
(1988) 03 GUJ CK 0021
In the Gujarat High Court
Case No : Wealth-tax Reference No. 8 of 1986

Commissioner of Wealth-tax	Vs	APPELLANT
Niranjan Narottam		RESPONDENT

Date of Decision : 18-03-1988

Acts Referred:

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

Citation : (1988) 72 CTR 220 : (1988) 173 ITR 693

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

Bench : Division Bench

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

Judgement

R.C. Mankad, J.—The assessee is an individual. He owns a bungalow known as ""Shalimar"" situate in Shahibag, Ahmedabad. The assessee

disclosed the value of the bungalow at Rs. 3,95,260 in this return of wealth for the assessment year 1975-76. The assessee contended before the

Wealth-tax Officer that the bungalow which was exclusively used by him for residential purpose throughout the period of twelve months

immediately preceding the valuation date, that is March 31, 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 assessee contended that the value of the bungalow on the valuation date relevant to the

assessment year 1971-72, that is March 31, 1971, should be adopted as its value on the valuation date, March 31, 1975. The Wealth-tax Officer

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.

2. Being aggrieved by the assessment order passed by the Wealth-tax Officer for the assessment year 1975-76, the assessee carried the matter in appeal before the Commissioner of Wealth-tax (Appeals) (hereinafter referred to as the "Commissioner"). The Commissioner and, while disposing of the assessee's appeals for the proceeding years 1967-68 to 1974-75, by a common order dated July 14, 1982, accepted the assessee's contention that the provisions of section 7(4) of the Act 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, 1973-74 and 1974-75, would be the market value of the bungalow as on the valuation date relevant to assessment year 1971-72 which according to him was Rs. 4,46,600. He, therefore, directed the Wealth-tax Officer to adopt the value of the bungalow at Rs. 6,46,600 for the assessment years 1972-73, 1973-74 and 1974-75. The Commissioner, following his said decision, by his order dated January 13, 1983, directed the Wealth-tax Officer to adopt the value of the bungalow at Rs. 6,46,600 for the assessment year under reference, that is the assessment year 1975-76 also u/s 7(4) of the Act.

3. Being aggrieved by the valuation of the bungalow adopted by the Commissioner, the Revenue carried the matter in appeal before the Income Tax Appellate Tribunal, Ahmedabad Bench. It was contended on behalf of the Revenue before the Special Bench of the said Tribunal that section 7(4) of the Act, 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, 1976, did not indicate the date from which the provisions contained in section 7(4) of the Act were to come into operation and, therefore, as provided in section 1(2) of the Finance Act, 1976, it would come into operation from April 1, 1976. Therefore, contended the Revenue, section 7(4) would come into force or operation with effect from April 1, 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) of 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

a 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.

4. 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 ?

5. 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.

6. u/s 3 of the Act, it is provided that subject to other provisions contained in the Act, there shall be charged for every assessment year

commencing as and from the first day of April, 1957, a tax (hereinafter referred to as the wealth-tax) in respect of the net wealth on the

corresponding valuation date of every individual, Hindu undivided family 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 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 owned 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 refers to certain assets

which are to be included in the net wealth of an individual. Section 5 provides for exemption in respect of certain assets. Section 6 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 :

7. (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.

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 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.

(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 sub-

section shall apply only in respect of one of such houses which the assessee may, at his option, specify in this behalf in the return of net wealth.

Explanation. - For the purposes of this 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.

7. 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 Central Board of Direct Taxes is to be found in section 46. It is, however, not necessary to refer to any of the rules framed in exercise of the

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 wealth-tax Officer it would fetch, if sold in the open market on the valuation date. The provision makes it clear

that the 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 that the property can be sold in such a market and on that business of 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 the non

obstinate 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 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. Sub-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 an option to the Wealth-tax Officer 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 cases where the assessee is carrying on a business for which the accounts are regularly

maintained by him. In the case of such assessee, the Wealth-tax Officer 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 a non obstinate clause, empowers the Wealth-tax Officer

to estimate the value of the asset as on the valuation date on the basis of the opinion of the Valuation Officer to whom he has made reference u/s

16A. Sub-section (4) of section 7 also begins with a non obstinate clause having overriding effect on sub-section (1) of section 7. Under sub-

section (4), the assessee has the option to ask the Wealth-tax Officer 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 became the owner of the house or on the valuation date relevant to the assessment year

commencing on the first day of April, 1971, whichever valuation date is later. As under sub-section (1), the Wealth-tax Officer has to estimate the

value 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 assessee. Sub-sections (2) and (4) which begin with a non obstante clause are comparable, in the sense that while sub-section (2)

gives an option to the Wealth-tax Officer to value the business assets in the manner prescribed therein, sub-section (4) gives an option to the

assessee to ask the Wealth-tax Officer to value the house exclusively used by him for residential purposes in the manner prescribed therein. While

sub-section (2) gives an option to the Wealth-tax Officer, sub-section (4) gives an option to the assessee. It is however, pertinent to note that both

these sub-sections 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 the 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. The definition of ""net wealth"" in section 2(m) also makes it

clear that net wealth is the amount of the aggregate value of all the assets of the assessee computed in accordance with the provisions of the Act as

is in excess of the aggregate value of all the debts other than those specified. Section 7 provides for the method of the 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 the assets of the assessee determined under any of the sub-sections of section 7 would be the value

of the relevant or corresponding valuation date.

8. The main contention of the Revenue is that sub-section (4) of section 7 is substantive in character and, that therefore, it operates prospectively.

It was urged that this provision confers a right on the assessee to exercise an option to 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 the method or manner of computation of the value of the assets belonging to the assessee to the extent sub-section (4) creates a 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 a 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 April 1, 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.

9. 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 Wright J. in *In re Althlumney* [1898] 2 QB 547 :

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.

10. However, the presumption against retrospective construction has no application to enactments which effect 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 Edition, pp. 215, 216, 222). Law defines the rights which 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 new 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, those 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 a 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

charge is made in procedural law, it taken retrospective effect. (Vide. N. S. Bindra's "The Interpretation of Statutes", Seventh Edition, pp. 645, 646 and 648).

11. The Supreme Court in *Income Tax OFFICER, TUTICORIN Vs. T. S. DEVINATHA NADAR AND OTHERS.*, , quoted with approval

The general rule" as Halsbury puts it in Vol. 36 (Third edition), page 423 :

..... 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.

12. Therefore, the general rule of interpretation 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 a 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 obligations 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.

13. 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 the 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) (p. 476 of 63 ITR) :

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) there 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 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. 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 owned 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.

14. The Supreme Court went on to observe further that section 7 does not deal with the computation of net wealth. It deals with the computation

of the aggregate value of the assets. u/s 7 the Wealth-tax Officer is competent, where the assessee is carrying on the 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 set wealth of the business. In Ahmed G.H. Ariff and Others Vs. Commissioner of Wealth Tax, Calcutta, ,

the Supreme Court, while interpreting the words ""if sold in the open market"" used in sub-section (1) of section 7, observed that the 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 is Commissioner of Wealth-tax Vs. Kasturbhai Mayabhai, , 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. Upadhyia 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 Wealth-tax Officer 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"".

15. 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 provides ""the mode of ascertaining the value of assets"" for the purposes of the Act. The Supreme

Court in Commissioner of Wealth Tax, Bihar, Patna Vs. Maharaja Kumar Kamal Singh, 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 a machinery

for the purpose of ascertaining the 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 Wealth-tax Officer has an option 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 and

make such adjustments therein as the circumstances of the case may require. As observed by the Supreme Court in Kesoram Industries and

Cotton Mills Ltd. Vs. Commissioner of Wealth Tax, (Central) Calcutta, , which was approved in Standard Mills Co. Ltd. Vs. Commissioner of

Wealth-tax, Bombay City, , section 7(2) merely provides a machinery in certain special cases for valuation of the assets, and it is from the

aggregate valuation of the assets that the net wealth chargeable to tax has to be ascertained. Thus, both sub-sections (1) and (2) provide a

machinery or method to value the assets of the assessee. Sub-section (2) merely provides an alternative method. But, none the less, it is a method

for valuation of the asset of the assessee for the purpose of determining his net wealth chargeable to tax.

16. In MADAN GOPAL RADHEYAL Vs. COMMISSIONER OF WEALTH-TAX., , the Allahabad High Court dealing with sub-section (2)

of section 7, observed as follows : (p. 737) :

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 valuation the assets and not the sole method".

17. 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 on the valuation date. Under sub-section (2) (a) of that section, an 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 the 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 assessee 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.

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

19. Now, let us consider sub-section (1) in the context of sub-section (4) and sub-section (2) of section 7. Is it a machinery provision like sub-section (1) and sub-section (2) which have been held to be machinery or is it a substantive provision of law as contended on behalf of the Revenue

? In view of the settled position of law, sub-section (1) and sub-section (2) of section 7 are machinery provisions and they provide a method of valuing the 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 purposes throughout the period of twelve months immediately proceeding the valuation date and it lays down that, at the option of the assessee, such asset may be valued on the basis of the market value or on the basis of the market value it would fetch if sold in the open market on a 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 an 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 an option to adopt an alternative method of valuation. Under sub-section (2), it is the Wealth-tax Officer who has the option, while under sub-section (4), it is the assessee who has to option. The decisions to which we have already adverted have clearly laid down that sub-section (2) merely provides for an alternative method of valuation which can be adopted by the Wealth-tax Officer in cases of assesseees who are carrying on business for which regular accounts are maintained. If sub-section (2) is held to be a machinery section, 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 a right to exercise an 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.

20. 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, the decisions do not throw any light on the question whether it has to be given retrospective operation. However,

as observed by Wright J. in *Re Althlumney* [1898] 2 QB 547, the rule of the 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 to the matter of procedure under that effect cannot be avoidable 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 an alternative method of valuation of the assets of the assessee, namely, a house, exclusively used by him for the purpose of residence. This provision does not impair any existing right or obligation. Even if it confers a right on the assessee to exercise an 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, the provision contained in sub-section (4) becomes operative retrospectively in the sense that it would apply to all pending assessment proceedings. An appeal is a 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 any force in 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.

21. We, therefore, hold that the Tribunal was right in holding that the assessee's property, namely, bungalow namely "Shalimar", was required to be valued by applying the provisions of section 7(4) of the Act. In the view which we are taking, we do not consider it necessary to deal with the other contentions which were raised on behalf of the Revenue and assessee. We also do not consider it necessary to refer to or deal with the decision of this court and of other courts in which rules in the context of sub-section (1) of section 7 framed u/s 46 of the Act came up for consideration. These decisions, in our opinion, will have no bearing on the question as to whether or not section 7(4) has retrospective operation.

22. In the result, the answer to the question referred to us is in the affirmative and against the Revenue. Reference answered accordingly with no order as to costs.