A

COMMISSIONER OF WEALTH TAX, GUJARAT AT AHMEDABAD

v.

MRS. ARUNDHATI BALKRISHNA

February 25, 1970.

B

[J. C. SHAH, K. S. HEGDE AND A. N. GROVER, JJ.]

Wealth Tax Act (27 *of* 1957), *ss.* 2(*e*)(*iv*) *and* 5(1)(*vii*)—*Receipt of share from trust funds—When 'annuity'—Jewellery intended for personal use—Whether exempt.*

C The assessee was an individual. She was entitled for her life, to an *aliquot share of the income* arising from the funds settled on trust by three trust deeds and received payments of such share. She also possessed jewellery, intended for her personal use, of the value of Rs. 80,000.

On the questions: (1) whether the payments to the assessee were annuities falling within the scope of s. 2(e)(iv) of the Wealth Tax Act, 1957, whose value could not be included in the computation of her net wealth; and (2) whether the value of the jewels was exempt under D s. 5(1)(viii).

HELD: (1) Under the trust deeds, the assessee was not entitled to any *fixed sum of money*. Therefore, the payments to the assessee under the trust deeds could not be considered as annuities and hence, she was not entitled to the benefit of s. 2(e)(iv). [824 E-F]

E *Ahmed G H. Ariff* v. *Commissioner of Wealth Tax, Calcutta,* [1970] 2 S.C.R. 19 followed *Commissioner of Wealth Tax* v. *Mrs. Dorothy Martin,* (1968) 60 I.T.R. 586, approved.

(2) Under s. 5 there are four provisions dealing with jewellery, namely, (a) jewellery intended for the personal use of the assessee—s. 5(1)(viii), (b) jewellery which forms an heir loom—s. 5(1)(xiii), (c) jewellery in the possession of any ruler—s. 5(1)(xiv); and (d) F jewellery in general—s. 5(1)(xv). Under s. 5(1)(xv), as it stood in 1958-59, every assessee was entitled to deduct a sum of Rs. 25,000 from out of the value of the jewellery whether the same was intended for personal use or not; but under s. 5(1)(viii) the value of *all* the jewellery intended for the personal use of the assessee stands excluded in the computation of the net wealth of an assessee. Therefore, the jewellery in the present case is exempt under s. 5(1)(viii). [825 D, E-G]

G CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 1991 1992, 2010 and 2011 of 1968.

Appeals from the judgment and order dated October 9, 1967 of the Gujarat High Court in Wealth Tax Reference No. 3 of 1964.

H *B. Sen, S. K. Aiyar* and *B. D. Sharma,* for the appellant (in C. A. Nos. 1991 and 1992 of 1968) and the respondent (in C. As. Nos. 2010 and 2011 of 1968).

N. A. Palkhivala and *I. N. Shroff*, for the respondent (in C. As. Nos. 1991 and 1992 of 1968) and the appellant (in C.As. Nos. 2010 and 2011 of 1968). A

The Judgment of the Court was delivered by

Hegde, J. These appeals by certificate under s. 29 of the Wealth Tax Act, 1957 (to be hereinafter referred to as the Act) arise from a reference under s. 27(1) of the Act to the High Court of Gujarat. Therein four questions were referred to the High Court for its opinion. These four questions really gave rise to two questions of law *viz.* (1) whether under the three trust deeds referred to therein the assessee got annuities falling within the scope of s. 2(e)(iv) ? and (2) whether the value of the jewels owned by the assessee was exempt under s. 5(1)(viii) in computing the net wealth of the assessee ? B C

The assessee is an individual and the assessment years with which we are concerned in these appeals are 1957-58 and 1958-59, the corresponding valuation dates being December 31, 1956 and December 31, 1957. D

By a deed of settlement dated September 7, 1945 the father of the assessee settled certain shares of the Indian Companies of the estimated value of Rs. 5,50,325/- upon trust for the benefit of his two sons and his daughter, the assessee. By another deed of settlement dated October 12, 1945 he settled certain other shares upon trust for the benefit of the assessee and her two brothers. All the terms of the two trust deeds relevant for our present purpose are identical. By a deed of settlement dated September 30, 1945, the mother-in-law of the assessee settled upon trust a sum of Rs. 3,88,931/- and shares of some Indian Companies of the aggregate market value of Rs. 11,81,670/-. The assessee is one of the beneficiaries named in that deed. The assessee also possessed jewellery of the value of Rs. 80,000/- E F

As regards the payments to be made to the assessee under the afore-mentioned three trust deeds, the contention of the assessee is that under each of those deeds, she has only a right to an 'annuity' and the terms and conditions relating thereto preclude the commutation of any portion thereof into a lumpsum grant and hence in view of s. 2(e)(iv), the value of those annuities cannot be included in the computation of her net wealth. As regards the jewellery her case is that they are articles of her personal use and therefore their value cannot be taken into consideration in ascertaining her net wealth. She contends that the value of those jewellery is exempt under s. 5(1)(viii). The Wealth Tax Officer rejected both those contentions and assessed her after including in her net wealth the value of the benefits receivable by her under G H

A the trust deeds in question as well as the value of the jewellery minus Rs. 25,000/-, deduction given under s. 5(1)(xv) as it stood at the relevant time.

Against that order the assessee went up in appeal to the Assistant Appellate Commissioner. That officer agreed with the conB clusions reached by the Wealth Tax Officer and he accordingly dismissed the appeal of the assessee. Thereafter the assessee appealed to the Tribunal. The Tribunal held that the payments to be made to the assessee under the trust deed executed by her mother-in-law is an 'annuity' entitled to exemption under s. 2(e)(iv). As regards the payments to be made to the assessee under her father's settlement deeds, it opined that as the assessee was C entitled to withdraw from the trust fund at her own discretion after she attained majority and after she gave birth to one child, one half of the corpus, to that extent commutation was possible. Therefore to the extent of one half of the value of the annual payments to be made to her under those deeds, the assessee was not entitled to exemption under s. 2(e)(iv) but she was entitled to exemption D as regards the other half. The Tribunal rejected the assessee's claim for exemption under s. 5(1)(viii) i.e. in respect of the value of the jewellery.

One a reference under s. 27(1), the High Court of Gujarat held that the payments to be made to the assessee under the three settlement deeds do not come within s. 2(e)(iv) but the value of E the jewellery is exempt under s. 5(1)(viii). Both the assessee as well as the Revenue have appealed against that decision.

We shall first take up the contention of the assessee that the payments to be made to her under the trust deeds are annuities which by the terms and conditions relating thereto preclude the commutation of any portion thereof into a lumpsum grant and F hence are within the scope of s. 2(e)(iv). If those payments fall within the scope of that provision, they cannot be considered as the assets of the assessee and therefore their value cannot be reckoned in determining her net wealth under s. 2(m). Under s. 3, the charging section, only the net wealth of an assessee can be brought to tax. Hence we have to examine the terms of the settleG ment deeds to find out whether the benefits conferred on the assessee by any or all of those deeds can be considered as annuity.

As stated earlier the two settlement deeds executed by the father of the assessee are expressed more or less in identical language. It was conceded at the bar that whatever construction we may place on one, would be equally applicable to the other. ThereH fore we shall take up the deed executed on September 7, 1945 by the father of the assessee. Under cl. 3 of that deed it is provided that the trustees, after deducting from the income of the

shares in question, all costs and expenses incurred in or about the administration of the trust, should at the end of every calendar year pay the whole residue to the assessee and her two brothers in equal shares. But after the death of the assessee her heirs are not entitled to any share in that income. Therein provision is made by the settlor for disposition of the corpus of the trust. But it is provided that notwithstanding anything contained to the contrary in the deed of Trust after assessee attained majority and after the birth of her first child when and so often as might be required by the assessee, the trustees are required to pay a portion of the corpus of the trust fund not exceeding in the whole one-half thereof to the assessee and this payment of the corpus was to be absolutely freed and discharged from the trust and provisions of the trust deed. The other provisions of the trust deed are not relevant for our present purpose.

Under the trust deed executed by the assessee's mother-in-law on December 30, 1945, the husband of the assessee and her two brothers-in-law were constituted as the Trustees. Under cl. (a) of that deed, the trustees were required to pay the income of the trust fund after deducting the expenses to the assessee during her life-time. The rest of the clauses in that trust deed relate to disposition of the corpus to different beneficiaries after the life time of the assessee.

It is clear from the terms of the three trust deeds referred to earlier that the assessee had a life interest in each of those funds. Further under the trust deeds executed by her father, she was also entitled to a portion of the corpus under certain circumstances. The question for decision is whether the benefits obtained by the assessee under those deeds can be held to come within s. 2(e)(iv).

The expression "annuity" is not defined in the Act. In Halsbury's Laws of England, 3rd Edn. Vol. 32 at p. 534 (paragraph 899), the meaning of the word "annuity" is explained thus :

> "An annuity is a certain sum of money payable yearly either as a personal obligation of the grantor or out of property not consisting exclusively of land."

In Jarman on Wills at p. 1113 "annuity" is defined 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 period, or in perpetuity; and there is also this singularity 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."

A In Williams on Executors and Administrators "annuity" is described as a yearly payment of a certain fixed sum of money granted for life or for years charging the person of the grantor only. In *Bignold* v. *Giles*,(1), Kindersley V. C. described "annuity" in these words :

B "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 period, or in perpetuity; and there is also this singularity 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 C 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 D 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 E to give a certain portion of the dividends 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."

F Illustrations of annuity given in s. 173 of the Indian Succession Act also show that it is a right to receive a specified sum and not an aliquot share in the income arising from any fund or property. Ordinarily an annuity is a money payment of a fixed sum annually made and is a charge personally on the grantor.

On an analysis of the relevant clauses in three trust deeds, it G is clear the assessee was given thereunder a share of the income arising from the funds settled on trust. Under those deeds she is not entitled to any fixed sum of money. Therefore it is not possible to hold that the payments that she is entitled to receive under those deeds are annuities. She has undoubtedly a life interest in those funds. In *Ahmed G. H. Ariff* v. *Commissioner of Wealth Tax, Calcutta*(2), a Division Bench of the Calcutta High Court H held that the right of a person to receive under a wakf an aliquot

(1) (1859) Ch. 4 Drew 345; (Revised Reports 113 p. 390).
(2) 59. I.T.R. 230.

share of the net income of the wakf property is an 'asset' within the meaning of the Wealth Tax Act, 1957 and the capital value of such a right is assessable to wealth tax. Therein the Court repelled the contention that the right in question was an 'annuity'. This decision was approved by this Court in *Ahmed G. H. Ariff & Ors.* v. *Commr. of Wealth Tax, Calcutta*(1) and the same is binding on us. A similar view was taken by another Bench of the Calcutta High Court in *Commissioner of Wealth Tax* v. *Mrs. Dorothy Martin*(2). In that case under the will of the assessee's father the assessee was entitled to receive for her life the annual interest accruing upon her share in the residuary trust fund. The Wealth Tax Officer included the entire value of the said share in the assessable wealth of the assessee and subjected the same to tax under s. 16(3) of the Wealth Tax Act, 1957. That order was confirmed by the Assistant Appellate Commissioner but the Tribunal in appeal excluded the same in the computation of the net wealth of the assessee. On a reference made to the High Court, it was held that on a construction of the various clauses in the will, the assessee was entitled to an aliquot share in the general income of the residuary trust fund and not a fixed sum payable periodically as "annuity" and, therefore, the value of her share was an asset to be included in computing his net wealth. These decisions in our view correctly lay down the legal position. In this view it is not necessary to consider whether the income receivable by the assessee under those deeds either wholly or in part is capable of being commuted into a lumpsum grant.

For the reasons mentioned above we agree with the High Court that payments to be made to the assessee under the three trust deeds cannot be considered as annuities and hence she is not entitled to the benefit of s. 2(e)(iv).

This takes us to the question whether the High Court was right in its view that the value of the assessee's jewellery should not be taken into consideration in determining her net wealth. The Tribunal has taken the view and the High Court has agreed with that view that the jewellery in question are articles intended for the personal use of the assessee. As mentioned earlier those jewels were valued at Rs. 80,000/-; out of that amount Wealth tax Officer deducted Rs. 25,000/- under s. 5(1)(xv). The assessee claims that in view of s. 5(1)(viii), the value of those jewels cannot be included in the computation of her net wealth. Section 5(1)(viii) reads :

> "5. (1) Wealth-tax shall not be payable by the assessee in respect of the following assets, and such assets shall not be included in the net wealth of the assessee—
>
> . . . . . .

(1) [1970] 2 S.C.R. 19. (2) [1968] 69, I.T.R. 586.

A (viii) furniture, household utensils, wearing apparel, provisions and other articles intended for the personal or household use of the assessee."

There is no dispute that the jewels in question were intended for the personal use of the assessee; but it is said on behalf of the revenue that s. 5(1)(viii) does not apply to jewels as those articles B are specifically provided for under s. 5(1)(xv). On the other hand it is urged on behalf of the assessee that s. 5(1)(xv) deals with jewellery which are not intended for personal use of the assessee such as heirloom or other jewellery which are retained as valuable assets or intended for the use of persons other than the assessee whereas s. 5(1)(viii) takes in only such jewellery as are intended C for personal use of the assessee. We think the contention advanced on behalf of the assessee is the correct one. It is well known that the jewellery is widely used as articles of personal use by the ladies in this country specially by those belonging to the richer classes. That being so jewellery intended for the personal use of the assessee comes within the scope of s. 5(1)(viii). But the jewellery mentioned in s. 5(1)(xv) need not be articles intended for D personal use of the assessee. That provision deals with jewellery in general. The two provisions deal with different classes of jewellery. That is made further clear by s. 5(1)(xiii) which says that Wealth Tax shall not be payable by assessee in respect of any drawings, paintings, photographs, prints and other heirloom not falling within cl. (xii) and not intended for sale but not including E jewellery. If the contention that the jewellery is exclusively dealt with by s. 5(1)(xv) is correct then there was no occasion for the legislature to refer to jewellery in s. 5(1)(xiii). From an analysis of the various provisions in s. 5, it appears to us that therein there are four provisions dealing with jewellery *viz.* (1) jewellery intended for personal use of the assessee—s. 5(1)(viii); (2) jewellery F that is heirloom—s. 5(1)(xiii); (3) jewellery in the possession of any ruler—s. 5(1)(xiv) and (4) jewellery in general—s. 5(1)(xv). Under s. 5(1)(xv) as it stood at the relevant time every assessee was entitled deduct a sum of Rs. 25,000/- from out of the value of the jewellery in her possession whether the same was intended for her personal use or not but under s. 5(1)(viii) the value of all the jewellery intended for the personal use of the assessee stands G excluded in the computation of the net wealth of an assessee.

For the reasons mentioned above we think the High Court was right in answering the question relating to the value of the jewellery in favour of the assessee.

H In the result these appeals fail and they are dismissed—no costs.

V.P.S. *Appeals dismissed.*

L10Sup CI/70—8