

(1981) 11 KL CK 0007
In the High Court Of Kerala
Case No : Income Tax R. No. 76 of 1979

Commissioner of Wealth-tax

APPELLANT

Vs

P.N. Rajakrishna Menon

RESPONDENT

Date of Decision : 05-11-1981

Acts Referred:

Kerala Land Reforms Act, 1963 — Section 72, 72(2), 72(3), 72(4), 72A
Wealth Tax Act, 1957 — Section 2

Citation : (1982) 1 ILR (Ker) 390 : (1982) 136 ITR 198

Hon'ble Judges : P. Subramonian Poti, Acting C.J.; K. Sukumaran, J

Bench : Division Bench

Advocate : P.K. Ravindranatha Menon, for the Appellant; K.P. Radhakrishna Menon, for the Respondent

Judgement

Subramonian Poti, Actg. C.J.

1. The assessee was the owner of extensive agricultural lands in the possession of cultivating tenants. On January 1, 1970, under the provisions of the Kerala Land Reforms Act, 1963, the rights of the assessee over these lands held by the cultivating tenants vested in the Kerala Govt. Thereafter, the assessee had only a right to get compensation from the Kerala Govt. for the rights so vested in the Government.

2. In the assessment to wealth-tax for the year 1970-71, the WTO accepted the return filed by the assessee treating the right to get compensation as an asset valued at a certain figure and that was included in the net wealth of the assessee. From the assessment so based on such return the assessee filed an appeal contending that he included the right to compensation as an asset by mistake, that it was not an asset at all and further the valuation was excessive. The Tribunal considered in detail the various provisions of the Land Reforms Act, referred to various litigations pending concerning the constitutional validity of the legislation, referred to the uncertainties caused by the litigation and held that because of the various uncertainties that prevailed on the valuation day the asset

will not fetch any price if sold in the open market. So the Tribunal took its value to be nil. This decision was taken by the Tribunal not in the appeal in this case, but in another case. The AAC, before whom the appeal was pending, followed the decision and consequently allowed the appeal. Thereupon the WTO appealed to the Tribunal. It was contended before the Tribunal that the assessee having returned the asset and the officer having accepted it, the assessee could not have agitated the question over again before the AAC. Further, it was contended that the view that the asset was not to be valued at all was wrong. The Tribunal followed its earlier decision on the question of valuation of the asset. On the question whether the assessee could have gone back on his original return, the Tribunal held in favour of the assessee and that is the subject of the first question here (sic). The second question concerns the correctness of the finding of the Tribunal that "because of the uncertainties that prevailed on the valuation date the value of the asset was nil". The two questions so referred are :

"(i) Whether the right of the assessee provided under Sub-section (1) of Section 72A of the Kerala Land Reforms Act for compensation is, as on the valuation date, April 12, 1970, an asset as defined in the Wealth-tax Act, 1957 ?

(ii) In case it is an asset, is it properly valued ?"

3. The asset concerned is the compensation receivable by a land-owner under the provisions of the Kerala Land Reforms Act. It may not be necessary to refer in detail to the scheme of that Act. Section 72 of the Act vests all right, title and interest of land-owners and intermediaries in respect of holdings held by cultivating tenants entitled to fixity of tenure in the Government as on the notified date, which date is January 1, 1970. Therefore, the land-owner and intermediary, if any, ceases to have any ownership in his properties as from that date. Section 72A of the Act provides that every land-owner and intermediary whose right, title and interest vests in the Government u/s 72 shall be entitled to compensation as provided in Sub-sections (2), (3) and (4). Sub-sections (2), (3) and (4) define the rules for determining the quantum of compensation. Thus, any land-owner or intermediary of land in the possession of a cultivating tenant entitled to fixity of tenure will no longer be the owner of the land after January 1, 1970, but will be entitled to compensation determined in accordance with Sub-sections (2), (3) and (4) of Section 72A. The amount due is thus an ascertainable sum payable by the Government in accordance with the provisions of the Act. Could it be said that this is an asset of no value ? This is the simple question that arises for consideration in this case and that arises in connection with the assessment to wealth-tax. Section 7(1) of the W.T. Act provides that the value of any asset is to be estimated as a price which in the opinion of the WTO it would fetch if sold in the open market on the valuation date. The term "if sold in the open market" has received judicial notice. It does not necessarily mean that there should be a market on the valuation date for these goods. The market is assumed. What the value will be, if sold in such a market, is the only question. Of course if any asset is of no value because of its intrinsic character that is a

different thing altogether. It will then be no asset at all. The uncertainties arising out of litigations challenging the validity of the Kerala Land Reforms Act would not render the right to receive compensation as of no value whatsoever. If the Act is struck down the land-owner is certainly the better off for it. The land takes the form of compensation under the provisions of the Act. That is the asset. May be that if the land-owner attempts to negotiate and sell his right to receive compensation he may not get the same amount as could be found to be due as compensation calculated in accordance with the provisions of Sub-sections (2), (3) and (4) of Section 72A. In other words, the difficulty of obtaining compensation in time, the circumstance that it is only after adjudication that such compensation will be due and the further circumstance that one has to await the Government's payment of such compensation are all matters which may have relevance in determining what value the asset has but not in finding that it has no value. It has value.

4. The High Court of Bombay referring to Section 7 of the W.T. Act considered the question whether the right of a settlor to receive the benefit under the settlement could be said to be an asset for the purpose of assessment under the W.T. Act. It was contended in that case that the benefit due to the assessee under the trust deed was indeterminate and unknown and, therefore, was not an asset. Referring to the definitions of the term "net wealth" and "assets" and the provisions in Section 7(1) of the W.T. Act, the High Court proceeded to consider the correctness of the view of the Tribunal that in view of the terra "if sold in open market on the valuation date", it has to be considered whether the interests of the assessee under the trust would have any value in the open market on the valuation date. On that approach the Tribunal found that it had little or no value. Referring to this, the High Court said (p. 189 of 71 ITR):

"Now, it seems to us that virtually the order of the Tribunal amounts to this that, having taken into account the provisions of Section 7(1) which merely deals with how the value of assets has to be determined, it has ultimately held that the interest of the assessee was not an asset at all."

5. The court proceeded to show that the Tribunal reached this conclusion on a misconstruction of Section 7 and because of an incorrect view about this provision. The decision in Commissioner of Wealth-tax, Bombay City II Vs. Purshottam N. Amersey and Another, was approved by the Supreme Court in Ahmed G.H. Ariff and Others Vs. Commissioner of Wealth Tax, Calcutta, . The court dealing with a similar contention said (p. 477):

"Mr. Sen has laid emphasis on the language of Section 7(1) of the Act and has contended that the right to a share in the income is not capable of any valuation and the price which it would fetch, if sold in the open market, could not possibly be ascertained. Such an argument was fully examined in the Commissioner of Wealth-tax, Bombay City II Vs. Purshottam N. Amersey and Another, in which the High Court referred to the provisions of the English statutes, which were in *pari materia*, as also decisions given by the English courts including the one by

the House of Lords in Commissioners of Inland Revenue v. Crossman [1937] AC 26 : 2 EDC 537 (HL), It has been rightly observed by the High Court that when the statute uses the words "if sold in the open market" it 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 is a hypothetical case which is contemplated "and the tax officer must assume that there is an open market in which the asset can be sold."

6. The decision in Commissioner of Wealth-tax, Bombay City II Vs. Purshottam N. Amersey and Another, was the object of an appeal to the Supreme Court and in the decision in Purshottam N. Amarsay and Another Vs. The Commissioner of Wealth Tax, Bombay, , the Supreme Court followed the earlier decision in Ahmed G.H. Ariff and Others Vs. Commissioner of Wealth Tax, Calcutta, .

7. The second question before us, therefore, calls for a plain answer, namely, that the asset cannot said to be of no market value. It has to be answered in favour of the revenue and against the assessee. In this view, the first question does not call for an answer and, therefore, we decline to answer the question.

8. A copy of the judgment under the seal of the High Court and signature of the Registrar will be sent to the Income Tax Appellate Tribunal, Cochin Bench.