

(1972) 04 MAD CK 0018

In the Madras High Court

Case No : Tax Case No. 319 of 1966 (Reference No. 81 of 1966)

Commissioner of Wealth Tax

APPELLANT

Vs

Vasanth

RESPONDENT

Date of Decision : 14-04-1972

Acts Referred:

General Clauses Act, 1897 — Section 20
Wealth Tax Act, 1957 — Section 2, 4, 46
Wealth Tax Rules, 1957 — Rule 1A, 2, 2(1)

Citation : (1972) ILR (Mad) 665 : (1973) 87 ITR 17

Hon'ble Judges : V. Ramaswami, J;G. Ramanujam, J

Bench : Division Bench

Advocate : V. Balasubrahmanyam and J. Jayaraman, for the Appellant; K.R. Ramamani for Subbarayar Iyer, Sethuraman and Padmanabhan, for the Respondent

Judgement

Ramanujam, J.—The following question has been referred to us by the Income Tax Appellate Tribunal, u/s 27 of the Wealth-tax Act, at the

instance of the revenue :

Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the assessee's share in the

agricultural lands owned by the two firms was not includible in the net wealth of the assessee for the assessment year 1960-61 ?

2. The circumstances under which the reference came to be made are these. The assessee is the widow of one Ramanathan Chettiar who was a

partner in two firms, (1) Valimalai Rubber Estate, and (2) Peramboocoly Coffee Estate. The assets of these firms mainly consisted of agricultural

lands. Ramanathan Chettiar died on April 12, 1960, and his widow, the assessee, filed a wealth-tax return valuing the net wealth of the deceased

as on the date of his death at Rs. 5,80,645. In computing the value of the net wealth the assessee did not take into account the value of the share of the deceased in the agricultural lands owned by the two firms. The Wealth-tax Officer, however, took the view that the agricultural lands of the two firms were not as such owned by the deceased and that, therefore, the value of the interest of the deceased in the two firms taking into account all the assets of the firm including the agricultural lands should be valued at Rs. 5,50,352. He, therefore, added this sum to the amount of net wealth as disclosed by the assessee in her return .

3. The assessee preferred an appeal to the Appellate Assistant Commissioner and contended that a firm was not a separate legal entity and that the agricultural lands must be deemed to be owned collectively by the partners and that, therefore, the share of the deceased in the agricultural lands of the firm was exempt from wealth-tax. The Appellate Assistant Commissioner accepted the said contention of the assessee and held that the share of assessee's husband in the agricultural lands owned by the firms could not be brought to charge, and in that view deleted the addition of Rs. 5,50,352 from the net wealth of the assessee.

4. The revenue then took the matter in appeal to the Tribunal. The Tribunal affirmed the view of the Appellate Assistant Commissioner holding that under Rule 2 of the Wealth-tax Rules the net wealth of the firm on the valuation date shall first be determined, that in such determination the agricultural lands owned by the firm will have to be excluded in view of Section 2(e)(i) of the Wealth-tax Act which excludes agricultural lands from the definition of assets, and that it is only the net wealth of the firm after excluding the value of the agricultural lands that has to be allocated among the partners in proportion to the capital contributed by them as per Rule 2. The revenue questions the correctness of the view taken by the Tribunal in this reference.

5. The learned counsel for the revenue contends that the Tribunal has not properly appreciated the true scope of Rule 2 of the Wealth-tax Rules, that the interest of a partner in a firm being an asset by itself and the firm not being an assessable entity under the Wealth-tax Act, the principle adopted for finding out the net wealth of an assessee as laid down in the provisions of the Act could not be adopted, and that in ascertaining the

value of the interest of a partner in a firm the value of the agricultural lands owned by the firm could not be excluded. What the learned counsel for

the revenue contends, in effect, is that the net worth of the interest of 1 partner in a firm has to be ascertained according to commercial notions and

such value has to be added to the net wealth of the assessee's individual assets.

6. In this connection it is necessary to set out the relevant provisions of the Act. The definition of "assets" in Section 2(e) is set out below so far as

is relevant for the purpose of the present discussion. :

2. (c) "assets" includes property of every description, movable or immovable, but does not include,--

(1) in relation to the assessment year commencing on the first day of April, 1969, or any earlier assessment year-

(i) agricultural land and growing crops, grass or standing trees on such land.

7. Section 2(m) gives the definition of "net wealth". According to that definition, "net wealth" means 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,

exceeds the aggregate amount of debt due by him, and "valuation date" is defined in Section 2(q). Section 3, which is the charging section,

provides for a 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 the Schedule. Section 4(1)(b) provides that in computing the net wealth of an individual, the value of his interest in a firm

of which he is a partner or an association of which he is a member as determined in the prescribed manner shall be included. Section 5 provides for

certain exemptions in respect of certain assets. Section 7(1) states that, subject to any rules made in this behalf, the value of any asset other than

cash, for the purpose of the 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. Section 46 enables the Central Board of Direct Taxes to make rules for carrying out the purposes of the Act

including the manner in which the market value of any asset is to be determined. In pursuance of the rule-making power contained in Section 46

read with Section 4(1)(b), Rule 2 of the Wealth-tax Rules, 1957, has been made, prescribing the manner and method of valuing the interest in any

partnership or association of persons. Rule 2(1), which is material, is set out below :

The value of the interest of a person in a firm of which he is a partner or in an association of persons of which he is a member, shall be determined

in the manner provided herein. The net wealth of the firm or the association on the valuation date shall first be determined. That portion of the net

wealth of the firm or association as is equal to the amount of its capital shall be allocated among the partners or members in the proportion in which

capital has been contributed by them. The residue of the net wealth of the firm or association shall be allocated among the partners or members in

accordance with the agreement of partnership or association for the distribution of assets in the event of dissolution of the firm or association or, in

the absence of such agreement, in the proportion in which the partners or members are entitled to share profits. The sum total of the amounts so

allocated to a partner or member shall be treated as the value of the interest of that partner or member in the firm or association.

8. Rule 2(1) directs that for ascertaining the value of the interest of a partner in a firm or a member of an association the net wealth of the firm or

the association on the valuation date shall first be determined and then the portion of the net wealth of the firm or association as is equal to the

amount of the capital shall be allocated among the partners or members in the proportion in which the capital has been contributed by them and the

residue of the net wealth of the firm or association shall be allocated among them in accordance with the agreement of partnership or of association

for the distribution of assets in the event of dissolution, and in the absence of any such agreement, in the proportion in which the partners or

members are entitled to the share of profits. The sum total of the amounts so allocated to a partner or member shall be treated to be the value of

the interest of that partner or member in the firm or association.

9. In view of the said provision for ascertaining the value of the interest of the assesses in the two partnership firms in question, at the first instance

the net wealth of the two firms on the valuation date shall first be determined. Up to this there is no controversy between the parties. It is at this

stage both the revenue and the assessee join issue as to the mode of valuing the net wealth of the two firms. While the assessee contends that for

finding out the net wealth of the firm as on the valuation date the provisions of the Wealth-tax Act have to be applied and if so applied the agricultural lands held by the firm which are excluded from the definition of "assets" in the Act have to be excluded as has been done by the Tribunal, the revenue contends that the firm not being an assessee under the Act, the provisions of the Act cannot be applied to find out its net wealth, that the word "net wealth" used in connection with the firm in Rule 2(1) cannot be understood in the light of the definition of "net wealth" under the Act but should be construed as to mean only "net worth" and that in finding out the net worth of the firm the agricultural lands owned by the firm have to be naturally included. Thus, according to the revenue, the words "net wealth" and "valuation date" used with reference to the firm in that rule cannot be understood in the sense they have been defined in the definition section and that they should be understood in the normal and popular sense.

10. We find it difficult to accept the stand taken by the revenue. As a matter of fact Rule 1A(m) specifically directs that, except the words defined earlier in the various clauses in that rule, all other words and expressions used but not defined in these rules and defined in the Act shall have the meanings respectively assigned to them in the Act. Therefore, the words "net wealth" and "valuation date" not having been defined in the Wealth-tax Rules, 1957, they have to be understood in the same sense as in the Act. Even apart from the specific Rule 1A(m), the well established rule of interpretation is that the same expressions contained in the Act as well as the Rules framed thereunder have to receive an identical construction.

Maxwell on the interpretation of Statutes, 12th edition, at page 308, states that "where the words used in the regulations are identical with expressions contained in the Act under which the regulations were made, the maker of the regulations must be taken to have intended a construction identical with the statutory construction." In *Potts or Riddell v. Reid*, [1943] A.C. 1 Porter L.J. said:

Let me assume without deciding the point that the Interpretation Act does not apply to the regulations, yet where, as here, the words of the Act are repeated *totidem verbis* in the regulations, I am of opinion, in common with all your Lordships, that when used in the regulations they must bear

the same interpretation as in the Act, and that, therefore, in these regulations "building under construction" means "building or buildings".

11. Section 20 of the General Clauses Act, 1897, specifically provides that where, by any Central Act or Regulation a power to issue any

notification, order, scheme, rule, form or bye-law is conferred, then expressions used in the notification, order, scheme, rule, form or bye-law, if it

is made after the commencement of the Act, shall, unless there is anything repugnant in the subject or context, have the same respective meanings

as in the Act or Regulation conferring the power. We are, therefore, of the view that the words ""net wealth"" occurring in Rule 2(1) should be

construed only in the sense in which it has been defined in the Act, and that in ascertaining the net wealth as per Section 2(m) there should be an

aggregation of the value of all the assets but excluding the agricultural lands, as they have been specifically excluded from the definition of ""assets"" in

Section 2(e). The Tribunal should, therefore, be held to have correctly valued the interest of the assessee in the two partnership firms. The question

is, therefore, answered against the revenue. The assessee will be entitled to its costs. Counsel's fee Rs. 250.