

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2006

Coram :

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN

AND

THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

Tax Case (Reference) Nos.175 to 177 of 2001

Deputy Commissioner of Wealth Tax,
Special Range-I, Madurai. ...Applicant

Vs

A.Tenzing,
Sivakasi. ...Respondent

Reference under Section 27(2) of the Wealth Tax Act, 1957 by Income Tax Appellate Tribunal, Madras, 'D' Bench in R.A.Nos.960 to 962/M/91 arising out of W.T.A. Nos.827 to 829/Mds/1990 for the assessment years 1976-77, 1977-78 and 1978-79 respectively against the order of the Commissioner of Income Tax (Appeal)I, Madurai dated 28.3.90 and made in W.T.A.Nos.18/89-90, 19/89-90 & 17/89-90 respectively against the order of the Deputy Commissioner of Wealth Tax, Special Range I, Madurai dated 28.3.1989 and made in PAN PY-0649/1976-77/WT; PAN PY-0649/1977-78/WT and PAN PY-0649/1978-79/WT respectively.

For Applicant : Mrs.Pushya Sitaraman,
Sr. Standing Counsel
for Income Tax

For Respondent : Mr.J.Balachander

JUDGMENT

(Judgment of the Court was delivered by
P.P.S.Janarthana Raja, J.)

Income Tax Appellate Tribunal, Madras, 'B' Bench, referred the matter under Section 27(2) of the Wealth Tax Act at the instance of the assessee, for opinion of this Court, raising the following question of law:

"Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the assets of the Trust by name Tenzing Family Trust could not be included in the net wealth of the assessee-beneficiary and that the same should be considered in the hands of the Trust?"

2. The facts leading to the above question of law are as under:

The assessment years are 1976-77, 1977-78 and 1978-79 for which the valuation dates are 31.03.1976, 31.03.1977 and 31.03.1978, respectively. The Trust known as "Tenzing Family Trust" was formed by Sri K.A.A.Sankaralingam on 01.06.1974. Shri A.Tenzing is the sole beneficiary of the Trust. In case he remains unmarried till the end of 18 years from the date of execution of the deed, the corpus as well as the accumulated income shall be handed over and delivered to him to be enjoyed by him absolutely. In the event of his marrying, the corpus as well as the accumulated income shall be handed over and delivered to the wife of Shri A.Tenzing from the date of marriage. The trustee shall accumulate the surplus income after deducting all the necessary outgoings for earning the income, and preserve the property of the Trust. The trustee is entitled to apply the income of the Trust for the benefit of Shri A.Tenzing in his absolute discretion till the date of marriage of Shri A.Tenzing and for the exclusive benefit of his wife immediately thereafter. Clause 5 of the Trust Deed declares that none of the beneficiaries shall have any vested interest either in the corpus or in the income of the Trust fund of this settlement, except as otherwise provided in the Deed. The assessee's interest in the Trust property until the expiry of the abovesaid period was included in his net wealth by the Assessing Officer and brought to tax, rejecting the assessee's contention that the net wealth of the Trust should be assessed only in the hands of the Trust. Aggrieved by the order of the assessment, the assessee filed an appeal to the Commissioner of Wealth Tax (Appeals). The Commissioner of Wealth Tax (Appeals) held that, as the Trust properties were already assessed to wealth tax in the hands of the trustee for these assessment years, the same would not again be included in the hands of the assessee. Aggrieved by the order, Revenue filed an appeal to the Income Tax Appellate Tribunal. Income Tax Appellate Tribunal dismissed the Revenue's appeal and allowed the case in favour of the assessee by following its own order relating to the assessment year 1979-80.

3. The learned Standing Counsel appearing for the Revenue submitted that the assessment was rightly made in the hands of the

assessee. The learned counsel for the assessee submitted that the assessments were made in the hands of the Trust and hence it is wrong making the assessment again in the hands of the assessee.

4. We heard the counsel. From the Trust Deed it is seen that after 18 years are completed, the corpus and income would vest with the beneficiary or on his marriage, with his wife, absolutely. It is the fact that the beneficiary was not married nor the period of 18 years completed till the valuation date. Therefore, the corpus would not vest with the beneficiary. The beneficiary was not entitled to any income as of right, but the application of the income of the Trust is the absolute discretion of the trustee. We also found that the Tribunal relied on its own order for the assessment year 1979-80. The said main order came up before this Court in T.C. No.830 of 1988 and this Court, by its judgment dated 23.11.1998, decided the issue in favour of the assessee and held as follows:

"2. The Tribunal has found that the beneficiary had no vested interest in the assets owned by the Trust as its rights would arise after 18 years or on the date of his marriage and when such event happens, the assets would vest with his wife absolutely. There is no error in the reasoning or in the conclusion of the Tribunal. The question referred to us is answered in favour of the assessee and against the Revenue."

5. By following this Court judgment cited supra, we answer the above question of law in favour of the assessee and against the Revenue. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

km/sl

To

1. The Assistant Registrar,
Income Tax Appellate Tribunal,
III Floor, Rajaji Bhavan, Besant Nagar,
Chennai-90.

2. The Commissioner of Income Tax (Appeal)I,
Madurai.

3. The Deputy Commissioner of Wealth Tax,
Special Range I, Madurai

1 cc to Mr.J.Balachander, Advocate, Sr. 9397

1 cc to Mrs.Pushya Sitaraman, Advocate, Sr. 9522

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