

(1985) 09 PAT CK 0014

In the Patna High Court

Case No : Taxation Case No's. 20 to 22 (a) of 1976

Commissioner of Wealth Tax

APPELLANT

Vs

Mishrilal Jain

RESPONDENT

Date of Decision : 18-09-1985

Acts Referred:

Wealth Tax Act, 1957 — Section 2

Citation : (1986) 51 CTR 168 : (1986) 161 ITR 583

Hon'ble Judges : Uday Sinha, J; Nazir Ahmad, J

Bench : Division Bench

Advocate : B.P. Rajgarhia and S.K. Sharan, for the Appellant; K.N. Jain and L.K. Bajla and M. Nath, for the Respondent

Judgement

1. This is a reference u/s 27 of the Wealth-tax Act, 1957. The assessee is an individual and we are concerned in these four references with assessment years 1968-69 to 1971-72. In these four references, the question referred to us for our opinion is as follows :

"Whether, on the facts and in the circumstances of the case, the intangible additions in the Income Tax assessments of the assessee constituted the wealth of the assessee on the valuation dates relevant for the assessment years 1968-69, 1969-70, 1970-71 and 1971-72 keeping in view the provisions of Sections 2(e) and 2(m) of the Wealth-tax Act, 1957 ?"

2. The assessee is a jeweller. He did not maintain books of account. The sales were being disclosed and he was estimating net profits thereon by applying certain rates in the assessments under the Income Tax Act, 1961. The Income Tax Officer did not accept the net profit estimate of the assessee. A higher rate of net profit was applied. On appeal, the appellate authority reduced and determined the net profit at 14 per cent. for the assessment years 1963-64 to 1970-71. The assessee accepted that rate of net profit on the sales disclosed by him. The assessment proceedings concluded in that manner. In the assessments for each year, certain additions were made to the profits. These were treated as

intangible additions. In the proceeding under the Wealth-tax Act, the said intangible additions were taken as assets in the hands of the assessee on the dates of valuation. The assessee contested it, but without success before the Wealth-tax Officer. He, however, succeeded on appeal before the Appellate Assistant Commissioner of Wealth-tax who allowed the appeal holding that intangible additions were not covered by the definition of "assets" under the Wealth-tax Act. He also observed that it is not merely the possession but also the ownership of the assets that is contemplated under the definition of "net wealth" in Section 2(m), and since the assessee was not owning the intangible additions but the Department had imputed them to the assessee, they were not liable to be assessed as wealth of the assessee. The Wealth-tax Officer being aggrieved by the order of the Appellate Assistant Commissioner filed an appeal to the Tribunal. The point urged on behalf of the Revenue before the Tribunal was that intangible additions are as much wealth as any other asset and, therefore, liable to be taxed as such. The submission did not find favour with the Tribunal which, relying upon a decision of the Kerala High Court in *Annamma Paul Perincherry Vs. Commissioner of Wealth-tax*, held that intangible additions cannot be included in the net wealth of an assessee. The Tribunal also held that, as in regard to the assessment for earlier years, intangible additions had not been added to the assets of the firm in another batch of appeals to net profits, it was bound to follow the same dictum and reject the contentions of the Revenue for these years also. The Revenue, having been thrown out by the Tribunal, has got the question referred to us, as mentioned above, for our opinion.

3. The short point falling for consideration before us is whether intangible additions can be treated as wealth or assets as such. In order to appreciate this point, we must look to the definition of "assets" in Section 2(e) of the Wealth-tax Act, 1957. Assets have been described therein as including property of every description, movable or immovable. If intangible additions are cash, they must be treated as movable and must be treated as wealth of the assessee liable to be taxed. Whether it is real or ethereal was set at rest by the Supreme Court in *Anantharam Veerasinghaiah and Co. Vs. Commissioner of Income Tax*, Andhra Pradesh, where Pathak J., speaking for the court, observed as follows (at p. 462) :

"Now it can hardly be denied that when an "intangible addition" is made to the book profits during an assessment proceeding, it is on the basis that the amount represented by that addition constitutes the undisclosed income of the assessee. That income, although commonly described as "intangible", is as much a part of his real income as that disclosed by his account books. It has the same concrete existence. It could be available to the assessee as the book profits could be."

4. And again, at page 462, his Lordship observed as follows:

"There can be no escape from the proposition that the secret profits or undisclosed income of an assessee earned in an earlier assessment year may constitute a fund, even though concealed, from which the assessee may draw

subsequently for meeting expenditure or introducing amounts in his account books. But it is quite another thing to say that any part of that fund must necessarily be regarded as the source of unexplained expenditure incurred or of cash credits recorded during a subsequent assessment year."

5. From this decision of the Supreme Court, there need be no controversy that intangible additions are real and as such they are "assets". It can, therefore, be a subject-matter of assessment under the Wealth-tax Act. The above decision of the Supreme Court does lend support to the contention urged on behalf of the Department.

6. Mr. K.N. Jain, learned counsel for the assessee, however, contended that the case of *Anantharam Veerasinghaiah and Co. Vs. Commissioner of Income Tax , Andhra Pradesh*, is not the case relevant for our purpose. He relied upon another decision of the Supreme Court in *Commissioner of Wealth Tax, Kanpur Vs. J.K. Cotton Manufacturers Ltd.*, . In this case as well, intangible additions had been made in the assessments of the assessee. These additions were taken as assets of the assessee. The contention was that the intangible additions in the circumstances of that case could not be included in the net wealth of the assessee. In that context, Tulzapurkar J. observed that from mere absence of explanation, no presumption could be raised that the secret profits (which were described as intangible additions) was still retained by them on the valuation date in the circumstances of the case. His Lordship gave two reasons for that conclusion. The first reason was that the analogy applicable to Income Tax cases would be non-applicable to wealth-tax cases inasmuch as in the former case the unexplained cash credit item is regarded as income of the assessee from an undisclosed source, having accrued to him during the accounting year while in the latter case, only the valuation date is relevant on which date the assets must be held by the assessee and it will not do that it was so held by him some time during the concerned year. The second reason given by Tulzapurkar J. was that after a lapse of a sufficiently long period, no presumption can be raised that a secret profit earned some time during the concerned year has continued to be held by the assessee on the valuation date. His Lordship then considered a decision of the Kerala High Court and that of the Allahabad High Court which are *Annamma Paul Perincherry Vs. Commissioner of Wealth-tax*, and *Commissioner of Wealth-tax Vs. J.K. Jute Mills Co. Ltd.*, , respectively. His Lordship approved the view taken by the Kerala and the Allahabad High Courts that no presumption can be raised, after a lapse of a sufficiently long period in regard to the existence of the intangible additions on the relevant date. This decision *prima facie* appears to run counter to the earlier decision of the Supreme Court in *Anantharam Veerasinghaiah and Co. Vs. Commissioner of Income Tax , Andhra Pradesh*, . Mukharji J., however, in a separate note, while agreeing with Tulzapurkar J., made some observations which are rather significant. Mukharji J. observed that "if there had been any finding that these profits, in some form either as assets in the balance-sheet or otherwise, were with the assessee, it could have perhaps been examined whether, so long as the assessee does not bring those profits in

the computation of the wealth, the assessee would be disentitled to the deductions of liabilities in respect of the same." This aspect, according to Mukharji J. should have been examined by the WTO with the aid of the principles of Sections 106 and 114 of the Evidence Act, 1872. But these had not been done. The last sentence of Mukharji J. limits the rule to the special facts of that case. His Lordship confined the dictum of Tulzapurkar J. to the materials on record. "I respectfully agree with the conclusion arrived at by my learned brother on the first contention urged on behalf of the Revenue". Be that as it may, the case of Commissioner of Wealth Tax, Kanpur Vs. J.K. Cotton Manufacturers Ltd., seems to proceed upon an assumption that after a lapse of a sufficiently long period, no presumption can be raised of the existence of intangible additions. If this case is read as laying down that intangible additions cannot be treated as assets, unless the Revenue shows that it was still available with them by best evidence, this decision seems to run counter to the earlier decision in the case of Anantharam Veerasinghaiah and Co. Vs. Commissioner of Income Tax , Andhra Pradesh, . The earlier one being a decision of three judges and the later of two, we are bound to follow the earlier decision. Conflict between two decisions of the Supreme Court should not, however, be readily inferred. The only reconciliation point seems to be that where there has been long or considerable gap between the intangible additions and the valuation date under the Wealth-tax Act, it cannot be presumed that the intangible additions were still available with the assessee.

7. We should, therefore, proceed to consider whether there has been considerable time lapse between the estimated assessments resulting in intangible additions and their consideration as net wealth on the date of valuation. In the instant case, we are concerned with four consecutive years. It thus appears that intangible additions of 1967-68 must be held to be available in the year 1968-69, under the Wealth-tax Act. Similarly, for each year, it must be held to be available in the succeeding year till 1971-72. On this principle, it is difficult to hold that there has been considerable time gap. The presumption must, therefore, follow.

8. A question arises whether the onus is upon the assessee or upon the Revenue to show that the intangible additions were available with the assessee on the relevant date. That must be a matter specially within the knowledge of the person who has the intangible additions. Intangible, no doubt, it is, but the Supreme Court says it is real. So, it must be taken to be available in the hands of the assessee. That being so, the Revenue can hardly be directed to adduce evidence, or to produce some material to show that it had been spent or invested and was thus not available.

9. Further, the order of the Income Tax Officer, annexure A, shows that the Appellate Assistant Commissioner determined the net profit rate at 14% for the assessment years 1963-64 to 1971-72 and the assessee accepted that rate of net profit on the sales disclosed. The assessee himself estimated net profit rate

at 14% with sales disclosed for consecutive years 1971-72 and 1972-73. In the case of Commissioner of Wealth Tax, Kanpur Vs. J.K. Cotton Manufacturers Ltd., itself, as I read it, somewhat of a presumption in favour of the Revenue was conceded where lapse of time is not sufficiently long. In that situation, applying the principles of Sections 106 and 114 of the Evidence Act, 1872, the assessee would be the better person to explain his state of affairs and if he is in a better position but does not explain matters, the assessee must fail, upon the dictum laid down by Mukharji J., in the same Commissioner of Wealth Tax, Kanpur Vs. J.K. Cotton Manufacturers Ltd., . We are, therefore, of the view that the Tribunal was not correct in holding that the intangible additions could not be treated as net wealth of the assessee.

10. For the reason stated above, we are of the view that the Tribunal was not correct in holding that the intangible additions in the Income Tax assessment of the assessee did not constitute wealth of the assessee for the assessment years for which the present reference has been made. The reference is thus answered against the assessee and in favour of the Revenue. There shall, however, be no order as to costs. Let a copy of the opinion of this court delivered today be transmitted to the Assistant Registrar, Income Tax Appellate Tribunal, Patna.