**(1987) 03 KL CK 0011**

**In the High Court Of Kerala**

**Case No :** Income Tax Ref. No''s. 101 and 102 of 1982

COMMISSIONER OF INCOME TAX — APPELLANT

Vs

SARA VARGHESE. — RESPONDENT

**Date of Decision :** 13-03-1987

**Acts Referred:**

**Citation :** (1987) 66 CTR 231

**Hon'ble Judges :** Paripoornan, J

**Bench :** Division Bench

# Judgement

Paripoornan, J. - At the instance of the revenue, the following two questions of law have been referred for the decision of this Court :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal is right in law and on facts in holding that agriculture itself is a business, running of rubber estate is certainly business and are not the above findings wrong and perverse ?

2. Whether, on the facts and in the circumstances of the case, is not the assessee exigible to additional wealth-tax ?"

2. The respondent in both these cases is an assessee to wealth-tax. She is an individual. She owns 32 acres of land. Out of the above 32 acres, 26 acres are covered by rubber plantations. In the other 6 acres, there are trees like mangoes, coconuts, etc. There was also a building used as residence and as an office of above the assessee. We are concerned with the asst. yrs. 1973-74 and 1974-75. The Government of India by notification dated 6-2-1973 included Edappally within the limits of Cochin Corporation as urban land. On this basis, the WTO levied additional wealth-tax on these lands. The respondent-assessee contended that wealth-tax was not leviable in respect of these assets since agriculture itself is business. It was claimed that the entire land in question is taken up by that business and so it is a business asset. This plea was raised before the Tribunal. The Tribunal relied on the decision of the Punjab and

Haryana High Court in CWT v. Hari Singh (1980) 15 CTR (P&H) and held that running of rubber estate is certainly a business and that the assessee would be entitled to exemption from payment of additional wealth-tax in respect of the same. On motion by the Commissioner the questions of law have been referred for the decision of this Court.

3. We heard the counsel for the revenue, Mr. Menon. The respondent was not represented before us. As per s. 3 read with the Schedule, Part I, Paragraph A, rule No. (2), read with Paragraph B, rule No. 1(i) of Part I, the net wealth of a person includes the value of any asset being building or land, or any right in such building or land situated in an urban area (referred to as urban asset), other than business premises as it stood then. The short question that arises for consideration is, whether the agricultural land and building, in the urban land (urban asset) will be business premises for the purpose of Paragraph B, r. (1) of Part I and r. (2) of Para A, Part I of the First Schedule to the WT Act ? The Supreme Court in Konduri Buchirajalingam Vs. The State of Hyderabad and Others, at page 401 held that a producer of crops may engage in the business of selling or supplying and become a dealer for the purpose of the Sales Tax Act, 1958. Earlier, the Bombay High Court in Girdharilal Jiwanlal Vs. The Assistant Commissioner of Sales Tax (Appeals), Nagpur and Another, held that the cultivation of land may be undertaken with the object or purpose of carrying on the business of selling and supplying agricultural produce and in that case the person concerned will be dealer for the purpose of the Sales Tax Act. The word business has not been defined in the Wealth-tax Act, 1957 (hereinafter referred to as the Act). In such circumstances, what is the meaning to be given to that word, is the primary question. In Manmadhan v. Krishnappan Unni (1985) KLT 670, a Division Bench of this Court, to which one of us was a party, was construing the word business in the Government Servants Conduct Rules. It was observed :

"The word business has not been defined in the Government Servants Conduct Rules. We have to understand the word in the general sense. For that, it is permissible to look into the dictionary meaning of the term - Commissioner of Income Tax, West Bengal, Calcutta Vs. Raja Benoy Kumar Sahas Roy, . As stated in Halsburys Laws of England, Third edition, Vol. 38, page 10, Business is a wider term than, and not synonymous with trade; and means practically anything which is an occupation as distinguished from a pleasure. In Town Investments v. Department of Environment (1977) 1 All ER 813, Lord Diplock observed :

"The word business is an etymological chameleon; it suits its meaning to the context in which it is found. It is not a term of legal art and its dictionary meanings as Lindley, LJ pointed out in Rolls v. Miller Embrace almost anything which is an occupation, as distinguished from a pleasure anything which is an occupation or a duty which requires attention is a business ........."

Websters Third New International Dictionary, Vol. 1, p. 302, contains the various shades of meaning for the word business. A few of them are :

 

"A purposeful activity; activity directed towards some end; an activity engaged in as normal, logical, or inevitable and usually extending over a considerable period of time; a usually commercial or mercantile activity customarily engaged in as a means of livelihood and typically involving some independence of judgment and power of decision; transactions, dealing or intercourse of any nature; serious activity that requires time and effort and usually the avoidance of distracting influence; particular field of endeavour.

There are other shades of meanings as well. We should remember that the meaning of the word business depends upon the context and the status in which it occurs. In mercantile statutes or fiscal statutes it may mean one thing; but in non-mercantile statutes the same meaning cannot fit in."

4. In Hari Singhs case (supra) the Punjab and Haryana High Court held that agricultural operations involve carrying on systematic enterpreneurial activity with the help of capital and labour with a view to earn profits and the element of risk not being absent from such operations, agricultural operations will fall within the category of business. In this view it was held that where agricultural operations are carried on urban land, the said land would fall within the definition of the expression business premises as defined in r. 1(i), Paragraph B Part I of the Schedule to the WT Act, 1957, and would be entitled to exemption from the charge of additional wealth-tax on urban assets under paragraph (2). Even later in Commissioner of Wealth-tax Vs. Smt. Devinder Kaur, the said High Court took the same view. Smt. Devinder Kaurs case (supra) was taken in appeal by way of SLP before the Supreme Court (Special Leave Petition Nos. 5653 and 5655 of 1981). The Supreme Court rejected the special leave petition. It is so seen from (1983) 144 ITR 12. We concur with the decision of the Punjab and Haryana High Court in Hari Singhs case (supra). The Tribunal following the said decision, held that the running of the rubber estate is certainly a business and in view of the said decision, the assessee would be entitled to exemption in respect of additional wealth-tax. In the light of the above discussion, the said decision is justified in law.

5. We, therefore, answer question No. 1 referred to us in the affirmative, against the revenue and in favour of the assessee. We answer question No. 2 in the negative, against the revenue and in favour of the assessee.