

(1979) 11 P&H CK 0037

In the Punjab And Haryana At Chandigarh

Case No : Wealth-tax Reference No's. 10, 11, 14, 15, 16, 17, 18 and 19 of 1977, 15, 16, 21 and 22 of 1978 and 1 and 3 to 7 of 1979

Commissioner of Wealth-tax

APPELLANT

Vs

Smt. Devinder Kaur

RESPONDENT

Date of Decision : 02-11-1979

Acts Referred:

Income Tax Act, 1961 — Section 2(36)

Citation : (1984) 146 ITR 234

Hon'ble Judges : S.S. Dewan, J;B.S. Dhillon, J

Bench : Division Bench

Advocate : D.N. Awasthy and B.K. Jhingan, for the Appellant; Bhagirath Dass, R.K. Aggarwal and B.K. Gupta, for the Respondent

Judgement

S.S. Dewan, J.—This order will also dispose of Wealth-tax References Nos. 10, 11, 14, 15 16, 18, 19 of 1977; 15 & 16, 21 & 22 of 1978 and 1, 3 & 4, 5 & 6 and 7 of 1979. The assessee in all these references are different. The assessment years are 1973-74, 1974-75 and 1975-76, the relevant valuation dates being March 31, 1973, March 31, 1974, and March 31, 1975. We only propose to deal with the facts in Wealth-tax Reference No. 17/1977. It is agreed by the learned counsel for the parties that the decision on the question of law in this case will be applicable to all the references mentioned in this judgment.

2. The relevant facts are in short compass. While making the wealth-tax assessment for the assessment year 1974-75, the WTO assessed the value of the agricultural land belonging to the assessee. As the agricultural land is situated within the urban area, the WTO treated that as an urban asset within the meaning of Clause (2) of Para. A, Pt. I of the Schedule to the W.T. Act, 1957 (hereinafter called "the Act, 1957"), and levied additional wealth-tax thereon (copy of the order is annex. A).

3. The assessee who was dissatisfied with this decision went up in appeal to the AAC, Ludhiana. The AAC reversed the order of the WTO holding that the

agricultural operation carried on by the assessee fell within the category of "business" and, therefore, it is covered by the exemption provided in Para. A(2) of the Schedule to the Act of 1957. The Revenue then preferred an appeal to the Income Tax Appellate Tribunal with the contention that the land belonging to the assessee is not covered by the exemption envisaged by Para. A(2) of Pt. I of the Schedule and, therefore, the additional wealth-tax is leviable thereon. The contention of the assessee was that Para. A(2), Pt. I of the Schedule, provides for levying additional tax on the urban assets but business premises have been exempted and as the asset, i.e., the agricultural land, is covered by the expression "business premises", therefore, no additional tax is to be levied on the value of the agricultural land within the meaning of Para. A(2), Pt. I of the Schedule. The Tribunal relied on the decision in Chengarath Velu Vs. Executive Officer, Erumayur Panchayat, Post Erumayur, Alathur and Another, , and dismissed the Revenue's appeal. However, on considering the whole matter, the Tribunal observed in its order as under :

"The agricultural land owned by the assessee which is an urban asset is covered by the exemption envisaged by Paragraph A(2) of Schedule I, Part I, inasmuch as such land was used by the assessee throughout for the purpose of profession within the meaning of Rule 1, Paragraph B of Schedule 1."

4. The Commissioner of Wealth-tax, Patiala, being dissatisfied with the order of the Tribunal applied u/s 27(1) of the Act of 1957, praying that the following questions of law be referred for the opinion of this court :

1. (Arising out of Wealth-tax References Nos. 10, 11, 14, 15 & 16, 17 and 18 of 1977 ; 15 & 16, 21 and 22 of 1978 ; 1, 3 & 4, 5 & 6 and 7 of 1979):

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in upholding the finding of the Appellate Assistant Commissioner that the land in question was held by the assessee as business premises, as defined in Rule 1(1), Paragraph B of the Schedule to the Wealth-tax Act and thus exempt from the charge of additional wealth-tax on urban assets ?"

2. (Arising out of Wealth-tax Reference No. 19/1977) :

"(i) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in upholding the order of the Appellate Assistant Commissioner of Wealth-tax assigning the status of an HUF to the assessee ?

(ii) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in upholding the finding of the Appellate Assistant Commissioner that the land in question was held by the assessee as business premises as defined in Rule 1(1), Paragraph B of the Schedule to the Wealth-tax Act and thus exempt from the charge of additional wealth-tax on urban assets?"

5. This application was allowed and the aforesaid questions of law have been referred to this court for its opinion.

6. The short question that requires determination is whether the agricultural land owned by the assessee which is an urban asset is covered by the exemption envisaged by Para. A(2) of Pt. I of the Schedule. Mr. Awasthy, learned counsel for the Department, has very strenuously contended that the decision of the Tribunal is incorrect. The agricultural operation in no case can be equated with business or profession as contemplated by Rule 1(i), Para. B of the Schedule and at the most it can be said as an occupation which is not exempt under Para. A(2) of the Schedule. He further contends that only the office portion of the land will fall within the definition of the "business premises" and not the land on which the business activity is done. We regret our inability to accept these contentions. To buttress his arguments, the learned counsel relies upon the decisions of the Madras High Court in L.M. Chitale and Another Vs. The Commissioner of Labour, ; Sankaranarayana Pillai Vs. The Executive Officer, Panchayat Board, Ayikudi, , and the Bombay High Court decision in N.E. Merchant and Another Vs. State, . We have gone through these decisions and find that they are clearly distinguishable and do not at all cover the matter in controversy.

7. The entire decision of this controversy depends upon the true interpretation to be put on Clause (2) of Para. A, Pt. I and Rule 1(i), Para. B of the Schedule to the Act of 1957. They are reproduced below for facility of reference :

"(2) In addition, in the case of every individual and Hindu undivided family, where the net wealth of the individual or Hindu undivided family includes the value of any asset, being building or land (other than business premises) or any right in such building or land, situated in an urban area (such asset being hereafter in this Part referred to as urban asset) :--..."

"1. (i) "Business premises" means any building or land or part of such building or land or any right in building or land or part thereof, owned by the assessee and used throughout the previous year for the purposes of his business or profession, and includes any building used for the purpose of residence of persons employed in the business or any building used for the welfare of such persons as a hospital, creche, school, canteen, library, recreational centre, shelter, rest-room or lunch-room, but does not include any premises in the nature of guest house. "

8. This rule clearly indicates that any building or land owned by the assessee and used during the previous year for the purpose of business or profession has to be excluded for the purposes of levying of additional wealth-tax on urban assets. The expression "business" has not been defined in the W.T. Act. It is a common expression which is sometimes used by itself and sometimes in a collocation of words as in business, trade or profession. It is a word of large and wide import capable of a variety of meanings. In a broad sense, it is taken to mean everything that occupies the time, attention and labour of men for the purposes of livelihood or profit. Section 2(36) of the I.T. Act, 1961 (in short, "the Act of 1961"), defines the terra "profession" as including vocation. Vocation and occupation are synonymous and there is no difference between the two. Even if the argument advanced by the learned counsel for the Department is accepted,

the agricultural operation carried on by the assessee tant-amounts to profession within the meaning of Section 2(36) of the Act of 1961. In *Hindustan Steel Ltd. Vs. State of Orissa*, , it was observed that the expression "business" though extensively used as a word of indefinite import, in taxing statutes it is used in the sense of occupation or profession which occupies the time, attention and labour of a person normally with the object of making profit. To regard an activity as business, there must be a course of dealings either actually continued or contemplated to be continued with a profit motive and not for sport or pleasure.

9. Keeping the aforesaid observations in view we agree with the finding of the Tribunal that in so far as the agricultural operations involve carrying on systematic entrepreneurial activity with the help of capital and labour with a view to earn profits and the element of risk being not absent from such operations, the agricultural operations will fall within category of business. The land of the assessee being business premises, rightly falls within the definition of the term "business premises" as provided in Rule 1(i), Para. B of the Schedule. After carefully considering the entire matter and for the reasons recorded above we answer the question referred to us in the affirmative, i.e., in favour of the assessee and against the Department.

10. In view of our answer to the question in Wealth-tax Reference No. 17/1977, we answer the questions referred to for our opinion in Wealth-tax References Nos. 10, 11, 14, 15 & 16, 18 of 1977, 15 & 16 and 21 & 22 of 1978 and 1, 3 & 4, 5 & 6 and 7 of 1979 and question No. (ii) in Wealth-tax Reference No. 19 of 1977, in the affirmative; i.e., in favour of the assessee and against the Revenue.

11. Now, we advert to question No. (i) in Wealth-tax Reference No. 19/. 1977. The learned counsel for the Department fairly conceded that the Full Bench decision of this court in *Pritam Singh Vs. Assistant Controller of Estate Duty*, , covers the subject-matter of question No. (i) against the Revenue and he refrained from contesting the decision of the Tribunal in regard to the subject-matter of question No. (i). The answer to this question would obviously be in the affirmative, i.e., in favour of the assessee and against the Department.

12. The references are disposed of accordingly with no order as to costs.

Bhopinder Singh Dhillon, J.

13. I agree.