

(1978) 04 CAL CK 0071
In the Calcutta High Court
Case No : Matter No. 171 of 1971

Commissioner of Wealth Tax

APPELLANT

Vs

Md. Ismail

RESPONDENT

Date of Decision : 21-04-1978

Acts Referred:

Transfer of Property Act, 1882 — Section 105
Wealth Tax Act, 1957 — Section 2

Citation : (1979) 117 ITR 273

Hon'ble Judges : Dipak Kumar Sen, J; C.K. Banerji, J

Bench : Division Bench

Advocate : Suhas Sen, for the Appellant; None, for the Respondent

Judgement

Sen, J.—This is a reference under the Wealth-tax Act, 1957. At the instance of the CWT, West Bengal-II, the Tribunal u/s 27(1) of the Act has drawn up a statement of case and has referred the following question as a question of law arising out of its order :

"Whether, on the facts and in the circumstances of the case, the asses-see's right as a tenant in the property under the lease dated July 25, 1960, is an asset within the meaning of Section 2(e) of the Wealth-tax Act, 1957?"

2. The relevant facts found and/or admitted in these proceedings are shortly as follows: The assessee had taken on lease a property known as Nos. 225B and 225C, Lower Circular Road, Calcutta, and had been running a boarding house therein. The lease expired in 1949, Thereafter there were proceedings between the landlord and the assessee which were ultimately settled. A fresh lease was executed on the 25th July, 1960, for a period of 21 years. Separate fixed rents for each period of 5 years within the total period of demise were stipulated in the said lease. In the assessment of wealth-tax of the assessee for the assessment year 1963-64, the relevant valuation date being 31st December, 1962, the WTO included in the net wealth the value of the said leasehold computed at Rs. 5,99,352. On appeal the AAC upheld the decision of the WTO.

3. There was a further appeal by the assessee to the Tribunal. It was contended on behalf of the assessee in the appeal that the leasehold interest of the assessee in the said premises was not an asset within the meaning of the W.T. Act, 1957, and it could not be taxed. The revenue contended on the other hand that the expression "asset" in the W.T. Act included both movable as also immovable property and a leasehold interest would be included within immovable property.

4. The Tribunal considered Section 2(e)(v) of the W.T. Act, 1957, which defined the word "asset" and concluded that it was not the intention of the statute to tax a person on property given to him for a period not exceeding six years. The Tribunal also considered Section 3(25) of the General Clauses Act which provided, inter alia, that "immovable property shall include land, benefits to arise out of land....." and held that mere right of a tenant under a lease could not be said to be immovable property. The Tribunal finally considered Section 105 of the Transfer of Property Act which described a lease to be only a right to enjoy a property. The Tribunal found that such a right could not be equated to immovable property. For the reasons as aforesaid the Tribunal held that the value of the said leasehold interest should not be included in computing the net wealth of the assessee and taxed as wealth.

5. No one has appeared on behalf of the assessee at the hearing before us. It was stated by the advocate on record that the assessee, Md. Ismail, had died during the pendency of the proceedings. Learned counsel for the revenue states on instructions that the death of the assessee has not been ascertained on enquiry.

6. Mr. Suhas Sen, learned counsel for the revenue, contended before us that a leasehold interest was an interest in property within the meaning of the Transfer of Property Act and, therefore, it was an asset for the purpose of the W.T. Act, 1957. He drew our attention to Section 105 of the Transfer of Property Act, the material portion of which is as follows :

"A lease of immovable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value."

7. He also drew our attention to a decision of the Supreme Court in Commissioner of Wealth Tax, New Delhi Vs. P.N. Sikand, , where the Supreme Court had to consider the valuation of a leasehold estate in a wealth-tax assessment. In its judgment the Supreme Court observed as follows (p. 927):

"Now, plainly, one of the assets belonging to the assessee in the present case was the leasehold interest in the land together with the building upon it and for the purpose of computing the net wealth of the assessee, it was necessary to determine the value of this asset. The question which must, therefore, be asked in terms of Section 7(1) is : what would be the price which this asset would fetch

if sold in the open market on the valuation date ? This question cannot be satisfactorily answered, unless we first determine what is the nature of this asset, what is the interest in property qualitative as well as quantitative, which this asset represents ?

The asset consists of leasehold interest of the assessee in the land together with the building constructed upon it."

8. On the authority of the aforesaid observation Mr. Sen contended that the law stands settled. The contentions of Mr. Sen, in our opinion, are of substance. The relevant section of the W.T. Act is Section 2(e), which reads inter alia, as follows :

"2. In this Act, unless the context otherwise requires,--...

(e) " assets" includes property of every description, movable or immovable, but does not include, -

(1) in relation to the assessment year commencing on the 1st day of April, 1969, or any earlier assessment year--.....

(v) any interest in property where the interest is available to an assessee for a period not exceeding six years from the date the interest vests in the assessee."

9. The right of a lessee under a lease is an interest in property within the meaning of the Transfer of Property Act and in the instant case the period under the lease being over six years the interest created thereby is clearly an asset within the meaning of the W.T. Act. The pronouncement of the Supreme Court in the case of Commissioner of Wealth Tax, New Delhi Vs. P.N. Sikand, that a leasehold interest is an asset within the meaning of the W.T. Act concludes the controversy in the matter, if any.

10. For the reasons given above, we answer the question referred in the affirmative and in favour of the revenue. There will be no order as to costs.

Banerji, J.

11. I agree.