Pandit Lakshmi Kant Jha

Vs

Commissioner of Wealth-Tax, Bihar and Orissa

Civil Appeal No. 296 of 1970

(K.S. Hegde, H.R. Khanna JJ)

16.04.1973

JUDGMENT

KHANNA J. -

This appeal on certificate is directed against the judgment of the Patna High Court whereby that court answered the following three questions referred to it under section 27 of the Wealth-tax Act, 1957 (27 of 1957) (hereinafter referred to as "the Act") against the assessee :

> "(1) Whether in computing the market value of the shares the assessee is entitled to the deduction of a sum of Rs. 2,30,546 by way of brokerage commission ?
>
> (2) Whether, on a true construction of section 5(1)(viii) and 5(1)(xv) of the Wealth-tax Act, the assessee is entitled to the exclusion of the value of jewellery amounting to Rs. 27,27,330 from the computation of his total wealth ?
>
> (3) Whether any part of the amount of Rs. 36,87,419 fixed as compensation payable to the assessee under the Bihar Land Reforms Act is liable for inclusion in the total wealth of the assessee ?"

The assessee was the former Maharajadhiraja of Darbhanga. The matter relates to the assessment year 1957-58, the relevant valuation date for which was March 31, 1957. The assessee filed a return on April 22, 1958, declaring a net wealth of Rs. 2,77,46,489. A revised return was filed subsequently showing the total wealth to be Rs. 2,69,58,130. The Wealth-tax Officer determined the net wealth of the assessee to be Rs. 4,57,85,996.

The assessee held shares and stocks in various limited companies. In the return filed by him the assessee gave correct valuation of those shares and stocks as given in the stock exchange quotations and the quotations furnished by well-known brokers, but he claimed a deduction of a sum of Rs. 2,30,546 by way of brokerage. It was contended on behalf of the assessee that in effecting the sales of the shares and stocks, brokerage would have to be paid. The Wealth-tax Officer disallowed the claim in this respect on the ground that there was no provision for deducting the brokerage commission.

In Part IV of the return filed by the assessee, he mentioned the value of jewellery intended for personal use to be Rs. 27,27,330. It was claimed that as the said jewellery was intended for personal use, it should not be taken into account for computing the total wealth of the assessee. The assessee sought to bring his case under section 5(1)(viii) of the Act. The Wealth-tax Officer rejected this

claim of the assessee on the ground that the aforesaid clause did not cover jewellery.

The assessee had held zamindari estate which was acquired by the Government under the Bihar Land Reforms Act. The assessee was to received sum of Rs. 36,87,419 from the Government of Bihar as compensation in that connection. The assessee claimed that the compensation payable to him could not be included in his total wealth because it was not known as to when and in what manner the amount would be paid. The Wealth-tax Office held that the right to receive compensation represented a valuable asset which had to be included in the total wealth of the assessee. As the whole of the compensation had not yet been paid up to the date of the valuation, the Wealth-tax Officer estimated the value of the compensation to be 75 per cent. of its face value. Rs. 27,65,564 were accordingly included on that account in the total wealth of the assessee.

On appeal, the Appellate Assistant Commissioner affirmed the decision of the Wealth-tax Officer on the three questions mentioned above. The Appellate Assistant Commissioner also held that the items of jewellery could be considered only under section 5(1)(xv) of the Act and not under any other provision. On further appeal to the Income-tax Appellate Tribunal, the Tribunal rejected the claim of the assessee for deduction on account of brokerage commission. So far as the jewellery was concerned the Tribunal dealt with the submission made on behalf of the assessee that clause (xv) of section 5(1) of the Act had been deleted by the Finance Act of 1963, and observed that as long as that clause was in the statute book, that clause governed the exemptions granted by section 5 in preference to clause (viii). The Tribunal consequently rejected the claim of the assessee in respect of the jewellery. As regards the compensation payable under the Bihar Land Reforms Act to the assessee, a contention was raised on behalf of the assessee that the market value of the compensation bonds was about 50 per cent. of its value. The Tribunal observed in this connection that the value was generally estimated at 65 per cent. of the amount of compensation determined by the Compensation Officer. It was accordingly held that the valuation of the bonds should be determined to be 65 per cent. of the face value. The questions reproduced above were thereafter referred to the High Court at the instance of the assessee.

The High Court, while dealing with the first question, observed that in estimating the value of an asset, regard must be had to the value it would fetch. The word "fetch", in the opinion of the High Court, must mean the quoted price only and brokerage and other inevitable expenses would have to be ignored. On question No. (2), the High Court expressed opinion that the jewellery was outside the scope of clause (viii) of section 5(1) of the Act and could be dealt with only under clause (xv). As regards question No. (3), the High Court relied upon its earlier decision in the case of Maharajkumar Kamal Singh v. Commissioner of Wealth-tax. It was observed that merely because the amount of compensation payable to the assessee had not yet been paid and there was likely to be much delay in paying the same, the said amount could not be deducted from the assets for the purpose of the Act. Question Nos. (1) and (2) were accordingly answered in the negative, while question No.(3) was answered in the affirmative.

In appeal before us Mr. Kolah, on behalf of the appellant, has assailed the correctness of the answers given by the High Court on all the three questions. As against that, the learned Additional Solicitor-General has canvassed for the correctness of the judgment of the High Court so far as the answers to questions Nos. (1) and (3) are concerned. As regards question No. (2), the Additional Solicitor-General has made certain submissions to which reference would be made hereafter.

We may at the outset deal with question No. (2) relating to the jewellery. As mentioned earlier, the High Court took the view that as jewellery was dealt with specifically under clause (xv) of section

5(1) of the Act, the jewellery would be outside the scope of clause (viii) altogether. This view of the High Court cannot be sustained because of the decision of this court in the case Commissioner of Wealth-tax v. Arundhati Balkrishna. It was observed in that case by this court that section 5(1)(xv) dealt with jewellery in general whether intended for personal use of the assessee or not, while jewellery intended for personal use of the assessee came within the scope of section 5(1)(viii) of the Act. It was accordingly held that the value of jewellery of the assessee intended for personal use of the assessee would stand excluded under section 5(1)(viii) of the Act in the computation of the net wealth. The learned Additional Solicitor-General has frankly conceded that in view of the aforesaid decision of this court, he cannot support the view taken by the High Court in this respect. It has, however, been submitted by him that we should remand the case with a view to ascertain as to how much of the jewellery in question was intended for the personal use of the assessee. We find it difficult to accede to this contention. The matter is rather old as it relates to the assessment year 1957-58. The case of the assessee before the Wealth-tax Office was that the entire jewellery worth Rs. 27,27,330 was intended for his personal use and should not be included in the total wealth. The Wealth-tax Officer disallowed the claim of the assessee in this respect on the ground that the items of jewellery were covered by clause (xv) and not by clause (viii) of section 5(1) of the Act. The claim of the assessee that the jewellery in question was intended for the personal use of the assessee was not rejected. No plea was also raise in appeal before the Appellate Assistant Commissioner or the Tribunal that the jewellery was not intended for the personal use of the assessee. It, therefore, cannot be said on the record that the personal use had been controverted. In the circumstances, we must proceed on the assumption for the purpose of the assessment during the relevant year that the jewellery was intended for the personal use of the assessee.

It may be mentioned that jewellery has been excluded by section 32 of the Finance (No. 2) Act of 1971 (32 of 1971) from the purview of clause of (viii) of section 5(1) of the Act with effect from April 1, 1963. This amendment made in clause (viii) would not make any material difference because the said amendment is to operate with effect from April 1, 1963, while we are dealing with the assessment year 1957-58. As such, the said amendment can obviously not apply to the assessment in question.

Question No. (1), as would appear from the above, relates to the claim of the assessee for deduction on account of brokerage commission from the value of shares and stocks held by him. The stand which has been taken on behalf of the assessee is that as and when he sells the shares and stocks in question, he would have to pay brokerage commission. As such, it is urged that in computing the value of this asset, the price which it would fetch in the market should be reduced by the brokerage which would have to be paid on account of the transaction of sale. We find it difficult to accede to this contention. Section 7(1) of the Act reads as under :

> "Subject to any rules made in this behalf, the value of any asset, other than cash, for the purposes of this Act, shall be estimated to be the price which in the opinion of the Wealth-tax Officer it would fetch if sold in the open market on the valuation date."

Bare reading of the section makes it plain that subject to any rules which may be made in this behalf, the value of the assets, other than cash, has to be the price which the assets, in the opinion of the Wealth-tax therefore, follow that in the absence of any rule prescribing a different criterion, the value of an asset, other than cash, should be taken to be the price which it would fetch if sold in the open market on the valuation date. No rules prescribing a different criterion in respect of the value of quoted stocks and shares have been brought to our notice. Rule 1-C of the Wealth-tax Rules relates to the market value of unquoted preference shares, while rule 1-D of the said rules relates to

market value of unquoted shares of companies other than investment companies and managing agency companies. The value of the stock and shares in question, in the circumstances, would have to be estimated to be the price which they would fetch if sold in the open market on the valuation date. The authorities concerned under the Act for this purpose accepted the valuation as given in stock exchange quotations and the quotations furnished by well-known brokers. No objection can be taken to this mode of valuation. Indeed, this was the mode which had been adopted by the assessee himself in the return filed by him.

There is nothing in the language of section 7(1) of the Act which permits any deduction on account of the expenses of sale which may be borne by the assessee if he were to sell the asset in question in the open market. The value according to section 7(1) has to be the price which the asset would fetch if sold in the open market. In a good many cases, the amount which the vendor would receive would be less than the price fetched by the asset. The vendor may, for example, have to pay for the brokerage commission or may have to incur other expenses for effectuating the sale. It is not, however, the amount which the vendor would receive after deduction of those expenses but the price which the asset would fetch when sold in the open market as would constitute the value of the asset for the purpose of section 7(1) of the Act. To accede to the contention advanced on behalf of the appellant would be reading in section 7(1) the words "to the assessee" after the words "it would fetch", although the legislature has not inserted there is anything in the relevant provisions which may show that the intention of the legislature was that the value of an asset would be the price fetched after deducting the sale expenses.

It, no doubt, appears to be somewhat harsh that in computing the value of an asset only the price it would fetch if sold in the open market has to be taken into account and the expense which would have to be borne in making the sale have to be excluded from consideration. This, however, is a matter essentially for the legislature. No resort can be made to an equitable principle for there is no equity about a tax. So far as the construction of section 7(1) of the act is concerned, in view of its plain language, there is no escape from the conclusion that the expenses in effecting the sale of the asset in the open market cannot be deducted.

The material part of the language of section 7(1) of the Wealth-tax Act, 1957, is similar to that of sub-section to that of sub-section (1) of section 36 of the Estate Duty Act, which was brought on the statute book earlier in 1953. Sub-section (1) of section 36 of the Estate Duty Act reads as under :

> "(1) The principal value of any property shall be estimated to be the price which, in the opinion of the Controller, it would fetch if sold in the open market at the time of the deceased's death."

Section 48 of the Estate Duty Act was as under :

> "Whether the Controller is satisfied that any additional expense in administering or in realising property has been incurred by reason of the property being situate out of India, he may make an allowance from the value of the property on account of such expense not exceeding in any case five per cent. on the value of the property."

On account of the similarity in language of the material parts of section 7(1) of the Wealth-tax Act and section 36(1) of the Estate Duty Act, the value of an asset, other than cash, for the purpose of section 7(1) of the Wealth-tax Act, should be the same as its value for the purpose of section 36(1) of the Estate Duty Act. Section 48 of the Estate Duty Act reproduced above allows a deduction up

to 5 per cent. on account of expenses for administering or realising property situated out of India in computing the value of that property. It would follow from the above that where the legislature intended that allowance or deduction should be made from the value of property, it made an express provision to that effect. The fact that no provision was made in respect of expenses which may have to be borne by the assessee in effecting the sale of an asset shows that in computing the value of an asset, such expenses cannot be deducted from the price which the asset would fetch if sold in the open market.

Section 36(1) of the Estate Duty Act was based upon section 7(5) of U. K. Finance Act, 1894, and section 60(2) of the U.K. Finance Act, 1910, while section 48 of the Estate Duty Act was based upon section 7(3) of the U.K. Finance Act, 1894. According to section 7(5) of the U.K. Finance Act, 1894 :

> "The principal value of any property shall be estimated to be the price which, in the opinion of the Commissioners, such property would fetch if sold in the open market at the time of the death of the deceased."

Section 60(2) of the U.K. Finance Act, 1910, provides that :

> "In estimating the principal value of any property under section 7(5) of the principal Act,.... the Commissioners shall fix the price of the property according to the market price at the time of the death of the deceased, and shall not make any reduction in the estimate on account of the estimate being made on the assumption that the whole property is to be placed on the market at one and the same time."

In the context of the above provisions, it has been observed on page 393 of Green's Death Duties, sixth edition :

> "The price which property 'fetches' is the gross price paid by the purchaser, without deduction for the vendor's costs and expenses. This is so, even where the property is subject to a trust for sale. But if the property to be valued is merely a share in an unadministered estate, or in the proceeds of sale of trust property which must be realised for the purpose of distribution, the expenses of the executors or trustees under the old title should be taken into account."

The matter has been dealt with in Dymond's Death Duties, fourteenth edition, page 569, in the following words :

> "The price which the property fetches is the gross sale price, without deduction for the costs of sale, except that, if the property is part of an unadministered estate or a share of property subject to a trust already in operation which involves conversion, or if the property consists of certified chattels of national, etc., interest (see p. 868), allowance for costs may be made."

The House of Lords had to deal with this aspect of the matter in the case of Duke of Buccleuch v. Inland Revenue Commissioners. After referring to section 7 (5) of the U.K. Finance Act, 1894, Lord Reid observed :

> "I am confirmed in my opinion by the fact that the Act permits no deduction from the price fetched of the expenses involved in the sale (except in the case of property

abroad under sub-section (3))."

Lord Morris, in this context, observed :

> "The value of a property is to be estimated to be the price which it would 'fetch' if sold in the open market at the time of the death of the deceased. This points to the price which a purchaser would pay. The net amount that a vendor would receive would be less. There would be costs of and incidental to a sale. It would seem to be harsh or even unjust that allowances cannot be made in respect of them. But the words of the statute must be followed."

Similar observations were made by Lord Hodson and Lord Guest. We are, therefore, of the view that the High Court rightly answered question No. (1) relating to the claim for deduction on account of brokerage commission against the assessee.

Question No. (3) pertains to the compensation payable to the assessee under the Bihar Land Reforms Act. Two contentions have been advanced on behalf of the appellant in this court with regard to the above question. It is argued in the first instance that compensation payable to the assessee under the Bihar Land Reforms Act does not constitute an asset as can be taken into account in computing the total wealth of the alternative, it is urged that in computing the value of compensation the Tribunal should have taken the value to be 50 per cent. and not 65 per cent. of the amount of compensation. None of these contentions, in our opinion, is well-founded. The Bihar Land Reforms Act, 1950 (Bihar Act 3 of 1950), provides for the transference to the State of the interest of proprietors and tenure-holders in land and of other interests in land. According to section 3(1) of the Act, the State Government may, from time to time, by notification declare that the states or tenures of a proprietor or tenure-holder, specified in the notification, have passed to and become vested in the State. Section 4 enumerates the consequences of the vesting of an estate or tenure in the State. One of those consequences is that the estate or tenure, including the interest of the proprietor or tenure-holder in such an estate or tenure shall, with effect from the date of vesting, vest absolutely in the State free from all incumbrances and such proprietor or tenure-holder shall cease to have any interests in such estate or tenure, other than the interests expressly saved by or under the provisions of the Act. Section 19 makes provision for the appointment of Compensation Officer who shall, in the case of an estate or tenure which has vested in the State, prepare the prescribed form and manner compensation-assessment-roll containing the gross asset and the net income of each proprietor and tenure-holder of estates and tenures and the compensation to be paid in accordance with the provisions of the Act to such proprietor or tenure-holder and all other persons whose interests are transferred to the State. Section 23 prescribes the mode of computation of net income, while section 24 gives the rate of compensation and the mode of its determination. According to section 26, there should be a preliminary publication of compensation-assessment-roll. Section 27 gives a right of appeal from an order passed by a compensation-assessment-roll in accordance with section 28 of the Act. Section 32 provides for the manner of payment of compensation. Sub-section (2) of that section reads :

> "The amount of compensation so payable in terms of a compensation- assessment-roll as finally published shall be paid in cash or in bonds or partly in cash and partly in bonds. The bonds shall be either negotiable or non-negotiable and non-transferable and be payable in forty equal installments to the person named therein and shall carry interest at two and a half per centum per annum with effect from the date of issue."

Section 33 makes provision for ad interim payment to the proprietors after the date of vesting and before the day of payment of compensation under sub-section (2) of section 32 of the Act.

Perusal of the different provisions of the Bihar Land Reforms Act shows that as soon as the estate or tenure of a proprietor or a tenure-holder vests in the State, he becomes entitled to receive compensation. The fact that the payment of compensation in terms of the provisions of the Act may be deferred and be spread over a number of years does not affect the right of the proprietor or tenure-holder to the compensation. The assessee, in our opinion, was vested with a right to get compensation immediately his land was vested in the State. Section 2(e) of the Act defines "assets" to include property of every description, movable or immovable, but does not include certain categories of property with which we are not concerned. The word "property", as mentioned by this court in the case of Ahmed G. H. Ariff v. Commissioner of Wealth-tax is a term of the widest import and, subject to any limitation which the context may require, it signifies every possible interest which a person can clearly hold and enjoy. The definition of the "asset" as given in section 2(e) of the Act, though not exhaustive, shows its wide amplitude and we see no reason as to why the right to receive compensation cannot be included amongst the assets of an assessee.

According to Mr. Kolah, the amount of compensation had not been determined by the valuation date and as such it could not be included in the assets of the assessee. There is, however, no material on the record to show that the amount of compensation had not been determined by the valuation date. The fact that the assessee had originally shown the amount compensation payable to be Rs. 92.27.422 in his return and it was only in the revised return that he stated that the amount of compensation payable to him had been determined by the Compensation Officer to be Rs. 36,87,419 would not necessarily show that the amount of compensation had not been determined by the valuation date. According to the order of the Wealth-tax Officer the contention which was raised on behalf of the assessee was that the compensation money should not be included in the total wealth because it was not known as to when and in what manner the amount would be received. The Income- tax Appellate Tribunal, in this context, observed :

> "The value of the zamindary compensation payable to the assessee had been determined by the Compensation Officer at Rs. 36,87,419. For the purpose of assessment the Wealth-tax Officer had determined the value at 75% of the compensation determined. This has been sustained on appeal by the Appellate Assistant Commissioner who has found that a part of the compensation had been adjusted against Government dues outstanding from the assessee. So, the assessee is deemed to have received full value for that part of the compensation. It is submitted on behalf of the assessee that the market value of the Bihar Zamindari Compensation bonds is about 50% of the amount of the bonds. The Tribunal has taken all these facts into consideration in determining the value of compensation payable under the Bihar Land Reform Act in the case of several assessees and the Tribunal has generally estimated such value for wealth-tax purposes at 65% of the amount of the compensation determined. In this case also we would direct that the valuation be taken at 65% of the amount of the compensation determined by the Compensation Officer."

The above observations as well as the form of question No. (3) show that no controversy was raised by the assessee on the score that the amount of compensation had not been determined by the valuation date.

Assuming for the sake of argument that the amount of compensation payable to the assessee had not been determined by the Compensation Officer by the valuation date, that fact would not justify the exclusion of the compensation payable from the assets of the assessee. The right to receive compensation became vested in the assessee the moment he was divested of his estate and the same got vested in the State in pursuance of the provisions of the Bihar Land Reforms Act. As the estate of the assessee which vested in the State was known and as the formula fixing the amount of compensation was prescribed by the statute, the amount of compensation was to all intents and purposes a matter of calculation. The fact that the necessary calculation had not been made and the amount of compensation had consequently not been qualified by the valuation date would not take compensation payable to the assessee out of the definition of assets or make it cease to be property. The right to receive compensation from the State is a valuable right, more so when it is based upon statute and the liability to pay is not denied by the State. It is no doubt true that the compensation is not payable immediately and its payment might be spread over a period of 40 years, but that fact would be relevant only for the purpose of evaluating the right to compensation. It would not detract from the proposition that the right to receive compensation, even though the date of payment is deferred, is property and constitutes asset for the purpose if the Wealth-tax Act.

The Patna High Court in the case of Maharajkumar Kamal Singh v. Commissioner of Wealth-tax held that the right to receive compensation under the Bihar Land Reforms Act constituted "asset" for the purpose of the Wealth-tax Act. The view taken in that case was approved by a Full Bench of the Patna High Court in the case of Maharaj Kumar Kamal Singh v. Commissioner of Wealth-tax. We see no cogent ground to take a different view. It may also be observed that the Andhra Pradesh High Court in five cases, namely, Mir Imdad Ali Khan v. Commissioner of Wealth-tax, Rani Bhagya Laxmamma v. Commissioner of Wealth-tax, Chandramani Pattamaha Devi v. Commissioner of Wealth-tax, Vadrevu Venkappa Rao v. Commissioner of Wealth-tax and P. V. G. Raju v. Commissioner of Wealth-tax has held that the compensation payable on the abolition of estates can be taken into account for the purpose of the Wealth-tax Act. Similar view has been taken by the Madhya Pradesh High Court in Sardar C. S. Angre v. Commissioner of Wealth-tax and the Allahabad High Court in Maharaja Pateshwari Pd. Singh v. Commissioner of Wealth-tax.

Mr. Kolah has invited our attention to a decision of the Calcutta High Court in the case of Commissioner of Wealth-tax v. U. C. Mahatab, where in that court held that till the final publication of the compensation assessment-roll under the West Bengal Estates Acquisition Act, the assessee had no legal right to compensation and the same could not be included in the definition of "assets" in the Wealth-tax Act. It is, in our opinion, not necessary to express any view with regard to the correctness of that decision. Suffice it to say that the decision in that case proceeded upon the assumption that the provisions of the West Bengal Estates Acquisition Act, 1953, were materially different from those of the Bihar Land Reforms Act. It was, in fact, on that ground that the learned judges of the Calcutta High Court distinguished the case of Maharaj Kumar Kamal Singh v. Commissioner of Wealth-tax as well as the decision of the Patna High Court which is now the subject-matter of the present appeal.

We are also not impressed by the contention advanced on behalf of the appellant that the value of the compensation should have been determined for the purpose of the Wealth-tax Act to be 50 per cent. of the amount of compensation and not 65 per cent. As would appear from the order of the Tribunal, the value of compensation payable under the Bihar Land Reforms Act has been generally estimated for the purpose of the Wealth-tax Act to be 65 per cent. of the amount of compensation determined. We see no cogent ground to interfere in this respect.

As a result of the above, we uphold the answers given by the High Court in respect of the first and third questions. So far as the question No. (2) is concerned, we vacate the answer given by the High Court and answer that question in the affirmative in favour of the assessee. The appeal is disposed of accordingly. In the circumstances, the parties are left to bear their own costs of this court as well as in the High Court.

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