

(2001) 12 DEL CK 0079

In the Delhi High Court

Case No : WT Ref. No's. 25 of 1980, 110 of 1985, 137 of 1988, 36 and 146 of 1989 and 20 to 22 of 1990 11 December 2001 A.Y. 1975-76

CWT

APPELLANT

Vs

VASAVI PRATAP CHAND

RESPONDENT

Date of Decision : 11-12-2001

Acts Referred:

Citation : (2001) 172 CTR 190

Hon'ble Judges : S.B. Sinha, C.J.;A.K. Sikri, J

Bench : Full Bench

Advocate : Sanjiv Khanna, R. C. Pandey, Ms. Prem Lata Bansal and Ajay Jha, for the Revenue Anoop Sharma, for the assessee, for the Appellant;

Judgement

S.B. Sinha, C.J.

Interpretation of certain provisions of Wealth Tax Act, 1957 (hereinafter referred to as the Act) is involved in these set of references.

The question which has been referred for the opinion of this court is as under :

"Whether, on the facts and in the circumstances of the case, the Tribunal was legally correct in coming to the conclusion that the loan of Rs. 1,13,258 obtained by the assessed on the security of the life insurance policies is deductible in computing her net wealth u/s 2(m)(ii) of the Wealth Tax Act, 1957 ?"

2. For the purpose of disposal of these matters, fact of the matter would be noticed from Wealth Tax Ref. 25 of 1980.

The respondent is an assessed under the Wealth Tax Act. Partap Chand, husband of the assessed, had obtained a loan against certain policies from LIC. The assessed was trustee as well as beneficiary of these policies. A sum of Rs. 1, 13,258 was obtained by way of loan and assignment of the said policy. A part of the loan was invested in purchase of shares and another part thereof was used for making advances to others. She filed a return under the Wealth Tax Act

showing net wealth at Rs. 8,75,384 for the assessment year 1975-76 which included the value of certain shares including those which had been purchased out of the aforesaid loan. She claimed deduction for total liability of Rs. 1,38,731 which included the aforesaid loan amount of Rs. 1,13,258. The Wealth Tax Officer assessed the liability of the assessed at Rs. 1,38,731. The net wealth was thus determined at Rs. 9,26,620. The Commissioner was however, of the view that the order passed by the Wealth Tax Officer was erroneous and prejudicial to the interest of the revenue. He issued a show-cause notice on 30-11-1977, calling upon her to explain why the liability relating to the aforesaid loan amount should not be deducted from the value of her assets. The Commissioner was of the opinion that the said amount does not fall within the purview of the term net wealth as laid down in section 2(m)(ii) of the Act. The contentions raised by the assessed in her show cause were rejected.

Against the order of the Commissioner, the assessed preferred an appeal to the Tribunal. The Tribunal allowed the said appeal by an order dated 25-6-1979, holding that the Commissioner was not justified in withdrawing the relief already granted by the Wealth Tax Officer by holding that his order was erroneous insofar as it was prejudicial to the interests of the revenue.

Upon an application filed by the Commissioner, the Tribunal referred the aforesaid question to this court for its opinion.

3. Mr. Sanjiv Khanna, learned counsel appearing for revenue would submit that undisputedly the LIC policies are exempted from the purview of Wealth Tax Act u/s 5(1)(4) [sic-5(1)(vi)] of the said Act. According to the learned counsel if the benefit arising out of the policy could only be derived upon attaining maturity with the last payment made in relation thereto, the same would not attract the definition of "net wealth" as contained in section 2(m)(ii) of the Act. Learned counsel would submit that the provisions of sections 3, 4 and 5 of the Wealth Tax Act must be read harmoniously and so read, the amendment carried out in the definition to word chargeable" from, "payable" would not attract the mischief rule.

The words "chargeable" and "payable" according to Mr. Khanna are synonymous. In support of the said contention reliance has been placed by him on Premier Electro Mechanical Fabricators Vs. The State of Tamil Nadu, , APOORVA SHANTILAL (HUF) (WTR NO. 7 OF 1980) ARUN K. PARIKH (WTR NO. 19 OF 1980) ASHOK K. PARIKH (WTR NO. 20 OF 1980) AJIT K. PARIKH (WTR NO. 21 OF 1980) SMT. KAMAL K. PARIKH (WTR NO. 26 OF 1980) Vs. COMMISSIONER OF WEALTH-TAX., and CWT v. Premnarayan Garg (1982) 134 ITR 315 . Our attention was also drawn to the fact that this aspect of the matter had although been accepted by the Tribunal but it erred in proceeding on the basis that insurance policy is not one of the excluded assets.

Mr. Anup Sharma, learned counsel appearing for the respondent on the other hand, would submit that "the minority view in CIT v. Vaidyanathan (supra) has

been approved by the Division Bench in Commissioner of Wealth-tax Vs. Vasantkumar Govindji Kotak, . Learned counsel would contend that the expression payable used in section 5 must be construed having regard to the fact that the assets must at first be "chargeable" to tax and then a question would arise as to whether the same is "payable" or not.

Mr. Khanna in reply pointed out that Bombay High Court has not determined the question involved in this case and only in relation to another. contention, the minority view of the Full Bench of Madras High Court was followed.

Interpretation clause contained in section 2 of the Act begins with the words "unless the context otherwise requires".

4. Assets has been defined in section 2(e) to mean :

"assets" includes property of every description, movable or immovable, but does not include :

(1) in relation to the assessment year commencing on the 1-4-1969, or any earlier assessment year :

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

(ii) any building owned or occupied by a cultivator of, or receiver of rent or revenue out of agricultural land :

Provided that the building is on or in the immediate vicinity of the land and is building which the cultivator or the receiver of rent or revenue by reason of his connection with the land requires as a dwelling house or a store-house or an out-house."

The said definition is of wide amplitude.

Section 2(m) defines "net wealth" in the following terms :

(m) "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 assessed 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 owed by the assessed on the valuation date other than :

(i) debts which u/s 6 are not to be taken into account;

(ii) debts which are secured on or which have been incurred in relation to , any property in respect of which wealth-tax is not chargeable under this Act; and

(iii)

xxx

xxx

xxx"

In this context, it may be noted that section 2(m)(ii), as it originally stood prior to its amendment in 1964 by the Wealth Tax (Amendment) Act, 1964, reads thus :

"debts which are secured on, or which have been incurred in relation to any asset in respect of which wealth-tax is not payable under this Act. "

The only difference that has been made by the amendment is that the word "payable" has been replaced by the word "chargeable".

Section 3 of the Act states that wealth-tax shall be chargeable for every assessment year in respect of net wealth of the assessed on the corresponding valuation date. Section 3 however, is subject to other provisions contained in the Act. Section 5 of the Act states that wealth-tax shall not be payable in respect of certain assets and such assets shall not be included in the net wealth of the assessed.

The only question which thus falls for our consideration is applicability of the definition of net wealth as contained in section 2(m)(ii) of the Act in the fact of the present matter vis-a-vis sections 3, 4 and 5 thereof.

It is now trite that the expression occurring in the interpretation clause should ordinarily be given the same meaning unless the context otherwise requires. In a recent decision, the Apex Court in the Central Bank of India Vs. Ravindra and Others, referred to the decision in *Farrell v. Alexander* (1976) 2 All E.R. 721 which is in the following terms :

"where the draftsman uses the same word or phrase in similar contexts, he must be presumed to intend it in each place to bear the same meaning. The court having accepted invitation to embark upon interpretative expedition shall identify on its radar the contextual use of the word or expression and then determine its direction avoiding collision with icebergs of inconsistency and repugnancy."

5. It is also trite that the legislator is presumed to know the law. In *Dadi Jagannadham v. Jammalu Ramlu & Ors.* 2001 AIR SCW 3051 it has been held:

"13. We have considered the submissions made by the parties. The settled principles of interpretation are that the court must proceed on the assumption that the legislature did not make a mistake and that it did what is intended to do. The court must, as far as possible, adopt a construction which will carry out the obvious intention of the legislature. Undoubtedly if there is a defect or an omission in the words used by the legislature, the court would not go to its aid to correct or make up the deficiency. The court could not add words to a statute or read words into it which are not there, especially when the literal reading produces an intelligible result. The court cannot aid the legislature's defective phrasing of an Act or add and mend, and by construction, make up deficiencies which are there".

6. It is further well settled in view of *Gurudevdatte VKSSS Maryadit and Others Vs. State of Maharashtra and Others*, that the court will construe the statute having regard to its literal meaning wherein it was held :

"26. Further we wish to clarify that it is a cardinal principle of interpretation of statute that the words of a statute must be understood in their natural, ordinary or popular sense and construed according to their grammatical meaning, unless such construction leads to some absurdity or unless there is something in the context or in the object of the statute to suggest to the contrary. The golden rule is that the words of a statute must *prima facie* be given their ordinary meaning. It is yet another rule of construction that when the words of the statute are clear, plain and unambiguous, then the courts are bound to give effect to that meaning, irrespective of the consequences. It is said that the words themselves best declare the intention of the law-giver. The courts have adhered to the principle that efforts should be made to give meaning to each and every word used by the legislature and it is not a sound principle of construction to brush aside words in a statute as being in apposite surpluses, if they can have a proper application in circumstances" conceivable within the contemplation of the statute."

7. It is not in dispute that the courts while interpreting the statute must notice the law as it stood before the amendment.

8. In *Principles of Statutory Interpretation* by Shri G.P. Singh, 7th Edn at page 98, it is stated as under :

"When the material words are capable of bearing two or more constructions the most firmly established rule for construction of such words of all statutes in general (be they penal or beneficial, restrictive or enlarging of the common law)" is the rule laid down in *Heydon's case* (1584) 3 Co. Rep. 7a, p. 7B : 76 ER 637 which has now attained the status of a classic (*Kanai Lal Sur Vs. Paramnidhi Sadhukhan*, . The rule which is also known as purposive construction or mischief rule, enables consideration of four matters in construing an Act : (i) what was the law before the making of the Act, (ii) what was the mischief or defect for which the law did not provide, (iii) what is the remedy that the Act has provided and (iv) what is the reason of the remedy. The rule then directs that the courts must adopt that construction, which shall suppress the mischief and advance the remedy. The rule was explained in the *The Bengal Immunity Company Limited Vs. The State of Bihar and Others*, by S.R. Das, C.J., as follows : "It is a sound rule of construction of a statute firmly established in "England as far back as 1584 when *Heydon's case* was decided that for the sure and true interpretation of all statutes in general (be they penal or beneficial, restrictive or enlarging of the common law) four things are to be discerned and considered;

1st-What was the common law before the making of the Act;

2nd-What was the mischief and defect for which the common law did not provide;

3rd-What remedy the Parliament hath resolved and appointed to cure the disease of the commonwealth; and

4th-The true reason of the remedy;

and then the office of all the Judges is always to make such construction as shall suppress the mischief and advance the remedy and to suppress subtle inventions and evasions for continuance of the mischief, and pro privat commodo, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, pro bono publico.

9. The question which must be raised and answered is whether the assets chargeable and payable carry, different meaning or the same meaning. In other words, are the said words interchangeable :

Black's Law Dictionary (Sixth Edn.) defines these words as under :

"Chargeable : This word, in its ordinary acceptance, as applicable to the imposition of a duty or burden signifies capable of being charged subject to be charged, liable to be charged or proper to be charged.

Payable . Capable of being paid; suitable to be paid, admitting or demanding payment, justly due, legally enforceable. A sum of money is said to be payable when a person is under an obligation to pay it. Payable may, Therefore, signify an obligation to pay at a future time but when used without qualification, term normally means that the debt is payable at once, as opposed to owing."

Both the words, Therefore, are not interchangeable

10. The scheme of Wealth Tax Act in our opinion would suggest that the said words "chargeable" and "payable" carry different meaning. The statute states that the tax shall not be payable in respect of certain assets and property or income. The payability of tax may or may not depend on the chargeability of the tax. In other words, the assets, property or income may be chargeable to tax but may not be payable having regard to extent of exemption provided for in the Schedule appended to an Act. It is axiomatic that if the assets or property is not chargeable to tax, no tax would be payable but the converse may be true. In a situation of this nature, Therefore, an attempt must be made to give effect to both the expressions "chargeable" and "payable", having regard to the intention of the Parliament as reflected in different provisions of the Act as mentioned hereinbefore. We may notice that even in the Income Tax Act, the words "chargeable" and "payable" have been used in different provisions thereof.

11. Section 3 is the charging provision. The same does not exclude the applicability of the interpretation of "net wealth" as contained in section 2(m)(i)/(ii) of the Act.

12. The Schedule to the Act provides that no wealth-tax is payable in cases where the net wealth exceeds a particular figure. This only implies that the net wealth is chargeable to wealth-tax in terms of section 3 of the Act but the same

may not be payable having regard to the limit prescribed by reason of the Schedule appended thereto. Having regard to the fact that in the definition of net wealth both the expression "means" and "includes", are employed the same must be held to be exhaustive. Reference in this connection may be made to Commissioner of Income Tax, Bangalore Vs. Venkateswara Hatcheries (P) Ltd. etc. etc.,

13. It may be that chargeability to tax never operates on gross amount but nothing is payable as wealth-tax until by process of computation of it forms part of net wealth. The decision rendered in Commissioner of Income Tax, Bangalore Vs. B.C. Srinivasa Setty, , Bawa Shiv Charan Singh Vs. Commissioner of Income Tax, Delhi, , Commissioner of Income Tax (Central), Delhi Vs. Harprasad and Co. P. Ltd., were referred to in different context. The court in these cases was dealing with the concept of loss.

14. No asset is chargeable to wealth-tax. The Apex Court in SUDHIR CHANDRA NAWN Vs. WEALTH-TAX OFFICER, CALCUTTA, AND OTHERS. INTERVENERS : (1) STATE OF ASSAM; (2) STATE OF KERALA; AND (3) STATE OF UTTAR PRADESH., while considering the question as regards the constitutional validity of the Wealth Tax Act and also wealth-tax held :

"It is a tax on the capital value of the assets of individuals and companies on the valuation date. The wealth-tax is not imposed on the components of the assets of the assessed, it is imposed on the total assets which the assessed owns, and in determining the net wealth not only the encumbrances specifically" charged against any item of asset, but the general liability of the assessed to pay his debts and to discharges his lawful obligations have to be taken into account. In certain exceptional cases, where a person owes no debts and is under no enforceable obligation to discharge any liability out of his assets, it may be possible to break-up the tax which is livable on the total assets into components and attribute a component to lands and buildings owned by an assessed. In such a case, the component out of the total tax attributable to lands and buildings may in the matter of computation bear similarity to a tax on lands and buildings levied on the capital or annual value under entry 49 of List II. But the legislative authority of Parliament is not determined by visualizing the possibility of exceptional cases of taxes under two different heads operating similarly on taxpayers."

(Emphasis, here italicised in print, supplied)

15. It may thus legitimately be inferred that the expression "property not chargeable to wealth-tax" occurring in section 2(m)(ii) would manifest legislative intent that the property and asset may fall in section 2(e) of the Act but would only include net wealth for the purpose of taxability. The said Act, Therefore, must be read in the aforesaid context. Computation of net wealth would be based on charge of wealth-tax in terms of section 3 of the Act. The definition of "net wealth" as contained in section 2(m)(ii) fits in the scheme of charging

provision, inasmuch as the word assets as defined in section 2(e) of the Act covers the tax incurred by the assessed. Thus, any property which does not fall within the definition of assets u/s 2(e) would not be charged to wealth-tax.

16. It is true that a Full Bench of Madras High Court in CIT v. Vaidyanathan (supra) has held that by reason of such amendment no material change was effected. It was held thus:

"The rule of strict construction applies only to charging sections and not to machinery sections. Section 2(m) of the Wealth Tax Act, 1957, is not a charging section and the rule of strict construction cannot be applied to it. The principle of "purposive construction" has to be applied, This is a construction which will promote the general legislative purpose underlying the provision. Section 2(m) (ii) speaks of debts which are secured on or which have been incurred in relation to any property in respect of which wealth-tax is not chargeable under the Act. In case where an asset is only partially exemption from chargeability to wealth-tax, then it must be necessarily follow that the portion of the debt secured on such portion of the asset or incurred in acquiring such portion of the asset has to be excluded from reckoning. This construction will be in harmony with the scheme and purpose of the Wealth Tax Act."

17. With utmost respect we cannot subscribe to his said view. Rule of purposive construction may be taken recourse to when literal meaning attributed to a provision of statute leads to an absurdity. Such is not the case here. It is, in our view possible to give effect to the definition of "net wealth" in implementing section 3 vis-a-vis section 5 of the Act.

The minority view expressed by Balsubramaniam, J. commends to us. The view expressed runs thus :

"Section 2(m)(ii) does not speak of exempted assets. It only refers to property in respect of which wealth-tax is not chargeable. This phrase must be understood as meaning "property in respect of which wealth-tax is not at all chargeable". "Not at all" is not a gloss. It is very much a part of the meaning. If the secured properties fit in with the meaning of section 2(m)(ii), the connected debts go out of the reckoning. But if the properties are not comprehended by section 2(M)(ii), the general rule of deductibility operates and this general rule knows no restrictions. In other words, depending on its relation to the asset in question, a debt is either deductible or not deductible. Section 2(m)(ii) does not contain any provision for partial abatement, or apportionment, of a debt under which part of it is deductible and part of it is not. On the words of section 2(m)(ii), once an asset which secured the debt is treated as an asset on which wealth-tax is chargeable, even though a part of the value of the asset is exempt from tax, the whole of the secured debt must be deducted."

18. The legislature does not make an amendment unnecessarily. The amendment so carried out Therefore, must be given its full effect. To the aforesaid extent the mischief rule or "Heyden"s rules" must be applied having regard to the different

expressions "chargeable" and "payable" carry, particularly when the said expression are not interchangeable. In this connection, we may refer to the decision of the Apex Court in Commissioner of Income Tax, Bombay etc. Vs. M/s. Podar Cement Pvt. Ltd. etc., where their Lordships observed as under :

"At this juncture, we can also refer to the judgment cited by Mr. Syali regarding updating construction of the words used in the statute. In State through CBI/ New Delhi v. S.J. Choudhary , this court has quoted the following passage with approval in support of updating construction (1996) 2 SCC433 :

"Statutory Interpretation by Francis Bennion, 2nd Edn, section 288 with the heading "Presumption that updating construction to be given" states one of the rules thus (p. 617) :

(2) It is presumed that Parliament intends the court to apply to an ongoing Act a construction that continuously updates its working to allow for changes since the Act was initially framed (an updating construction). While it remains law, it is to be treated as always speaking. This means that in its application on any date, the language of the Act, though necessarily embedded in its own time, is nevertheless to be construed in accordance with the need to treat it as current law.

In the comments that follow it is pointed out that an ongoing Act is taken to be always speaking. It is also, further stated thus :

In construing an ongoing Act, the interpreter is to presume that Parliament intended the Act to be applied at any future time in such a way as to give effect to the true original intention. Accordingly the interpreter is to make allowances for any relevant changes that have occurred, since the Act's passing, in law, social conditions, technology, the meaning of words, and other matters. Just as the US Constitution is regarded as "a living Constitution", so an ongoing British Act is regarded as "a living Act". That today's construction involves the supposition that Parliament was catering long ago for a state of affairs that did not then exist is no argument against that construction. Parliament, in the wording of an enactment, is expected to anticipate temporal developments. The drafts will try to foresee the future, and allow for it in the wording.

An enactment of former days is thus to be read today. In the light of dynamic processing received over the years, with such modification of the current meaning of its language as will now give effect to the original legislative intention. The reality and effect of dynamic processing provides the gradual adjustment. It is constituted by judicial interpretation, year in and year out. It also comprises processing by executive officials."

It was further observed :

"Assuming that there are two possible interpretations on section 22 of the Act, which is akin to a charging section, it is well settled, that the one which is favorable to the assessed has to be preferred. "

Furthermore, for the purpose for computing the net wealth, the source of acquisition of assets may not have much relevance. The said assets have admittedly been acquired by the assessed. Policies are issued by LIC for particular purpose. Although loan can be obtained from LIC against such policy but the same by itself cannot be said to be object and purpose thereof. Assets had been acquired by the assessed by investing the amount in shares and by grant of loan or advance to other persons.

19. We may notice that the income derived from such investment would be subjected to Income Tax and thus there does not exist any reason as to why the same shall not form part of the "assets" for the purpose of Wealth Tax Act. The source of acquiring the money for such investment may not be relevant. What is relevant is the extent of assets in the hands of the assessed at the relevant time. If any assets acquired by investment from loan from any other sources could form part of assets we fail to understand as to why the same principle would not apply to acquisition of assets by investment of money which was procured by way of loan by pledging LIC policies. This aspect of the matter has not been considered in deciding by the courts. Vaidyanathan's case (supra), Apoorva Shanti Lals case (supra) and Premnarayan Garg's case (supra).

20. It may be true that the Bombay High Court in the CWT v. Vasant Kumar Govindji Kotak (supra) did not go into the question from this point of view but it is profitable to notice that therein it was held :

"On the words of section 2(m)(ii), once an asset which secures the debt is treated as an asset on which wealth-tax is chargeable, even though a part of the value of the asset is exempt from tax, the whole of the secured debt must be deducted."

The policy amount would be payable only upon its maturity but the same by itself in our considered view cannot be a ground to exclude any assets acquired out of the loan from LIC by securing the policies. The loan could have been obtained from any other source. Section 5(1)(4) [sic-5(1)(vi)] of the Act has provided for exemption. An exemption of the clause may be strictly construed and the same cannot be interpreted in such a manner so as to take away a benefit to which the assessed may otherwise be entitled to.

In The Federation of Andhra Pradesh Chambers of Commerce and Industry and Others Vs. State of Andhra Pradesh and Others Etc. Etc., , the Apex Court observed thus :

"It is trite law that a taxing statute has to be strictly construed and nothing can be read into it. In the classic passage from Cape Brandy Syndicate (1921) 1 KB 64 which was noticed in the judgment under appeal, it was said :

"In a taxing Act one has to look merely at which is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can look fairly at

the language used."

This view has been reiterated by this court time and again. Thus, in *State of Bombay v. Automobile & Agricultural Industries Corpn.* (1961) 12 STC 122, this court said :

"But the courts in interpreting a taxing statute will not be justified in adding words thereto so as to make out some presumed object of the legislature. If the legislature has failed to clarify its meaning by the use of appropriate language, the benefit thereof must go to the taxpayers. It is settled law that in case of doubt, that interpretation of a taxing statute which is beneficial to the taxpayer must be adopted."

21. In view of the aforesaid discussion the reference is answered in affirmative and in favor of the assessed and against the revenue.

The reference is disposed of accordingly.