F. S. Gandhi (Dead) By.Lrs.

Vs

Commissioner of Wealth Tax, Allahabad

Civil Appeal Nos. 3752-3755 of 1982

(Kuldip Singh, S. C. Agarwal JJ)

02.05.1990

JUDGMENT

S. C. AGARWAL, J. -

1. These appeals, by certificate granted by the High Court under Section 29(1) of the Wealth Tax Act, 1957, (hereinafter referred to as 'the Act') are directed against the judgment of the High Court of Allahabad dated February 2, 1982 in Wealth Tax Reference No. 179 of 1978.

2. The appellant, F. S. Gandhi (hereinafter referred to as 'the assessee'), owns properties situate at Mahatma Gandhi Marg and Sardar Patel Marg in Civil Lines area at Allahabad. The lands on which these buildings stand were leased out to the assessee by the Government of Uttar Pradesh. The leases in respect of these properties, except the property situate at 30-A, Mahatma Gandhi Marg, expired in 1958 and the lease in respect of the property situate at 30-A Mahatma Gandhi Marg expired in 1963. The Government of Uttar Pradesh issued notices to the assessee to hand over vacant possession of the leasehold lands. The properties are let out to the tenants and the assessee was receiving rental income from the same. For the assessment years, 1971-72, 1972-73, 1973-74 and 1974-75 the assessee submitted the wealth tax returns wherein he valued the properties at ten times of the annual rental income. The Wealth Tax Officer passed assessment orders wherein he valued the properties at fifteen times of the annual rental income. On appeal, the Appellate Assistant Commissioner of Wealth Tax, valued the said properties at twelve and a half times of the annual rental income. On further appeal, the Income Tax Appellate Tribunal (hereinafter referred to as 'the Tribunal') valued the properties at ten times of the annual rental income.

3. At the request of the assessee the Tribunal referred the following questions of law to the High Court :

> (1) "Whether on the facts and circumstances of the case, the Tribunal was right in holding that properties in respect of which leases had expired in 1958 and 1963 and notices had been received to hand over the possession were assets within the meaning of Section 2(e)(v) of the Wealth Tax Act and its value was liable to be included in the net wealth of the assessee ?
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> (2) Whether on correct interpretation of Section 2(e)(v) and relevant provisions of Transfer of Property Act, the Tribunal was right in holding that the interest of the appellant in respect of properties in dispute was for a period over six years ?
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> (3) Whether there was any material before the Tribunal to hold that on the relevant

valuation date the property situated at 30-A, Mahatma Gandhi Marg was worth ten times of its annual rental income while in previous years the value of the said property was shown and accepted at Rs. 1,19,000 ?

(4) Whether the Tribunal was right in holding that the property at 30-A, Mahatma Gandhi Marg, was to be valued on the basis of its annual income along with other properties notwithstanding the property in question was commercial property while other properties were residential houses and whether the multiple upheld the Tribunal is justified in law and on facts ?

(5) Whether on the facts and circumstances of the case the multiple of ten times of rental income in respect of property at 30-A, Mahatma Gandhi Marg, is not excessive and wholly unjustified ?"

4. By order dated February 2, 1982, the High Court answered the said questions in the affirmative i.e., in favour of the department and against the assessee. Thereafter the assessee moved an application under Section 29(1) of the Act for grant of certificate of fitness for appeal to this Court. By order dated July 8, 1982, the High Court granted certificate of fitness on the view that the following question is a question of law which is of general importance and as such this was a fit case in which an appeal could be filed before this Court :

"Whether on the facts and in the circumstances of the case the Tribunal was right in holding that the properties in respect to which leases had expired in 1958 and 1963 and notices had been received to hand over the possession were assets within the meaning of Section 2(e)(v) of the Wealth Tax Act and its valuation was liable to be included in the net wealth of the assessee ?"

This question was amongst the questions referred to the High Court. While dealing with the said question the High Court has held :

"on the determination of a lease by efflux of time or by notice, it is the duty of the lessee to deliver vacant possession of the demised premises to the lessor. If he continues in possession even after the determination of the lease, his possession is secured inasmuch as the lessor cannot evict him otherwise than in due course of law and if he continues in possession without the assent or dissent to the landlord, he would be a tenant at sufferance. His possession would be wrongful but not unlawful. It is wrongful because the erstwhile tenant continues in possession beyond the expiry of the period fixed in the lease. It is not unlawful because the landlord cannot take law into his own hands and evict him. But in case the landlord expresses his assent by acceptance or rent or otherwise to his continuing in possession this wrongful possession would be converted into a lawful one. The landlord's assent may be expressed or implied."

5. Taking into consideration the facts of the present case the High Court has found that the leases of the properties expired in 1958 and that of 30-A, Mahatma Gandhi Marg in 1963. The High Court has observed :

"There is nothing on record to show that any attempt was made whatsoever by the State Government to enforce those notices given by it and the assessee had continued

in peaceful possession and enjoyment of these properties all along. In our opinion, therefore, the assent of the landlord to the assessee's continuing in possession of these properties can be inferred and that being so that assessee would be treated to be a tenant of the same by holding over."

6. According to the High Court after determination of the earlier leases the assessee is lessee of properties under a new contract of tenancy and this tenancy is a tenancy from month to month under Section 116 read with Section 106 of the Transfer of Property Act. The High Court has further held that the present tenancy is a tenancy from month to month for an unstated period and it could not be said to be precarious in nature. The High Court was of the view that the said tenancy is an asset as defined in Section 2(e) of the Act and is not excluded under sub-clause (v) because the said interest has been available to the assessee for a period exceeding six years from the date the new contract of tenancy came into existence.

7. In the Act, as originally enacted, Section 2(e)(v) read as under :

"2. In this Act, unless the context otherwise requires -

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(e) "assets" includes property of every description, movable or immovable, but does not include -

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(v) any interest in property where the interest is available to an assessee for a period not exceeding six years."

8. By the Wealth Tax (Amendment) Act, 1964 which came into force with effect from April 1, 1965, the words "from the date the interest vests in the assessee" were inserted at the end of sub-clause (v) and thereafter, sub-clause (v) read as under :

"any interest in property where there interest is available to an assessee for a period not exceeding six years from the date the interest vests in the assessee."

9. By the Finance Act, 1969 clause (e) of Section 2 of the Act was substituted by the following provision :

"2.(e) - "assets" includes property of every description, movable or immovable, but does not include -

(1) in relation to the assessment year commencing on the 1st day of April, 1969 or any earlier assessment year -

(i) agricultural land and growing crop, grass or sanding trees on such land.

(ii) any building owned or occupied by a cultivator of, or receiver of rent or revenue out of, agricultural land :

Provided that the building is on or in the immediate vicinity or the land is a building

which the cultivator or the receiver of rent or revenue by reason of his connection with the land requires as a dwelling house or a storehouse or an outhouse;

(iii) animals;

(iv) a right to any annuity in any case where the terms and conditions relating thereto preclude the communication of any portion thereof into a lump-sum grant;

(v) any interest in property where the interest is available to an assessee for a period not exceeding six years from the date the interest vests in the assessee;

(2) in relation to the assessment year commencing on the 1st day of April, 1970 or any subsequent assessment year -

(i) animals;

(ii) a right to any annuity in any case where the terms and conditions relating thereto preclude the communication of any portion thereof into a lumpsum grant;

(iii) any interest in property where the interest is available to an assessee for a period not exceeding six years from the date the interest vests in the assessee."

10. As a result of the aforesaid amendment the provision which is applicable in relation to the assessment years commencing on April 1, 1970 and subsequent assessment years in sub-clause (2) of clause (e) of Section 2. Since the assessments in question relate to assessment years 1971-72 to 1974-75 the matter has to be considered in the light of the provisions contained in clause (e) of Section 2 of the Act as substituted by Finance Act, 1969. In framing questions 1 and 2 for reference to the High Court the Tribunal has erroneously made a reference to sub-clause (v) of clause (e) of Section 2 as it stood prior to the 1969 amendment. The High Court, while answering these questions and granting the certificate of fitness for appeal to this Court, did not notice this error. The provisions of Section 2(e)(v) as amended in 1964 are identical with the provisions of Section 2(e)(2)(iii), as substituted by the 1969 amendment. The error is, therefore, of no consequence and the matter has been examined by us in the light of the provisions contained in clause (e) of Section 2, as substituted in 1969.

11. Shri R. R. Agarwal, the learned counsel for the appellant, has not disputed the findings recorded by the High Court that the assessee was in possession of the leasehold properties as tenant holding over and that the said tenancy was a tenancy from month to month for an unstated period. The submission of Shri Agarwal is that the interest of the assessee under the said tenancy could not be regarded as an 'asset' under Section 2(e) of the Act and that it has to be excluded because the said interest cannot be regarded as an interest available to the assessee for a period exceeding six years from the date the interest vests in the assessee.

12. The aforesaid contention of Shri Agarwal involves interpretation of the words "where the interest is available to an assessee for a period not exceeding six years from the date the interest vests in the assessee" contained in Section 2(e)(2)(iii) of the Act. The word "available" is preceded by the word "is" and is followed by the words "for a period not exceeding six years". The word 'is', although normally referring to the present often has future meaning. It may also have a past signification as in sense of 'has been' (See Black's Law Dictionary, 5th edn., p. 745). We are of the view that in view of the words "for a period not exceeding six years" which follow the word

"available" the word 'is' must be construed as referring to the present and the future. In that sense it would mean that the interest is presently available and is to be available in future for a period not exceeding six years. The High Court has construed the word 'is' to mean 'has been'. As per the construction placed by the High Court in a case where an interest has been created for a period exceeding six years is would be included in the assets of the assessee under Section 2(e) of the Act only after the expiry of the period of six years even though the interest is available to the assessee for a period exceeding six years from the date the interest vests in the assessee. The construction placed by the High Court instead of placing emphasis on the nature of the interest attaches importance to the enjoyment of the interest. We are unable to subscribe to that view. In our opinion the question as to whether the interest should be included or excluded from the assets of the assessee under Section 2(e)(2)(iii) of the Act has to be considered in the light of the nature of interest on the relevant date. Under the said provision the relevant date is the date on which the interest vests in the assessee. Therefore, the matter was to be considered by examining the nature of the interest on the date the interest vests in the assessee.

13. This view of ours finds support from the decision of this Court in CWT v. Muthukrishna Ammal ((1969) 2 SCR 1 : AIR 1969 SC 740 : 72 ITR 801) wherein the provisions of Section 2(e)(v) as it stood prior to the amendment of 1964, have been considered. In that case the respondent-assessee had obtained on lease from government certain salt pans under two agreements dated January 1, 1943 and January 1, 1945, and each lease was a endure for 25 years but was liable to be determined by notice on either side at the close of any salt manufacturing season. In relation to wealth Tax assessment year 1959-60, a question arose as to whether the assessee's interest in the salt pans for the unexpired period of the two leases was liable to be included in the computation of her net wealth. This Court held that the interest of the lessee under each lease was precarious inasmuch as it was liable to be determined by notice by the government at the expiry of any manufacturing season and that the leasehold interest in the salt pans was not available to the assessee for a period exceeding six years from the valuation date. It was urged on behalf of the revenue that since the assessee had enjoyed the rights under one lease for 16 years and in the other lease for 14 years and on the valuation date both the leases were outstanding, the rights were "assets" within the meaning of the Act and that the expression "is available to an assessee for a period not exceeding six years" in clause (v) of Section 2(e) means 'is and has been available to an assessee for the period of six years before the date of valuation'. It was also urged that if interest in property though revocable has remained unrevoked for more than six years before the valuation date, the interest would be an asset within the meaning of Section 2(e). This Court rejected the said contention and held as under : (SCR p. 4)

> "We are unable to agree with that contention. The expression used by Parliament is "is available to an assessee for a period not exceeding six years", and it must mean that the assessee though he has interest in property at the valuation date and interest will remain available for a period not exceeding six years. If it is to remain available for six years or for a shorter period the interest will fall within the exception : if it is to remain available for a period exceeding six years it will fall within the definition of "assets" and its value will be liable to be included in the net wealth of the assessee."

14. In that case this Court has noticed the amendment introduced in sub-clause (v) of Section 2(e) by the Wealth Tax (Amendment) Act, 1964 but did not consider it necessary to deal with it because the said matter related to the period prior to the said amendment.

15. The High Court has sought to distinguish this decision on the view that the position has changed after the amendment introduced in 1964 and that the insertion of the words 'from the date the interest vests in the assessee' means that if an interest has been available to the assessee for a period exceeding six years from the date the interest vests in the assessee, it would be an asset while prior to its amendment if the interest was not available to an assessee for a period not exceeding six years it could not be treated as an asset. The High Court has observed that as a result of the amendment of 1964, Section 2(e)(v) can be interpreted to mean that if an interest has been available to an assessee for a period exceeding six years from the date the interest vests in the assessee, it would be asset. We are unable to agree with the said view. While construing the words "is available to an assessee for a period not exceeding six years" this Court in CWT v. Muthukrishna Ammal ((1969) 2 SCR 1 : AIR 1969 SC 740 : 72 ITR 801) has rejected the contention urged by the revenue that the said words mean "is and has been available to the assessee for a period of six years" and this Court has construed the said words to mean that "the interest will remain available for a period not exceeding six years" meaning thereby that the interest must be such that on the relevant date it is available presently and is available for a period not exceeding six years in future. The only change which was brought about in Section 2(e)(v) as a result of the amendment introduced in 1964, whereby the words "from the date the interest vests in the assessee" were inserted in that sub-clause, was that prior to the said amendment the relevant date was the valuation date and the availability of interest had to be seen with reference to that date and as a result of the amendment of 1964, the relevant date became the date on which the interest vests in the assessee and, therefore, the availability of the interest was to be seen with reference to the date on which the interest vests in the assessee. But the requirement that on the relevant date the interest would be available in future for a period exceeding six years, as held by this Court in CWT v. Muthukrishna Ammal ((1969) 2 SCR 1 : AIR 1969 SC 740 : 72 ITR 801), remained unaltered.

16. In this context, it may be mentioned that CWT v. Muthukrishna Ammal ((1969 2 SCR 1 : AIR 1969 SC 740 : 72 ITR 801) was decided by this Court on September 6, 1968. The Finance Act, 1969, whereby clause (e) of Section 2 of the Act was substituted, was enacted by Parliament on May 13, 1969. In the amended provisions of clause (e). Parliament has repeated the same language, namely, "where the interest is available to an assessee for a period not exceeding six years" in Item (v) of sub-clause (1) and in Item (iii) of sub-clause (2). It must be assumed that while enacting the Finance Act, 1969, Parliament was aware of the construction placed by this Court on these words in CWT v. Muthukrishna Ammal ((1969) 2 SCR 1 : AIR 1969 SC 740 : 72 ITR 801). In repeating the said words in the amended clause (e) of Section 2, Parliament must be taken to have used the said words to bear the meaning which has been put upon them by this Court in CWT v. Muthukrishna Ammal ((1969) 2 SCR 1 : AIR 1969 SC 740 : 72 ITR 801).

17. In the instant case, it has been found that after the expiry of the leases of the assessee in the years 1958 and 1963 the assessee continued in possession under a new contract of tenancy and the said tenancy was a tenancy from month to month for an unstated period. The said tenancy was precarious in nature because it could be terminated by the lessor, viz., the Government of Uttar Pradesh, at any time by a notice under Section 106 of the Transfer of Property Act. The fact that such a notice was not given cannot mean that the interest created by the said new tenancy was an interest available to the assessee for a period exceeding six years from the date the interest vested in the assessee. In the circumstances in view of Section 2(e)(2)(iii) the said interest could not be treated as an asset of the assessee for the purpose of the Act.

18. Our attention has been invited to the decision of the Allahabad High Court in Purshottam Dass Tandon v. State of U. P. (AIR 1987 All 56 : (1986) 2 All Rent Cases 218) From the said decision it

appears that a number of petitions were filed in the Allahabad High Court under Article 226 of the Constitution of India by lessees who had been granted leases of nazul lands in Civil Lines area of Allahabad and whose leases have expired and who were seeking renewal of those leases. After considering the various orders that were passed by the Government of Uttar Pradesh, from time to time, the High Court, while disposing the said petitions, has given the following directions to the opposite parties : (AIR p. 83)

> (i) Grant fresh leases to all those who had deposited the premium or at least one instalment on terms and conditions mentioned in 1959 Order read with 1960 Order.
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> (ii) To issue notices to all those lessees to whom no notice was issued and determine their premium etc. on terms and conditions mentioned in 1959-60 Orders expeditiously.
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> (iii) To determine premium etc. of others to whom notices were issued but it could not be finalised for one reason or other at an early date.
>
> (iv) Determine rate of premium etc. for premises which are used as residential-cum-commercial purpose in light of 1965 Order.
>
> (v) Determine rate of premium used for commercial purpose in light of various Orders issued till 1965.
>
> (vi) Lessees shall after grant of fresh leases file the necessary forms etc. within one month before the Prescribed Authority under Urban Ceiling Act, 1976 (Act 33 of 1976) if it had already not been filed who shall proceed to decide the same as expeditiously as possible.

19. In view of the aforesaid directions that have been given by the High Court it can be said that the assessee who leases expired in 1958 and 1963, can ask for grant of fresh leases on the terms and conditions mentioned in 1959 and 1960 Orders issued by the Government of Uttar Pradesh. In other words it can be said that in the relevant assessment years the assessee had the right to obtain fresh leases for the lands of the properties in question. But there is nothing to show that in pursuance of the said right fresh leases have been granted by the Government of U.P. in respect of those lands and such leases were available to the assessee during the assessment years in question.

20. For the reasons aforesaid it must be held that the properties in respect of which leases had expired in 1958 and 1963 and notices had been received by the assessee to hand over the possession were not assets within the meaning of Section 2(e)(2)(iii) of the Act and the valuation of the same was not liable to be included in the net wealth of the assessee. Question 1 referred by the Tribunal to the High Court must, therefore, be answered in the negative i.e. in favour of the assessee. Question 2 referred by the Tribunal to the High Court is connected with question 1 and both the questions were considered by the High Court together. Since question 1 is answered in favour of the assessee, question 2 must also be answered in the negative i.e. in favour of the assessee and it must be held that the Tribunal was not right in holding that the interest of the assessee in respect of the properties in dispute was for a period over six years for the purpose of Section 2(e)(2)(iii) of the Act.

21. In the result the appeals are allowed and the judgment and order of the High Court is set aside insofar as it relates to questions 1 and 2. The said questions are answered in favour of the assessee and against the revenue. No order as to costs.

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