

(1985) 04 PAT CK 0009

In the Patna High Court

Case No : Taxation Case No's. 71 to 73 of 1976

Commissioner of Wealth Tax

APPELLANT

Vs

Tara Chand Jain

RESPONDENT

Date of Decision : 12-04-1985

Acts Referred:

Wealth Tax Act, 1957 — Section 2

Citation : (1986) 55 CTR 106 : (1986) 55 CTR 104 : (1987) 164 ITR 516 :
(1987) 30 TAXMAN 222

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

Bench : Division Bench

Advocate : B.P. Rajgarhia and S.K. Sharan, for the Appellant; Narayan Prasad Agrawal and Nilu Agrawal, for the Respondent

Judgement

N. Ahmad, J.—A consolidated statement of the case has been submitted by the Income Tax Appellate Tribunal, "A" Bench, Patna (hereinafter referred to as "the Tribunal"), u/s 27(1) of the Wealth-tax Act, 1957 (hereinafter referred to as "the Act"), at the instance of the Commissioner of Wealth-tax, Bihar, Patna, for the assessment years 1966-67 to 1968-69, referring the following question of law for the opinion of this court :

"Whether, on the facts and in the circumstances of the case, it was correct on the part of the Tribunal to hold in the assessment years 1966-67, 1967-68 and 1968-69 that the land owned by the assessee was agricultural land not assessable to wealth-tax under the Wealth-tax Act, 1957 ?"

2. The facts may be briefly stated. From the assessment order of the Wealth-tax Officer for the assessment year 1966-67, it is evident that in the original assessment, the land situated at Ranchi Hazaribagh Road, Ranchi, belonging to the assessee was not included in the total wealth of the assessee although it was shown in Part IV of the return as agricultural land. This practice, the assessee had been following since the past. In the Income Tax assessment for the assessment year 1967-68, the question of computation of capital gains on sale of

some of this land arose. The assessee contended that the land in question was agricultural land and, therefore, no capital gains arose. On the basis of local enquiries made by the Inspector, it was found that these lands comprising a total area of 1.67 acres in village Konka, Ranchi, is situated at Ranchi-Hazaribagh Road and although in the past the land might have been agricultural in nature but because of the development of the town, it had now acquired the character of urban property. The Inspector also reported after local enquiry that for the last two to three years, no agricultural operations were carried on on those lands. It was also found by the Inspector that on the other side of these plots, the Lalpur Police Outpost and the land now belonging to the Income Tax Department purchased for the purpose of construction of staff quarters is situated. It was pointed out on behalf of the assessee that in the adjoining lands even now agricultural operations are being carried on and since in the past agricultural operations were carried on in the land belonging to the assessee till before the last two to three years from now, it could not be treated as urban land. The Income Tax Officer held that on the valuation date, i. e., October 31, 1965, for the assessment year 1966-67, the land in question had already acquired the character of urban property. He, therefore, added the value of the land at Hazaribagh Road, Ranchi, relating to 101 kathas of land at the average rate of Rs. 3,000 which was the rate for the land sold by the assessee in the assessment year 1967-68 and thus he took the value at Rs. 3,03,000. This assessment was u/s 16(3)/(17)(b) of the Act. For the same reasons, the Wealth-tax Officer assessed the value of the land at Rs. 2,80,750 for the assessment year 1967-68 u/s 16(3)/(17)(b) of the Act, as in that year, the assessee had sold the land valued at Rs. 22,250. In the assessment year 1968-69, the assessee had shown the value of the agricultural land at Rs. 1,19,688 and so in the assessment year 1968-69, the Wealth-tax Officer took the value of these lands at Rs. 1,19,688. This assessment was made u/s 16(3) of the Act. The assessment orders of the Wealth-tax Officer for the assessment years 1966-67, 1967-68 and 1968-69 have been annexed and marked as annexures A-1, A-2 and A-3 forming part of the statement of the case.

3. The assessee filed appeals before the Appellate Assistant Commissioner. The Appellate Assistant Commissioner disposed of the appeals for the assessment years 1966-67 and 1967-68 by one consolidated order and passed a separate order for the assessment year 1968-69. The Appellate Assistant Commissioner in view of the findings of the Tribunal that the lands were agricultural lands held that the lands in question were agricultural lands and, therefore, excluded from the net wealth of the assessee the amounts of Rs. 3,03,000, Rs. 2,80,750 and Rs. 1,19,688 in the three assessment years, respectively. The two orders of the Appellate Assistant Commissioner have been annexed and marked as annexures B-1 and B-2.

4. The Department appealed before the Tribunal and the Tribunal disposed of the appeals for all the three assessment years by a consolidated order dated April 16, 1974. The Tribunal relied on its orders in ITA No. 816 (Pat) 1969-70 and ITA

No. 1260 (Pat) 1972-73 and agreed with the findings of the Appellate Assistant Commissioner that the lands in question were agricultural lands and held that the Appellate Assistant Commissioner was justified in excluding the value of the lands in question from the taxable wealth of the assessee for all the three years. The consolidated order of the Appellate Tribunal has been annexed and marked as annexure C forming part of the statement of the case.

5. Thus the only question which arises in this case is whether the lands in question of the assessee were agricultural lands during the assessment years 1966-67, 1967-68 and 1968-69.

6. u/s 2(e) of the Act, the expression "assets" does not include agricultural land in relation to the assessment year commencing on the first day of April, 1969, or any earlier assessment year. Thus up to (and inclusive of) the assessment year 1969-70, agricultural lands will not be treated as "assets" for the purpose of the Act. u/s 45 of the Income Tax Act, 1961, any profits or gains arising from the transfer of a capital asset effected in the previous year shall be chargeable to Income Tax under the head "Capital gains", and shall be deemed to be the income of the previous year in which the transfer took place. u/s 2(14)(iii) of the Income Tax Act, 1961, agricultural land in India was not a capital asset till the assessment year 1969-70. Thus agricultural lands were exempt both under the Income Tax Act, 1961, as well as under the Act for the assessment years 1966-67, 1967-68 and 1968-69.

7. This court while considering the question relating to capital gains in the assessment year 1967-68 relating to the assessee held in the case of Addl. Commissioner of Income Tax Vs. Tarachand Jain, , that the fact that the land had been sold for the purposes of construction of a house is irrelevant and that lands of the assessee were agricultural lands and so the profits arising from the lands could not be taxed as capital gains.

8. In the case of Commissioner of Income Tax Vs. Dumraon Cold Storage Refrigeration Service P. Ltd., , a Division Bench of this court held that if on the materials it is established that the land which is the subject-matter of controversy has actually been used for agricultural purposes, then merely because such land is near a railway station or within a municipality is not of much consequence and, similarly, the purpose for which the lands have been sold is also not of much consequence because what is to be considered is the nature of the land on the date of sale and on the facts of that case it was held that the land was agricultural land and the profit arising from the sale of the land was not liable to capital gains tax.

9. view of the aforesaid decisions, it has to be held that the lands of the assessee were agricultural lands for the assessment years in question. Under such circumstances, I hold that the Tribunal was correct in holding that in the assessment years 1966-67, 1967-68 and 1968-69, the land owned by the assessee was agricultural land not assessable to wealth-tax under the Act. The

question is accordingly answered in the affirmative and in favour of the assessee and against the Revenue. However, it may be observed that in the subsequent assessment years when this question arises, it will be obligatory for the assessee to show that the land is agricultural land and the Wealth-tax Officer in future will decide the case on the materials placed before him. There shall, however, be no order as to costs.

Uday Sinha, J.

10. I agree.