A

COMMISSIONER OF WEALTH TAX, BIHAR AND ORISSA

V.

KIRPASHANKAR DAYASHANKAR WORAH

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July 29, 1971.

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

Wealth Tax Act (27 *of* 1957), *s.* 21(1) & (4)—*Liability of trustee to be assessed to wealth tax—Scope of s.* 21(4).

C

The respondent, by means of a trust-deed, transferred certain properties described in the deed unto himself as a trustee for making provision for the maintenance of himself and his wife, for the maintenance, education and marriage expenses of his unmarried daughters, and for the maintenance and education expenses of his minor sons. For the assessment years 1957 to 1961 the Department assessed the respondent to wealth-tax in respect of the trust properties as a trustee under s. 21 of the Wealth Tax Act 1957. The respondent contended that: (1) Since, as a trustee he was only holding the properties *for the benefit of* the beneficiaries and not *on behalf of* the beneficiaries as laid down in the section he was not assessable to wealth-tax, and (2) as the share of each of the beneficiaries was not indeterminate, he should not be taxed at the maximum rate.

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The High Court in reference held that respondent was not assessable to wealth tax.

HELD: In appeal to this Court,

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S. 21(1) of the Act specifically refers to trustees. The Legislature is competent, in the absence of any restrictions placed on it by the Constitution, to give its own meaning to the words used by it in a statute. In the Wealth Tax Act, Parliament, while enacting s. 21(1) & (2) of the Act, proceeded on the basis that for the purpose of that Act a trustee is holding the trust property *on behalf of* beneficiaries. The mere fact that this conception does not accord with the provisions of the Trust Act does not

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invalidate the section. If the construction contended for on behalf of the respondent is accepted then a part of the section would become otiose. While a taxing provision must be strictly construed by courts and the benefit of any ambiguity must to go the assessee, if the intention of the Legislature is clear and beyond doubt then the fact that the provision could have been more artistically drafted cannot be a ground for treating any part of a provision as otiose. [973B-F]

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Therefore a trustee is assessable to wealth tax under the Act even as it then stood. [975B]

Suhashini Karuri v. *Wealth Tax Officer*, 46 I.T.R. 953, and *Trustees of Gordhandas Govindram Family Charity Trust* v. *Commissioner of Income-tax, Bombay*, 70 I.T.R. 600, approved.

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Commissioner of Income-tax v. *Puthiya Ponamanichintakam Wakf*, 44 I.T.R. 172 (S.C.), *Commissioner of Income-tax*, v. *Kokila Devi*, 77 I.T.R. 350 (S.C.), *The Commissioner of Income-tax* v. *Manila Bharti*, [1962] Supp. 2 S.C.R. 902 and *Commissioner of Income-tax* v. *Managing Trustees Nagor Durgha*, 57 I.T.R. 321 (S.C.), referred to.

W.O. Holdsworth v. *State of U.P.*, 33 I.T.R. 472 (S.C.), explained. A

(2) In the present case, on the relevant dates, the settlor as well as his wife were alive and had a right to be maintained out of the trust properties and they had also a right of residence in a part of the trust property, and two of the sons of the settlor had a right to be maintained and educated. Therefore the shares of the beneficiaries were indeterminate, and hence, the trustee had to be assessed under s. 21(4) of the Act as it then stood. [975H; 976A-B] B

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 1478 to 1481 of 1967.

Appeals from the judgment and order dated April 13, 1966 of the Patna Court in Misc. Judicial Cases Nos. 552 to 555 of 1964. C

Jagadish Swarup Solicitor-General, A. N. Kirpal, B. D. Sharma and *R. N. Sachthey*, for the appellant (in all the appeals).

M. C. Setalvad, S. K. Mitra and *A. K. Nag*, for the respondent (in all the appeals). D

The Judgment of the Court was delivered by

Hegde J.—This appeal by certificate arises from the decision of the High Court of Patna in a reference under s. 27(1) of the Wealth Tax Act, 1957 (which we shall hereafter refer to as the Act). The question of law arising for decision in these appeals E is :

> "Whether in the facts and circumstances of the case, the trustee under the Trust deed dated 19th July 1949 executed by Kirpashankar D. Worah was assessable to wealth tax under Section 21 of the Wealth Tax Act ?" F

The tribunal upheld the contention of the Revenue that the trustee is liable to be proceeded against under s. 21 of the Act but the High Court disagreeing with the view taken by the tribunal answered the question referred to it in the negative. Hence this appeal. G

The facts of the case as set out in the statement of the case submitted to the High Court may now be briefly stated: The respondent Kirpashanker D. Worah by means of a deed of trust dated July 19, 1949 transferred certain shares described in Schedule 7 of the trust deed and certain immovable properties and shares in business described in Schedule 8 of that deed unto himself as the trustee for making provision for the maintenance of himself, his wife, for the maintenance, education and the marriage H

A expenses of his unmarried daughters and for the maintenance and education expenses of his minor sons. The main purpose of the trust is set out in paragraph 3 of the objects of the trust. That paragraph reads:

> "To apply the income of the Trust Estate for the maintenance and the joint use and benefit of the Settlor
B and his wife the said Srimati Kanchan Kunver and also for the maintenance, education and marriage expenses of the said two minor daughters Kumari Kumud Bala and Kumari Jyoti and also for the maintenance and education of the Settlor's minor sons Harsukhari Worah and Chand-
erakant Worah PROVIDED ALWAYS that if the in-
C come of the Trust Estate is insufficient for the purpose of meeting any of the said expenses the Trustee shall have full liberty to dispose of or otherwise apply sufficient portion of the corpus of the Trust Estate for the purpose of discharging the trust contained in this clause."

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Sub-paragraph 4 of the Trust deed provides that in the event of the Settlor predeceasing his wife, the shares and securities mentioned in Schedule 7 was to be made over to his wife to be enjoyed by her as her absolute property, provided that if the Settlor predeceased his wife before the marriages of the two unmarried daughters had been performed, the trustee was to retain
E out of the shares and securities mentioned in the said Schedule sufficient number of shares for the purpose of meeting the marriage expenses of the said two daughters or either of them as the case may be. Sub-paragraph(5) provides that after the marriages of both the daughters and/or after the death of both of such daughters, whichever happens first and also after the death of the
F Settlor's wife and the attainment of majority of both the minor sons, the trustee was to hold the Trust Estate for the absolute use and benefit of the two said sons, Harsukhari and Chandrakant. It was further provided that the intention of the Settlor was that subject to the trust thereby created the said two minor sons would take a vested interest in the trust estate. Under cl.
G (4) of the said deed provision was made for the residence of the Settlor, his wife and the minor children free of rent in a part of the trust properties described in Schedule 8 until the determination of the trust as aforesaid. Even before the first valuation date with which we are concerned in these appeals, both the daughters had been married and the two sons had attained majority. The reference relates to wealth tax assessment of the assessee for
H the assessment years 1957-58, 1958-59, 1959-60 and 1960-61, the corresponding valuation dates being 2-11-1956. 23-11-1957, 11-11-1958 and 31-10-1959.

The department has assessed the respondent in respect of the wealth tax due in respect of the trust properties as a trustee. The question for consideration is whether he is liable to be assessed to wealth tax in respect of the trust properties. The respondent contends that as he is not holding the trust properties on behalf of the beneficiaries, he does not come within the scope of s. 21 of the Act and further as the share of the beneficiaries under the trust is not indeterminate, he cannot be taxed at the maximum rate.

We shall first take up the question whether the case of the assessee comes within the scope of s. 21(1) of the Act. At the material time s. 21 read thus :

> "21(1). In the case of the 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 the assets are held, and the provision of this Act shall apply accordingly."

Leaving out the unnecessary words, section 21 to the extent material for our present purpose can be recast thus :

> In the case of the assets chargeable to tax under this Act which are held by a trustee appointed under a trust deed by a duly executed instrument in writing, whether testamentary or otherwise, the wealth tax shall be levied upon and recoverable from the trustee in the like manner and to the same extent as it would be leviable upon and recoverable from the person on whose behalf the assets are held and the provision of this Act shall apply accordingly.

It is plain from the language of s. 21(1) that a trustee is also brought within its scope. But that section proceeds on the basis that a trustee is holding the trust property on behalf of one or more beneficiaries.

A The High Court has come to the conclusion and that conclusion is supported by Mr. M. C. Setalvad, learned counsel for the assessee that it is well established that a trustee does not hold the trust property on behalf of the beneficiaries but he holds it only for their benefit. Under the Trust Act, it is indisputable that a trustee is the legal owner of the trust property. He holds B the trust property on his own right and not on behalf of someone else though he holds it for the benefit of the beneficiaries The High Court in coming to the conclusion that s. 21(1) is inapplicable to the facts of the case heavily relied on the decision of this Court in *W. O. Holdsworth and Ors.* v. *State of U. P.*(1) In that case this Court was considering the scope of s. 11(1) of C the U.P. Agricultural Income-tax Act, 1948. That section reads:

> "Where any person holds land, from which agricultural income is derived, as a common manager appointed under any law for the time being in force or under any agreement or as receiver, administrator or the like on behalf of persons jointly interested in such land or in D the agricultural income derived therefrom the aggregate of the sums payable as agricultural income-tax by each person on the agricultural income derived from such land and received by him, shall be assessed on such common manager, receiver, administrator or the like, and he shall be deemed to be the assessee in respect of the agricultural income tax so payable by each such person and E shall be liable to pay the same."

It may be noted that in that provision, there is no reference to trustees. That section speaks of "receiver, administrator or the like on behalf of persons jointly interested in such land or in the agricultural income derived therefrom". While interpreting F that clause this Court held that a trustee is not a person who can be equated to a receiver or an administrator inasmuch as those persons hold the property on behalf of other persons whereas a trustee is the legal owner of the trust property. In that decision this Court also observed that there is a fundamental difference between a property being held on behalf of others and property G being held for the benefit of others. In our opinion the ratio of that decision does not bear on the point under consideration though certain observations found therein may give some assistance to the respondent. Section 11 of the U. P. Agricultural Income-tax Act does not refer to trustees at all whereas s. 21(1) of the Act specifically refers to trustees. It is true that it refers H to a trustee as holding a trust property on behalf of other persons. The conception that the trustee is holding the trust property on

(1) 33 I.T.R. 472.

behalf of others may not be in conformity with the legal position as contemplated by the Trust Act but the legislature is competent in the absence of any restrictions placed on it by the Constitution to give its own meaning to the words used by it in a statute. There can be hardly any doubt that the parliament while enacting s. 21 (2) of the Act proceeded on the basis that for the purpose of that Act the trustee is holding the trust property on behalf of the beneficiaries. The mere fact that this conception does not accord with the provisions of the Trust Act does not invalidate s. 21(1) As seen earlier s. 21(1) specifically takes in the trustees. It cannot be said and it was not said that the parliament had not specifically brought in the trustee under s. 21(1). What was urged by Mr. Setalvad was that though the parliament intended to bring in the trustees within the scope of that provision, it failed to achieve its purpose because of the inartistic drafting, inasmuch as the section speaks of the "trustee holding the trust property on behalf of others". It is true that a taxing provision must receive a strict construction at the hands of the courts and if there is any ambiguity, the benefit of that ambiguity must go to the assessee. But that is not the same thing as saying that a taxing provision should not receive a reasonable construction. If the intention of the legislature is clear and beyond doubt then the fact that the provision could have been more artistically drafted cannot be a ground to treat any part of a provision as otiose. If the construction contended for on behalf of the respondent is accepted then a part of s. 21(1) would become otiose. So long as the intention of the legislature is clear and beyond doubt, the court's have to carry out that intention. In our opinion the High Court did not take a proper view of the decision of this Court in *Holdworth's* case(1).

Section 21(1) of the Act is analogous to s. 41(1) of the Income-tax Act, 1922. The only difference between the two sections is that whereas the former deals with assets, the latter deals with income. Subject to this difference, the two provisions are identically worded. Hence the decisions rendered under s. 41(1) of the Indian Income-tax Act, 1922 have bearing on the question arising for decision in this case.

In *Commissioner of Income-tax Kerala and Coimbatore* v. *Puthiya Ponamanichintakam Wakf*,(2) this Court proceeded on the basis that the income received by a trustee came within the scope of S. 41(1) of the Income-tax Act, 1922. In *Commissioner of Income-tax, Calcutta* v. *Kokila Devi and Ors.*,(3) a similar view was taken by this Court.

(1) 33 I.T.R. 472.
(2) 44 I.T.R. 172.
(3) 77 I.T.R. 350.

A In *The Commissioner of Income-tax, Bombay* v. *Manilal Dhanji Bombay*,(1) this Court again proceeded on the basis that s. 41 applied to the trustees.

In *Commissioner of Income-tax, Madras* v. *Managing Trustees, Nagore Durgha*,(2) this Court was called upon to interpret the scope of s. 41(1). Therein the question was whether natta-maigars of Nagore Durgha who are considered as trustees in whom the properties of the Durgha vested would come within the scope of s. 41(1) of the Indian Income-tax Act, 1922. This Court answered that question in the affirmative. Therein also it was contended that as the property is vested in the managing trustee and he received the income in his own right and not on behalf of the beneficiaries though for their benefit, the income in the hands of the managing trustee fell outside the scope of s. 41(1) of the Act. Repelling that contention Subba Rao J. (as he then was) speaking for the Court, observed:

> "There are two answers to this contention. The doctrine of vesting is not germane to this contention. In some of the enumerated persons in the section the property vests and in others it does not vest, but they only manage the property. In general law the property does not vest in a receiver or manager but it vests in a trustee, but both trustees and receivers are included in section 41 of the Act. The common thread that passes through all of them is that they function legally or factually for others; they manage the property for the benefit of others. That the technical doctrine of vesting is not imported in the section is apparent from the fact that a trustee appointed under a trust deed is brought under the section though legally the property vests in him."

In *G. T. Rajahannar* v. *Commissioner of Income-tax, Mysore*(3) while dealing with the scope of s. 41(1), the High Court of Mysore had to deal with a contention similar to the one advanced in this case. Therein also the assessee relied on the decision of this Court in *Holdsworth's* case(4). While rejecting the contention of the assessee the High Court held that the observations made by this Court in *Holdsworth's* case must be understood in the light of the provision that this Court was considering in that case. The Court held that s. 41(1) of the Income-tax Act, 1922 is applicable to a case where income is derived from the trust property even though the trustee does not strictly speaking receive such

(1) [1962] Supp. 2 S.C.R. 902. (2) 57 I.T.R. 321.

(3) 51 I.T.R. 339. (4) 33 I.T.R. 472.

income "on behalf of" the beneficiaries but is the legal owner of that income; the words "on behalf of" in s. 41(1) must be construed as being equivalent to "for the benefit of" and further in the case of a trust where the beneficiaries are indeterminate, the income must be assessed at the maximum rate in the hands of the trustee in view of the first proviso to s. 41(1). In the course of that judgment it was observed:

> "But in the present case if we do not read that expression in the manner I have indicated, then a good portion of section 41(1) and the first proviso thereto becomes otiose. It is not proper to construe that any portion of a provision in a statute is superfluous. Such a construction should be avoided except in extreme cases. Though as a normal rule the courts should give to the words used in the statute its normal meaning, occasions do arise when it becomes necessary to give a special meaning to a word.
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> For the reasons mentioned above, I interpret the words "on behalf of" found in section 41(1) and the first proviso thereto as equivalent to "for the benefit of".

In *Suhashini Karuri* and *anr.* v. *Wealth Tax Officer, Calcutta and anr.*(1) the High Court of Calcutta held that the words "on behalf of" used in s. 21(1) of the Act are synonymous with the expression "for the benefit of". It further held that notwithstanding that the trustees hold property for the benefit of beneficiaries and not on their behalf, s. 21(1) applies to them and they are liable to wealth tax only "in the like manner and to the extent as it would be leviable upon and recoverable from any such beneficiary". The Calcutta High Court distinguished the decision of this Court in *Holdsworth's* case. The Bombay High Court in *Trustees of Gordhandas Govindram Family Charity Trust, Bombay* v. *Commissioner of Income-tax, Central Bombay*(2), disagreeing with the decision under appeal and following the decision of the Calcutta High Court in *Suhashini Karuri's case* (supra) took the view that a trustee also came within the scope of s. 21(1) of the Act. The same view was taken by the Allahabad High Court in *Chintamani Ghosh Trust* v. *Commissioner of Wealth Tax, U. P.* We think that the view taken by the Calcutta, Bombay and Allahabad High Courts is the correct view.

Now coming to the question whether the shares of the beneficiaries under the trust deed on the relevant valuation dates are determinate or indeterminate, we have to bear in mind the fact that on those dates the Settlor as well as his wife were alive.

(1) 46 I.T.R. 953. (2) 70 I.T.R. 600.

A They had a right to be maintained out of the income of the trust properties. They had also a right of residence in the house, situate in that property. The two sons of the Settlor had a right to be maintained and educated. That being so, there is no doubt that on the relevant dates, the shares of the beneficiaries were indeterminate. Hence the trustee had to be assessed under s. 21
B (4) as it stood at the relevant time.

In the result these appeals are allowed and the answer given by the High Court is revoked and in its place we answer that question in the affirmative namely that on the facts and circumstances of the case the trustee under the trust deed dated July 19, 1949 executed by Kirpashanker D. Worah was assessable to
C wealth tax under s. 21 of the Wealth Tax Act as it stood at the relevant time. The respondent to pay costs of the department both in this Court and in the High Court—hearing fee one set.

V. P. S *Appeals allowed.*