
(1999) 06 KAR CK 0048
In the Karnataka High Court
Case No : Writ Petition No. 16302 of 1994

K.V. Sathyanarayana Raju

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 16-06-1999

Acts Referred:

Citation : (1999) 240 ITR 912

Hon'ble Judges : V.K. Singhal, J

Bench : Single Bench

Advocate : Murthy Kumar, for the Appellant; M.V. Seshachala, for the Respondent

Judgement

V.K. Singhal, J.—Validity of section 2(ea)(i) and 2(ea)(ii) and 2(m) of the Wealth-tax Act, 1957, as inserted by the Finance Act, 1992 with effect from 1-4-1993 have been assailed in this petition. It is stated that prior to its amendment, section 2(m) which defined "net wealth" includes all the assets belonging to the assessee on such valuation date, minus debts owed by him. Now by amendment it is only debt in respect of that asset which could be reduced and, therefore, it has gone beyond the scheme of the Act. It is submitted that the levy of tax on land and building which is exclusively within the legislative competence of the State Legislature under Entry 49, List II, Schedule VII of the Constitution of India cannot be made liable to tax under the Wealth-tax Act. Reliance is placed on the judgment given by the Apex Court in the case of 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., it was observed that the tax which is imposed by Entry 86, List I, of the Seventh Schedule is not directly a tax on lands and buildings. It is a tax imposed on the total assets of individuals and companies, on the valuation date. The tax is not imposed on the components of the assets of the assessee, it is imposed on the total assets which the assessee owns, and in determining the net wealth not only the encumbrances specifically charged against any item of asset, but the general

liability of the assessee to pay his debts and to discharge his lawful obligations have to be taken into account.

It is submitted that the wealth-tax could not be imposed on the components of assets of an assessee but it could be only on the total value of the assets. Decision given in the case of *The Assistant Commissioner of Urban Land Tax and Others Vs. The Buckingham and Carnatic Co. Ltd., etc.*, is relied, wherein it was observed that tax on the capital value of the assets would bear no definable relations to lands and buildings, which also may form a component of the total assets of the assessee. Since only selected assets are subject to wealth-tax, similarly the debt in relation to that asset alone is deductible while computing the "net wealth", the charge is stated to be relatable, individually, to each of the assets owned by an assessee. It is stated that the amendments are trenching upon the powers of the State Legislature and in pith and substance they amount to a tax on land and buildings hence, beyond the powers of the Parliament. There may be a liability unconnected with the assets which may be even much more than the value of the asset, no deduction is now permissible because the value of the few assets is separately being charged. It may result in levy of tax on that item, particularly for land and building which is directly a tax falling within the legislative competence of the State and, thus, the provisions of section 2(ea)(i) and 2(ea)(v) are liable to be struck down.

It is also stated that tax on land and building individually and separately is violative of the fundamental right as it results in double taxation on the same asset, namely, land and building.

2. Argument of both the learned counsels for the parties have been heard.

Entry 86, List I, VII Schedule is in respect of the taxes on the capital value of the assets exclusive of agricultural land of individuals and companies. Entry 49, List II, Schedule VII is in respect of taxes on lands and buildings. The difference between the two provisions is that in the case of wealth-tax, it is the capital value of the asset on which the tax could be levied. It could be any asset may be land and building but the tax could be on the capital value of such land and building exclusive of agricultural lands of individuals and companies.

3. In the case of *Sudhir Chandra Nawn (supra)*, same arguments have been raised and it was observed as under:

...The tax which is imposed by Entry 86, List I, of the Seventh Schedule, is not directly a tax on lands and buildings. It is a tax imposed on the capital value of the assets of individuals and companies, on the valuation date. The tax is not imposed on the components of the assets of the assessee : it is imposed on the total assets which the assessee owns, and in determining the net wealth not only the encumbrances specifically charged against any item of asset, but the general liability of the assessee to pay his debts and to discharge 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 leviable on the total assets into components and attribute a component to lands and buildings owned by an assessee. 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, 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. Again Entry 49, List II, of the VII Schedule contemplates the levy of tax on lands and buildings or both as units. It is normally not concerned with the division of interest or ownership in the units of lands or buildings which are brought to tax. Tax on lands and buildings is directly imposed on lands and buildings, and bears a definite relation to it. Tax on the capital value of assets bears no definable relation to lands and buildings which may form a component of the total assets of the assessee. By legislation in exercise of power under Entry 86, List I, tax is contemplated to be levied on the value of the assets. For the purpose of levying tax under Entry 49, List II, the State Legislature may adopt for determining the incidence of tax the annual or the capital value of the lands and buildings. But the adoption of the annual or capital value of the lands and buildings for determining tax liability will not, in our judgment, make the fields of legislation under the two entries overlapping." (p. 900)

4. In the case of *Buckingham & Carnatic Co. Ltd.* (supra), it was observed that the basis of taxation under the two entries is quite distinct. As regards Entry 86 of List I, the basis of taxation is the capital value of the asset. It is not a tax directly on the capital value of the assets of individuals and companies on the valuation date. The tax is not imposed on components of the assets of the assessee. The tax under Entry 86 proceeds on the principle of aggregation and is imposed on the totality of the value of all the assets. It is imposed on the total assets which the assessee owns and in determining the net wealth not only the encumbrances specifically charged against any item of assets, but the general liability of the assessee to pay his debts and to discharge 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 leviable on the total assets into components and attribute a component to lands and buildings owned by an assessee. 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, List II. But in a normal case a tax on capital value of assets bears no definable relation to lands and buildings which may or may not form a component of the total assets of the assessee. But Entry 49 of List II contemplates a levy of tax on lands and buildings or both as units. It is not concerned with the division of interest or ownership in the units of lands or buildings which are brought to tax. Tax on lands and buildings is directly imposed on lands and buildings, and bears

a definite relation to it. Tax on the capital value of assets bears no definable relation to lands and buildings which may form a component of the total assets of the assessee. By legislation in exercise of power under Entry 86, List I, tax is contemplated to be levied on the value of the assets. For the purpose of levying tax under Entry 49, List I, the State Legislature may adopt for determining the incidence of tax the annual or capital value of the lands and buildings. But the adoption of the annual or capital value of lands and buildings for determining tax liability will not make the fields of legislation under the two entries overlapping. The two taxes are entirely different in their basic concept and fall on different subject-matters.

5. Validity of gift-tax on land and building was examined in the case of *SECOND-GIFT TAX OFFICER, MANGALORE Vs. D. H. NAZARETH.*, wherein it was observed that the pith and substance of the Gift-tax Act, 1958 is to place the tax on the gift of property which may include lands and buildings. It is not a tax imposed directly upon lands and buildings but is a tax upon the value of total gifts made in a year which is above the exempted limit. There is no tax upon lands or buildings as units of taxation. Indeed, the lands and buildings are valued to find out the total amount of the gift and what is taxed is the gift. A gift-tax is, thus, not a tax on lands and buildings as such (which is a tax resting upon general ownership of lands and buildings) but is a levy upon a particular use, which is transmission of title by gift. The two are not the same thing and the incidence of tax is not the same. Since Entry 49 of the State List contemplates a tax directly levied by reason of the general ownership of lands and buildings, it cannot include the gift-tax as levied by Parliament. There being no other entry which covers gift-tax, the residuary powers of Parliament could be exercised to enact a law.

6. Reliance is placed on the judgment given in the case of *Union of India (UOI) Vs. Shri Harbhajan Singh Dhillon*, wherein the Wealth-tax Act was held as not imposing a tax mentioned in Entry 49, List II but a caution was left that if the real effect of the Central Act is to impose the tax mentioned in Entry 49, List II, the tax may be bad, as encroaching upon the domain of the State Legislatures. Requisites of a tax under Entry 49, List II were considered (a) it must be a tax on units, i.e., lands and buildings separately as units, (b) the tax cannot be a tax on totality, i.e., it is not a composite tax on the value of all lands and buildings, (c) the tax is not concerned with the division of interest in the building or lands. In other words, it is not concerned whether one person owns or occupies the land or building or two persons own or occupy it.

7. Reliance is placed on the decision given in the case of *Commissioner of Wealth Tax Vs. Dr Karan Singh and Others*, The tax contemplated by Entry 86 is a tax upon the net wealth. It is a net wealth of an individual which necessarily means "what all he owns minus what all he owes" and this is what the Act purports to tax. The tax is not upon the assets as such but is upon individuals and companies with reference to the capital value of the assets held by them. I have

considered over the matter.

Apparently, there appears to be no conflict of jurisdiction in exercising the power by the State Legislature under Entry 86, List I. The legislative entries are to be given a liberal interpretation. The power to levy tax on land and building under Entry 49, List II has been held not encroaching upon the power conferred on the Parliament under Entry 86, List I, as held in the case of *Sudhir Chandra Nawn* (supra) referred to above. A distinction has been drawn between the levy of tax on land and building or both as a unit for which various State Legislatures have enacted land and building tax Act and that on the capital value of the assets owned. Under Entry 86, List I, the principle of aggregation is made applicable and tax is imposed on the totality of the value of all the assets. By the amendment in respect of levying wealth-tax on all the assets, few items have been selected and land and building is one of them. In a particular case, an assessee may own land and building alone while in other cases, it may be number of lands and buildings with or without other assets which are liable to wealth-tax. If there is no other asset, then the principle of aggregation cannot apply and it is the value of that asset which is liable to tax. The Legislature could have levied the tax on the capital value of the asset without even providing the deduction on any debt owed in respect thereof. Earlier it was the total debts owed which were to be reduced from the total assets owned. Even before the amendment, exemptions were provided, capital value of those assets was to be excluded from the total value of the assets for determining the wealth-tax liability. In the case of tax on land and building, it is a tax directly imposed on land and building irrespective of the fact as to who owns it and whether there is any liability on that asset or not. Now the aggregation of land and building is with number of assets and the debt which is owed by the assessee in respect of such asset is allowed as a deduction because all the assets are not taken for computation purpose in aggregation. The Central legislation has the power to classify the assets or limit the liability of wealth-tax in respect of selected items, but for that reason it could not be considered that the tax is levied by the Central legislation on that very item and more particularly in respect of land and building. The principle of aggregation still applies. In these circumstances, it cannot be considered that the amendments made by the Finance Act are ultra vires the Constitution or the Central legislation has encroached upon the field of State Legislature.

Writ petition having no force is, accordingly, dismissed.