IN THE HIGH COURT OF SINDH AT KARACHI

Wealth Tax Appeals No.786, 787, 788 & 789 all of 2000

The Commissioner of Income Tax.....Appellant (in all the matters).

Vs.

Ferozuddin Khan.....Respondent (in all the matters).

Present:
Mr. Justice Irfan Saadat Khan
Mr. Justice Yousuf Ali Sayeed

Date of hearing	:	26.11.2020
For the appellant *(In all the matters)*	:	Mr. Kafeel Ahmed Abbasi, Advocate.
For the respondent *(In all the matters)*	:	Nemo, despite proper service.

J U D G M E N T

IRFAN SAADAT KHAN, J. The instant Wealth Tax Appeals **(WTAs)** were admitted for regular hearing, vide order dated 27.05.2003, to consider the following questions of law:

> *"WHETHER ON THE FACTS AND IN THE CIRCUMSTANCES OF THE CASE THE LEARNED ITAT HAS CORRECTLY INTERPRETED SECTION 2(M)(EXP)(II) OF THE WEALTH TAX, 1963?"*

2. Briefly stated, the facts of the case are that the respondent is an individual who filed his returns of wealth tax for the assessment year 1995 – 1996 by declaring a wealth of Rs.1,487,954/-; for 1996 – 1997 at Rs.1,519,665/-; for 1997 – 1998 at Rs.1,523,559/- and for 1998 – 1999 at wealth of Rs.1747531/-. Assessments thereafter were completed under Section 16 of the Wealth Tax Act, 1963 **(the**

repealed Act). Thereafter the Inspecting Additional Commissioner **(IAC)**, while exercising his powers under Section 17-B of the repealed Act, revised the assessments, as according to him the assessee has failed to include the wealth of his minor children in his wealth. According to the IAC, the assessments previously made were erroneous insofar as they were prejudicial to the interest of the revenue. The IAC then added the shares owned by the minor children in the wealth of the respondent through his orders dated 12.08.1999. Being aggrieved with the said orders passed by the IAC, appeals were preferred before the Income Tax Appellate Tribunal **(ITAT)** bearing WTA No.247/KB of 1999 – 2000 to WTA No.250/KB of 1999 – 2000. The matters proceeded before the ITAT, which, vide its order dated 14.04.2000, vacated the orders of the IAC and restored those of the Assessing Officer **(AO)** on the ground that the wealth of the minor children had already been shown and included in the wealth of their mother (wife of the present respondent). It is against the order of the ITAT that the present WTAs were filed and the above referred question was admitted for regular hearing, as noted above.

3. Mr. Kafeel Ahmed Abbasi Advocate has appeared on behalf of the department and stated that the taxpayer in order to avoid the incidence of tax has deliberately disclosed the shares owned by the minor children in the wealth of the mother, being the wife of the respondent, which according to him should have been included in the wealth of the father (i.e. the respondent). According to Mr. Abbasi, had the wealth belonging to the minors been included in the wealth of

the respondent, the incidence of wealth tax would have been higher than the tax actually paid by the respondent. According to Mr. Abbasi, prejudice had thus been caused to the revenue in this regard, hence the matters were rightly revised /re-opened by the IAC. Learned counsel also read out Section 2(m)(Exp)(ii) of the repealed Act and stated that the ITAT had erred in incorrectly interpreting the said provision of law as, according to him, had this provision been properly interpreted by the ITAT, the matter would then have been resolved in favour of the department rather than the respondent. He submitted that since a wrong interpretation of the above provision of the law has been made by the ITAT, therefore, the answer to the question raised may be given in favour of the department (i.e. in Negative).

4. Nobody has appeared on behalf of the respondent despite proper service of notice.

5. We have heard Mr. Abbasi at some length and have also perused the record and the law in this regard.

6. Before proceeding any further, we deem it appropriate to reproduce herein below the relevant provision of the law:

> *Section 2(m)"net wealth" means the amount by which the aggregate value computed in accordance with the provisions of this Act of all the assets, wherever located, belonging to the assessee on the valuation date including assets required to be included in his net wealth as on that date under this Act, is in excess of the aggregate value of all the debts owned by the assessee on the valuation date other than—*
>
> *(i) Debts which under Section 6 or 6-A are not to be taken into account; and*

(ii) Debts which are secured on, or which have been incurred in relation to, any asset in respect of which wealth tax is not payable under this Act;

Explanation-- For the purposes of this clause,--

(i) any property, other than agricultural land, owned by any minor child of the assessee shall be deemed to belong to the assessee;

Provided that any immovable property so deemed to belong to the assessee shall not be included in the net wealth of the spouse or minor child of the assessee;

(ii) "assessee" shall be the parent determined by the Wealth Tax Officer; and

(iii) Where the right, title or interest to or in any immovable property other than agricultural land vests in more than one person, such persons shall, in respect of such property, be assessed as an association of persons and the value of such right, title or interest shall not be included in the net wealth of an individual provided wealth-tax is charged on such right, title or interest.

7. Perusal of the above provision of law would reveal that the property owned by minor children shall be deemed to belong to the assessee and assessee shall be "a parent determined by the Wealth Tax Officer **(WTO)"**. It is an admitted position that in the instant matters the wealth belonging to the minor children was already included in the wealth of the wife of the respondent, who being one of the parents had already been treated as an "assessee" by the WTO, meaning thereby that the parameters of inclusion of the wealth of the minor children in the hand of an "assessee" had already been fulfilled by the WTO. It may be noted that the power to treat the assessee for the purposes of inclusion of wealth of a minor rests with the WTO and in the instant matter it could be noted that the WTO while making the assessments

of the respondent or his wife has already included the wealth of the minor children in the hands of one of the parents, being the mother of the minors.

8. Therefore, in our view, the interpretation of the department that the wealth of the minor children should have been included in the wealth of the respondent, being the higher taxpayer than his wife, appears to be incorrect and misplaced. In our view, the only requirement of law is with regard to adding the wealth of a minor in the wealth of an assessee, which has already been done in the present case, as the wealth of the minor children was duly included in the wealth of the mother and thereafter determined by the department by treating her as an assessee. Hence, in our view, there was no justification for the department to firstly exclude the wealth of the minor children from that of the mother and then to re-open /revise the assessments under discussion so as to add the wealth of the said minor children in the wealth of the respondent.

9. In our view, the ITAT was justified in observing that in the instant matters the wealth of the minor children were rightly included in the wealth of the mother, who has filed her returns of wealth by adding the wealth of the minor children in her hand, which were duly assessed by the concerned WTO as wealth belonging to her, hence the action of the IAC in re-opening the matter and adding the wealth of the minor children in the hands of the respondent appears to be incorrect and contrary to law. Thus the exercise of the power vested under Section 17-B of the repealed Act by the learned IAC is found to

be an abuse of such power /authority. Hence, in our view, the orders of the AO were neither erroneous nor prejudicial to the interest of revenue so as to empower the IAC to re-open /revise the assessments under Section 17-B of the repealed Act. The interpretation of Section 2(m)(Exp)(ii) of the repealed Act thus made by the ITAT does not suffer from any legal infirmity or illegality as the said interpretation seems to be in accordance with and as per the spirit of the said provision of the law.

10. It may also be noted that there are two common phrases used in the tax laws being "avoidance" and "evasion". Tax avoidance is permissible under the law, whereas evasion entails penalty. It is always open to a taxpayer to arrange his tax matters in such a manner so as to lessen his tax burden, that is why avoidance is permissible, whereas the evasion is not. Avoidance and evasion has been interpreted in the decision reported as CIT Vs. Raman and Co. ***(67 ITR 11)*** by the Supreme Court of India as under:

> *"Avoidance of tax liability by so arranging commercial affairs that charge of tax is distributed is not prohibited. A taxpayer may resort to a device to divert the income before it accrues or arises to him. Effectiveness of the device depends not upon considerations of morality, but on the operation of the Income-tax Act. Legislative injunction in taxing statutes may not, except on peril of penalty, be violated, but it may lawfully be circumvented."*

11. If the facts of the case are examined, it would reveal that the taxpayer has avoided the incidence of tax by arranging his affairs in such a manner so that the brunt of taxation falling upon him is reduced, which is quite permissible under the law.

12. We, therefore, under the circumstances, find the interpretation of the above referred Section made by the ITAT to be correct and no exception in this regard is warranted. All the four WTAs, thus, are disposed of by answering the same in the "Affirmative", i.e. against the appellant /department and in favour of the respondent /taxpayer.

13. Above are the reasons for our short order dated 26.11.2020.

Let a copy of this judgment be sent to the Registrar, ITAT, for doing the needful in accordance with law.

JUDGE

JUDGE

Karachi:
Dated:_____.2020.
(Tahseen, PA)