IN THE HIGH COURT OF BOMBAY AT GOA

WEALTH TAX REFERENCE NO. 3 OF 2012

1. Mr. Auduth Timblo
2. Mrs. Sushila M. Timblo (since deceased), Through heirs, Applicant Nos. 1 and 3 and Respondent No. 2.
3. Mr. Prashant Timblo,
   All major of age, having address at Villa Flores Da Silva, Erasmo Carvalho Street, Post Box No. 31, Margao-Goa 403 601. …. Applicants

Versus

1. The Commissioner of Wealth-Tax, Karnataka, Bangalore.
2. Mr. Dilip Timblo,
   Major of age, having address at Villa Flores Da Silva, Erasmo Carvalho Street, Post Box No. 31, Margao-Goa 403 601. …. Respondents

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Mr. S.S. Kantak, Senior Advocate with Ms. Vinita Palyekar, Advocate for the Applicants.
Ms. Susan Linhares, Standing Counsel for Respondent No. 1.

Coram:- M.S. SONAK &
SMT. M.S. JAWALKAR, JJ.

Date:- 5th March, 2020

ORAL JUDGMENT: (Per M. S. Sonak, J.)

Heard Mr. S.S. Kantak, the learned Senior Counsel along with Ms. Vinita Palyekar, the learned Counsel who appears for the applicants and Ms. Susan Linhares, the learned Standing Counsel, who appears for respondent no. 1.

2. The Appellate Tribunal vide its order dated 25.07.1979 referred the following questions for the opinion of this Court in terms of Section 27(1) of the Wealth Tax Act, 1957 (said Act):

> *1) Whether on the facts and in the circumstances of the case, the Tribunal was right in upholding the valuation of the shares held by the assessee in Sociedade De Fomento Industrial Private Limited as made by the Appellate Assistant Commissioner ?*
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> *2) Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in confirming the inclusion in the net wealth of the assessee the amount due to the assessee by certain parties in Portugal ?*
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> *3) Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the ornaments of gold not studded with precious stones came within the definition of the term "jewellery" and hence the value of the same was includible in the net wealth of the assessee ?*
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> *4) Whether the Tribunal was right in law in rejecting the assessee's claim for deduction to be made from the value of the assets.*

3. Mr. S.S. Kantak, the learned Senior Advocate for the applicants, on instructions, states that the applicants do not press for any opinion on question nos. 3 and 4. Accordingly, we dispose off this

Reference, insofar as question nos. 3 and 4 are concerned, without expressing any opinion thereon.

4. Insofar as question no. 1 is concerned, Mr. Kantak, the learned Senior Advocate pointed out that the Tribunal, Pune Bench in its common judgment and order 04.07.1975 in the case of applicant's wife has held that Rule 1D of the Wealth Tax Rules, 1957, is prospective in nature and therefore, the same could not have been applied for undertaking valuation of the shares for the assessment years 1964-65, 1965-66 and 1966-67. However, the Tribunal, Pune Bench has held that Rule 1D of the Wealth Tax Rules could have been applied for the assessment years 1967-68 and 1968-69. On this basis, the Tribunal, Pune Bench, in fact, partly allowed the Appeals instituted by the applicant's wife, insofar as assessment years 1964-65, 1965-66 and 1966-67 are concerned, but, dismissed the Appeals for the assessment years 1967-68 and 1968-69.

5. Mr. Kantak, the learned Senior Advocate then pointed out that the Appellate Tribunal, in the present case, in its judgment and order dated 08.02.1977 had in fact relied upon the aforesaid decision of the Tribunal, Pune Bench and stated that it finds itself in complete agreement, both, with the view that the Tribunal, Pune Bench has expressed and with the decision that is given on this issue. Thereafter,

however, by the impugned order, the Appellate Tribunal proceeded to dismiss all the Appeals.

6. Mr. Kantak, the learned Senior Advocate submits that once, the Appellate Tribunal had agreed with the view expressed by Tribunal, Pune Bench, there was no question of dismissal of all the Appeals, but, the same course of action as was followed by the Tribunal, Pune Bench, was required to be followed in case of these applicants as well.

7. According to us, Mr. Kantak's submission deserves to be accepted. Once, the Tribunal, Pune Bench ruled that Rule 1D of the said Act could have been invoked prospectively and such view of the Tribunal, Pune Tribunal was never challenged by the Revenue, the same view was required to be adopted in the case of the present applicants as well. In fact, the Tribunal has also taken a view that the Pune Bench view was required to be followed. However, while actually following such view, the Appellate Tribunal proceeded to dismiss all the Appeals instituted by the present applicants, instead of following the same course of action as was adopted by the Tribunal, Pune Bench.

8. This means that the Appeals instituted by the present applicants, insofar as assessment years 1964-65, 1965-66 and 1966-67

were required to be partly allowed by the Appellate Tribunal and only the Appeals concerning the assessment years 1967-68 and 1968-69 could have been dismissed.

9. Accordingly, we answer the first question referred for our opinion in the aforesaid terms.

10. Insofar as the second question, which is referred for our opinion is concerned, we note that the same again, pertains to the assessment years 1964-65 to 1968-69.

11. Mr. Kantak, the learned Senior Advocate for the applicants has placed on record communication dated 29.03.1994 addressed by the Assistant Commissioner of Income Tax acting for the Commissioner of Income Tax, Karnataka-I, Bangalore to the Deputy Commissioner of Income Tax, Special Range, Panaji and the Assistant Commissioner of Income-Tax (Judl)-I, office of CCIT, Bangalore, on the precise issue of the Lisbon fund being business advance given for purchase of machinery prior to the liberation of Goa by the applicant no. 1 and his wife, Sushila Timblo. No doubt, this communication relates to the assessment years 1990-91, 1991-92, 1992-93, however, since, it refers to the very same Lisbon fund, according to us, the same is relevant.

12. For convenience of reference, we incorporate the contents of the communication dated 29.03.1994.

> *I am directed to communicate the Commissioner's remarks on the order sheet for necessary action at your end:-*
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> *"The issues on which the petitioner(s) want my intervention is about taxing foreign advances represented by moneys given to one J.A. Alvis, since deceased for supply of some machinery way back in 1960, during preliberation days of Goa, to wealth tax. These advances were assessed to wealth tax, in the hands of Mr. & Mrs. Timblo, from Assessment Year 1964-65, when our tax laws became applicable to Goa. It is more than 30 years since the matter is hanging fire. For assessment years 1964-65 to 68-69 the matter is before the High Court, on a reference by the assessees. From 69-70 to 79-80, the matter is before the Tribunal. The CIT (Appeals) had confirmed the addition on this point, but the assessees appealed. There was difference of opinion among the AM & JM on the admissibility of a MP, since the petitioner contended that the matter was concluded without taking into account the fact that the Tribunal did not take into account the fact that Portugal had barred remittances to India. The Third Member decision is yet to come. The assessees would appear to be making frantic efforts to have the matter disposed of by the Third Member.*
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> *The subsequent 10 years (Assessment Years 80-81 to 89-90) form the next stage. As usual, the additions were made. However, these additions were deleted by the CIT (A), in fact, by two successive CsIT(A). They took into account, the following salient points for taking a view, different from those of the earlier CIT (A).*

(1) The claim itself was barred by limitation (under article 309 of PCC), the claim cannot be enforced after 20 years in a court of law.

(2) Govt. of India did not permit import as desired by the assessees.

(3) Economic relations with Portugal had not revived even though the treaty of 1972 had provided for the same.

(4) Ban on remittances were continuing.

We had taken up the matter before the Tribunal. And the appeals are pending. The petitioners' request is that having regard to the circumstances of the case, the Department should withdraw the grounds (Ground Nos.13, 13, 2, 2, 8, 7, 8, 2, 9 & 9) for Assessment Years 1980-81 to 89-90 in this respect.

I have thought over the matter carefully. I am of the view that there is no point in pressing the ground before the tribunal in respect of Lisbon advances. If I may use a figurative expression, I have to say that a lot of water has flown down Mandovi & Zuari since 1960. There was absolutely nothing which the assessees could get from the Lisbon party. He is no more. His legal heirs are unknown. Even if they are known, there is no way from which they could be proceeded against. The law of limitation had squarely applied. Even granting that court action was possible, there was no way by which it could be done, because, the assessees had no documentary evidence to press the claim in a court of law in Portugal, where laws could be quite stringent. The person who made the advance, Mr. Timblo himself is no more. He

> *passed away in January 1993. Historically the assessees could do nothing to retrieve the money from the Lisbon party. Legally, they had no case to press the demand. Factually, as of now, and even as of the years involved, the advances had vanished into thin air.*
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> *It is always the Board's policy to avoid unnecessary litigation. Having regard to this and having regard to the facts of the case stated above, I hereby order withdrawal of the grounds of appeal on this point for the assessment years 1980-81 to 89-90. For the pending assessment years (91-92 onwards), the Assessing Officer shall not make any addition on this point.*
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> *As for A.Y. 1990-91, the point may be conceded before the CIT (A), who at any rate is going to follow his earlier years orders."*

13. Based upon the aforesaid communication dated 29.03.1994, the Appellate Tribunal, Pune Bench has disposed off 20 matters in respect of these very assessees for the assessment year 1969-70 to 1979-80, on the issue of Lisbon fund. The Tribunal, allowed the Appeals where relief was denied to the assessee and dismissed the Appeals where relief was already granted to the assessee.

14. Ordinarily, therefore, we see no good reason as to why the same reasons are not prevailing when it comes to the assessment years 1964-65 to 1968-69. In fact, the Appellate Tribunal, Pune Bench, which disposed off the 20 matters or for that matter, the aforesaid

letter dated 29.03.1994 merely records that the Reference for the assessment years 1964-65 to 1968-69 are pending before this Court and therefore, the same are not considered.

15. However, Ms. Linhares, the learned Standing Counsel pointed out that the position for the assessment years 1964-65 to 1968-69 is required to be construed differently because the applicants had placed no material on record to indicate that for these assessment years, the recovery of the Lisbon fund was not possible and that the same was time barred.

16. Insofar as the contention of recovery being time barred is concerned, perhaps, Ms. Linhares may be right. However, the aforesaid communication dated 29.03.1994 is really not based only on the recovery of the debt been time barred, but, the communication makes reference to the other factors like ban on imports by Government of India, post liberation; strained economic relations with the Portugal until 1972 and the ban on remittances.

17. Obviously, these circumstances, would also apply for assessment years 1964-65 to 1968-69. In fact, some of the circumstances would apply with much greater vigour for the said assessment years because by then, the treaty of 1972 was not in force.

Accordingly, we really see no good ground not to adopt the reasoning, which is reflected in the aforesaid communication dated 29.03.1994, which is again incorporated in the common judgment and order dated 30.11.1995 made by the Appellate Tribunal, Pune Bench, while disposing off almost 20 matters instituted by the applicant no. 1 and his wife in relation to this very fund.

18. Mr. Kantak, the learned Senior Advocate has correctly relied upon the order made by the Hon'ble Apex Court in **M/s Shiv Shakti Flour Mills (P) Ltd. Vs. Commissioner of Income Tax** (Civil Appeal Nos. 2899-2902/2011 decided on 30.01.2020), which reads as follows:

> *1. Heard counsel for the parties.*
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> *2. These appeals take exception to the judgment and order dated 15.09.2009 passed by the High Court of Gauhati at Gauhati in I.T.A. Nos. 8/2006, 6/2007, 7/2007 and 8/2007. The assessment years involved in these appeals are from 1997-1998 to 2000-2001.*
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> *3. The issue involved in these appeals is whether transport subsidy received by the assessee during the aforesaid assessment years is in the nature of revenue receipt or capital receipt.*
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> *4. In respect of same assessee, the High Court in Income Tax Appeal No.6/2014 for the subsequent assessment year 2001-2002 has answered the question on the basis of the exposition of this Court in particular in 'Jai Bhagwan Oil*

& Flour Mills vs. Union of India & Ors.' reported in (2009) 14 SCC 63. Admittedly, this decision is accepted by the Department and no appeal is preferred against the same.

5. The principle stated in paragraph 23 of the said decision in the case of the same assessee which has been allowed to become final, the view expounded therein must apply proprio vigore even for the assessment years in question. As a result, in the facts of the present case, these appeals succeed on the same terms.

6. As a consequence of the above, since the issue stands concluded in favour of the assessee there would be no need to continue with the reassessment on that score.

7. The appeals and pending applications are disposed of accordingly.

19. Applying the aforesaid principles to the facts of the present case, we opine that the Tribunal was not justified in law in confirming the inclusion in the net wealth of the assessee as amount due to the parties (the Lisbon fund). The second question is answered accordingly.

20. This Reference is disposed off in the aforesaid terms.

21. The Registry is directed to send a certified copy of this judgment and order to the Registrar of the Appellate Tribunal, which

shall now be the ITAT, Panaji and the ITAT, Panaji shall pass such orders as necessary to dispose off the Appeals pending before it, in conformity with the opinion expressed in this judgment and order.

22. In the facts and circumstances of the present case, there shall be no order as to costs.

SMT. M. S. JAWALKAR, J. ***M. S. SONAK, J.***

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