Commissioner of Wealth Tax Patna

Vs

Raghubar Narain Singh

Civil Appeal Nos. 1233-1237 of 1973

(V. D. Tulzapurkar, Sabyasachi Mukharji JJ)

20.02.1984

JUDGMENT

SABYASACHI MUKHARJI, J. -

1. These appeals from the judgment of the High Court of Patna have come to this Court by certificates granted under Section 29 of the Wealth Tax Act, 1957. The questions upon which the certificates of fitness of appeal to this Court have been granted are Question Nos. 2,3 and 4 in Tax Cases Nos. 64 to 68 of 1967. The questions are as follows :

> Question No. 2 : Whether, in the facts and circumstances of the case, the decrees obtained by the assessee against Sri. A. H. Lal and Sri D. D. Tulsi for Rs. 1,11,747 and Rs. 51,525 respectively, have been valued under the Wealth Tax Act, 1957, by correctly applying the provisions of Section 7 of the Act for the purpose of including their values in the net wealth of the assessee ?
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> Question No. 3 : Whether, the sum of Rs. 32,266, the amount of agricultural income-tax due from the assessee, falls for deduction in hands of the assessee in arriving at his total wealth for the years 1957-58, 1958-59, 1959-60 and 1960-61 ?
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> Question No. 4 : Whether, the sums of Rs. 5,97,909 due from Tikait Birja Prasad Singh, Rs. 40,001 due from Sri Gangeshwar Prasad Singh, Rs. 64,000 due from Mahanth Mahabir Das, Rs. 39, 773 due from Sri Lakshmi Narain Singh, Rs. 2600 due from Sri Jamuna Parsad Missir, Rs. 1250 due from Sri Sarjug Kumar, Rs. 15,344 due from Sri Nandikishore Singh, and Rs. 3,88,760 due from Raja Prithivichand Lal Chaudhury under claim decrees obtained against them by the assessee under the Bihar Land Reforms Act are assets of the assessee within the meaning of Wealth Tax Act, 1957, and have been valued under the said Act by correctly applying the provisions of Section 7 of the Act for the purpose of including their values in the net wealth of the assessee ?

2. Regarding Question No. 3 which is the question whether, the amount of agricultural income-tax dues from the assessee is a factor which has to be taken into account for valuing the compensation payable to the assessee, we have held that agricultural income-tax dues from the assessee which are deductible from the compensation under Section 4 (c) of the Bihar Land Reforms Act, 1950, if the same has not been deducted before the issue of the compensation bond then the possibility and the hazard of its being deducted from the compensation involved is a factor which has to be taken into account in estimating the value of the right of compensation fro the purpose of estimating the net

wealth of the assessee on the valuation date under the Wealth Tax Act. The arrears of agricultural income-tax is not to be deducted from the net wealth as such but is a factor which a willing purchaser will take into consideration in estimating the value of these assets and that is a factor which should be taken into consideration. The point has been discussed by this Court in the case of C. W. T. v. Maharaja Kumar Kamal Singh. The question, is, therefore, answered as the answer given in the said appeals and the Tribunal will estimate the account of the liability of the assessee on account of agricultural income-tax if it had not been already deduced in accordance with the provisions of the Act and determine the net value of the assets of the assessee, accordingly.

3. These questions are for the wealth tax assessments of the assessee for the assessment years 1957-58, 1958-59, 1959-60, 1960-61 and 1961- 62. The assessments involved were for those years in which the relevant valuation dates were September 20, 1956, March 21, 1958, March 21, 1959, March 21, 1960 and March 20, 1961 respectively. In the first year the assessee had filed return of wealth for Rs. 4,47,065. The Wealth Tax Officer, however, determined the total wealth of the assessee at Rs. 16,08,863. The Wealth Tax Officer included in the net wealth of the assessee, various amounts of money due under decrees which the assessee, various amounts of money due under decrees which the assessee had obtained against certain debtors, as well as the compensation payable to him under the Bihar Land Reforms Act after valuing the bonds. It may be mentioned that the assessee had appealed to the Appellate Assistant Commissioner and thereafter he had carried appeals to the Tribunal also and had obtained some relief in the process. For the subsequent assessment years of 1958-59, 1959-60, 1960-61 and 1961-62, similar considerations had come up before the Wealth Tax Officer, on the assessee filing separate returns and similar results were followed. In each year the assessee had claimed certain deductions, including an amount of Rs. 32,266 due as agricultural income tax. The latter sum has been consistently disallowed. This point we have disposed of in terms of the decision of this Court in Civil Appeal Nos. 1238 to 1240 (NT) of 1973.

4. So far as Question No. 2 is concerned, while computing the net wealth, the Wealth Tax Officer had included the sums of Rs. 8000 and Rs. 13,011 for the year 1957-58, due from Sri. A. K. Hazra and Sri N. Sahay respectively, on the basis of usufructuary mortgage in favour of the assessee as his assets. On the last point the assessee has obtained relief from the Appellate Tribunal for the year 1957-58 and for that reason these two sums were excluded from the net wealth of the assessee for the subsequent assessment years and that point had given rise to the reference in Tax Cases Nos. 23 to 27 of 1966. On the other questions raised by the assessee, reference in Tax Cases Nos. 64. to 68 of 1967 had arisen.

5. Now the facts material for Question No. 2 are as follows :

6. The assessee had obtained civil court decrees for Rs. 1,11,747 and Rs. 51,525 against Sri. A. H. Lal and Sri D. D. Tulsi. The decrees are still pending execution. In the books of the assessee these two decretal amounts were shown as still outstanding. So far as the decree obtained against Shri D. D. Tulsi, the position seems to be that Tulsi owed a decree to the assessee and the assessee owed money too the bank. In connection with the decree obtained against D. D. Tulsi, it had been contended before the Tribunal that at the instance of the Official Liquidator, the Calcutta High Court had issued a garnishee order on January 13, 1960 for setting off the assessee's liability to the Pacific Bank and, therefore, the decree did not represent wealth which could be valued under the Act. It was recorded by the Tribunal that the order of the Calcutta High Court had been passed after the relevant dates of the first three assessment years and it held that even for the assessment years 1960-61 and 1961-62, the order of attachment could not indicate that the value of the decree was 'nil', as

was the assessee's case. Hence, the decree against Sri Tulsi was valued by the Wealth Tax Officer at Rs. 51,525. As regards the decree against Sri A. H. Lal, the attachment order passed by the Calcutta High Court was on June 21, 1961, that is to say, even after the valuation date for the assessment year 1961-62. The decree was therefore valued by the Wealth Tax Officer at the figure of Rs. 1,11,747. It was the contention of the assessee that the two decrees had been erroneously valued and the principles for valuation under Section 7 (1) had not been followed. On the other hand it was contended on behalf of the revenue that decrees had been correctly valued under Section 7 (2) (a) of the Act. The High Court held and in our opinion rightly that two decrees had not been valued under Section 7 (1) of the Act. We are in agreement with the High Court that merely because the assessee had shown the full decretal amounts in his books as still due, would not ipso facto lead to the conclusion that they would be valued at those sums without taking into consideration the hazards for realisation of the decrees. These decrees had not been executed and in the process of execution, there may be hazards and the Wealth Tax Officer must estimate the price of the decree by anticipating what a willing purchaser would have paid for those decrees taking the hazards into consideration in open market on the valuation date and should estimate the price of the asset in question accordingly. The High Court answered this question in the negative. We are of the opinion that in view of the well-settled principles which we have discussed in the case of C. W. T. v. Maharaja Kumar Kamal Singh, the High Court was right in its decision.

7. So far as the Question No. 3 is concerned, the same question would have to be answered in the manner indicated above and the High Court has done the same and we affirm the said decision in view of the decision of this Court in Civil Appeal Nos. 1238 to 1240 (NT) of 1973. The facts regarding Question No. 4 after taking into consideration statement of this case as also the supplementary statement of the case sent to the High Court pursuant to its directions are as follows :

8. In respect of sums due from Tikait Girja Prasad Singh, the High Court has observed that assessee was entitled in respect of the zamindari compensation of Tikait Girja Prasad Singh which had vested in the Government and the value of the compensation had been estimated at 75 per cent of certain figure. The High Court directed that when assessee had a claim decree against its debtor, the Wealth Tax Officer should ascertain the price that a reasonable person would have paid for it on the relevant date, valuation in open market considering that this claim decree can only be satisfied, wholly or partly from the compensation which the debtor would receive under the Bihar Land Reforms Act, 1950. the claim decree was an asset, the High Court held, but it was wrongly valued by the authorities and directed to be valued by estimating what it would fetch in the open market on the valuation date taking into consideration all the hazards.

9. On the same principle, the other decrees mentioned in the questions have been disposed of by the High Court. We are of the opinion that in view of the principles discussed by this Court in the case of C. W. T. v. Maharaja Kumar Kamal Singh, the High Court was right in its conclusion. Indeed this question was not seriously pressed before us separately.

10. We may reiterate that learned counsel for the revenue urged before us certain propositions, namely :

> (1) For the purposes of computation of net-wealth of an assessee each asset belonging to him and each debt owed by him has to be valued separately.
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> (2) The difference between the aggregate value of the assets and the aggregate value of the debts represents is net-wealth.

(3) In determining the marked value of an asset (or the residue of the asset diminished by an overriding title on the asset itself.) any liability or debt incurred in relation to it has to be ignored as the debt or liability has to be separately evaluated.

(4) What is the market value of a certain asset or the residue asset as referred to above, is a question of fact, to be determined finally by the Income-tax Appellate Tribunal taking into account the relevant evidence and considerations put forward by both the sides and the High Court cannot interfere with such a finding of fact unless it is found to be based on irrelevant consideration or is arrived at by ignoring relevant evidence.

(5) When the debt is represented as an asset, its market value has to be determined in the same manner as the market value of any other asset irrespective of the fact whether such an asset-debt is encumbered by another debt owed from the assessee, because the later- mentioned debt can qualify for dedication at its market value independently.

11. About Proposition Nos. (1) and (2) above, there cannot be any dispute. But as regards Proposition No. (3), as this Court has discussed in C. W. T. v. Maharaja Kumar Kamal Singh, if there is an asset which is subject to certain hazards including the liability of certain debt to be deducted from the said asset, then that factor would be relevant factor diminishing the market value of the asset in open market and has to be estimated taking into consideration that factor. Regarding Proposition No. (4), it may be stated that while it is question of fact but if the Tribunal has arrived at the conclusion by taking wrong principles into consideration, then such a finding would not bind the High Court. Regarding Proposition No. (5), it may be stated that debts may be dedicated from the value of assets but the valuation of an asset has to be done in terms of Section 7 (1) taking into consideration all the hazards including the possibility of an amount on account of debt being deducted from the value of the asset is a factor which will influence a prospective buyer in the open market, depending upon the facts and circumstances of each case.

12. In the aforesaid view of the matter, we affirm the decision of the High Court Court in all these points and dismiss these appeals with costs.

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