

SUPREME COURT OF INDIA

Commissioner of Wealth Tax, Hyderabad

Vs.

Trustees of Heh. Etc.

(N S Hegde and B Singh JJ.)

01.11.2002

ORDER

1. The primary question which arises for our consideration in these appeals is whether the probable estate duty payable on the death of the life-tenant has to be taken into account and the value of the property will be diminished by that for charge of wealth tax in the hands of the remainder man.
2. The Revenue strongly relies upon a judgment of this Court in *Bharat Hari Singhania and Ors. v. Commissioner of Wealth tax (Central) and Ors.*¹ wherein this Court while considering the valuation of the estate for the purpose of the Wealth Tax Act though arising under Rule 1-D of the Rules therein held :

"The contention of the learned counsel, in this behalf, is rather involved if not obscure. The argument runs thus: Section 7(1) says that the value of an asset shall be the price which such asset would fetch if sold in the open market on the valuation date. In other words, the sub-section creates a fiction of sale of such asset on the valuation date for the purpose of determining its market value. Once a fiction is created, it must be carried to its logical extent and the court should not allow its imagination to be boggled by any other considerations. If an asset is sold, it would be subject to capital gains tax. For finding out the net wealth received in the hands of assessee, one must necessarily deduct the capital gains tax. Then alone one can arrive at the net price which the assessee will receive - and that should be the market value. We must say that the entire argument is misplaced. There is no sale of the asset and there is no question of capital gains tax being attracted or being paid. For the purpose of determining the market value, the sub-section says that the Wealth Tax Officer shall make an estimate of the price which the asset would fetch if sold in the open market on the valuation date. The sub-section speaks of the market value of the asset and not the net income or the net price received by the assessee. This is not a case where a fiction is created by Parliament. It is only a case of prescribing the basis of determination of market value. On the same reasoning, it must be held that no other amounts like provision for taxation, provident fund and gratuity etc. can be deducted. The contention of the learned counsel for the assessee is, therefore, wholly unacceptable."

3. Based on the above principle laid down in Singhanian's case (supra), Revenue contended that in view of the fiction created by the Statute, there is no question of making any deduction from the market value of the property under any possible head; be it a payment to be made under a taxing statute or otherwise while determining the value of the estate for the levy of wealth-tax. Therefore, the Revenue contends, assuming that there is a possibility of any demand being made on the estate for the payment of estate duty, the same cannot be deducted from the actual market value of the property while assessing the property for wealth-tax. The High Court in the course of the order impugned in these appeals, has distinguished this judgment of the Supreme Court on facts and has placed reliance on another judgment of this Court which, according to the High court, covers the facts involved in the case before it i.e. the case of *Commissioner of Wealth-Tax, A.P. v. Trustees of H.E.H. Nizam's Family (Remainder Wealth) Trust*².

4. Mr. S. Ganesh, learned senior counsel appearing for the respondent, contends that the High Court was justified in relying upon the judgment of this court in the case of Trustees of Nizam's Family Trust (supra) which both on facts and law fully cover the facts in the present appeals. he also contends that this Court in the case of Hari Singhanian (supra) has not laid down any principle in law but has only decided that case on facts of that case which involved a valuation under Rule 1-D of the Wealth Tax Rules, hence, the said observations of this Court in the case of Hari Singhanian (supra) do not apply to the facts of the appeals in hand.

5. We do see some force in the arguments of the learned counsel for the respondent that on facts it could be said that the decision in Nizam's Family Trust case (supra) is more akin to the facts of the appeals before us now. But then we do not agree with the learned counsel for the respondent that what is stated in Hari Singhanian's case (supra) is only an obiter of an issue decided on facts. A perusal of the judgment extracted hereinabove clearly shows that this Court in Hari Singhanian's case (supra) has in specified terms laid down the principle that in cases where the statute creates a legal fiction for determination of market value, no amount like provision for taxation, PF and gratuity etc. can be deducted from the market value of the estate while evaluating the estate for the levy of wealth-tax. If this be the correct principle in law then it will not be possible for the respondents to contend that the value of the estate duty payable, if any, should be deducted from the market value of the state while determining the wealth-tax. If the principle what we have understood it to be, enunciated in the Hari Singhanian's case (supra) is correct then the same, in our opinion, runs counter to the earlier decisions of this Court in the case of Nizam's Family Trust (supra) and both judgments being judgments of a Bench of three Judges, we think it appropriate that this issue should be settled by a larger Bench. Therefore, we direct that the papers of these appeals and connected matters be placed before the Hon. C.J.I. for appropriate orders.

¹1994 Supp (3) SCC 46

²1977 108 ITR 555