

THE TRUSTEES OF GORDHANDAS GOVINDRAM FAMILY TRUST, BOMBAY

v.

THE C.I.T. BOMBAY

November 28, 1972

[K. S. HEGDE, P. JAGANMOHAN REDDY AND H. R. KHANNA, JJ.]

Wealth Tax Act, 1957, Ss. 3 and 5(1)(i)—Charging section not expressly mentioning association of persons as a chargeable entity—Trustees of a trust whether can be charged as individuals—Construction of deed—Trust whether a charitable trust within meaning of S. 5(1)(i) of Act.

Four persons constituted on June 11, 1941 a Trust known as 'Gordhandas Govindram Family Trust'. In respect of the assessment years 1957-58 and 1958-59 the following two questions were referred to the High Court under S. 27(1) of the Wealth Tax Act 1957; (a) Whether on a true construction of the indenture of trust dated 11-6-1941 the trustees of the Trust constitute an assessable unit under the provisions of the Wealth-Tax Act; (b) Whether the property held by the trustees under the indenture of trust dated 11-6-1941 is held for any public purpose of a charitable or religious nature in India within the meaning of Sec. 5(1)(i) of the Wealth-Tax Act? The High Court answered both the questions against the assesseees. In appeal by certificate it was contended before this court in respect of the first question that the charging section of the Act did not expressly mention 'association of persons' as a chargeable entity and therefore the trustees could not be taxed.

HELD : (i) Section 21(1) as well as S. 5(1)(i) of the Act proceed on the basis that a trust property comes within the scope of the Act. Sec. 3 of the Act does bring within its scope an individual which expression in view of the Central General Clauses Act includes individuals as well, unless the context otherwise indicates. In this case, the context, far from not indicating that the individual does not include individuals, clearly shows at any rate so far as the trustees are concerned that it includes individuals. As the Indian Income-tax Act provides for the assessment of 'an association of persons' the context therein may indicate that individual does not include individuals. But such an interpretation is not permissible when we deal with Sec. 3 of the Act. Therefore joint trustees can be taxed as individual under the Act. Accordingly, the trustees of the trust in the present case constitute an assessable unit under the provisions of the Act. [105 H E]

Commissioner of Income-tax, Madhya Pradesh and Bhopal v. Sodra Devi, 32, I.T.R. 615 at 620 and *V. Venugopala Ravi Varma Rajah v. Union of India and Another*, 74, I.T.R. 49, applied.

Subashini Karuri and Another v. Wealth-tax Officer, Calcutta and Another, 45 I.T.R. 953 and *Abhay L. Khatau and Others v. Commissioner of Wealth-tax, Bombay City II*, 57 I.T.R. 202, approved.

Commissioner of Wealth-tax, Bihar and Orissa v. Kripashankar Dayashanker, Worah, 81 I.T.R. 763 referred to.

(ii) The trust in question was created primarily for the benefit of the members of the family of Gordhandas Govindram Seksaria. This is clear from the title given to the Trust as well as from the various provisions of the trust deed. Therefore it was not possible to hold that

A the Trust in question is a Trust for any public purpose. It is clearly a private Trust. [1055 F]

Trustees of Gordhandas Govindram Family Charity Trust v. Commissioner of Income-tax (Central), Bombay, 21 I.T.R. 231 at 237 applied.

Trustees of the Charity Fund v. Commissioner of Income-tax, Bombay, 36 I.T.R. 513 referred to.

B CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 2382-2383 of 1969.

Appeals by certificate from the judgment and order dated 14th and 15th February 1968 of the Bombay High Court in Wealth Tax Reference No. 1.

C *S. T. Desai, A. G. Menezes, J. B. Dadachanji, O. C. Mathur and Ravinder Narain* for the appellant.

T. A. Ramachandran, S. P. Nayar and R. N. Sachthey for the respondent.

The Judgment of the Court was delivered by

D HEGDE, J.—These are appeals by certificate. They arise from a reference under s. 27(1) of the Wealth Tax Act, 1957 (To be hereinafter referred to as the Act). These appeals relate to the Wealth Tax assessment of the appellant assessee for the assessment years 1957-58 and 1958-59, the relevant valuation dates being December 31, 1956 and December 31, 1957.

E The two questions of law referred to the High Court are :—

“1. Whether on a true construction of the indenture of trust dated 11-6-1941 the trustees of the Trust constitute an assessable unit under the provisions of the Wealth-tax Act ?

F 2. Whether the property held by the trustees under the indenture of trust dated 11-6-1941 is held for any public purpose of a charitable or religious nature in India within the meaning of Sec. 5(1)(i) of the Wealth-tax Act ?”

G The High Court has answered both these questions in favour of the Department and against the assessee. Hence these appeals.

H The facts of this case lie within a narrow compass. Govindram Gordhandas Seksaria; Ramnath Gordhandas Seksaria, Makhantal Gordhandas Seksaria and Bholaram Gordhandas Seksaria constituted a Trust on June 11, 1941 in respect of a sum of Rs. 11 lacs (Rupees eleven lacs). That Trust was known as ‘Gordhandas Govindram Family Trust’. Clause (2) of the Trust deed says that it was created “for giving help or relief to such poor Vaishya Hindoos or other Hindoos as the trustees may consider deserving

of help in the manner and to the extent hereinafter specified and subjects to the conditions and directions stated in the next following clauses and/or for the charitable object or objects hereinafter mentioned." Clause (3)(a) of the Trust deed provides that the conditions and directions to be observed and followed by the Trustees in the execution of the Trusts herein declared as follows :

"Poor Vaishaya Hindoos who are members of Seksaria families shall be preferred to poor Vaishaya Hindoos of Navalgadh not belonging to that family."

Sub-clauses (b) to (q) provide for the payment of maintenance and marriage expenses of the poor male or female descendants of Seksaria family.

We shall now set out sub-clauses (r) to (u) of clause (3). They read :—

"(r) Rs. 5/- (Rupees five) per month may be paid as and by way of maintenance of any poor male Vaishaya Hindoo who may be deserving of help.

(s) Rs. 5/- (Rupees five) per month may be paid as and by way of maintenance to any poor unmarried female Vaishaya Hindoo or a poor Vaishaya Hindoo or a poor Vaishaya Hindoo widow who may be deserving of help.

(t) Rs. 500/- (Rupees five hundred) may be expended or given for the purpose of meeting the expenses of marriage of any poor female Vaishaya Hindoo who may be deserving of help."

(u) Rs. 500/- (Rupees five hundred) may be expended or given for the purpose of meeting the expenses of marriage of any poor female Vaishaya Hindoo who may be deserving of help."

The deed further provides :—

"If the income of the Trust Estate is not sufficient to carry out the charities specified in sub-clauses (a) to (u) above the charity specified in an earlier sub-clause shall be given priority over a charity specified in a later sub-clause."

From the above, it is clear that charity provided was primarily for the benefit of the members of the family of Seksaria, no doubt including both male and female descendants. It is also clear from the deed that the amounts provided for the payment of maintenance and marriage expenses for the poor members of the Seksaria family is bound to take away a substantial part of the income of the trust, if not the whole of it.

- A As mentioned earlier, the Trust is known as "Gordhandas Govindram Family Trust". That is a clear pointer. That shows that the Trust was primarily intended for the benefit of the family of Gordhandas Govindram. This is made further clear from the various provisions in the Trust deed. A reading of the Trust deed as a whole clearly goes to prove that the charity under that deed
- B begins with the family of Gordhandas Govindram and possibly ends with it. Charity in favour of the Vaishaya Hindoos other than the members of the family of Gordhandas Govindram is not only marginal, but also quite tenuous.

- C We shall now take up the two questions of law referred to the High Court to ascertain its opinion. It was contended before the High Court that the Wealth-tax Act does not provide for levy of any tax on Trusts. As seen earlier, this contention did not find favour with the High Court. But that contention was repeated before this Court. In order to decide that contention, it is necessary to refer to three provisions in the Act viz. Sections 3, 5(1)(i) and 21. Section 3 is the charging section. It says :—

- D "Subject to the other provisions contained in this Act, there shall be charged for every assessment year commencing on and from the first day of April, 1957, a tax (hereinafter referred to as wealth-tax) in respect of the net wealth on the corresponding valuation date of every individual, Hindu "undivided family and com-
- E pany at the rate or rates specified in the Schedule."

- F Section 5 provides for exemption in respect of certain assets. One of the exemptions provided is in respect of any property held by an assessee under Trust or other legal obligation for any public purpose of a charitable or religious nature in India. Section 21 to the extent material for our present purpose may be recast thus :—

- G "In the case of 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 persons on whose behalf the assets are held, and the provisions of this Act shall apply accordingly."

- H It was urged that unlike the charging section in the income-tax Act, the charging section in the Act does not provide for the levy of tax on association of persons. It merely provides for assessing an individual or Hindu undivided family or a company. Trustees cannot be considered either individual or as Hindu Un-

divided Families or Companies. They could have been charged as an association of persons. But that body is not assessable under the Act. Hence, the trustees are not chargeable under the Act. It was conceded at the hearing that sec. 5(1)(i) as well as s. 21 proceed on the basis that a Trust property is also liable to be taxed under the Act. But what was urged before us was that there is a lacunae in the charging section and, therefore, the trustees of a Trust cannot be taxed under the Act. We see no merit in this contention.

In *Commissioner of Wealth-tax, Bihar and Orissa v. Kripashankar Dayashanker Worah*,⁽¹⁾ the contention raised was that trustees could not be assessed under the Act as Sec. 21(1) of the Act provides for assessing the trustees who held the Trust property "on behalf of" others. In law, a trustee does not hold the trust property "on behalf of" others. Hence, trustees cannot be assessed to tax under the Act. That contention was rejected by this Court. No contention was raised in that case that trustees did not come within the scope of sec. 3 of the Act. The judgment in that case proceeded on the basis that trustees can be assessed to wealth-tax in respect of the trust property of which they are trustees.

There is also no dispute that s. 5(1)(i) of the Act proceeds on the basis that a trust property comes within the scope of the Act. Sec. 3 of the Act does bring within its scope an individual which expression in view of the Central General Clauses Act includes individuals as well, unless the context otherwise indicates. In this case, the context, far from not indicating that the individual does not include individuals, clearly shows at any rate so far as the trustees are concerned that it includes individuals. As the Indian Income-tax Act provides for the assessment of "an association of persons", the context therein may indicate that individual does not include individuals. But such an interpretation is not permissible when we deal with sec. 3 of the Act.

In *Commissioner of Income-tax, Madhya Pradesh and Bhopal v. Sodra Devi*,⁽²⁾ this Court observed :—

"The word assessee is wide enough to cover not only an "individual" but also a Hindu undivided family, company and local authority and every firm and other association of persons or the partners of the firm or the members of the association individually."

In *V. Vnugopala Ravi Varma Rajah v. Union of India and Another*,⁽³⁾ a question arose whether s. 3 of the Expenditure-tax Act, 1957, which reads :—

(1) 81 I.T.R. 763.

(2) 32 I.T.R. 615 at 620.

(3) 74 I.T.R. 49.

- A “(1) Subject to the other provisions contained in this
Act, there shall be charged for every financial year
commencing on and from the first day of April,
1958, a tax (hereinafter referred to as expendi-
B ture-tax) at the rate or rates specified in the
Schedule in respect of the expenditure incurred
by any individual or Hindu undivided family in
the previous year”

brought within the net of taxation a Mappilla Marumakkattayam family. As seen earlier, under s. 3 of the Expenditure Tax Act, the only entities which are mentioned, are individuals or Hindu undivided family. This Court came to the conclusion that Mappilla Marumakkattayam Family could also be assessed as an individual.

- In *Subashini Karuri and Another v. Wealth-tax Officer, Calcutta and Another*, ⁽¹⁾ the Calcutta High Court opened that the joint trustees could be assessed as individuals under the Act. A similar view was taken by the Bombay High Court in *Abhay L. Khatau and Others v. Commissioner of Wealth-tax, Bombay city II.* ⁽²⁾ We are in agreement with that view. We, accordingly, agrees with the High Court and hold that the trustees of the trust, with which we are concerned in these appeals, constitute an assessable unit under the provisions of the Act.

- Now, let us turn to the other question viz. whether the trust in question can be considered as a trust created for public purpose of a charitable or religious nature. As seen earlier, the trust in question was created primarily for the benefit of the members of the family of Gordhandas Govindram Seksaria. That is clear from the title given to the Trust as well as from the various provisions to which we have made reference earlier. Therefore, it is not possible to hold that the Trust in question is a Trust for any public purpose. It is clearly a private Trust. The character of the Trust in question came to be considered by the Bombay High Court in *Trustees of Gordhandas Govindram Family Charity Trust v. Commissioner of Income-tax (Central), Bombay*, ⁽³⁾ under sec. 4(3)(i) of the Indian Income-tax Act. After examining the various provisions, the High Court opined that it was not a trust

(1) 46 I.T.R. 953.

(2) 57 I.T.R. 202.

(3) 21 I.T.R. 231 at 237.

for charitable purpose within the meaning of Indian Income-tax Act, 1922. It was held that the primary purpose of the settlor was to benefit the members of his family and remotely and indirectly to benefit the general public. We agree with that conclusion. The decision in the above case came up for consideration by this Court in *Trustees of the Charity Fund v. Commissioner of Income-tax, Bombay*.⁽¹⁾ This Court did not differ from the view taken by the High Court. But distinguished the same.

In the result, these appeals fail and they are dismissed with costs—one hearing fee.

G.C.

Appeal dismissed.

(1) 36 IT.R. 513.