

(1991) 06 KAR CK 0002

In the Karnataka High Court

Case No : T.R.C. No. 6 of 1986 & Tax Reference Case No. 6 of 1986

C.N. Nagakumar

APPELLANT

Vs

Commissioner of Wealth Tax

RESPONDENT

Date of Decision : 03-06-1991

Acts Referred:

Citation : (1992) 63 TAXMAN 99

Hon'ble Judges : R. Ramakrishna, J;K. Shivashankar Bhat, J

Bench : Division Bench

Advocate : S.P. Bhat and Ajit Kumar, for the Appellant; G. Chander Kumar and S.R. Shivaprakash, for the Respondent

Judgement

1. The question referred under the provisions of Wealth-tax Act, 1957 ("the Act") reads thus:

Whether, on the facts and in the circumstances of the case, the Tribunal is justified in upholding the assessment made by the Wealth-tax Officer on account of compensation receivable under the provisions of the Karnataka Land Reforms Act, treating the same as an asset within the meaning of section 2(e) of the Wealth-tax Act, 1957?

The assessee was the owner of the agricultural lands; there is no dispute that he lost his lands under the provisions of the Karnataka Land Reforms Act, 1961, and they vested in the State Government. But the compensation receivable by the assessee was not yet determined at the time of assessment. The amount was estimated at Rs. 1,19,000 and after giving the deduction, its value was determined for the purpose of the Act (for the assessment years 1976-77 to 1978-79), in the light of a circular issued by the CBDT dated 15-5-1964. There is also no dispute as to the mode of valuation in this case. The assessee contends that, since compensation is not yet determined and quantified, and he has no present right to receive the same, the statutory right to receive the compensation is not an "asset" at all falling within the taxable subject under the

Act.

2. The search for the answer requires finding out the nature of the compensation and mode of its determination under the Karnataka Land Reforms Act, 1961. As per section 44 all lands held by or in possession of tenants vest in the State Government with effect from 1-3-1974 and on such vesting all the rights of the owner stand transferred and vest in the State free from all encumbrances. The owner, whose rights have vested in the State Government, shall be entitled to receive only the amount as provided in Chapter III of the Act. Section 47 provides for the amount payable to the owner and it is determined with reference to the net annual income derivable from the land, in accordance with the scale stated in section 47. The net annual income is deemed u/s 47(2). The amount payable is determined after the Tribunal determines whether a land is tenanted u/s 48A (because such a finding is necessary for the vesting of the land, which relates back to 1-3-1974). Thereafter the Tahsildar determines the amount payable to the owner, including the question of apportionment; at that time encumbrances, etc., are also to be determined u/s 50 and the amount payable to the owner is after deducting the value of encumbrances u/s 50. The amounts are paid in the mode stated in section 51, i.e., cash to some extent and in non-transferable and non-negotiable bonds for the balance carrying interest at the rate of 5 1/2 percent per annum, maturing within a specified period not exceeding twenty years; it is unnecessary to refer to the details of these provisions.

3. The compensation is a determinable amount. There is a definiteness in the principles applicable to compute the amount; in cases of disputes there is a machinery to resolve the same by applying the norms presented by the said Act. The only snag or hindrance to its full enjoyment by the owner is the delay involved in its determination and waiting period prescribed to encash the bonds.

4. Commissioner of Wealth Tax, Bihar, Patna Vs. Maharaja Kumar Kamal Singh, is a decision of the Supreme Court. There was no dispute therein, that the right to receive compensation on the vesting of the estate in the Government was an "asset" and as such its value had to be taken in computing the net value of the assets; the Supreme Court says that "there is no doubt that it is..." thereby affirming that it is an asset. The only question was the mode of valuing the asset and it was held that possibility of deduction of the dues of the assessee for agricultural income tax from compensation money will have to be considered as a hindrance and its estimated value should be deducted and similarly, the fact that compensation was payable in 40 years is a factor which has to be taken into account and the face value of compensation bonds has to be discounted.

5. In Lakshmi Kant Jha Vs. Commissioner of Wealth Tax, Bihar and Orissa, the Supreme Court had already held that right to receive compensation under Bihar Land Reforms Act was an asset to be valued for purposes of Wealth-tax Act. The Supreme Court observed:

Perusal of the different provisions of the Bihar Land Reforms Act shows that as

soon as the estate or tenure of a proprietor or a tenure-holder vests in the State, he becomes entitled to receive compensation. The fact that the payment of compensation in terms of the provisions of the Act may be deferred and be spread over a number of years does not affect the right of the proprietor or tenure-holder to the compensation. The assessee, in our opinion, was vested with a right to get compensation immediately his land was vested in the State. Section 2(e) of the Act defines "assets" to include property of every description, movable or immovable, but does not include certain categories of property with which we are not concerned. The word "property" as mentioned by this Court in the case of Ahmed G.H. Ariff and Others Vs. Commissioner of Wealth Tax, Calcutta, is a term of the widest import and, subject to any limitation which the context may require, it signifies every possible interest which a person can clearly hold and enjoy. The definition of the "assets" as given in section 2(e) of the Act, though not exhaustive, shows its wide amplitude and we see no reason as to why the right to receive compensation cannot be included amongst the assets of an assessee." (p. 106)

Section 2(e) referred herein is the provision in the Act. Then assessee's contention that computation of compensation takes time and until then, there is no such asset, was negated in the following words:

Assuming for the sake of argument that the amount of compensation payable to the assessee had not been determined by the Compensation Officer by the valuation date, that fact would not justify the exclusion of the compensation payable from the assets of the assessee. The right to receive compensation became vested in the assessee the moment he was divested of his estate and the same got vested in the State in pursuance of the provisions of the Bihar Land Reforms Act. As the estate of the assessee which vested in the State was known and as the formula fixing the amount of compensation was prescribed by the statute, the amount of compensation was to all intents and purposes a matter of calculation. The fact that the necessary calculation had not been made and the amount of compensation had consequently not been qualified by the valuation date would not take compensation payable to the assessee out of the definition of assets or make it cease to be property. The right to receive compensation from the State is a valuable right, more so when it is based upon statute and the liability to pay is not denied by the State. It is no doubt true that the compensation is not payable immediately and its payment might be spread over a period of 40 years, but that fact would be relevant only for the purpose of evaluating the right to compensation. It would not detract from the proposition that the right to receive compensation, even though the date of payment is deferred, is property and constitutes asset for the purpose of the Wealth-tax Act." (p. 108)

A decision of the Calcutta High Court in Commissioner of Wealth Tax, West Bengal II Vs. U.C. Mahatab, was referred wherein such a right to receive compensation under West Bengal Estates Acquisition Act was held as not an

asset. The Supreme Court left open the correctness of the said decision. Further, the Supreme Court observed:

...Suffice it to say that the decision in that case proceeded upon the assumption that the provisions of West Bengal Estates Acquisition Act, 1953, were materially different from those of the Bihar Land Reforms Act...." (p. 109)

6. Shri S.P. Bhat, the learned counsel, strongly relied on the said Calcutta High Court decision in U.C. Mahatab's case (supra). The uncertainty of getting any compensation, under the relevant Act, was highlighted in the said decision. The ultimate decision rested on the finding that right to compensation under the said West Bengal Act was not a right at all, but a mere chance or expectancy, a possibility which may or may not mature. The Court held:

The argument for the revenue seemed to assume that it was a legal right complete in itself. This, in our view, is the basic fallacy in the arguments for the revenue. If this is at all any kind of a right, it appears, on an analysis of the different sections of the West Bengal Estates Acquisition Act, that it is at best a very inchoate right...."(p. 227)

The Bench observed that right to compensation, under certain circumstances, will be an asset. It was held:

We are not to be misunderstood as holding that a right to compensation under no circumstance cannot be property or assets. Certainly, such a right can be an asset or property in appropriate circumstances. The appropriate circumstances are that it must be a legal right, not inchoate, vague, indeterminate, problematical, contingent, and a mere possibility or expectancy. What we are holding is that it is not so on the present facts before us under the scheme and the sections of the West Bengal Estates Acquisition Act...." (p. 229)

The decision entirely rested on the facts of the said case. The compensation (referred as the "amount") under the Karnataka Land Reforms Act is not so vague, indeterminate, contingent, etc., as was the case under the above West Bengal Act. The provisions of the Karnataka Act are clear; fact that determination of the amount gets delayed in view of the procedural delays is no ground to hold that no compensation will be awarded and no right exists. The amount determined as payable relates back to the date of vesting and is payable within 20 years, as stated in section 51.

7. A detailed reference to jurisprudential concept of "property" and "asset" is unnecessary. Right to compensation, it cannot be denied, is a valuable asset, though its present value may not be as high as its face value; that is a matter to be considered while valuing it for the purposes of taxation. The assessee has not raised any dispute about the mode of valuation. There exists a distinction between a right being an asset and its value; the valuation of an asset depends upon several factors and in a given case, at a particular moment, the value of the asset may even be zero; still asset is an "asset".

8. Consequently, we are of the view that the question referred has to be answered in the affirmative and against the assessee. Reference answered accordingly.