ORISSA HIGH COURT

Vysya Raju Badri Narayanamurthy

Vs

Commissioner of Wealth Tax

S.J.C. Nos. 42 of 1962 and Nos. 7 and 8 of 1963

(R.L. Narasimham, C.J. and R.K. Das, J.)

04.11.1963

JUDGMENT

Narasimham, C.J.

1. In these three references under Section 27(1) of the Wealth Tax Act 1957, the main question for consideration is the constitutional validity of the Wealth Tax Act (hereinafter referred to as the Act). In reference No. 42 of 1962 which deals with assessment to Wealth Tax for the year 1957-58 the further question for decision by this Court is whether the Act could have limited retrospective effect so as to apply to the wealth of an assessee for the previous year.

2. The Act was passed by Parliament and brought into force with effect from 1-4-1957. The statement of Objects and Reasons (see Gazette of India Extraordinary dated 28th March 1957, Part II, Section 2, page 132) reveals that the object of the Act is to impose an annual tax on the net wealth of individuals, Hindu Undivided families and companies.

> "The Wealth Tax is an important constituent of an integrated tax structure which the Government have been aiming at for sometime and it is consistent with the avowed goal of the attainment of a socialistic pattern of society."

This goal appears to have been aimed at with a view to implement Article 39(c) of the Constitution which seeks to prevent concentration of wealth in the hands of a few individuals which is perhaps the necessary evil of any capitalistic system. The Act authorizes the imposition of Wealth Tax at certain rates on the net wealth, either of an individual or of a Hindu undivided family subject to certain exemptions specified in Section 5. The schedule attached to the Act gives the rates at which wealth tax is livable on the net wealth. Different rates of assessment have been provided for assessing tax on (i) individual and (ii) a Hindu undivided family. The net wealth of a person is defined in clause (24) of Section 2 of the Act and it would include all assets including moveable and immoveable property. Section 4, however, says that in computing the net wealth of an individual any transfer made directly or indirectly, otherwise than for adequate consideration, either to a wife (living with him) or to a minor child, shall be ignored and the

assets so transferred shall be computed as the net wealth of the transferor himself. That section further provides that transfers to other persons also, if the transfer is revocable, shall be ignored.

3. The constitutional validity of the Act was challenged (1) in Bombay in *Mahavirprasad Badridas v. M.S. Yanik*[1], (2) in Andhra Pradesh in *Subramanyam v. Addl. Wealth Tax Officer, Eluru*[2], (3) in Allahabad in *Jugal Kishore v. Wealth Tax Officer Special Circle 'C' Ward, Kanpur*[3], (4) in Kerala in *Mammad Keyi v. Wealth Tax Officer, Calicut*[4], and (5) in Mysore in *Krishna Rao v. Third Wealth Tax Officer*[5], In all these decisions the High Courts have upheld the validity of the Act. In Kerala however, the learned Judges (in AIR 1962 Kerala 110) struck down the provisions of the Act relating to Hindu undivided families as unconstitutional on the ground that there is an unfair discrimination between a Hindu undivided family and a non-Hindu undivided family such as the Moplah family governed by the Marumakatayan law and the Christian undivided family.

4. Mr. Narasaraju, eminent counsel for the petitioner, while reiterating some of the arguments which were rejected in the aforesaid decisions, raised some new points also which require careful consideration. His submissions may be classified as follows :-

> (i) The legislative competence of Parliament to pass the Act which depends on a proper construction of entry 86 of List I of the 7th schedule to the Constitution along with Entry 49 of List II of the said schedule.
> (ii) Contravention of the fundamental rights guaranteed under Article 14 and Article 19(1)(f).

5. Parliament passed the Act in exercise of the legislative power conferred by Entry 86 of List I of the Seventh Schedule, which reads as follows :-

> "Tax on the capital value of the assets, exclusive of agricultural land, of individuals and companies."

Entry 49 of the State list (List II) reads as follows :

> "Taxes on lands and buildings."

This entry is exclusively within the State field. It is true that paramountcy is given to the legislative power of Parliament by the non-obstante clause occurring in Clause (1) of Article 246 of the Constitution; and clause (3) of the Article makes the power of the State Legislature subject to the power of the Union legislature under Clause (1). Hence there can be no doubt that if there is any overlapping between Entry 86 of List I and Entry 49 of List II, Parliament's power to legislate must prevail.

6. But as pointed out by the Federal Court in Central Provinces and Berar Sales of Motor Spirit and Lubricants Taxation Act 1938. In the matter of, AIR 1939 FC 1 :

> "A reconciliation should be attempted between two apparently conflicting jurisdictions by reading the two entries together and by interpreting and where necessary modifying the

language of the one by that of the other. If indeed such reconciliation should prove impossible, then and only then will toe non-obstante clause operate and the Federal power prevail. But the clause ought to be regarded as a last recourse a witness to the imperfections of human expression and the fallibility of legal draftsmanship."

The aforesaid observations were made while construing the corresponding provisions of the Government of India Act, 1935 (Section 100).

7. As regards the principles to be followed in construing entries dealing with legislative power their Lordships of the Supreme Court in *Jagannath Baksh Singh v. State of U.P*[6]*.,* (paragraph 10) observed as follows :

"It is an elementary, cardinal rule of interpretation that the words used in the Constitution which confer legislative power must receive the most liberal construction and if they are words of wide amplitude they be interpreted so as to give effect to the amplitude. It would be out of place to put a narrow or restrictive construction on words of wide amplitude, in a Constitution. A general words used in an Entry like the present one must be construed to extend to all ancillary or subsidiary matters which can fairly and reasonably be held to be included in it."

8. Mr. Narasaraju's argument as regards the construction of the two entries may be summed up as follows :-

(i) Construing Entry 86 of List I and Entry 49 of List II harmoniously, the "assets" referred to in Entry 86 of list I must be held to exclude all lands - whether agricultural or non-agricultural,- and buildings and the State Legislature alone has the right to legislate for the imposition of taxes on lands and buildings.
(ii) The collocation of the entries from 82 to 88 in list I shows that a tax can be levied only once in respect of taxable event and just as the same income cannot be charged twice to income-tax (entry 82) or the same goods cannot be charged twice to customs duty (entries 83 and 84) or there cannot be an imposition of death duty or succession duty more than once (entries 87 and 88), entry 86 should be so construed as to prevent the same assets from being taxed more than once.
(iii) The expression 'individual' in entry 86 must be so construed as to exclude a Hindu undivided family.
(iv) Entry 86 does not authorize the levy of a tax on assets not belonging to individuals. Hence, transfers in favor of wives or minor children made out of love and affection (which are otherwise valid) should not be ignored only for the purpose of Wealth Tax.

9. Each of these arguments will be dealt with in turn.

10. As regards the first point, the very principle of construction of an entry in a Constitution enunciated by the Supreme Court in the case cited above, will go against Mr. Narasaraju's

contention, The word 'assets' in Entry 86 of List I is not qualified by any limiting expression. On the other hand by excluding agricultural lands only the framers of the Constitution made it absolutely clear that all other assets would come within the scope of that entry. It is true that Entry 49 of List II is also wide enough to include not only agricultural lands but also non-agricultural lands, as pointed out by the Supreme Court in AIR 1962 SC 1563 (paragraph 10). It was however urged that the makers of the Constitution could not have thought of conferring on the State Legislature the power to impose taxes on non-agricultural lands and at the same time conferring power on Parliament to levy taxes on the capital value of those lands. The obvious reply to this argument is that if that was the intention there is no reason why, in Entry 86 of List I, only agricultural lands should have been expressly excluded. There was nothing to prevent the makers of the Constitution from excluding, from the scope of that Entry, all lands and buildings (agricultural and non-agricultural). Apart from this reason I would, with respect, adopt the reasons given by the Bombay High Court in *Municipal Commr., Ahmedabad v. Gordbandas Hargovandas*[7], while construing the corresponding entries (Entry 55 of List I (Federal List) and Entry 42 of List II (Provincial List) in the Government of India Act 1935. There, the learned Judges pointed out, that the pith and substance of the two Entries were fundamentally different. Entry 55 (here Entry 86 of List I) dealt with capitalised value of assets whereas Entry 42 (here entry 49 of List II) was not directly concerned with the capitalised value of lands and buildings though in a particular piece of legislation the capital value may be taken as the basis for levying tax. That will only be a method of collecting tax which is an accident of administration to quote their Lordships of the Privy Council in *Governor-General-in-Council v. Province of Madras*[8], The aforesaid Bombay view has been adopted by the Kerala High Court in AIR 1962 Kerala no and by the Mysore High Court in AIR 1963 Mysore 111. The Bombay case went up in appeal to the Supreme Court and the judgment of the Supreme Court pronounced on 28-3-63 in C. A. No. 253 of 1956 does not yet appear to have been reported, (now reported in *Gordhandas Hargovandas v. Municipal Commr., Ahmedabad,*[9]). There the majority of the Judges set aside the judgment of the Bombay judgment on another ground. Hence they did not give their views on the constitutional question regarding the construction of Entry 55 of List I and 42 of List II of the Government of India Act 1935 but the minority Judge (Sarkar, J.) endorsed the view taken by the Bombay Judges and observed that the fact that the Bombay Act provided for the tax being quantified on the basis of the capital value of the land tax does not take it out of Item 42 of List II and place in item 55 of List I. The learned Judge further observed :

> "The Provincial Legislature had been given the power to tax units of lands and buildings irrespective of their value of assets".

It is true that in *Oudh Sugar Mills Ltd., Hargaon v. State of U.P*[10]., the Bombay view has not been accepted in full and some observations have been made to the effect that for the purpose of giving full scope to
Entry 49 of List II, Entry 86 of List I should be construed as excluding both agricultural and non-agricultural land from its scope. But the learned Judge (Sahai, J.) pointed out (paragraph 35) that this question did not directly arise for decision, and hence his observations are in the nature of obiter. In my opinion, the express exclusion of agricultural lands in Entry 86 of List I, is decisive. I would, therefore reject this contention of Mr. Narasaraju.

11. The entries dealing with the power of taxation are dealt with in List I, beginning with Entry

82 which deals with taxes on income other than agricultural income. It is true that the power of taxation conferred by Entries 82, 83, 84, 87 and 88 can be used only once in respect of a taxable event, such as income, entry of goods, production of goods, death duty, succession duty etc. But such a result flows from the nature of the taxable event which is the basis of those Entries. Thus the same sum of money cannot accrue as 'income' more than once, the same goods cannot enter a country or leave a country except once, and similarly a person can die only once and another person can succeed to a property only once. But as regards Entry 86 of List I the taxable event is the ownership of the assets; and the ownership continues unless it is divested subsequently. There is also no principle of public finance in support of the view that a tax on the capitalized value of assets can be levied only once. The location of Entry 86 in List I may be a mere accident of draftsmanship and too much importance should not be given to the collocation of the Entries, if the language of a particular Entry, on a reasonable construction does not support such a restrictive interpretation. Learned Standing Counsel for the Department rightly invited my attention to the provisions of Section 14 of tne General Clauses Act, which applies to the construction of Constitutional provisions also. There it is stated that the statutory power conferred (here by the Constitution) can be exercised from time to time as occasion arises unless a different intention appears. No such different intention appears in the language used in Entry 86. Mr. Narasaraju urged that if such a view be accepted it may be open to Parliament to authorise the levy of wealth tax on the same assets not only annually as at present, but once in three months or even once a month, and thus completely appropriate the net wealth of an assessee. This argument was advanced also to show the unreasonableness of the restriction while considering the infringement of Article 19(1)(f) of the Constitution. In my view this is more a question of policy which must be left to the wisdom of the Legislature than one of interpretation of a Constitutional provision. In the well known saying of Chief Justice *Marshall M'Culloch, v. Maryland*[11], the power to tax also include the power to destory. The limitations of this principle have however been summarized in a recent book 'American Jurisprudence' Vol. I, Taxation, pages 80-81 as follows :

> "When a legislative body having power to tax a certain subject-matter actually imposes such a burdensome tax as effectually to destroy the right to perform the act or to use the property subject to tax, the validity of the enactment depends upon the nature and character of the right destroyed. If so great an abuse is manifested as to destroy natural and fundamental which no free government could consistently violate, it is the duty of the Judiciary, to hold such an Act unconstitutional. In any other case however, since the taxing power conferred by the Constitution knows no limits except those expressly stated in that instrument, it must follow that if a tax is within the lawful power, the exertion of that power may not be judicially restrained because of the results to follow from its exercise."

In a very recent, unreported judgment of the Supreme Court in *Rai Ramkishna v. State of Bihar*[12] the same principle has been reiterated as follows :

> "The quantum of tax levied by the taxing statute, the conditions subject to which it is levied, the manner in which it is sought to be recovered - are all matters within the competence of the Legislature, and in dealing with the contention raised by a citizen that

> the taxing statute contravenes Article 19, Courts will naturally be circumspect and cautious. Where for instance it appears that the taxing statute is plainly discriminatory, or provides no procedural machinery for assessment and levy of the tax, or that it is confiscatory, Courts would be justified in stinking down the impugned statute as unconstitutional. In such cases the character of the material provisions of the impugned statute is such that the Court would feel justified in taking the view that in substance the taxing statute is a cloak adopted by the Legislature for achieving its Confiscatory purposes".

But this question is to some extent academic here, because under the scheme of the Act wealth tax is assessable on the net wealth only once a year. The constitutional validity of the Act may open to challenge if the charging section (section 3) is worded so as to authorise the levy of wealth tax on the net wealth say once a fortnight or once a month, so as to make it oppressively burdensome or confiscatory in nature, within the meaning of the principles enunciated in the aforesaid passages. But as the section stands at present, it is not open to any such challenge.

12. The third contention of Narasaraju deals with the interpretation of the word 'individual'. It is true that in the Indian Income-tax Act the word 'individual' is used in contradistinction to a Hindu undivided family, but the argument that the makers of the Constitution being aware of this distinction made in the Indian Income-tax, must be presumed to have accepted that distinction while making Entry 86 of List I, is somewhat far fetched. In fact, their Lordships of the Supreme Court themselves in *Commissioner of Income Tax, Madhya Pradesh and Bhopal v. Sen Sodra Devi*[13], have pointed out that the word 'individual' has not been defined in the Income-tax Act and there is authority for the proposition that the word "individual" does not mean only a human being but is wide enough to include a group of persons forming a unit. A Hindu undivided family is not a corporation but is merely a group of individuals forming a unit - See AIR 1960 Bombay 191 followed in AIR 1961 Andhra Pradesh 75 and AIR 1962 Kerala 110. Doubtless the Allahabad High Court in AIR 1961 Allahabad 487 has taken a slightly different view. The majority of the Judges were of opinion that a Hindu undivided family may not come within the scope of the expression 'individual' but one of the learned Judges (Gurtu, J.) was prepared to go so far as to hold that legislation in respect of wealth tax on a Hindu undivided family would be saved by the residuary power conferred by Entry 97 of List I. Only one
Judge (Upadhya, J.) was prepared to go so far as to say that the Act is ultra vires inasmuch as it imposes a tax on the capital assets of a Hindu Undivided family. With respect I am inclined to follow the view taken by the Bombay, Kerala, Andhra High Courts in this respect.

13. The fourth contention of Mr. Narasaraju is in respect of Section 4 of the Act. It was urged that when the legislative power conferred by Entry 86 of List I is restricted to assets of individuals, the Legislature cannot by a deeming provision in the Act, include the assets of some other persons for the purpose of taxation. He contended that if there is a transfer by an individual in favour of his wife (living with him) or his minor children even without consideration, which is otherwise valid under any other law in force in India (such as the Transfer of Property Act) the Legislature while passing the Act must recognise such transfers and cannot, by a deeming provision in Section 4 of the Act, ignore such transfer, for the purpose of assessment. The object of Section 4 is clear. It is meant to prevent evasion of tax by transfer made by an assessee in

favour of his wife or minor children living with him, and also transfers made in favour of other persons which are not irrevocable. It was conceded by Mr. Narasaraju that the power to legislate for the levy of a tax includes the ancillary power to legislate for the purpose of preventing evasion of such tax and, in my opinion, Section 4 of the Act has been enacted in exercise of this ancillary power of preventing evasion. I shall discuss this section presently while dealing with Mr. Narasaraju's arguments on infringement of fundamental rights under Article 19(1)(f) but it is sufficient to say at this stage that that section cannot be held to be outside the legislative competence of Parliament conferred by Entry 86 of List I.

14. As regards infringement of fundamental rights the main argument of Mr. Narasaraju is that Article 19(1)(f) is contravened and the provisions of the Act will not amount to a reasonable restriction in the interest of the public saved by Clause (5) of Article 19. The unreasonableness, according to him, arises in the following manner:

> (a) Recurring Tax on the same assets of a person is excessive interference with citizen's right to hold property.
> (b) Refusal to recognize the validity of transfers in favor of wives and minor children is also an unreasonable restriction.

15. These arguments do not appeal to me. It is conceded that the wealth tax is (sic) levied by the authorities for taxation may abridge the fundamental rights. It is true that their Lordships of the Supreme Court in *Chhotabhai Jethabhai Patel and Co. v. Union of India*[14], emphasised that though taxation laws may not be hit by Article 31(2) nevertheless they must satisfy tile requirements of Articles 14 and 19. But in considering whether the restrictions are reasonable or not, the Court must have due regard to the Directive Principles of State Policy. Hence once it is held that the levy of wealth tax is for a public purpose, i.e., for preventing the concentration of wealth in a few hands, even periodical levy of the tax annually for that purpose, with a view to implement the provisions of Article 39(c) must be held to be a reasonable restriction, subject to the limitations mentioned in the passages quoted at page 10 of this
judgment. Then again, the refusal to recognise a transfer in favour of wives and minor children living with the assessees where such transfer is not for adequate consideration (though otherwise valid), must be held to be a reasonable restriction having regard to the main object of preventing large scale evasion of the tax. Doubtless, if such transfers have been ignored for all purposes the restriction may be held to be unreasonable. But it should be remembered that Section 4 only refuses to recognize such transfers for the limited purpose of assessment of wealth tax. The transfers are valid for other purposes. By expressly excluding those transfers made for adequate consideration or made in favour of a wife who is living separate from the husband assessee, the apparent unreasonableness of the restriction is removed.
16. It should be pointed out here that there is a similar provision in the Indian Income-tax Act 1922 - see Section 16(3). Though the Constitution has been in force from 1950, this provision has not been challenged till now on the ground that it amounts to an unreasonable restriction on the fundamental right of a person to hold and dispose of property. On the other hand, in a very recent (unreported) judgment of Supreme Court in *Philip John Plasket Thomas v. Commissioner of Income-tax Calcutta*[15], the aforesaid provision in the Income-tax Act was analysed and it was observed;

"It clearly aims at foiling an individual's attempt to avoid or reduce the incidence of taxation by transferring his assets to his wife or minor child."

17. The challenge under Article 14 is also equally unconvincing. Mr. Narasaraju relied to some extent on Kerala decision (already cited) striking down the provisions of the Act dealing with a Hindu undivided family on the ground that it discriminated in favor of other (non-Hindu) undivided families. He further urged that the rates of tax as given in the schedule provinding for different rates for individuals and Hindu undivided families amounts to unfair discrimination.

18. The scope of Article 14 of the Constitution has been explained in innumerable decisions by their Lordships of the Supreme Court and it is unnecessary to refer to them in detail here. The peculiar problem arising out of the existence of undivided families amongst non-Hindus does not arise in this State and in most other States in India. Moplahs following the Marumakathayam law are found only in Kerala. Similarly, Christians following the Hindu Law of coparcenery even after conversion must be very few indeed. It is open to Parliament to say that the number of undivided families of non-Hindus who may be assessable to wealth tax is so negligible that it is not necessary to treat them as a separate entity. Again, it is open to the Legislature to classify a Hindu undivided family as a distinct unit apart from an individual, for the purpose of levying a separate rate of tax. This is a well known feature found in the Indian Income-tax Act also, and, as far as I know, such classification has not been challenged as offending Article 14. With respect therefore, I am unable to agree with the view taken by the Kerala High Court. I may also, in this connection, refer to another ingenious contention raised by Mr. Narasaraju. He urged that if for the purpose of construing Entry 86 in List I the expression 'individual' occurring therein is held to include an undivided family also, on the ground that a Hindu undivided family is only a group of individuals, the levy of a separate rate of wealth tax on Hindu undivided families as provided in the schedule to the Act, must be held to be
unconstitutional. According to him the interpretation of the word 'individual' in Entry 86 of List I must be logically followed up in the provisions of the Act also. This argument cannot bear scrutiny. Once it is held that the power to tax is conferred by the Entry, the classification of the assessees for the purpose of levying different rates of taxation, must be left to the wisdom of the Legislature, and it need not necessarily follow the same rule of construction applied in interpreting an Entry in the legislative list. Considerations of equity, reason of justice, have no place in a taxing statute, which must be construed only on the basis of the language used therein see Cape *Brandy Syndicate v. Inland Revenue Commrs*[16]*.,*

19. I may now notice the last Contention of Mr. Narasaraju. The Act was passed by Parliament and was published in the gazette only on 12-9-1957. But it was given retrospective effect from 1-4-1957. Mr. Narasaraju, quite fairly, conceded in view of the pronouncement of the Supreme Court in AIR 1962 SC 1006 that taxation measures may be retrospective, but urged that the computation of the net wealth with reference to the assets of the previous year on 31-3-1957 was not justified, because according to him, the Act cannot be given retrospective effect earlier than 1-4-1957. This argument is also not correct. For the purpose of computing wealth tax, the assets of the previous year as they stood on 31-3-1957 which are equivalent to the assets as on 1-4-1957 (the date on which the Act came into operation) have been taken into consideration. As pointed out by Lord Denman, C.J. in *The Queen v. St. Mary Whitechapel*[17]*,* a statute is not retrospective merely because a part of the requisites for its action is drawn from a time antecedent to its

passing. The assets of an individual on 1-4-1957 are alone liable to wealth tax, but they must necessarily include the assets acquired by him in the previous year.

20. For these reasons I hold that the Act does not suffer from any of the Constitutional infirmities as urged on behalf of the petitioner. I also hold that the assessment for the year 1957-58 is valid. Questions 1 and 2 are accordingly answered in the negative and question 3 is answered in the affirmative. There shall be one consolidated hearing fee of Rs. 200/- (two hundred rupees) payable to the opposite party.

R.K. Das, J.

21. I agree.

Answers accordingly.

Cases Referred.

[1] AIR 1960 Bom 191
[2] AIR 1961 And Pra 75
[3] AIR 1961 All 487
[4] AIR 1962 Ker 110
[5] AIR 1963 Mys 111
[6] AIR 1962 SC 1563
[7] AIR 1954 Bom 188
[8] AIR 1945 PC 98 at p. 101
[9] AIR 1963 SC 1742
[10] AIR 1960 All 136 (FB)
[11](1819) 4 Law Ed 579
[12]Civil Appeals Nos. 16 and 17 of 1963, D/-11-2-1963 (Now reported in AIR 1963 SC 1667)
[13] AIR 1957 SC 832 (834)
[14] AIR 1962 SC 1006 and AIR 1962 SC 1563
[15] Civil Appeals 352 to 355 of 1962, D/-22-03-1963 (Now reported in AIR 1964 SC 587)
[16]1921 (1) KB 64 and 1834-2 Dowl 497
[17](1848) 116 ER 811