

KERALA HIGH COURT

Annamma Paul Perincherry

Vs

Commissioner of Wealth-Tax

(P Govindan Nair, C.J. T K Iyer, J.)

10.11.1971

JUDGMENT

Govindan Nair, J.

1. These are references under Section 27(1) of the Wealth-tax Act, 1957. The assessment years are 1960-61, 1961-62 and 1962-63. The assessee in all these years is the same individual, and the question which is a common one for all the three years referred to us is in these terms :

" Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in upholding the inclusion of Rs. 75,000 in the net wealth of the assessee for the assessment years 1960-61, 1961-62 and 1962-63?"

2. During the assessment to income-tax of the same assessee for the years 1957-58, 1958-59 and 1959-60, additions have been made to the disclosed income on the basis that the assessee had been carrying on other business benami for the assessee in the name of Raman and Company. Large amounts were therefore added to the income by the assessing authorities and it is on the basis that this income was available with the assessee as an asset on the respective valuation dates which are March 31, 1960, March 31, 1961, and March 31, 1962, for the three assessment years, that additions were made by the Wealth-tax Officer of a sum of Rs. 80,000 in the first of these years and a sum of Rs. 90,000 for each of the subsequent years. The assessee appealed and the Appellate Assistant Commissioner felt that since the assessments to income-tax had been finalised only after the wealth-tax assessment was over, the extent of additions were not justified and he reduced the additions to Rs. 75,000 each for the three years. The assessee went up in further appeal to the Appellate Tribunal and the Tribunal dismissed the appeal, relying on a decision of the Madras High Court in *S. Kuppuswami Mudaliar v. Commissioner of Income-tax*¹, and a decision of this court in Income-tax Referred Case No. 24 of 1966. After referring to these decisions, the Tribunal in its order observed as follows :

" We feel that the earlier decision in the income-tax proceedings has established that the

assessee was in possession of assets as a consequence of carrying on business benami in the names of others. The assets so found to belong to him have to be included in the net wealth of the assessee for the years under appeal unless the assessee is able to prove that the assets no longer belonged to him. No such evidence having been adduced by the assessee, the department's action in assessing it to wealth-tax has to be upheld."

3. The charge under the Wealth-tax Act is on the net wealth of an assessee and " net wealth " has been defined in Section 2(m) of the Wealth-tax Act, 1957, in the following terms :

" (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,--."

4. It is unnecessary for our purpose to refer to the exclusions contained in the definition.

5. " Valuation date ", in relation to any year for which an assessment is to be made under the Wealth-tax Act, 1957, means the last day of the previous year as defined in Section 3 of the Income-tax Act if an assessment were to be made under that Act for that year (vide Section 2(q)). The assets that could, therefore, have been assessed in this case were assets which the assessee was in possession of on the three dates March 31, 1960, March 31, 1961, and March 31, 1962.

6. From the fact that the assessee had been taxed on estimated income for the years 1957-58, 1958-59 and 1959-60, it is not possible to postulate that either at the time those assessment orders were made or at any subsequent time thereafter the assessee was possessed of the income assessed as an " asset ". Even this is not enough for the purpose of the assessment to wealth-tax. It must be established that the assessee had assets on the valuation dates mentioned above. There is certainly no presumption that income that had accrued as long ago as three years before the valuation dates should be available as an "asset" on that date. It appears to us that the Tribunal took it as axiomatic that assessment to income-tax is sufficient to assume that the assessee was possessed of assets, to the extent to which income had been estimated and assessed, on the valuation date. We feel that there is no justification for such an assumption.

7. The decisions referred to by the Tribunal have no application. The decision in *S. Kuppuswami Mudaliar v. Commissioner of Income-tax*², dealt with the question whether income that had been estimated for the purpose of assessment to income-tax is merely notional or fictitious or it is real income. The decision was that the income is real income and the assessee's plea that investments subsequent to the relative accounting periods were made with the estimated income cannot be brushed aside on the ground that the estimated income is unreal, notional or fictitious. This case is of no help in deciding the question nor do we think the decision of this court in Income-tax

Referred Case No. 24 of 1966 has any application. That was a case in which a particular asset was admittedly in existence immediately prior to the valuation date. The burden then was cast on the assessee to prove that the asset did not exist on the valuation date. In the absence of such proof the asset was taken to have existed on the valuation date.

8. The assessee had not admitted that the income found to have accrued due to him during the relative accounting periods for the assessment years 1957-58, 1958-59 and 1959-60 existed with him on any date in part or as a whole as his asset. There is no presumption as we indicated earlier that the whole of the income or any part of it continued as an asset of the assessee. There was no material whatever to indicate that there were any assets other than those disclosed in existence on the valuation dates. In these circumstances, the question referred to us has to be answered in the negative, that is, in favour of the assessee and against the department. We accordingly answer the question referred to us in the negative.

9. A copy of this judgment under the seal of the High Court and the signature of the Registrar will be forwarded to the Income-tax Appellate Tribunal, Cochin Bench.

Cases Referred.

1 [1964] 51 I.T.R. 757 (Mad)

2[1964] 51 I.T.R. 757 (Mad)