(1988) 07 GUJ CK 0002

In the Gujarat High Court

Case No : WT Reference No. 8 of 1986 (Reference Appeal No. 691 of 1985)

Commissioner of Wealth Tax APPELLANT

Vs

Niranjan Narottam Pankore Naka RESPONDENT

Date of Decision : 18-07-1988

Acts Referred:

Finance Act, 1976 — Section 1(2), 27(1), 27(3), 27(3)(b)
Wealth Tax Act, 1957 — Section 16A, 2(m), 2(m), 3, 4

Citation : (1988) 41 TAXMAN 18

Hon'ble Judges : S.B. Majmudar, J;R.C. Mankad, J

Bench : Division Bench

Advocate : K.N. Raval and K.H. Kaji For the Intervener, for the Appellant; J.P. Shah, for the Respondent

Judgement

R.C. Mankad, J.—The assesses is an individual. He owns a bungalow known as ''Shalimar'' situate in Shahibaug, Ahmedabad. The assessee disclosed the value of the bungalow at Rs. 3,95,260 in his return of wealth for the assessment year 1975-76, The assessee contended before the WTO that the bungalow which was exclusively used by him for residential purposes throughout the period of 12 months immediately preceding the valuation date that is 31-3-1975, which is relevant to the assessment year 1975-76, should be valued as provided in section 7(4) of the Wealth-tax Act, 1957 (''the Act''). The assessee contended that the value of the bungalow on the valuation date relevant to the assessment year 1971-72, that is, March 1971 should be adopted as value on the valuation date 31-3-1975. The WTO, however, rejected the assessee''s contention and valued the bungalow at Rs. 15,48,600 for the assessment year 1975-76. We are not concerned with the other assets of the assessee in this reference and, therefore, we have not considered it necessary to mention them. Being aggrieved by the assessment order passed by the WTO for the assessment year 1975-76, the assessee carried the matter in appeal before the Commissioner (Appeals). The Commissioner had, while disposing of the assessee''s appeals for the preceding years 1967-68 to 1974-75, by a common order dated 14-7-1982, accepted the assessee''s contention that provisions of section 7(4) would be applicable to the assessment years prior to the assessment year 1976-77 and the value of the bungalow to be adopted for the purpose of assessment for the assessment years 1972-73 to 1974-75, would be the market value of the bungalow as on the valuation date relevant to the assessment year 1971-72 which according to him was Rs. 6,46,600. He, therefore, directed the WTO to adopt the value of the bungalow at Rs. 6,46,600 in the assessment years 1972-73, to 1974-75. The Commissioner, following his said decision, by his order dated 13-1-1983, directed the WTO to adopt the value of the bungalow at Rs. 6,46,600 for assessment year under reference, that is, the assessment year 1975-76 also u/s 7(4).

2. Being aggrieved by the valuation of the bungalow adopted by the Commissioner, the revenue carried the matter in appeal before the Tribunal, Ahmedabad Bench. It was contended on behalf of the revenue before the Special Bench of the said Tribunal that section 7(4), which was inserted by section 27(3)(b) of the Finance Act, 1976 was effective prospectively from the assessment year 1976-77 onwards. Section 27(3) of the Finance Act, did not indicate the date from which the provisions contained in section 7(4) were to come into operation and, therefore, as provided in section 1(2) of the Finance Act, it would come into operation from 1-4-1976. Therefore, contended the revenue, section 7(4) would come into force or operation with effect from 1-4-1976 and consequently, it would apply only from the assessment year 1976-77. It was contended that section 7(4) cannot be given retrospective effect as was done by the Commissioner. The Commissioner, it was submitted, gave retrospective effect to section 7(4) by applying it to the assessment proceedings for the assessment years subsequent to 1971-72, which were pending. On the other hand, it was contended on behalf of the assessee that section 7(4) was procedural and, therefore, it applied retrospectively in the sense that it would apply to all pending assessment proceedings for the assessment years subsequent to the assessment year 1971-72. The Tribunal, by its order, however, held that section 7(4) was a procedural provision and not substantive provision of law and, therefore, it applied retrospectively to all the pending assessment proceedings. In the view which it took, the Tribunal confirmed the order of the Commissioner and dismissed the revenue''s appeal.

3. It is in the background of the above facts that the Tribunal has, u/s 27(1) of the Act, referred to us for our opinion the following question of law:

Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law and on facts in holding that the valuation of the property ''Shalimar'' was required to be made by applying the provisions of section 7(4) of the Wealth-tax Act, 1957?

4. Before we deal with the contentions which are raised on behalf of the revenue and the assessee, it is necessary to set out the relevant provisions of the Act which fall for our consideration in this reference.

5. u/s 3 of the Act as it is provided that subject to other provisions contained in the Act, there shall be charged for every assessment year commencing on and from 1-4-1957, a tax in respect of the net wealth on the corresponding valuation date of every individual, HUF and company at the rate or rates specified in Schedule I. The ''net wealth'' referred to in section 3 is defined in section 2 (m) of the Act as meaning "the amount by which the aggregate value computed in accordance with the provisions of this Act of all the assets, wherever located, belonging to the assessee on the valuation date, including assets required to be included in his net wealth as on that date under this Act, is in excess of the aggregate value of all the debts owed by the assessee on the valuation date other than" certain debts which are specified in sub-clauses (i), (ii) and (iii) of clause (m). Section 4 of the Act refers to certain assets which are to be included in the net wealth of an individual. Section 5 of the Act provides for exemption in respect of certain assets. Section 6 of the Act provides for exclusion of assets and debts outside India. Then comes section 7 under the caption ''Value of assets, how to be determined''. The whole controversy involved in this reference centres round section 7 which reads as follows:

Value of assets, how to be determined.-- (1) 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 in the open market on the valuation date.

1 [Explanation : For the removal of doubts, it is hereby declared that the price or other consideration for which any property may be acquired by or transferred to any person under the terms of a deed of trust or through or under any restrictive covenant in any instrument of transfer shall be ignored for the purpose of determining the price such property would fetch if sold in the open market on the valuation date.]

(2) Notwithstanding anything contained in sub-section (1),--

(a) where the assessee is carrying on a business for which accounts are maintained by him regularly, the Wealth-tax Officer may, instead of determining separately the value of each asset held by the assessee in such business, determine the net value of the assets of the business as a whole having regard to the balance sheet of such business as on the valuation date and making such adjustments therein as may be prescribed;

(b) where the assessee carrying on the business is a company not resident in India and a computation in accordance with clause (a) cannot be made by reason of the absence of any separate balance sheet drawn up for the affairs of such business in India, the Wealth-tax Officer may take the net value of the assets of the business in India to be that proportion of the net value of the assets of the business as a whole wherever carried on determined as aforesaid as the income arising from the business in India during the year ending with the valuation date bears to the aggregate income from the business wherever arising during that year.

(3) Notwithstanding anything contained in sub-section (1), where the valuation of any asset is referred by the Wealth-tax Officer to the Valuation Officer u/s 16A, the value of such asset shall be estimated to be the price which, in the opinion of the Valuation Officer, it would fetch if sold in the open market on the valuation date 2 [or, in the case of an asset being a house referred to in sub-section (4), the valuation date referred to in that sub-section].

2 [(4) Notwithstanding anything contained in sub-section (1), the value of a house belonging to the assessee and exclusively used by him for residential purposes throughout the period of twelve months immediately preceding the valuation date may, at the option of the assessee, be taken to be the price which, in the opinion of the Wealth-tax Officer, it would fetch if sold in the open market on the valuation date next following the date on which he became the owner of the house, or on the valuation date relevant to the assessment year commencing on the 1st day of April, 1971, whichever valuation date is later:

Provided that where more than one house belonging to the assessee is exclusively used by him for residential purposes, the provisions of this subsection shall apply only in respect of one of such houses which the assesses may, at his option, specify in this behalf in the return of net wealth.

Explanation : For the purposes of this sub-section,--

(i) where the house has been constructed by the assessee, he shall be deemed to have become the owner thereof on the date on which the construction of such house was completed;

(ii) ''house'' includes a part of a house, being an independent residential unit.]

It will be seen that the value of the assets for the purpose of determining the net wealth of the assessee is to be computed in accordance with the provisions of section 7. Section 7(1) opens with the words ''Subject to any rules made in this behalf. The rule making power which has been given to the Board is to be found in section 46 of the Act. It is, however, not necessary to refer to any of the rules framed in exercise of power u/s 46. Section 7(1) lays down that subject to any rules made in this behalf, the value of any asset other than cash, shall be estimated to be the price which in the opinion of the WTO it would fetch, if sold in the open market on the valuation date. The provision makes it clear that value of the asset for the purpose of computing the net wealth of the assessee must be estimated by working out the price it would fetch if it is put to sale in the open market. This provision, as observed by the Supreme Court in Ahmed G.H. Ariff and Others Vs. Commissioner of Wealth Tax, Calcutta, , does not contemplate actual sale or the actual state of the market, but only enjoins that it should be assumed that there is an open market and the property can be sold in such a market and, on that basis, the value has to be found out. It would appear that each asset has to be separately valued in accordance with section 7(1) read with the relevant rule if any. Sub-section (2) of section 7 begins with non obstante clause which has overriding effect on sub-section (1) of section 7. Under clause (a) of this sub-section (2), where the assessee is carrying on a business for which accounts are maintained by him regularly, the WTO may, instead of determining separately the value of each asset held by the assessee in such business, determine the net value of the assets of the business as a whole having regard to the balance sheet of such business as on the valuation date and making such adjustment therein as may be prescribed. Clause (b) of sub-section (2) of section 7 which deals with a case where the assessee carrying on business is a company not resident in India. This provision is, however, not relevant for the purpose of this reference. It will be seen that section 7(2)(a) gives option to the WTO to determine the net value of the assets of the business as a whole having regard to the balance sheet of such business as on the valuation date subject to making certain adjustments. This provision would be attracted only in case where the assessee is carrying on business for which the accounts are regularly maintained by him. In case of such assessee the WTO may either value each asset held by the assessee in such business separately as provided in sub-section (1) or determine the net value of the assets of the business as a whole on the basis of the balance sheet as on the valuation date subject to certain adjustments. Sub-section (3), which also begins with non obstante clause empowers the WTO to estimate the value of the asset as on the valuation date on the basis of opinion of the Valuation Officer to whom he has made reference u/s 16A of the Act. Sub-section (4) of section 7 also begins with non obstante clause having overriding effect on sub-section (1) of section 7. Under sub-section (4), the assessee has option to ask the WTO to value the house belonging to him and exclusively used by him for residential purposes throughout a period of 12 months immediately preceding the valuation date, on the basis of the market value of the asset on the valuation date next following the date on which he becomes the owner of the house or on the valuation date relevant to the house or on the valuation date relevant to the assessment year commencing on 1-4-1971, whichever valuation date is later. As under sub-section (1), the WTO has to estimate the balance of the asset on the basis of the price, the asset would fetch if sold in the open market on one of the two dates mentioned in sub-section (4) at the option of the assessees. Sub-sections (2) and (4) which begin with non obstante clause are comparable, in the sense that while sub-section (2) gives option to the WTO to value the business assets in the manner prescribed therein, sub-section (4) gives option to the assessee to ask the WTO to value house exclusively used by him for residential purposes in the manner prescribed therein. While sub-section (2) gives option to the WTO, sub-section (4) gives option to the assessee. It is, however, pertinent to note that both these subsections are part of section 7 which is under the caption ''Value of assets, how to be determined''. It would, therefore, appear that all the provisions contained in section 7 deal with the mode or method of determination of value of the assets of the assessee for the purpose of assessing the wealth-tax on the net wealth of the assessee as provided in section 3 --the charging section. All the sub-sections of section 7 have to be read with section 3 and the value of any asset determined in accordance with any of them would be the value of the asset on the corresponding valuation date for the purpose of determining the net wealth and levying charge thereon. Definition of the ''net wealth'' in section 2(m) also makes it clear that net wealth is the amount of aggregate value of all the assets of the assessee computed in accordance with the provisions of the Act which is in excess of the aggregate value of all the debts other than those specified. Section 7 provides for method of computation of the value of the assets and this valuation is to be done for the purpose of determining the net wealth as defined in section 2(m) and levying wealth-tax as provided in section 3. Therefore, the value of asset of the assessee determined under any of the sub-section of section 7 would be the value on the relevant or corresponding valuation date.

6. The main contention of the revenue is that sub-section (4) of section 7 is substantive in character and, therefore, it operates prospectively. It was urged that this provision confers right on the assessee to exercise option to value the house exclusively used by him for residential purposes on the valuation date mentioned in the sub-section instead of valuing it on the basis of the estimated market price on the relevant valuation date as provided in sub-section (1). Therefore, even if section 7 on the whole is held to be a machinery section providing for method or manner of computation of the value of the assets belonging to the assessee, to the extent sub-section (4) creates right in favour of the assessee as stated above it transgresses the machinery provision and enters the field of substantive law. Sub-section (4), therefore, cannot be said to be mere procedural provision to which retrospective effect can be given. It was submitted that sub-section (4) being substantive in character, it cannot be given retrospective effect. Consequently it would apply prospectively from the assessment year 1976-77 inasmuch as it came into force with effect from 1-4-1976. It was, therefore, submitted that it is not open to the assessee to take advantage of the provisions contained in sub-section (4) in any assessment year prior to 1976-77. On the other hand, it was submitted on behalf of the assessee that sub-section (4) is part of the machinery provision and it being procedural in character, the Tribunal was right in holding that it applied to the pending proceedings.

7. It is a fundamental rule of interpretation that no statute shall be construed to have a retrospective operation unless such a construction appears very clearly in the terms of the Act or arises by necessary and distinct implication. One of the most well known statements of the rule regarding retrospectivity is contained in this passage from the judgment of R.S. Wright, J. in In re., Athlumey (sic): "Perhaps no rule of construction is more firmly established than this that a retrospective operation is not to be given to a statute so as to impair an existing right or obligation, otherwise than as regards matter of procedure, unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in language which is fairly capable of

either interpretation, it ought to be construed as prospective only". However, the presumption against retrospective construction has no application to enactments which affect only the procedure and practice of the Courts. Alterations in the form of procedure are always retrospective, unless there is some good reason or other why they should not be. Maxwell on the Interpretation of Statutes Twelfth edn. pp. 215, 216, 222. Law defines the right which it will aid and specifies the way in which it will aid them. So far as it provides a method of aiding and protecting, it is ''adjective law''. The adjective law is also termed as ''procedure'' which is a term used to express the mode of proceeding by which a legal right is enforced, as distinguished from the law which gives or defines the right, and which by means of the proceeding, the Court is to administer: the machinery as distinguished from the product. Substantive law is concerned with the ends which the administration of justice seeks: procedural law deals with the means and instruments by which those ends are to be attained. There is difference in the matter of construction between a law dealing with substantive rights which are already vested and one relating to procedure. There is no vested right in procedure but the case of vested rights is different. It stands to reason that the procedure provided in a statute for enforcement of substantive rights conferred thereby should be construed as far as possible so as to give effect to and not to nullify these rights. A mere procedural provision ought not to be allowed to whittle down or modify a substantive provision of law. Procedural enactments should be construed liberally and in such manner as to render the enforcement of substantive rights effective. It is no doubt true that nobody has a vested right in procedural law that is to say, that when a change is made in procedural law it takes retrospective effect, vide N.S. Bindra''s The Interpretation of Statutes, Seventh edn., pp. 645, 646 and 648.

8. The Supreme Court in Income Tax Officer, Tuticorin Vs. T.S. Devinath Nadar and Others, , quoted with approval ''the general rule'' as Halsbury puts it in Vol. 36, Third edn.:

...is that all statutes, other than those which are merely declaratory, or which relate only to matters of procedure or of evidence, are prima facie prospective; and retrospective effect is not to be given to them unless, by express words or necessary implication, it appears that this was the intention of the Legislature." (p. 423)

Therefore, the general rule of interpretation is that a substantive law is intended to be prospective unless a contrary intention is manifest from the language of the statute or arises by necessary implication.

It is well settled that the Courts will refuse to place construction giving retrospective effect if such construction is likely to impair the existing rights and/ or obligations. It is, however, open to the Legislature to give retrospective effect to law by use of express words manifesting such an intention. The statute which takes away or impairs any vested right or creates new obligation must be considered not to have been intended to apply retrospectively but if the law deals with matters of procedure only it is deemed to be retrospective unless such inference is likely to lead to unjust results.

9. Bearing in mind the above well recognised rules of construction, we will now refer to the decisions of different Courts interpreting the provisions of section 7. In Standard Mills Co. Ltd. Vs. Commissioner of Wealth-tax, Bombay City, , the Supreme Court observed that section 7 falls in Chapter II which deals with charge of wealth-tax and assets subject to such charge: it is intended to provide a machinery for the determination of the value of assets. The Supreme Court quoted with approval the following observations made in the minority judgment in Kesoram Industries and Cotton Mills Ltd. Vs. Commissioner of Wealth Tax, (Central) Calcutta, (Majority of the Court having not expressed any opinion on the question):

By the first sub-section the Wealth-tax Officer is authorised to estimate, for the purpose of determining the value of any asset, the price which it would fetch, if sold in the open market on the valuation date. But this rule in the case of a running business may often be inconvenient and may not yield a true estimate of the net value of the total assets of the business. The Legislature has therefore provided in sub-section (2)(a) that where the assessee is carrying on a business for which accounts are maintained by him regularly, the Wealth-tax Officer may determine the net value of the assets of the business as a whole, having regard to the balance sheet of such business as on the valuation date and make such adjustments therein as the circumstances of the case may require. But the power conferred upon the tax officer by section 7(2) is to arrive at a valuation of the assets, and not to arrive at the net wealth of the assessee. Section 7(2) merely provides machinery in certain special cases for valuation of assets, and it is from the aggregate valuation of assets that the net wealth chargeable to tax may be ascertained. The power conferred upon the tax officer to make adjustments as the circumstances of the case may require is also for the purpose of arriving at the true value of the assets of the business. Sub-section (2)(a) of section 7 contemplates the determination of the net value of the assets having regard to the balance sheet and after making such adjustments as the circumstances of the case may require. It does not contemplate determination of the net wealth, because net wealth can only be determined from the net value of the assets by making appropriate deductions for debts owed by the assessee....

The argument raised by counsel for the assessee is that substantially section 7(2) is a definition section, which extends, for the purposes of the Act, the definition of the ''net wealth'' of assessees carrying on business. There is no warrant for this argument in the language used in section 7(2). Counsel was unable to suggest any rational explanation why, if what he contends was the intention, Parliament should have adopted this somewhat roundabout way of incorporating a definition of net wealth in a section dealing with valuation of assets." (p. 792)

The Supreme Court went on to further observe that section 7 does not deal with the computation of the net wealth. It deals with the computation of the aggregate value of the assets. u/s 7, the WTO is competent, where the assessee is carrying on business of which accounts are maintained regularly, to determine the net value of the assets of the business as a whole. But in doing so, he determines the value of the assets of the business as a whole, and not the net wealth of the business. In Ahmed G.H. Ariff''s case (supra) the Supreme Court, while interpreting the words ''if sold in the open market'' used in sub-section (1) of section 7 observed that section does not contemplate actual sale or the actual state of the market, but only enjoins that it should be assumed that there is an open market and the property can be sold in such a market and, on that basis, the value has to be found out. Referring to these observations made by the Supreme Court, a Division Bench of this Court in Commissioner of Wealth-tax Vs. Kasturbhai Mayabhai, at p. 115 observed: "It was, therefore, rightly contended by counsel for the assessee that section 7 was a machinery section." In Smt. Kusumben D. Mahadevia V. N. C. Upadhya and Others Kusumben D. Mahadevia Vs. Commissioner of Wealth-tax, Bombay City-I, , Chandurkar, J. speaking for the Division Bench of the Bombay High Court observed:

Section 7(1) is thus a machinery provision which requires the WTO to hypothetically assume that there is an open market and the property can be sold in such market and it is on that basis that the value of the asset has to be determined for the purposes of computation of the net wealth of the assessee." (p. 817)

Same view was expressed by the Andhra Pradesh High Court in Commissioner of Wealth-tax, Andhra Pradesh Vs. Pachigolla Narasimha Rao, . It was observed therein that ''section 7 of the Act provides the mode of ascertaining the value of the assets for the purposes of the Act''. The Supreme Court in Commissioner of Wealth Tax, Bihar, Patna Vs. Maharaja Kumar Kamal Singh, at p. 206 observed: ''Section 7 is important which provides the method how the value is to be assessed.'' It would appear from the above decisions that sub-sections (1) and (2) of section 7 provide machinery for the purpose of ascertaining wealth of the assessee by valuing his assets. Value of an asset is estimated on the basis of the price it would fetch on the valuation date if sold in the open market under sub-section (1), while under sub-section (2), the WTO has option to determine the net value of the asset of the business as a whole having regard to the balance sheet of such business as on the valuation date and make such adjustments therein as the circumstances of the case may require. As observed by the Supreme Court in Kesoram Industries & Cotton Mills Ltd.''s case (supra), which was approved in Standard Mills Co. Ltd.''s case (supra), section 7(2) merely provides a machinery in certain special cases for valuation of assets, and it is from the aggregate valuation of assets that the net wealth chargeable to tax may be ascertained. Thus both sub-sections (1) and (2) provide for machinery or method to value assets of the assessee. Sub-section (2) merely provides an alternative method. But nonetheless it is a method for valuation of the asset of the assessee for the purposes of determining his net wealth chargeable to tax.

10. In MADAN GOPAL RADHEYLAL Vs. COMMISSIONER OF WEALTH-TAX., , the Allahabad High Court dealing with sub-section (2) of section 7 observed as follows:

It is clear from this provision that the Wealth-tax Officer could either proceed u/s 7(1) or u/s 7(2)(a) of the Act. The words ''may'' instead of determining separately the value of each asset held by the assessee in such business, determine the net value of the assets of the business as a whole having regard to the balance sheet of such business'' clearly show that section 7(2)(a) of the Act provides for an alternative manner for valuing the assets and not the sole method...." (p. 737)

A Division Bench of this Court dealing with the same provision, namely, section 7(2) in Kikabhai Bhagubhai and Another Vs. Commissioner of Wealth Tax, Gujarat, observed:

...It is, therefore, clear that an option has been given to the Wealth-tax Officer concerned to value the net value of all the assets of the entire business instead of valuing each asset separately. Under sub-section (1) of section 7, it is the valuation of each asset held by the assessee that has to be carried out on the basis of the market value as of the valuation date. Under sub-section (2)(a) of that section option is given to the Wealth-tax Officer by using the word ''may'' and also by using the words, ''instead of determining separately the value of each asset held by the assessee in such business'', and also by using the words, ''determine the net value of the assets of the business as a whole'' in section 7(2)(a), the Legislature has clearly indicated that in the case of valuation of the assets of the business as a whole, it is open to the Wealth-tax Officer to value the assets of the entire business without going into the valuation of each asset held by the assessees in respect of that business. On a plain reading of the section it is clear that section 7(2)(a) gives an option to the Wealth-tax Officer concerned, to adopt the valuation shown in the balance sheet of the business of the assessee making such adjustments in that valuation as the circumstances of the case may require...." (p. 590)

These two decisions also make it clear that section 7(2)(a) merely provides an alternative method of valuing the assets. But all the same, it is a method of valuation which is prescribed by that provision.

11. Now, let us consider sub-section (4) in the context of sub-sections (1) and (2) of section 7. Is it machinery provision like sub-sections (1) and (2) which have been held to be machinery provisions or is'' it a substantive provision'' of law as contended on behalf of the revenue? In view of the settled position of law, sub-sections (1) and (2) of section 7 are machinery provisions and they provide for method of valuing assets of the assessee for the purpose of ascertaining the net wealth. Sub-section (4) deals with only one of the assets of the assessee, namely, house, which is exclusively used by him for residential purpose throughout the period of 12 months immediately preceding the valuation date

and it lays down that at the option of the assessee, such assets may be valued on the basis of the market value it would fetch in the open market on certain valuation date. The valuation so arrived at is for the purpose of determining the net wealth of the assessee on the relevant valuation date and, therefore, it must be deemed to be the value of the asset as on the relevant valuation date. Sub-section (4) which gives option to the assessee to value his aforesaid asset under either sub-section (1) or sub-section (4), undoubtedly provides for, an alternative method of valuation. As observed above, sub-section (4) is comparable with sub-section (2). Both these sub-sections give option to adopt an alternative method of valuation. Under sub-section (2), it is the WTO who has the option, while under sub-section (4), it is the assessee who has the option. The decisions to which we have already adverted have clearly laid down that sub-section (2) merely provides for alternative method of valuation which can be adopted by the WTO in case of the assessee who is carrying on business of which regular accounts are maintained. If sub-section (2) is held to be machinery, sub-section (4) must a fortiori be held to be machinery, since it also provides for an alternative method of valuation at the option of the assessee. In our opinion, therefore, sub-section (4) which provides for an alternative method of valuation is procedural and not a substantive provision of law. And even if it confers upon the assessee right to exercise option to value his aforesaid asset under either sub-section (1) or sub-section (4), it is not taken out of the domain of procedure or machinery. Such right is in the procedural field.

12. The question whether or not sub-section (2) of section 7 has retrospective operation had not come up for consideration in any of the decisions referred to above, and, therefore, these decisions do not throw any light on the question whether it was to be given retrospective operation. However, as observed by H.H. Wright, J., in Athlumey''s case (supra) rule of construction firmly established is that retrospective operation is not to be given to a statute so as to impair the existing right or obligation otherwise than as regards the matter of procedure unless that effect cannot be avoided without doing violence to the language of the enactment. Sub-section (4), as observed above, is in the procedural field. It is a machinery provision which provides for alternative method of valuation of one of the assets of the assessee namely, house, exclusively used by him for the purpose of residence. This provision does not impair any existing right or obligation. Even if it confers right on the assessee to exercise option as aforesaid, as contended on behalf of the revenue, such right is in the procedural field. In our opinion, therefore, having regard to the settled principles of law, provision contained in sub-section (4) becomes operative retrospectively in the sense that it would apply to all the pending assessment proceedings. Appeal is continuation of the original proceedings and, therefore, if the proceedings are pending, even at the appellate stage, proceedings would be considered to be pending for the retrospective operation of sub-section (4). We do not find forcing the argument that sub-section (4) has transgressed the machinery provision and entered the field of substantive law as urged on behalf of the revenue. The entire

sub-section is in the procedural field and, therefore, it has retrospective operation as held above.

13. We, therefore, hold that the Tribunal was right in holding that the assessee''s property, namely, bungalow named ''Shalimar'' was required to be valued by applying the provisions of section 7(4). In the view which we are taking, we do not consider it necessary to deal with other contentions which were raised on behalf of the revenue and the assessee. We also do not consider it necessary to refer to or deal with the decisions of this Court and other Courts in which rules in the context of sub-section (1) of section 7 framed u/s 46 came up for consideration. These decisions, in our opinion, will have no bearing on the question whether or not section 7(4) has retrospective operation. In the result, we answer the question referred to us in the affirmative and against the revenue. Reference answered accordingly with no order as to costs.