduled Property")" and that he is desirous of making an irrevocable settlement of the Scheduled Property for the benefit of his wife (the assessee) and his four sons. One of the clauses in the deed says that :

"the settlor has accordingly transferred or intends forthwith to transfer the Scheduled Property into the name of the Trustee to be held by him upon the trusts and with and subject to the powers and provisions hereinafter declared and contained concerning the same."

Clause 1(d) of the deed is important. It reads :

"The Scheduled Property and any other investments or property which may from time to time be transferred to and accepted by the Trustee as additions to the Scheduled Property and any other capital moneys which may be received by the Trustee in respect of the

A trust premises and the investments and property for the time being representing the same respectively are together called "the Trust Fund".

From this clause, it is clear that the "Trust Fund" is not a fixed sum. It is capable of being augmented in several ways. B At the time of creation of the trust, the only assets mentioned in the schedule to the trust deed was £ 300,000 3½ War Loan. But as seen earlier this fund was capable of being augmented.

Clauses of the trust deed which are relevant for our present purpose are clauses 2, 3, 4(1) and 7. They read :

C *Clause* 2 :

The Trustee shall stand possessed of the scheduled property and any other investments or property which may from time to time be transferred to and accepted by the Trustee as aforesaid UPON TRUST that the Trustee may either allow the same to remain actually D invested so long as the Trustee thinks fit or may at any time or times at his discretion sell call in or convert into money the same or any part thereof and shall at his discretion (but subject to the restriction contained in clause 9 hereof) invest the moneys produced thereby and any other capital moneys which may be received E by him in respect of the trust premises in the name or under the legal control of the Trustee in or upon any investments hereby authorised with power at his discretion to vary or transpose any investments for or into others of any nature hereby authorised."

Clause 3 :

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The Trustee shall divide the Trust Fund into thirty equal parts and shall stand possessed of such parts and the income thereof respectively upon the trusts and with and subject to the powers and provisions herein after declared and contained concerning the same.

G *Clause* 4(1) :

THE TRUSTEE shall stand possessed of fifteen such parts of the Trust Fund UPON TRUST to pay the income thereof to the wife during her life and after her death shall hold the said fifteen such parts of the Trust Fund and the income thereof Upon the same H powers and provisions as are hereinafter declared and contained concerning the share in the Trust Fund which is hereinafter directed to be held in trust for the said

Maharaj Kumar Jagat Singh or as near thereto as circumstances will admit.

Clause 7.

NOTWITHSTANDING the trusts hereinbefore declared the Trustee if he in his absolute discretion thinks fit may at any time by writing under his hand declare that the whole or any part of the share (whether original or accruing) in the Trust Fund to the income whereof any Beneficiary shall then be entitled in possession or any property appropriated in or towards the satisfaction of such share shall thenceforth be held IN TRUST for such Beneficiary absolutely and thereupon the trusts hereinbefore declared concerning such share or the part thereof or the property to which such declaration relates shall forthwith determine and the Trustee may at any time thereafter transfer such share or the part thereof or the property to which such declaration relates to such Beneficiary absolutely."

From these clauses it is clear that the intention of the Maharaja was that the assessee should get a half share in the income of the trust fund. Neither the trust fund was fixed nor the amount payable to the assessee was fixed. The only thing certain is that she is entitled to a 15/30 shares from out of the income of the trust fund. That being so, it is evident that what she was entitled to was not an annuity but an aliquot share in the income of the trust fund.

Mr. Setalvad, learned Counsel for the assessee contended that during the year with which we are concerned, there was no change in the trust fund and in view of that fact and as we are considering the liability to pay wealth-tax, we would be justified in holding that the amount receivable by the assessee in the year concerned was an annuity. We see no force in this contention. The question whether a particular income is an annuity or not does not depend on the amount received in a particular year. What we have to see is, what exactly was the intention of the Maharaja in creating the trust. Did he intend to give the assessee a pre-determined sum every year or did he intend to give her an aliquot share in the income of a fund? On that question, there can be only one answer and that is that he intended to give her an aliquot share in the income of the trust fund. As income cannot be an annuity in one year and an aliquot share in another year. It cannot change its character year after year. From the facts found, it is clear that the assessee has a life interest in the trust fund.

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For the reasons mentioned above, we allow this appeal, set aside the judgment of the High Court and discharge the answers given by the High Court to the questions referred to it by the Tribunal and in its place we answer those questions in favour of the Department. The Commissioner is entitled to his costs of this appeal from the respondent.

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V.P.S. *Appeal allowed.*