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B.L. B. Part III

Paper VIII th

Taxation

Assessment when assets are held by courts of wards, administrators general, etc. (S 213)

Rule 213 provides that subject to the provisions of rule 213, (1) in the case of 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 appointed under any order of court to manage property on behalf of another or any trustee appointed under a trustee declared by a duly executed instrument in writing, whether testamentary or otherwise the wealth tax shall be levied upon and recoverable from the court of wards administrator-general, official trustee, receiver, manager or trustee in the like manner and to the same extent as it would be leviable upon and recoverable from the person on whose behalf or for whose benefit the assets are held and the provisions of this Act shall apply accordingly.

(2)

A trust which is not declared by a duly executed instrument in writing shall be deemed, for the purposes of this section, to be a trust if a duly executed instrument in writing or a statement in writing signed by the trustee or trustees setting out the purpose or purposes of trust, particulars as to the trustee or trustees, the beneficiary or beneficiaries and the trust property is forwarded to the W.T.O. —

(i) where the trust property has been declared before 1-6-1984 within a period of three months from that day; and

(ii) in other cases, within three months from the date of declaration of the trust. —

According to sub-section (2) of S. 21 shall prevent either the direct assessment of the person on whose behalf or for whose benefit the assets above referred to are held or the recovery from such person of the tax payable in respect of such assets, where the assessing officer in the first instance assesses the tax on beneficiaries directly under S. 21 (2) but subsequently he makes assessment under S. 21 (1) on the trustees representing the beneficiaries, the later order of assessment will be invalid. S. 21 empowers the assessment authority to make

two modes of assessment, i.e. the beneficiary directly under S. 21(1) or the trustee under S. 21(2). When a beneficiary is sought to be assessed and his interest in the asset is sought to be brought within the net of the net wealth, what is sought to be assessed is the interest he acquired under the trust. If the assessing authority wants to exercise its powers under S. 21(2) and make direct assessment of the net wealth of the person on whose behalf or for whose benefit the assets have been held by the trustee, then to the extent so assessed the corresponding power given to the assessing authority under S. 21(1) by necessary implication in the like manner and to the same extent "is taken away since what is eligible to wealth tax is the interest in the assets held by the beneficiary. The trustee is only a representative in character for the benefit of the ultimate beneficiary." Thus, where the assessing authority in the first instance admittedly has taken recourse to S. 21(2) and made assessment for the relevant year directly on the beneficiaries, thereafter he ceased to have any power to take recourse to S. 21(1) in respect of the same beneficial interest, held by the beneficiaries to being within the net wealth of the beneficiaries.

(4)

Under S. 21(2) idiot holds any assets on behalf of or for the benefit of such beneficiary, the tax under this Act shall be levied upon and recoverable from such guardian or trustee in the like manner and to the same extent as it would be leviable upon and recoverable from any such beneficiary if of full age, of sound mind and in direct ownership of such assets. Sub-section (4) of S. 21 provides that notwithstanding anything contained in the foregoing provisions of this section, where the shares of the persons on whose behalf or for whose benefit any such assets are held i.e., beneficiaries are indeterminate or known, the wealth tax shall be levied upon and recovered from the court of wards, Administrator-general, official trustee, receiver, manager or other person, as the case may be, in the like manner and to the same extent as it would be leviable upon and recoverable from an individual who is a citizen of India and resident in India for the purposes of this Act.

Sub-section (5) of S. 21 provides that any person who pays any sum by virtue of the provisions of this section in respect of the net wealth

(5)

of any beneficiary, shall be entitled to recover the sum so paid from such beneficiary and may retain out of any assets that may hold on behalf of or for the benefit of such beneficiary, an amount equal to the sum so paid.

In this section the term "beneficiary" means any person including a minor, lunatic or idiot on whose behalf or for whose benefit assets are held by any other person.

W.e.f 1.4.1993, nothing contained in S. 21 shall apply to and in relation to any assessment for the assessment year commencing on 1.4.93 or any subsequent assessment year.

