

Commissioner of Wealth Tax, Bihar, Patna

Vs

Maharaja Kumar Kamal Singh

Civil Appeals Nos. 1238 to 1240 (NT) of 1973

(V. D. Tulzapurkar, R. S. Pathak, Sabyasachi Mukharji JJ)

20.02.1984

JUDGMENT

SABYASACHI MUKHARJI, J. -

1. These appeals by certificates arise against a decision of the Full Bench of the Patna High Court. Several questions were referred to the High Court of Patna Under Section 27(1) of the Wealth Tax Act, 1957, hereinafter referred to as the Act. Two of these questions have been answered against the assessee, one was held to be not entertainable and one misconceived. The question answered against the revenue in that reference before the High Court was question No. (iii) mentioned in the judgment of B. D. Singh, J. and the question is as follows :

Whether, on the facts and circumstance of the case, the Tribunal was right in including in the assessee's net wealth a positive figure, on account of zamindari compensation without taking into consideration the arrears of agricultural income tax instead of taking the figure of compensation receivable from government of Bihar at nil.

2. In order to appreciate the question, it may be necessary to refer to some facts. The question involved before the Full Bench was for the assessment years 1959-60, 1960-61 and 1961-62, corresponding valuation dates of which were October 31, 1958, October 3, 1959 and October 31, 1960. The assessee is an individual. His estate vested in the State of Bihar under the Bihar Land Reforms Act, 1950 on and from July 1, 1952 and he is entitled to receive compensation under the Act from the Government. Under Section 3 of the Act, the question arose about the inclusion in the assessee's "net wealth" the value of the estimated amount of compensation receivable by him from the Bihar Government under the Bihar Land Reforms Act, 1950. In the Assessment years 1959-60, the Wealth-tax Officer estimated the value at Rs. 10,25,123 and included it in the net wealth of the assessee. For the assessment years 1960-61 and 1961-62 the assessee produced a letter from the District Collector, Arrah, to show that the assessee is entitled to compensation of Rs. 4,39,713 only. The Wealth-tax Officer estimated 75 per cent thereof as the market value of the right of assessee to receive the compensation. According he included in the assessee's net wealth Rs. 3,29,784. On appeal, the Appellate Assistant Commissioner reduced the valuation for the first years to Rs. 3,29,784. For the next two years, namely 1960-61 and 1961-62 the Appellate Assistant Commissioner held that it would be reasonable to estimate the market value of the compensation to be received by the assessee at 65 per cent of the face value.

3. The assessee preferred appeals before the Appellate Tribunal regarding assessments for the aforesaid three years and reiterated his contention that the right to receive compensation under the

Land Reforms Act was not an asset within the meaning of Section 2(m) of the Act and could not be included in the assessee's net wealth. The Tribunal held that the estimated amount of Zamindari compensation payable to the assessee was an asset and had to be included in the assessee's net wealth. However, it directed the Wealth-tax Officer to estimate the value and compensation to be received by the assessee at 65 per cent even for the first year, i.e. 1959-60 as was done by the Appellate Assistant Commissioner with regard to the second and third years, i.e. 1960-61 and 1961-62.

4. The contention of the assessee further was that the unpaid agricultural income-tax as a debt was deductible while computing his net wealth. His claim was that this debt was Rs. 5,10,831 in the first year, Rs. 4,76,461 in the second year and RS. 4,75,906 in the third year. A sum of Rs. 24,430 being agricultural income-tax demand for 1363 Fasli was allowed to be deducted by the Wealth-tax Officer. For the second and third years' arrears of agricultural income tax. The assessee had produced Government letter to show that the amount of compensation receivable by the assessee would be nil. According to the enquiries from the revenue department it also appeared that the final compensation money payable in respect of the assessee's zamindari was less than the agricultural income-tax dues outstanding against him, and so it was not possible to effect realisation of the dues of agricultural income-tax only by adjustment from the final compensation money. The Tribunal therefore held that except Rs. 24,430 which was agricultural income tax demand for 1963 Fasli and which was allowed to be deducted by the Wealth-tax Officer, the other amounts as claimed by the assessee were not deductible as the arrears were outstanding for more than 12 months, in view of the provision contained under Section 2(m) of the Act and the Government letter was not at all helpful to the assessee. Then reference was made to the High Court under Section 27(1) of the Act raising five questions out of which question No. (iii) as set out hereinbefore is before us.

5. The questions before the High Court including the question which is before us were referred to a Full Bench of the Court and the reference was disposed of by the Full Bench of Patna High Court on September 17, 1971, and the decision is reported in 84 ITR p. 240.

6. The Full Bench decided the question in issue before us against the revenue and in favour of the assessee holding thereby that in the facts and circumstances of the case as nothing was receivable by the assessee in view of the arrears of agricultural income-tax, the value of the asset to the assessee was nil.

7. Though at one point of time there was certain controversy as to whether the right to receive compensation on the vesting of the estate of the appellant in the Government was an asset and as such its value had to be taken in computing the net value of assets or not, there is no doubt that it is and it was not urged before us that it is not an asset. The only question, is, how should it be valued? It was contended before us that the Act prohibits setting off of deductions of debts which are outstanding for more than 12 months on account of the arrears of tax on income, agricultural or otherwise. Therefore it was urged that if the arrears of agricultural income-tax due as in this case are taken into account against the value of the compensation receivable by the assessee, then it would not be in accordance with the scheme of the Act and it would permit defeating the intention of the legislature, namely, permitting deduction of arrears of agricultural income-tax outstanding for more than 12 months by indirect method which is prohibited directly in terms of Section 2(m)(iii) of the Act. This is the question for our consideration in these appeals.

8. We may at a glance examine the provisions of the Bihar Land Reforms Act, under which compensation was payable to the assessee and the value of which was under consideration in this

case. Before we do that, it is necessary to note the relevant provisions of the Wealth Tax Act and to find out the scheme under the Wealth Tax Act as to how the assets have to be valued. Section 3 of the said Act is the charging section which imposes a tax for every assessment year in respect of the net wealth on the corresponding valuation date. Section 4 makes some deeming inclusion of certain assets as assets of the assessee. It is not necessary to deal with these in detail but it may be mentioned that certain assets which are not standing in the name of the assessee are included in the net wealth, for example, assets transferred to spouse or minor child or partner of a firm etc. These deal with the assets which are not in the name or standing in the name of assessee but which really belong to the assessee according to the scheme of the legislation. We may note here as it was canvassed before us that under sub-section (3) of section 4 of the act which provides that where the value of any asset is to be included in the net wealth of an assessee in accordance with clause (a) of sub-section (1) or sub-section (1-A), there shall be deducted from such value any debts owing on the valuation date by the transferred mentioned in that clause insofar as such debts are referable to such assets; and the provision of section 5 shall apply in relation to such assets as if such assets were assets belonging to the assessee. Section 5 deals with the exemption of certain assets. Section 6 excludes certain assets and outside India. Section 7 is important which provides the methods how the value is to be assessed. It provides that it 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. Section 2(m) deals with "net wealth" upon which tax is levied and reads as follows :

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 owed by the assessee on the valuation date other than -

(i) debts which under Section 6 are not to be taken into account;

(ii) debts which are secured on or which have been incurred in relation to, any property in respect of which wealth-tax is not chargeable under this Act; and

(iii) the amount of the tax, penalty or interest payable in consequence of any order passed under or in pursuance of this Act or any law relating to taxation of income or profits, or the Estate Duty Act, 1953 (34 of 1953), the Expenditure Tax Act, 1957 (29 of 1957), or the Gift-tax Act, 1958 (18 of 1958), -

(a) which is outstanding on the valuation date and is claimed by the assessee in appeal, revision or other proceeding as not being payable by him; or

(b) which, although not claimed by the assessee as not being payable by him, is nevertheless outstanding for a period of more than twelve months on the valuation date.

9. The main contention of the revenue is that the amount of tax, penalty or interest payable in consequence of any order passed under or in pursuance of the Act or any law relating to taxation of income or profits, or the Estate Duty Act which is outstanding on the valuation date and is claimed by the assessee in appeal, revision or other proceedings as not being payable by him and which, although not claimed by the assessee as not being payable by him, is nevertheless outstanding for more than twelve months on the valuation date should not be considered to be debt entitled to be

deducted from net wealth. 'Net wealth' as we have noticed means the amount by which the aggregate value computed in accordance with the provisions of the Act of all the assets wherever located, belonging to the assessee is in excess of the aggregate value of all debts excluding the debts mentioned in Section 2(m) of the Act. Therefore the scheme of imposition of wealth tax in case of an assessee which is not a company [and the present assessee is not a company and the computation of the wealth tax of an assessee which is a company might be done under sub-section (2) of Section 7 of the Act], must be done by first estimating the value of the assets in accordance with the provisions of the Act. That is the first step. Therefore the estimation of the value of the assets is first necessary in accordance with the provisions of the Act. The material provision of the Act for this purpose in the said Act would be Section 7(1) which enjoins the Wealth-tax Officer in case of an asset other than cash to estimate the price which, in his opinion, it would fetch if sold in the open market on the valuation date. Therefore the first step in the facts and circumstances of this case was that the Wealth-tax officer to estimate to the price which in his opinion the right to compensation of the assessee would fetch if sold in the open market, and after determining the value in the manner aforesaid to deduct therefrom debts owed by the assessee excluding however the debts which are mentioned in clause (i), (ii) and (iii) of Section 2(m) of the Act.

10. Keeping this scheme of the Act in mind, we have to examine the nature of compensation under Bihar Land Reforms Act, 1950. Section 3 provides for the notification vesting an estate or tenure in the State and from the date specified in the notification, the estates or tenures of a proprietor or tenure-holder, specified in the notification, will pass on to and become vested in the State. It is not disputed that in this case this has happened in respect of the property in question. Section 4 deals with the consequences of the vesting of an estate or tenure in the State and stipulates different consequences. We are not really concerned with all the various consequences. We may, however, mention clause (c) of Section 4 which is important for our present purpose. It provides as it indicated that the arrears of revenue and cesses remaining lawfully due in respect of the estate or tenure shall continue to be recoverable from him in spite of the vesting of the estate and "shall without prejudice to any other mode of recovery, be recoverable, when so ordered by the Collector, by the deduction thereof from the amount payable to such intermediary under Section 32, Section 32-A or Section 33". Reference was made to Section 14 which deals with provisions relating to certain debts of proprietors and tenure-holders. Section 19, 23 and 24 were also referred to which we do not think are material for our present purpose. Section 26 onwards deal with the publication of Compensation Assessment-roll. Section 32 provides for the manner of payment of compensation. Section 32-A provides as follows :

32-A. Where the Compensation Officer considers that delay is likely to occur in payment of compensation under Section 32, he may, subject to the provisions of Section 32-B pay in the manner, so far as may be applicable, provided in Section 32, to the person entitled thereto under this Act a sum not exceeding fifty per centum of the approximate amount of compensation payable to him under Section 32 calculated in the manner prescribed in this behalf :

Provided that, if subsequently it is found by the Compensation Officer or the Collector that any amount has been paid to any person in excess of the amount payable to him under Section 32 or that the person to whom the amount has been paid was not entitled to it under this Act, the amount so paid shall, after giving the person concerned a reasonable opportunity of being heard, be recoverable from him together with interest at 6 1/2 per centum per annum as if it were a public demand.

11. Section 40 is also important and is as follows :

40. (1) The Collector, the Claims Officer or the Compensation Officer may, at any time either before or after the date of vesting, by a written order served in the prescribed manner, require any intermediary or any other person in possession of an estate or tenure or any part thereof or any agents or employees of such intermediary or other person, as the case may be, to produce, at a time and place specified in the order, such documents, or to furnish an affidavit otherwise such information relating to any estate or tenure of such intermediary as the Collector, Claims Officer or the Compensation Officer may, from time to time require for any of the purposes of this Act or for giving effect to any provision thereof.

(2) Where any intermediary or other person, referred to in sub-section (1), if so required by a written order of the Collector, fails without sufficient cause, to produce such documents, or to furnish such information at such time and place as may be specified in the order, such intermediary or other persons, as the case may be, shall be liable to a penalty which may extend to fifty rupees for every day after the expiration of such time until such documents have been produced or such information has been furnished and such penalty shall be realised as public demand :

Provided that where the sum of such penalty exceeds five hundred rupees, the Collector shall refer the matter to the Commissioner whose orders thereon shall be final :

Provided further that the Commissioner may at any time, of his own motion or on the application of any intermediary, revise any order of the Collector imposing any penalty and the order of the Commissioner on revision shall be final.

12. Section 33 which provides for making ad interim payments to proprietors, sub-section (2) of which contains the following proviso :

Provided that the Collector shall have the power to refuse, suspend or stop any such ad interim payment in the case of any proprietor or tenure-holder who in his opinion has failed or neglected to comply with any order under Section 40.

13. The Patna High Court was of the opinion that in view of the facts and specially the letter given by the Collector, the market value of the right of the assessee to receive ad interim compensation should be determined in view of the provisions of Section 4(c) of Bihar Land Reforms Act, 1950, and keeping in view the correspondence passing between the Collector and the assessee. It is true that the taxing authority has adopted 65 per cent of the face value of the amount discounting the rest on account of delayed payment. It may be mentioned that these compensations were payable in 40 years. That is a factor which has to be taken into account and discounted but the other vital factor affecting the value of the asset namely, the liability and the obligation to have the amount deducted under Section 4(c) of the Bihar Land Reforms Act has not been taken into account at all. Where bonds have been issued after taking into consideration the liability under Section 4(c) of the Bihar Land Reforms Act or where liability under Section 4(c) has been determined and deducted from the compensation, in such a case no question of deduction on account of the arrears of agricultural income-tax mentioned in Section 4(c) of the Bihar Land Reforms Act would arise but in all other cases, this is a liability, a hazard, a factor, a clog or a jeopardy which detracts from the value of the

asset and in estimating the value which one has to do on the basis which a willing purchaser would pay for buying the said asset in open market, the Wealth-tax Officer must take that factor into account, otherwise it would be an unreal estimate. This chance and hazard must influence all buyers.

14. There are two different stages. One is estimation of the value of the assets and the other deduction therefrom the debts owed by the assessee. In last mentioned stages, surely in view of the provisions of Section 2(m), the debt in respect of income-tax which is outstanding for more than 12 months cannot be deducted. But in estimating the value of the assets, this possibility, which is indeed in the nature of an obligation of the compensation Officer, is hazard, a clog or a hindrance which if a proper estimate is made under Section 7(1) by the Wealth-tax Officer, he has to take into consideration. It is not a question of deducting the debt but a question of estimation of the value of the asset in question.

15. Learned counsel for the assessee drew out attention to the decision of this Court in the case of *Standard Mills Co. Ltd. v. CWT* ((1967) 63 ITR 470 : AIR 1967 SC 595 : (1957) 1 SCR 768) and to a Bench decision of the Bombay High Court in the case of *CWT v. Purshottam N. Amersey* ((1969) 71 ITR 180). These decisions, in our opinion, are not relevant at all. Reliance was also placed on a decision of this Court in the case of *Pandit Lakshmi Kant Jha v. SWT* (90 ITR 97 : (1974) 3 SCC 126 : 1973 SCC (Tax) 468 : (1973) 3 SCR 973). This question was not in issue but it was reiterated that under the Bihar Land Reforms act, 1950 as soon as the estate or a tenure of a proprietor or tenure-holder vested in the State, he became entitled to receive compensation. The right to receive compensation from the State was a valuable right. The fact that compensation was not payable immediately and its payment might be spread over a period of 40 years would be relevant only for the purpose of evaluating his right of compensation. The right to receive compensation even though the date of payment is deferred is property and constituted an asset for the purpose of Wealth Tax Act.

16. We are clearly of the opinion that the possibility of deduction of the dues of the assessee for agricultural income tax under Section 4(c) of the Bihar Land Reforms Act from the compensation money is a factor that affects price or value of the compensation money receivable by the assessee under the Bihar Land Reforms Act and until it has been finally determined that no arrears of agricultural income tax is payable at all, will remain a hindrance and the value of which must be quantified and deducted before a proper estimate of the value of the asset money receivable by the assessee is prepared. Except in cases where the question of arrears of agricultural income tax is settled, this is a factor which goes to the diminution of the value of the asset. To what extent that would affect the value of the asset is a matter of quantification. We are not concerned with that question of actual quantification. We are concerned with the question whether that factor is a matter which has to be taken into consideration in estimating the value of the asset in question. We are of the opinion that it is a factor certainly to be taken into consideration in estimating what it would fetch in the open market. It is not a case, as was contended on behalf of the revenue, that this was permitting indirectly deduction of debt which was prohibited by the legislation. Section 7 and 2(m) of the Act though must be read harmoniously apply to two different stages. Section 7 is the estimation of the market value of the asset, Section 2(m) enjoins that from the same the debt owed by the assessee has to be deducted. Such debt owed would be computed in accordance with Section 2(m) but the estimation of the value of asset is on the basis which such asset would fetch in the open market taking into consideration the viewpoint of a willing purchaser.

17. We must mention that our attention was drawn to certain other provisions of the Income-tax Act and also Wealth Tax Act and it was contended that any debt which is excluded under the provisions

of Wealth Tax Act cannot be deducted and on the same principle a debt which is not deductible because of provisions of Section 2(m) should not be taken into consideration in estimating the value of an asset. We are unable to accept this position in the facts and circumstances of this case.

18. Our attention was drawn to certain other rules namely, Rule 34 of the Bihar Land Reforms Rules, 1951. We do not think it is material to discuss these rules any further.

19. In the view we have taken, we are of the opinion that the Full Bench of the Patna High court was right in its conclusion. The appeals therefore fail and are accordingly dismissed with costs.

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