
(1979) 12 AP CK 0007

In the Andhra Pradesh High Court

Case No : Case Referred No. 23 of 1977

Commissioner of Wealth Tax

APPELLANT

Vs

G.M. Omar Khan

RESPONDENT

Date of Decision : 27-12-1979

Acts Referred:

Estate Duty Act, 1953 — Section 36
Wealth Tax Act, 1957 — Section 27(2), 7

Citation : (1980) 4 TAXMAN 244

Hon'ble Judges : P.A. Choudary, J; Madhava Reddy, J

Bench : Division Bench

Advocate : P. Rama Rao, for the Appellant; Upendralal Waghray, for the Respondent

Judgement

Madhava Reddy, J.—This reference u/s 27(2) of the Wealth-tax Act, raises the following two questions for our decision: (1) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is justified in fixing the market value on the relevant valuation date at Rs. 14,05,536 in respect of the assessee's right to compensation for the lands acquired by the Government under the R.A.I.P. Act, 1952?

(2) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is justified in fixing the market value on the relevant valuation date at nil in respect of the assessee's right to compensation for the lands acquired by the Government under the R.A.I.P. Act, 1952?

The few facts necessary to appreciate how these questions arise may be briefly referred: Acs. 36.22 guntas of land situated in Hyderabad Urban Taluk belonging to the assessee who is an individual was acquired by the Collector and District Magistrate, Hyderabad, under the provisions of the Requisitioning and Acquisition of Immovable Property Act (XXX of 1952)(hereinafter referred to for short as "the R.A.I.P. Act "). The assessee laid a claim before the Collector for payment of compensation of Rs. 1,15,86,500 and 15% solatium thereon for the property

acquired. The Collector paid a sum of Rs. 14,05,536 to the assessee during the period relevant for the assessment year 1970-71. The Wealth-tax Officer noticing during the course of the assessment proceedings for the assessment year 1970-71 that the assessee had made a claim for compensation and solatium of Rs. 1,15,86,500, assessed the assessee to wealth-tax on a sum of Rs. 1,33,24,475 inclusive of solatium. The assessee claimed that he cannot be assessed for any amount over and above Rs. 14,05,536 which was the amount paid by the Collector and for the succeeding assessment year 1971-72 he claimed that the entire amount of Rs. 14,05,536 was invested for acquiring other assets which were accounted and no further amount which may be received by way of compensation on an ultimate decision of the case could be added, much less the amount of compensation claimed by him be treated as wealth for the purpose of assessment of tax under the Wealth-tax Act. The Wealth-tax Officer rejected his contention and treated the entire amount of compensation claimed by him as his wealth and assessed him to wealth-tax. The assessee carried the matter in appeal. The AAC who disposed of the appeal by his order dated September 30, 1972, observed that the compensation claimed by the assessee was not yet quantified by the Government under the R.A.I.P. Act, though entitlement to compensation arose in March, 1970, when the land was acquired. In these circumstances, the quantum of compensation receivable by the assessee as on the respective valuation date was an unascertained amount. The AAC further observed that the Government having committed itself to pay a minimum sum of Rs. 21,08,304 as compensation subject to further proceedings contemplated under the R.A.I.P. Act, paid a sum of Rs. 14,05,536, and the tax payable by the assessee would be assessed on Rs. 21,08,304 and not Rs. 1,33,24,475. But at the same time, the AAC directed that the balance of tax demand be kept in abeyance pending final determination of compensation. Accordingly, he partly allowed the appeal. The assessee preferred an appeal to the Appellate Tribunal and the Appellate Tribunal held that the market value of the right to compensation was to be estimated and that had to be estimated on the basis of the price which this right would fetch if sold in the open market on the relevant valuation dates. The Wealth-tax Officer erred in not assessing this value and in taking the figure claimed by the assessee as compensation before the District Collector as the basis for assessing the wealth-tax. The Tribunal categorically observed that the sum of Rs. 1,33,24,475 could never be taken as the market value of the property or the right to receive compensation for the land acquired. It also observed that even the sum of Rs. 21,08,304, considered by the Appellate Assistant Commissioner as the amount of compensation receivable by the assessee was also not correct, for, that amount was only determined tentatively subject to the final order and also because the title of the assessee itself was questioned by one Mohd. Osman Ali Khan and an arbitrator was appointed by the Government to go into that question. As the arbitration proceedings were not yet completed by the dates relevant for the assessment years in question and the assessee had received only Rs. 14,05,536 by April 2, 1970, it directed that amount to be taken as the basis for assessing the wealth-

tax for the assessment year 1970-71. For the assessment year 1971-72, the Tribunal was of the view that the value of the right to receive compensation for the assessment year was "nil", for the matter was still pending and in view of the dispute raised, no further amount could be added to the assessee's wealth for the purpose of determining his wealth-tax liability. 2. It cannot be disputed that the entire amount of compensation claimed by the assessee before the acquisition authorities under the R.A.I.P. Act cannot by itself form the basis for determining the wealth of the assessee for the relevant assessment years. The land is acquired in March, 1970, and the amount of compensation determined for that property as payable to the assessee would undoubtedly be the wealth for the relevant assessment year and if any amount is paid on or about that date that could also form the basis for assessing the wealth for that assessment year. But merely because he laid a claim for Rs. 1,33,24,475 that cannot be said to be his wealth either on the date when the land was acquired or subsequent thereto. After the acquisition, the only right that vested in the assessee was the right to receive compensation. The amount of compensation was to be determined in accordance with the provisions of the R. A. I. P. Act and any person aggrieved by that order is given a right to prefer an appeal. Unlike the provisions of the Land Acquisition Act, the R. A. I. P. Act does not even lay down that the Government is obliged to pay the entire amount of compensation as determined by the competent authority. Even the authority acquiring the property is given a right of appeal under the provisions of the R.A.I.P. Act, There is thus a possibility of reduction of that amount. However, as the right to receive compensation is itself an asset, the wealth-tax authorities are under an obligation to assess the same. Section 7 of the Act lays down that subject to any rules made in this behalf, the value of any asset, other than cash, for the purposes of this Act, shall be estimated to be the price which in the opinion of the Wealth-tax Officer it would fetch if sold on the valuation date. This provision is in pari materia with section 36 of the Estate Duty Act under which the estate of the deceased has to be estimated for the purpose of levy of estate duty. Dealing with the provisions of the said Act with reference to the land acquired under the provisions of the Land Acquisition Act before the death of the estate holder for the purpose of determining the liability of the accountable person to pay the estate duty the Supreme Court in Civil Appeal No. 2205/72 Mrs. Khorshed Shapoor Chenai and Others Vs. Assistant Controller of Estate Duty, Andhra Pradesh and Others,):

It will be the duty of the assessing authority under either of the enactments to evaluate this property (right to receive compensation at market value on the date of relevant notification) as on the relevant date (being the date of death under the Estate Duty Act and valuation date under the Wealth-tax Act). u/s 36 of the Estate Duty Act the assessing authority has to estimate the value of this property at the price which it would fetch if sold in the open market at the time of the deceased's death. In the case of the right to receive compensation, which is property, where the Collector's award has been made but has not been accepted or has been accepted under protest and a reference is sought or is

pending in a Civil Court at the date of the deceased's death, the estimated value can never be below the figure quantified by the Collector.

3. Even this stipulation cannot be imposed with reference to the land acquired under the R.A.I.P. Act. The Supreme Court further laid down thus (p. 32):

.... the estimated value can be equal to the Collector's award or more but can never be equal to the tall claim made by the claimant in the reference nor equal to the claim actually awarded by the Civil Court inasmuch as the risk or hazard of litigation would be a detracting factor while arriving at a reasonable and proper value of this property as on the date of the deceased's death. The assessing authority will have to estimate the value having regard to the peculiar nature of the property, its marketability and the surrounding circumstances including the risk or hazard of litigation looming large at the relevant date.

4. These factors, as observed by the Supreme Court, would have to be taken into account even for the purpose of determining the value of the wealth as on the date of valuation for the purposes of wealth-tax. The risk involved in the case of acquisition of property under the R.A.I.P. Act is much more, for, the amount of Rs. 21,08,304 determined by the Collector as the compensation which may be paid for the lands acquired is not binding on the Government. Out of that amount only 80%, i.e., Rs. 14,05,536, has been paid. As that amount was paid on April 2, 1970, that can properly form the basis for holding that the value of the wealth of the assessee as on the date of acquisition, i.e., March, 1970, was at least fourteen lakhs. Though there is a prospect of the entire compensation on reference to the competent authority being reduced below that amount, still the fact that Rs. 14,05,536 has been paid cannot be ignored. That is certainly the wealth in the hands of the assessee. Although a dispute is raised as to the right of the assessee to receive compensation, the fact that he is in possession of the wealth cannot be ignored. That position is well settled. However, merely because there is a prospect of his receiving a higher amount of compensation, that prospect itself does not constitute wealth as on the relevant date of valuation for the purpose of the assessment year 1970-71 or the subsequent assessment year 1971-72. Following the judgment of the Supreme Court in the matter of determining the value of the right to receive higher compensation in R. C. No. 182 of 1976, this court by judgment dated December 26, 1979 Controller of Estate Duty Vs. Estate of Late Mohd. Sultan, , to which both of us were parties, held that while the amount awarded by the Collector is a safe index for determining the value of the right to receive the compensation and such value can never be less than the said amount, that is not final, nor is the claim of the estate-holder, or his legal heirs for enhanced compensation final. Neither the ultimate compensation that is awarded by the final court of appeal, nor the compensation determined by the court subsequent to the death of the deceased estate-holder, could be deemed as final for the purpose of arriving at the principal value of the estate u/s 36. These are all relevant factors which are to be taken into account for determining the value of the right to receive compensation

which alone forms part of the estate. In a given case not merely the amount of compensation but even the right to receive compensation may be in dispute. That again is a factor to be taken into account. For litigating with a view to earn the enhanced compensation, the time spent and the expenditure likely to be incurred, are all factors which would weigh with any person if the right to receive compensation were to be put in the market for sale on the date of death. Hence, those factors are also relevant even for the purpose of determining the value of the wealth of the assessee for the purpose of assessing the wealth-tax. The Appellate Tribunal was, therefore, right in assessing the value of the wealth of the assessee at fourteen lakhs odd which was paid to him on April 2, 1970. As there is a prospect of the said amount being reduced and there is no prospect of the amount being paid in the near future in the circumstances, no further addition could be made to that amount. For the year 1971-72, when the claim of the assessee that he has invested the entire amount of Rs. 14,05,536 in acquiring the other assets is not in dispute, the fact that the claim for higher compensation is still pending, cannot be made a ground for assessing the value of the asset at any higher amount than Rs. 14,05,536, That higher amount has neither been received nor has it any market value for the assessment year 1971-72. We are, therefore, clearly of the view that no further amount could be added to the assessee's wealth for the assessment year 1971-72. In view of the aforesaid discussion, we answer both the questions in the affirmative and in favour of the assessee. Ordered accordingly. No costs.