
(1984) 12 AP CK 0015
In the Andhra Pradesh High Court
Case No : R.C. No. 126 of 1980

M. Ramanamma	Vs	APPELLANT
Commissioner of Wealth Tax		RESPONDENT

Date of Decision : 18-12-1984

Acts Referred:

Income Tax Act, 1961 — Section 66, 66(1)
Wealth Tax Act, 1957 — Section 16(3), 17, 17(1), 17(1A), 17(1B)

Citation : (1987) 59 CTR 206 : (1986) 157 ITR 555 : (1985) 23 TAXMAN 197

Hon'ble Judges : Y.V. Anjaneyulu, J;K. Amareswari, J

Bench : Division Bench

Advocate : S. Dasaratharama Reddy, for the Appellant; M.S.N. Murthy, for the Respondent

Judgement

Y.V. Anjaneyulu, J.—This reference made by the ITAT arises under the WT Act ("the Act" for short). The reference is made under s. 27(1) of the Act and relates to wealth-tax asst. yrs. 1965-66 to 1969-69 (both years inclusive) and 1970-71 to 1973-74 (both years inclusive). The Tribunal made a consolidated reference in connection with the reference applications filed both by the assessee as well as the CWT. Some questions are referred at the instance of the Revenue. The questions referred for the opinion of this Court are set out below :

A. Questions referred at the instance of the assessee for the wealth-tax asst. yrs. 1965-66 to 1968-69 (both years inclusive) :

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal is justified in holding that the re-opening of the assessments was under s. 17(1) (a), but not under-s. 17(1)(b) of the WT Act, 1957 and reassessment were, therefore, not barred by the limitations ?

(2) Whether, on the facts and in the circumstances of the case, the findings of the Tribunal that the lands held by the assessee within the limits of Visakhapatnam Municipality as on the relevant valuation dates were non-agricultural in

character is correct and based upon the correct application of the tests laid down by the Supreme Court in the case of Commissioner of Wealth Tax, Andhra Pradesh Vs. Officer-in-charge (Court of Wards), Paigah,

(3) Whether, on the facts and in the circumstances of the case, the Tribunal is right in rejecting the assessee's contention that the right to compensation was a mere inchoate right and did not become an asset belonging to the assessee until the final determination of the proceedings under s. 30 of the Land Acquisition Act rejecting the rival claims of others to the same compensation and also until the final determination of the proceedings under s. 18 of the Land Acquisition Act determining the quantum of compensation payable for acquisition of lands ?

(4) Whether, on the facts and in the circumstances of the case, the Tribunal is right in impliedly rejecting the assessee's contention that since its mode of accounting was on cash basis nothing would be added in her net wealth for the assessment years under reference on account of the right to compensation ?"

B. Questions referred at the instance of the assessee for the wealth-tax asst. yrs. 1970-71 to 1973-74 (both years inclusive) :

"(5) Whether, on the facts and in the circumstances of the case and on the correct application of the tests laid down by the Supreme Court in Commissioner of Wealth Tax, Andhra Pradesh Vs. Officer-in-charge (Court of Wards), Paigah, , the Tribunal is correct in holding that the lands still held by the assessee within the Visakhapatnam Municipality as on the relevant valuation dates are non agricultural in character and in holding that the assessee is not entitled to the benefit of exemption to the extent of Rs. 1-1/2 lakhs under s. 5(1)(iv)(a) of the WT Act, 1957 ?

(6) Whether, on the facts and in the circumstances of the case, the Tribunal is right in rejecting the assessee's contention that the right to compensation was a mere inchoate right and did not become an asset belonging to the assessee until the final determination of the proceedings under s. 30 of the land Acquisition Act rejecting the rival claims of others to the same compensation and also until the final determination of the proceedings under s. 18 of the Land Acquisition Act determining the quantum of compensation payable for acquisition of lands ?

(7) Whether, on the facts and in the circumstances of the case, the Tribunal is right in impliedly rejecting the assessee's contention that since its mode of accounting was cash basis nothing could be added in her net wealth for the assessment years under reference on account of the value of the right to compensation ?"

C. Question referred at the instance of the CWT for the wealth-tax asst. yrs. 1966-67 to 1973-74 (both years inclusive) :

"Whether, on the facts and in the circumstances of the case, the Tribunal is correct in holding that the assessee's right to compensation for the lands acquired should not be valued as on the relevant valuation dates at the same

figures at which the compensation was finally determined by the High Court in the Land Acquisition proceedings but only at 40% thereof ?"

D. Question referred at the instance of the CWT for the wealth-tax asst. yrs. 1970-71 to 1973-74 (both years inclusive) :

"(9) Whether, on the facts and in the circumstances of the case, and on a correct interpretation of the provision of s. 4(1)(iv)(a) read with explanation under s. 4 of the WT Act, the Tribunal is correct in holding that 111.72 acres of land was irrevocably transferred by the assessee to others and ceased to be an asset belonging to the assessee by the relevant valuation dates even though no registered deed of conveyance was executed by the assessee in favour of the transferees ?"

It may be mentioned that wealth-tax assessments for the years 1965-66 to 1968-69 under consideration are re-assessments made under s. 17 of the Act, whereas wealth-tax assessments made for the years 1970-71 to 1973-74 are regular assessments made under s. 16(3) of the Act. It will be noticed that question Nos. 5,6 and 7 stated above at the instance of the assessee for the wealth-tax asst. yrs. 1970-71 to 1973-74 are identical to the question Nos. 2, 3 and 4 referred at the instance of the assessee of the assessee for the wealth-tax asst. yrs. 1965-66 to 1968-69. It will be convenient to deal with each question separately. Sri S. Dasaratharama Reddy, Id. counsel appearing for the assessee, and Sri M. Suryanarayana Murthy, Id. standing counsel for the revenue, put forward their submissions while dealing with each question.

2. We shall first consider the question concerning the validity of the re-assessment proceedings initiated under s. 17(1)(a) of the Act for the asst. yrs. 1965-66 to 1968-69. The assessee owned considerable extent of land in Kothapadue in West Godavari district, Tallarevu in East Godavari district and also within the municipal limits of Visakhapatnam Municipality. Returns were failed for the wealth-tax asst. yrs. 1965-66 to 1968-69 declaring her net wealth. On the valuation dates Corresponding to these assessment years, a substantial portion of the assessee's lands was acquired for the purpose of Railway Port Trust and other public bodies. The relevant notifications acquiring the property were issued between 26-9-1963 and 7-7-1966. It is common ground that, in the wealth-tax returns filed by the assessee, the assessee did not disclose the value of the lands held by her. It is also not in dispute that, in respect of the lands acquired, of which possession was taken before the valuation dates corresponding to the assessment years referred to above, the assessee did not disclose the compensation receivable as an asset. It is also not in dispute that, during the original assessment proceedings, attention of the WTO was not invited to the fact that the assessee was the owner of large extent of land and that a substantial portion of the same was already acquired and vested in the Government enabling the assessee to receive compensation in respect of the lands acquired. The wealth-tax assessments were completed on the basis of the returns filed between 31-10-1965 and 21-2-1969. The assessment completed did not include

the value of lands held by the assessee or the compensation receivable. After the completion of the assessments, the WTO came by the above information. Noticing that, in the returns filed, the assessee failed to declare the value of the lands and the compensation receivable pursuant to the acquisition of a substantial portion of the lands, the WTO initiated proceedings under s. 17 of the Act reopening the assessments. The WTO served notices dt. 10-12-1973 on the assessee under s. 17 requiring the assessee to file returns of net wealth for these assessment years. The assessee challenged the validity of the jurisdiction assumed by the WTO under s. 17 by filing Writ Petition Nos. 4003 to 4010 of 1974 in this Court. The writ petition were dismissed upholding the validity of the reassessment jurisdiction assumed by the WTO. Against the order of the Id. single Judge dismissing the writ petitions, the assessee filed writ appeals bearing W.A. Nos. 608 to 615 of 1974. These writ appeals were disposed of by a Division Bench of this Court in 16-9-1974. The appeals filed were dismissed affirming the decision of the Id. single Judge. It may be jurisdiction assumed by the WTO by issuance of notice dt. 10-12-1973 under s. 17 of the Act was upheld basically on the ground that the assessee did not disclose in the wealth-tax return filed by her the value of the lands held by her on the valuation dates corresponding to the assessment years mentioned above and that the assessee failed to disclose in the returns the compensation receivable in respect of the lands acquired. It was also found that, during the course of the original assessment enquiry, the assessee did not disclose any facts concerning the acquisition of the lands, the awards passed or the proceedings pending for enhancement of compensation. The above decisions of this Court should have given a quietus to any further contention on the part of the assessee that the reassessment proceeding were not valid. Even so, the assessee seems to have urged before the authorities below that the reassessment proceedings are invalid, as the WTO did not indicate whether the proceedings were initiated either under s. 17(1)(a) or under s. 17(1)(b) of the Act. The assessee seems to have urged that the lands were agricultural in character and, therefore, there was no obligation to declare the value of the lands held by her and that information regarding acquisition of lands was not furnished because of the inconclusive nature of award proceedings at the relevant time. The WTO rejected the assessee's plea that there was disclosure of the material facts and held that there was escapement of wealth in the assessments originally completed by reason of the omission or failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment. The assessee appealed unsuccessfully on this point to the AAC. In the second appeal filed before the ITAT, the assessee reiterated the plea that the reassessment proceedings were not valid. The Tribunal held that the decision of this Court upholding the validity of the reassessments concluded the question against the assessee and that it was not open to the assessee to re-agitate this question in appeals against the assessments made after the decision of this Court. The Tribunal also held that it was obligatory on the part of the part of the assessee to disclose the extent of lands held by her and put in appropriate claim for exemption if the assessee thought that the lands were agricultural in

character. There was failure on the part of the assessee to do so when the returns were originally filed. The Tribunal also held that the assessee was entitled to receiver compensation in respect of the lands acquired before the valuation dates corresponding to the assessment years mentioned above. The Tribunal rejected the assessee's contention that, because there were some dispute regarding the persons to whom the compensation should be paid and the extent thereof the assessee should be absolved from the obligation to disclose the relevant particulars at the time when the original assessments were made. For these reasons, the Tribunal upheld the validity of the reassessment proceedings initiated under s. 17(1)(a) of the Act. We are satisfied, on looking into the materials on record, that there was omission of failure on the part of the assessee to disclose fully and truly all the material facts in the wealth-tax returns originally filed by her. This was the basis on which the writ petitions and the writ appeals filed by the assessee were dismissed by this Court. The WTO rightly invoked the provisions of s. 17(1)(a) of the Act. In fairness to the Id. counsel for the assessee it should be said that he did not seriously advance any submissions for the acceptance of the assessee's claim that the reassessment proceedings were invalid. We accordingly hold that the reassessment proceedings initiated by the WTO under s. 17(1)(a) of the Act for the wealth-tax asst. yrs. 1965-66 to 1968-69 (both years inclusive) are valid. Inasmuch as the reassessment proceedings were initiated under s. 17(1)(a) of the Act, the re-assessments made were not barred by limitation. We accordingly No. 1 in the affirmative, that is to say, in favour of the revenue and against the assessee.

3. Question No. 2 referred to this Court at the instance of the assessee may now be considered. Our answer to question No. 2 would also cover the answer to question No. 5 referred at the instance of the assessee. As already stated above, the assessee owned substantial extent of lands in village Marripalem, Dondaparthi, Allipuram and Kancharlapalem within the Visakhapatnam municipal limits. It would appear that the assessee purchased these lands in the years 1960 and 1961. The total extent of lands was found to be in the region of 175 acres from out of which a portion had been acquired for the Railway, Port Trust, etc. as already mentioned. The assessee claimed that the lands held by her were agricultural in character and consequently they could not be considered as "assets" for wealth-tax purposes under s. 2(e)(1)(i) of the Act and including the asst. yrs. 1969-70. From the asst. yr. 1970-71 onwards, the assessee claimed that she is entitled to exemption upto the extent of Rs. 1,50,000 under s. 5(1)(iva) of the Act. The contention would, therefore, appear to be that, for the wealth-tax asst. yrs. 1965-66 to 1968-69, the value of the agricultural lands cannot enter into the computation of net wealth at all, while, for the wealth-tax asst. yrs. 1970-71 to 1973-74, the value of the agricultural lands could be included consequent on the amendments to the WT Act introduced by the Finance Act, 1969, subject however to the exemption under s. 5(1)(iva) of the Act. The WTO rejected the assessee's claims that the lands were agricultural in character for a variety of reasons. On appeal, the AAC upheld the WTO's view

that the lands were not agricultural in character. The assessee filed a second appeal before the Tribunal reiterating the contention that the lands were agricultural in character. The Tribunal observed that an identical contention was urged by the assessee in connection with the Income Tax asst. yrs. 1966-67 to 1969-70. It would appear that the question whether the lands were agricultural in character had arisen before the Income Tax authorities in connection with the liability to capital gains on the transfer of a portion of the lands under consideration. The Tribunal stated that, by its order dt. 31-1-1979 disposing of the appeals in connection with the Income Tax asst. yrs. 1966-67 to 1969-70, it was held that the lands were not agricultural in character. For the same reasons, the Tribunal rejected the assessee's contention that the lands should be considered as agricultural lands for purposes of wealth-tax (vide paragraph 26 of the Tribunal's order).

4. During the course of the hearing, Id. counsel for the assessee furnished to us a copy of the Tribunal's order dt. 31-1-1979 in connection with the Income Tax asst. yrs. 1966-67 to 1969-70 wherein the Tribunal had dealt with the question exhaustively and came to the conclusion that the lands were not agricultural in character. The Tribunal had taken note of the tests enunciated by the Supreme Court in Commissioner of Wealth Tax, Andhra Pradesh Vs. Officer-in-charge (Court of Wards), Paigah, . Applying those tests, the Tribunal held that, on the evidence led by the assessee, an initial presumption could be drawn that the lands were agricultural in character, but that the lands were agricultural in character, but that the revenue had successfully rebutted the above presumption by leading appropriate evidence. In view of the rebuttal by the revenue of the initial presumption, the Tribunal held that the lands in question could not be considered to be agricultural lands.

5. Learned counsel for the assessee, Sri Dasaratharama Reddi, has invited our attention to the following aspects, which, according to him, unmistakably establish that the lands were agricultural in character :

(a) the ryotwari pattas were granted in respect of the lands in question under the revenue laws and all the lands were registered in the revenue records of the State Government as agricultural lands;

(b) that land revenue was paid in respect of the lands in question;

(c) that tax was not levied under the Andhra Pradesh Non-Agricultural Lands Assessment Act, 1963 (Act No. 14 of 1963) treating the lands in question as non-agricultural lands;

(d) that there was no conversion of the lands as non-agricultural lands as required under the revenue laws; and

(e) that there was evidence to show that the lands were used for agricultural purposes, although unfortunately, the evidence was conflicting.

Learned counsel has taken us through the evidence on record and urged that, in

the facts and circumstances, the Tribunal was in error in coming to the conclusion that the lands were not agricultural in character, Learned counsel, in particular, submitted that the Tribunal erred in coming to the conclusion that the presumption that the lands were agricultural in character, which was established by reference to the above aspects of the matter, was rebutted by the revenue successfully.

6. Learned standing counsel for the revenue, Sri M. Suryanarayana Murthy, on the other hand, has invited out attention to the evidence which, according to him, unmistakably indicated that the lands were not agricultural in character. He urged that the attempts of the assessee to fabricate evidence in support of the contention that the lands were agricultural in character were successfully frustrated by the revenue. It is submitted that there was no evidence at all that any agricultural operations were carried on the lands either before or after the purchase of the lands by the assessee. On the contrary, the evidence according to the Id. standing counsel, showed that the lands were unfit for cultivation and that, in fact, the lands were not put to use for agricultural purposes by the assessee. It is further submitted that the evidence was clinching that the assessee purchases these lands with a view to sell the same after the prices escalated and there was no intention at any time on the part of the assessee to use the lands for agricultural purposes. According to the Id. standing counsel, this is not a case where there was a temporary cessation of the user of the lands for agricultural purposes, but a case of total non-user for agricultural purposes both before and after the purchase by the assessee. It is urged that the revenue successfully rebutted the initial presumption that the lands were agricultural in character and that the tests laid down by the Supreme Court in *Commissioner of Wealth Tax, Andhra Pradesh Vs. Officer-in-charge (Court of Wards), Paigah*, were correctly applied by the Tribunal in coming to the conclusion that the lands were not agricultural in character.

7. We have gone through the entire evidence on record and carefully considered the submissions of the Id. counsel for the assessee as well as the revenue. Inasmuch as the Tribunal itself had proceeded on the assumption that the initial presumption that the lands were agricultural in character could be drawn in the facts and circumstances of the case following the tests laid down by the Supreme court in *Commissioner of Wealth Tax, Andhra Pradesh Vs. Officer-in-charge (Court of Wards), Paigah*, , all that we have to see is whether the revenue successfully rebutted the initial presumption. The facts viz., that ryotwari pattas were granted in respect of the lands in question, that the lands were registered as agricultural lands in the revenue records and that land revenue was paid in respect of the lands in question, furnish the evidence that prima facie the lands were agricultural in character. The Tribunal was, therefore, perfectly correct in proceeding on that assumption. This "prima facie evidence" provided by the entries in the revenue records could raise only a rebuttable presumption, as held by the Supreme Court in *Commissioner of Wealth Tax, Andhra Pradesh Vs. Officer-in-charge (Court of Wards), Paigah*, . It was, therefore, imperative that

the revenue led some evidence to rebut the presumption. The Tribunal took considerable pains in shifting the evidence led by the revenue to rebut the above presumption based on "Prima facie evidence" and came to the conclusion that the evidence led by the revenue was enough to displace the initial presumption that the lands were agricultural in character. We would have, in the normal course, refrained from referring to the volume of evidence relied on by the Tribunal, but we would prefer, in a case of this magnitude, to briefly refer to this evidence. The findings of the Tribunal based on the evidence led by the revenue are :

(i) The evidence relied on the by assessee to show that the lands were put to actual agricultural user was found to have been fabricated. Entries in the Adangal registers of the concerned villages were found to have been tampered with to support the assessee's plea that crops were raised. Initially, the Revenue Inspectors and the Village Karnams of the villages concerned testified that the lands held by the assessee were unfit for cultivation. They tried to resile from their original statements and endeavoured to support the assessee's version. The authorities below successfully demonstrated that the statements initially made by the Revenue Inspectors and the Village Karnams were correct.

(ii) The affidavits of two villagers filed by the assessee before the AAC were considered to be irrelevant and inconsequential; firstly, these affidavits were not filed before the WTO and secondly, the two villagers did not belong to the villages wherein the lands of the assessee were situate and also did not own and possess any lands in the villages. The Tribunal found that they did not have any personal knowledge of the matters and, therefore, their oral evidence to support the plea of the assessee's lands being put to agricultural use was not relied upon.

(iii) The assessee's claim that she spent a sum of Rs. 1,50,000 for reclaiming waste land to make it useful for purposes for cultivation was found to be untrue. The Tribunal noticed that the assessee failed to make any claim before the Land Acquisition Authorities that she incurred expenditure of Rs. 1,50,000 for purposes of development of the lands, when the lands in question were acquired.

(iv) The assessee relied on the report of the Asstt. Director of Agriculture, Soil Testing Laboratory, Anakapalle, to show that the chemical analysis of the soil taken from out of her lands showed that dry crops can be raised. When the Asstt. Director was examined by the WTO on 28-6-1974, he stated that he cannot vouchsafe to the fact that the soil tested by him came out of the assessee's lands. The Tribunal, therefore, found that the report of the Asstt. Director of Agriculture, Soil Testing Laboratory, Anakapalle, did not advance the assessee's case.

(v) The WTO took one Sri T. Koteswara Rao, Asstt. Director of Agriculture, Visakhapatnam, for personal inspection of the assessee's lands in Dondaparathi and Allipuram and got the lands examined by that officer on 11-1-1974. The Asstt. Director of Agriculture testified that the assessee's lands are unfit for

cultivation.

(vi) It was found that the Special Tahsildar, Visakhapatnam, in his letter dt. 14-11-1972 addressed to the Collector in connection with the compulsory acquisition of the assessee's lands, stated that the assessee's lands are only fit for construction purposes and no cultivation or plantation in the lands under acquisition is possible and no crops can be grown.

(vii) In her statement dt. 21-12-1973, the assessee stated that, being unable to develop the fertile lands in Tallarevu in East Godavari district, she surrendered 67 acres of land. The Tribunal held that it was highly unlikely that the assessee, who surrendered rich cultivable land, could have purchased waste land in Visakhapatnam district for purposes of cultivation.

(vii) According to Award No. 5 of 1966 dt. 30-7-1966, the assessee's lands, which were the subject-matter of acquisition, were found to be rocky, as seen from the profile of the gullies. It was observed that the lands were not useful for cultivation.

(ix) In Award No. 14 of 1968, it was stated that the assessee claimed before the Land Acquisition Authorities that she purchased the lands with the idea of constructing a factory and claimed compensation at the rate of Rs. 8 per sq. yard.

(x) In O.P. No. 75 of 1977 dt. 13-9-1971 concerning the claim for enhancement of compensation in Award No. 14 of 1968, the assessee claimed that the lands were fit for building purposes and there were intending purchasers and there were intending purchasers to purchase the land at Rs. 10 to 12 per sq. yard.

(xi) In the report dt. 7-11-1972 of preliminary valuation of the assessee's land acquired for the Port Trust, the following findings were recorded by the authorities :

"No cultivation or plantation is there nor is it possible to grow any crops in the area. The area is only fit for building construction and it is also being used for the same."

8. Based on the above evidence. The Tribunal came to the conclusion that the revenue successfully rebutted the presumption with reference to the "prima facie evidence" that the lands were agricultural in character. One has to ascertain the cumulative effect of the entire evidence led by the revenue. The WTO had conducted the investigations with meticulous care and attention and successfully frustrated the efforts of the assessee to support the plea of user of the lands for agricultural purposes with reference to fabricated evidence and by inducing persons to falsify testimony. The officers of the Agri. Department stated in no unmistakable terms that the lands were unfit for cultivation. There was no evidence to show that the lands were used for agricultural purposes prior to the purchases by the assessee in the years 1960 and 1961. The evidence to show actual user of the lands for agricultural purposes after the purchases by the assessee was found to have been fabricated and must, therefore, be

disregarded. That being so, there is no evidence of user of the lands for agricultural purposes either before or after the assessee purchased the same. The basic requirement for considering any land as "agricultural land" is that such land is used for agricultural purposes. Even if there is no evidence to show that the lands were used for agricultural purposes at the relevant time, there must be evidence forthcoming that the lands were used for agricultural purposes in the not remote past. It is true that temporary cessation of use of the lands for agricultural purposes does not deprive the lands of their character as agricultural lands, provided the lands are not used for any non-agricultural purposes. In a given case, land used for agricultural purposes may not have been used for such purposes and allowed to remain fallow. In such cases, one has to ascertain whether the idea of using the land for agricultural purposes is abandoned permanently. If there is evidence to indicate that the intention to use the land for agricultural purposes was abandoned permanently, then in such cases, the land ceases to be agricultural land. The intention regarding the abandonment of the user of the land for agricultural purposes will have to be ascertained with reference to the facts of each case and no test of universal application can be formulated for the above purpose. If the evidence in a given case indicated that the lands were not put to agricultural use for considerable time coupled with the evidence regarding abandonment of intention to use the lands for agricultural purposes in future, that would be a sufficient ground to hold that, even if the lands were registered as agricultural lands in the revenue records, they ceased to be so for tax purposes. Learned counsel for the assessee had drawn our attention to a large number of cases wherein the question regarding character of the land came up for consideration. They are : Gemini Pictures Circuit P. Ltd. v. CIT, Tamil Nadu-I (1983) 130 ITR 686 ; Commissioner of Wealth-tax, Poona Vs. H.V. Mungale, ; Commissioner of Income Tax, Gujarat-II Vs. Siddharth J. Desai, ; Addl. Commissioner of Income Tax Vs. Tarachand Jain, ; M. Ranganatha Sastri Vs. Commissioner of Income Tax and Commissioner of Wealth-tax, , COMBINED INDUSTRIES (P.) LTD. Vs. COMMISSIONER OF Income Tax, MADRAS., and Commissioner of Income Tax Vs. Sutton and Sons Ltd., . It is not necessary to examine these cases, as eventually the decision in each of these cases turned out on the facts of each case. There is no dispute regarding the tests applicable for the determination of the lands as agricultural lands. Disputes arose in the application of these tests with reference to the particular facts of each case. So long as the tests are applied to the facts of a given case, the decision would govern only the facts of that particular case while the tests that are applied may offer useful guidance in other cases. We are satisfied that the Tribunal applied these tests correctly in coming to the conclusion that the lands were not agricultural lands. The total absence of evidence indicating the user of the lands for agricultural purposes either before or after the purchase by assessee is destructive of the assessee's claim that the lands were agricultural in character. The fact that ryotwari pattas were issued or that land revenue was paid in respect of the lands in question is not conclusive. It offered only a prima facie evidence and that evidence was of no consequence in view of the incontrovertible

evidence that the lands had not been used for agricultural purposes at any known point of time. The Tribunal, Therefore, came to the conclusion correctly that the lands held by the assessee were not agricultural in character.

9. We must refer to a contention urged by the Id. sanding counsel for the revenue that the finding of the Tribunal that the revenue rebutted the presumption based on prima facie evidence is a finding of fact and therefore, this Court is not entitled to interfere with that finding in a reference. Learned standing counsel relied upon the decision in Commissioner, Sales Tax Vs. Brij Kishore Satish Chandra, ; ADDITIONAL COMMISSIONER OF Income Tax, RAJASTHAN Vs. NOOR MOHD and CO. AND OTHERS., ; R.B. Seth Champalal Ramswarup Vs. Commissioner of Income Tax, East Punjab, Delhi and Ajmer, and Additional Commissioner of Income Tax Vs. Bipan Lal Kuthiala, . In the view that we have taken that the lands held by the assessee were not agricultural in character, it is unnecessary to consider this contention of the Id. standing counsel.

10. For the aforesaid reasons, questions Nos, 2 and 5 above referred are answered in the affirmative, that is to say, in favour of the revenue and against the assessee.

11. Question Nos. 3 and 6 are identical. It would appear that there were some disputes regarding the persons to whom the amount of compensation in respect of the lands compulsorily acquired should be paid. It is contended that there were rival claims for payment of compensation in Award Nos. 3/66 and 4/67. In view of the rival claims, the matter was referred under s. 30 of the Land Acquisition Act to the Subordinate Judge's Court and it appears that the Subordinate Judge's Court declared the right of the assessee to receive the amounts in the year 1972 in one award and in the year 1977 in another award. The assessee contends that until the final determination of the disputes referred under s. 30, the WTO was not justified in evaluation the right to receive compensation and including the same in the net wealth. This contention was rejected by the WTO as well as in appeals by the AAC and the Tribunal.

12. We are satisfied that the decision of the Tribunals below is correct. The fact that disputes subsisted on the valuation date is no ground to exclude from consideration the asset as such. The disputes may be relevant for the purpose of determining the valuation and have no effect whatsoever on the question whatsoever on the question whether the asset should be considered for wealth-tax purposes or not. We are informed that the right to receive compensation in respect of the lands acquired was valued by the Tribunal at 40%. In valuing the light at 40%, it must be said that all the disputes subsisting on the valuation dates corresponding to the above wealth-tax assessment years were duly taken into account and the valuation fixed by the Tribunal. The Tribunal was right to receive compensation in respect of the above-referred awards could not be included in the wealth-tax assessments under consideration. Question Nos. 3 and 6 are accordingly answered in the affirmative, that is to say, in favour of the revenue and against the assessee.

13. Question Nos. 4 and 7 are identical. The assessee's contention is that, inasmuch as she follows cash system of accounting, the value of the right to receive compensation cannot be included in her net wealth-tax assessment years mentioned above, as she did not actually receive the compensation in cash. This contention was rejected by the WTO as well as in the appeals by the AAC and the Tribunal. The assessee's contention is totally misconceived. System of accounting has no relevance to the assessment under the WT Act. Under s. 3 of the Act, wealth-tax is leviable in respect of the net wealth of every individual on the corresponding valuation date. Section 2(m) defines "net wealth" as meaning the amount by which the aggregate value computed in accordance with the provisions of the Act of all the assets belonging to the assessee on valuation date is in excess of the aggregate value of all the debts owed by the assessee on the valuation date. Section 2(e) defined "assets" as meaning property of every description. Movable or immovable. On the scheme of wealth-tax, all assets enter into the computation of net wealth, whether or not those assets are actually realised in cash by an assessee. There is no dispute in the present case that the assessee has a right to receive compensation in respect of the lands acquired and that right, being property, is an asset under s. 2(e) and that right, being property, is an asset under s. 2(e) of the Act. It is, therefore, liable to be taken into account for purposes of computing the assessee's net wealth. The fact that the assessee had not realised the same in cash is inconsequential. The Tribunal was, therefore, correct in coming to the conclusion that the right to receive compensation is liable to be valued and included in the assessee's net wealth even if it is not actually received in cash. Question Nos. 4 and 7 are accordingly answered in the affirmative, that is to say, in favour of the revenue and against the assessee.

14. This disposes of the seven questions referred at the instance of the assessee. All the seven questions are answered in the affirmative, that is to say, in favour of the revenue and against the assessee. That leaves question Nos. 8 and 9 referred at the instance of the revenue.

15. Question No. 8 does not require detailed examination, as it is fairly settled. The assessee's right to receive compensation in respect of the lands compulsorily acquired under the Land Acquisition Act was valued by the Tribunal at 40% of the amount finally determined by the High Court in the land acquisition proceedings. It is urged that, on the valuation dates corresponding to the assessment years under consideration, the assessee's claims for enhancement of compensation were pending final determination. The assessee carried the matter in reference under s. 18 of the Land Acquisition Act and compensation was enhanced. Being dissatisfied with the compensation enhanced, the assessee carried the matter in appeal to the High Court. The Government was also unacceptable to the enhancement made by the Courts and, therefore, filed appeals in the High Court for reducing the compensation enhanced by the Courts. All these disputes were pending final determination on the valuation dates corresponding to the assessment years under consideration.

In these circumstances, the Tribunal held that, while the right to receive compensation is itself an asset and is liable to be valued, its value should be estimated at 40% of the amount finally determined by the High Court taking into consideration the fact that the disputes were pending on the valuation dates. The principle that the right to receive compensation has to be valued on the valuation date is fully supported by the decision of the Supreme Court in *Mrs. Khorshed Shapoor Chenai and Others Vs. Assistant Controller of Estate Duty, Andhra Pradesh and Others*, . This question came up for consideration before this Court in *Controller of Estate Duty Vs. Estate of Late Mohd. Sultan, , CWT, Andhra Pradesh v. G. M. Omar Khan* (1981) 121 ITR 543 and *Commissioner of Wealth-tax, Andhra Pradesh Vs. Amatul Kareem*, . In all these matters, this Court upheld the principle that the right to receive compensation has to be suitably valued on the valuation date bearing in mind the hazards of the litigation and the risks involved and also the inconclusive nature of the awards as on the valuation date. Bearing all these aspects in mind, the Tribunal valued the right to receive compensation at 40% of the amount of compensation as finally determined by the High Court in the land acquisition proceedings. We do not see any ground for grievance on the part of the revenue on the question of valuation. It has not been sated that the Tribunal committed any error in applying the principles of valuation. All that the Id. standing counsel for the revenue urged is that in other cases the Tribunal has estimated the value at 50%. Indeed, the fact that the Tribunal estimated the value in the assessee's case at 40% is itself a ground to support that the Tribunal saw some distinction between other cases and the assessee's case. It must be remembered that the stakes involved in the assessee's case are very high, as the compensation involved is in cores of rupees. Obviously, the Tribunal must have taken into account the attitude of a willing purchaser to take risk of paying a larger amount in respect of an unduly large sum of compensation. For that reason, the Tribunal must have thought fit to value the right to receive compensation at only 40% in the assessee's case. We do not see any ground to hold that the Tribunal committed any error. Question No. 8 is accordingly answered in the affirmative, that is to say, in favour of the assessee and against the revenue.

16. Question No. 9, above referred, raises an interesting issue. It was already pointed out above that the assessee was owning extensive land in Visakhapatnam and a part of the land was already acquired for Railways, Port Trust and other public purposes. After a few sales and compulsory acquisitions, the assessee was left with the following extent of land :

Marripalem village Ac. 62.91	Allipuram village Ac. 48.81	-----	Total
Ac. 111.72	-----		

The assessee claimed that, under an agreement dt. 15-7-1968, she entered into an agreement with Smt. D. Suryavathi and nine others for the sale of the abovementioned land for consideration of the Rs. 3,00,000. It is stated that, out of the consideration of Rs. 3,00,000, a sum of Rs. 1,00,000 had been paid by

way of advance at the time of execution of the agreement dt. 15-7-1968. It is further claimed that possession of the land was delivered to the agreement-holders on the date of the agreement. On these facts, the assessee claimed that the agreement. On these facts, the assessee claimed that the value of the Ac. 111.72 of land forming part of the agreement dt. 15-7-1968 could not be included in her wealth-tax assessments. The WTO declined to accept the assessee's contention basically on the ground that, in the absence of a registered sale deed, the value of the lands has to be considered in the assessee's wealth-tax assessments. In that view, the WTO valued the lands at Rs. 1,22,96,080 for each of the wealth-tax asst. yrs. 1970-71 to 1973-74 and included the same in the assessee's net wealth. The assessee filed an appeal against the inclusion in her wealth-tax assessment of the value of the said AC. 111.72 of land. Before the AAC, a plea was taken that, as the agreement entered into with Smt. D. Suryavathi and nine others was irrevocable in view of the specific terms of the agreement, the provisions, of s. 4(1)(a)(iv) of the Act come into operation and, consequently, the value of the land, which is the subject-matter of irrevocable agreement dt. 15-7-1968, cannot be included in the wealth-tax assessments. The AAC found that the WTO did not go into the question of genuines of the agreement entered into and he considered it necessary to go into that question. He accordingly remanded the matter to the WTO for a report on the genuines of the agreement. The WTO made an exhaustive enquiry into the genuineness of the agreement and reported to the AAC,. That in his opinion, the alleged agreement dt. 15-7-1968 is a sham document got up for the purpose of supporting the claim for exclusion of the above-mentioned land from the wealth-tax assessments of the assessee.

17. The AAC considered the above aspects and held that the alleged agreement dt. 15-7-1968 was spurious and was deliberately got up for the purpose of advancing a fictitious claim that the land in question was agreed to be sold under the agreement dt. 15-7-1968. The AAC also considered the applicability of s. 4(1)(a)(iv) of the Act and held that the said provision has no application to the facts of the assessee's case. The AAC observed that the absence of a sale deed duly registered conveying the property by the assessee to the agreement-holders is fatal to the claim that the lands did not belong to the assessee on the respective valuation dates corresponding to the wealth-tax assessment years under consideration. Eventually, the AAC confirmed the view that the assessee was liable to be assessed in respect of the value of Ac. 111.72 of land allegedly agreed to be sold under the agreement dt. 15-7-1986. We have already referred to the fact that the WTO valued these lands at Rs. 1,22,96,080 for each of the four assessment years under consideration and included the same in the net wealth. The AAC went into the question of valuation and determined the value of the land for purposes of assessment at Rs. 31,62,000 giving a relief in valuation of Rs. 91,34,080.

18. The assessee filed an appeal to the Tribunal challenging the correctness of the view of the view of the AAC that the agreement dt. 15-7-1968 was not

genuine and that the value of the lands could be included in the net wealth of the assessee. The Tribunal, on a consideration of all the evidence on record, held that the agreement was genuine. The Tribunal considered the applicability of s. 4(1)(a)(iv) of the Act and accepted the assessee's contention that, pursuant to the provisions contained in s. 4(1)(a)(iv), the value of the lands could not be included in the wealth-tax assessments of the assessee. In that view, the Tribunal deleted the value of the lands from the wealth-tax assessments of the assessee. The revenue then asked for reference to this Court of question No. 9 above referred.

19. Learned standing counsel for revenue, Sri M. Suryanarayana Murthy, made a two-fold submission before us. He firstly urged that the Tribunal was in error in coming to the conclusion that the agreement dt. 15-7-1968 was genuine. It is next urged that, in any event, the said agreement cannot be considered to be irrevocable for purposes of s. 4(1)(a)(iv) of the Act in view of certain provisions contained in the agreement which give the assessee a right to re-assume power, directly or indirectly, over the whole or any part of the Act in view of certain provisions contained in the agreement which give the assessee a right to re-assume power, directly or indirectly, over the whole or any part of the assets or income from the lands which are the subject-matter of the agreement.

20. Sri S. Dasaratharama Reddy, Id. counsel for the assessee, submitted that the question regarding the genuineness of the agreement dt. 15-7-1968 cannot be gone into by this Court in this reference, inasmuch as the revenue did not challenge the finding that the agreement was genuine. It was pointed out that no specific question of law has been raised by the revenue in the reference application filed challenging the validity of the Tribunal's finding regarding the genuineness of the agreement. It was further submitted that, on the specific terms of the agreement dt. 15-7-1968, it was irrevocable and no provision contained in the agreement gave the assessee a right to re-assume power directly or indirectly over the whole or any part of the assets or income from the lands which are the subject-matter of the agreement.

21. We are unable to accept the contention of the Id. standing counsel for the revenue that we can go into the question of genuineness of the agreement dt. 15-7-1968 notwithstanding the finding of fact given by the Tribunal upholding the genuineness of the agreement. The finding that the agreement dt. 15-7-1968 was genuine was arrived at by the Tribunal after consideration of all the evidence on record. If the revenue was aggrieved, it should have specifically raised in the reference application the question regarding the validity of the finding recorded by the Tribunal. It is settled law that, if an application under s. 256(1) of the IT Act is not filed expressly raising the question about the validity of the findings of fact, a contention cannot be urged before the High Court that the findings of the Tribunal are vitiated for one reason or the other. We may refer to the decision of the Supreme court in *India Cements Ltd. v. CIT* (1960) ITR 52 . The following observations at p. 64 of the report are relevant :

"..... In a reference, the High Court must accept the findings of fact made by the Appellate Tribunal and it is for the person who has applied for a reference to challenge those findings first by an application under s. 66(1). If he has failed to file an application under s. 66(1) expressly raising the question about the validity of the findings of fact, he is not entitled to urge before the High Court that the findings are vitiated for one reason or the other."

This view has been reiterated by the Supreme Court in a number of decisions subsequently. In Commissioner of Income Tax, West Bengal III Vs. Kamal Singh Rampuria, , the Supreme Court observed at page 161 of the report :

"It is well established that the High Court is not a Court of appeal in a reference under s. 66 of the Act and it is not open to the High Court in such a reference to embark upon a reappraisal of the evidence and to arrive at findings of fact contrary to those of the Appellate Tribunal. It is the duty of the High Court to confine itself to the facts as found by the Appellate Tribunal and answer the question of law in the setting and context of those facts. It is true that the finding of fact will be defective in law if there is no evidence to support it or if the finding is unreasonable or perverse.

But in the hearing of a reference under s. 66 of the Act it is not open to the assessee to challenge Such a finding of fact unless he has applied for a reference of the specific question under s. 66(1)."

22. We may also refer to the decision of the Supreme Court in Karnani Properties Ltd. Vs. The Commissioner of Income Tax, West Bengal, . The following observation appearing on pp. 553-554 of the report are relevant :

"Mr. Manchanda contended, and the High Court has accepted that contention, that the authorities under the Act have not properly construed the lease deeds not have they properly appreciated the evidence on record. It may well be so. We say nothing about it as it is not within our province to reappraise the evidence on record. The question as to the correctness of the facts found by the Tribunal was not before the High Court nor is it before us. When the question referred to the High Court speaks of "on the fact and circumstances found by Tribunal and not about the facts and circumstances that may be found by the High Court. We have earlier referred to the facts found and the circumstances relied on by the Tribunal, the final fact finding authority. It is for the Tribunal to find facts and it is for the High Court and this Court to lay down the law applicable to the facts found. Neither the High Court nor this Court has jurisdiction to go behind or to question the statements of fact made by the Tribunal. The statement of the case is binding on the parties and they are not entitled to go behind the facts found by the Tribunal in the statement."

23. In The Commissioner of Income Tax, Bihar and Orissa, Patna Vs. S.P. Jain, , the Supreme Court observed at p. 381 of the report :

"In our view there can be not doubt that unless the Tribunal has been asked to

refer a question impugning the validity of the findings sustainable on any principle of law, the facts stated in the statement of the case would form the basis on which the legality or otherwise of the assessment would alone require to be considered by the High Court."

We may mention that the same view was expressed by the Supreme Court in Aluminium Corporation of India Ltd. Vs. Commissioner of Income Tax, West Bengal, of the report, the Supreme Court observed :

"If any party wants to challenge the correctness of the findings given by the Tribunal either on the ground that the same is not supported by any evidence on record or is based on irrelevant or inadmissible evidence or is unreasonable or perverse, a question raising anyone of those grounds must be ought for and obtained. It is needless to say that the jurisdiction of the High Court in a reference under s. 66 is only an advisory jurisdiction. That being so, it can only pronounce its opinion on the questions referred to it. It is trite to say that it cannot sit as an Appellate Court over the decision of the Tribunal."

24. We have perused the reference applications filed by the revenue under s. 27(1) of the Act before the ITAT. The revenue failed to raise a specific question questioning the validity of the Tribunal's finding that the agreement dt. 15-7-1968 was genuine. The revenue did not require the Tribunal to refer a specific question that the Tribunal to refer a specific question that the Tribunal's finding regarding the genuineness of the agreement is vitiated either because the findings is based on no evidence at all or because it is perverse. The two questions, which the revenue required the Tribunal to refer to this Court, were consolidated into one single question and that is how question No. 9 was referred. It is clear from a perusal of question No. 9 that it does not specifically raise a question regarding the validity of the finding of the Tribunal regarding the genuineness of the agreement dt. 15-7-1968. We are unable to accept the submission of the Id. standing counsel for the revenue that the question referred to this Court by the Tribunal is wide enough to cover the aspect of genuineness of the agreement also. In the first place, in our opinion, the question is not wide enough to cover the question regarding the genuineness of the agreement and, in any event, the point for consideration is not whether the question is wide enough to cover the aspect of genuineness of the agreement, but whether the revenue required the Tribunal to specifically refer the question regarding the validity of the finding that the agreement dt. 15-7-1968 is genuine. There can be little doubt that the revenue failed to specifically raise this question before the Tribunal in the application filed under s. 27(1) of the Act. WE. therefore, reject the contention of the revenue that this Court can go into the question regarding the genuineness of the agreement.

25. Even otherwise, it is settled law that, if there is some evidence to support the finding of the Tribunal on a question of fact, this Court will not interfere with that finding. The Tribunal referred to a number of circumstances, some of which pointed in the direction of the genuineness of the agreement. The revenue's

grievance is that matters of significance affecting the genuineness of the agreement were lightly explained away by the Tribunal and the genuineness of the agreement has been upheld accepting inconsequential and insignificant matters. Having perused the entire evidence on record, we feel that there is justification for the grievance of the revenue. On a consideration of the totality of the evidence, we are left with a feeling that there are circumstances throwing doubt on the genuineness of the agreement and the Tribunal referred to some insignificant aspects of the matter and held that those aspects supported the genuineness of the agreement. All the same, we must point out that the Tribunal referred to all the evidence, pro and con, and held eventually that the agreement is genuine. It is not for this Court to substitute its own judgment. The finding of fact recorded by the Tribunal is thus binding on this Court and we have to answer question No. 9 on the basis that the agreement dt. 15-7-1968 is genuine.

26. We are also unable to accept the contention of the revenue that the agreement dt. 15-7-1968 should be held to be revocable within the meaning of s. 4(1)(a)(iv) of the Act. Learned standing counsel for the revenue drew out attention to clause 5 of the agreement which provided that "the vendor shall have a first charge over the land hereby sold for the balance of the sale consideration." According to the Id. standing counsel, this clause has the effect of giving the assessee a right to re-assume power, directly or indirectly, over the whole or any part of the assets or income from the lands. It is necessary to refer to clause 8 of the agreement, which reads as under :

"The vendor agrees that with the receipt of earnest money and execution of this agreement, this agreement is irrevocable and the only right remaining with the vendor is to receive the balance of the consideration and the purchasers may deal with this land as they like and vendor shall not question them."

Reading cls. 5 and 8 together, we do not think that the Id. standing counsel is right in his submission that, because of the first charge against the land for payment of the balance of the consideration, the agreement becomes revocable within the meaning of sub-clause (ii) of clause (b) of the Explanation to s. 4 of the Act. The only right the assessee has is to receive the balance of sale consideration and the first charge against the land for payment of the balance of the sale consideration does not give the assessee a right to re-assume power, directly or indirectly, over the whole or any part of the assets or income therefrom. We, therefore, reject the revenue's contention that the agreement dt. 15-7-1968 should be held to be revocable for purposes of s. 4(1)(a)(iv) of the Act.

27. We feel, however, that the revenue is entitled to succeed for an entirely different reason. The revenue failed to focus attention on this aspect of the matter. At the outset, it must be pointed out that the value of the lands covered by the agreement dt. 15-7-1968 was not included in the assessee's net wealth under s. 4(1)(a)(iv) and include, while computing the net wealth of the assessee, the value of the lands covered by the agreement dt. 15-7-1968, one can

understand the assessee's defence that s. 4(1)(a)(iv) has no application to the facts of the present case and, therefore, the revenue cannot succeed in its attempts to include the value of the lands under s. 4(1) of the Act. We do not understand the relevance of the assessee's contention that, because of s. 4(1)(a)(iv) of the Act, the value of the lands cannot be included in the assessee's net wealth, when the revenue made no attempt to invoke the provision of s. 4 for the purpose of inclusion. It must be remembered that, in the assessments made, the value of the lands was included by the WTO on the ground that, notwithstanding the agreements made, the value of the lands was included by the WTO on the ground that, notwithstanding the agreement dt. 15-7-1968, the lands continued to belong to the assessee and consequently, the value of the lands was liable to be included in the net wealth and charged to wealth-tax under s. 3 of the Act. Section 3 is the charging section, which provides for the levy of wealth-tax in respect of the "net wealth" on the corresponding valuation date of every individual. Section 2(m) of the Act defines "net wealth" as the amount by which the aggregate value of the valuation date is in excess of the aggregate value of all the debts owned by the assessee. The expression "assets" is defined in s. 2(e) of the Act as including property of every description, movable or immovable. For purposes of determining whether the value of any asset should be included in the assessee's net wealth, all that is required to be seen is whether the asset belonged to the assessee on the valuation date. If the asset belonged to the assessee, then the value of such asset automatically forms part of the net wealth and is liable to be charged to wealth-tax under s. 3 of the Act, subject, however, to other provisions contained in the Act conferring exemptions (see s. 5) or other deductions as provided in the Act. If the value of any asset falls to be included in the net wealth under s. 3, it is not necessary for the revenue to find out whether the value of such an asset can be included in the net wealth of the assessee under any other provisions of the Act. In the present case, the land belonged to the assessee notwithstanding the agreement dt. 15-7-1968 because of the fact that there was no sale deed duly registered conveying the property to the agreement-holders. There can be little dispute that, in the absence of a sale deed duly registered conveying the property to the agreement-holders, the property continued to belong to the assessee, inasmuch as the title to the property legally vested in the assessee. The agreement dt. 15-7-1968 may have relevance to the question of valuing the property under s. 7 of the Act, but certainly has no relevance to determine the question whether the lands covered by the agreement dt. 15-7-1968 continued to belong to the assessee. Recourse to s. 4 can be had only in a case where chargeability does not arise under s. 3 of the Act. It may be useful to extract s. 4(1) of the Act to the extent that it is relevant :

"4. (1) In computing the net wealth of an individual, there shall be included, as belonging to that individual -

(a) the value of assets which on the valuation date are held -

(i) by the spouse of such individual to whom such assets have been transferred by the individual, directly or indirectly, otherwise than for adequate consideration or in connection with an agreement to live apart, or

(ii) by a minor child, not being a married daughter, of such individual, to whom such assets have been transferred by the individual, directly or indirectly, otherwise than for adequate consideration, or

(iii) by a person or AOPs to whom such assets have been transferred by the individual directly or indirectly otherwise than for adequate consideration for the immediate or deferred benefit of the individual, his or her spouse or minor child (not being a married daughter) or both, or

(iv) by a person or AOPs to whom such assets have been transferred by the individual other wise that under an irrevocable transfer, or

(v) by the son's wife, or the son's minor child, of such individual, to whom such assets have been transferred by the individual, to whom such assets have been transferred by the individual, directly or indirectly, on or after the 1-6-1973, otherwise than for adequate consideration,

whether the assets referred to in any of the sub-clauses aforesaid are held in the form in which they were transferred or otherwise."

It is apparent that s. 4(1) deals with the inclusion of certain categories of assets that do not belong to the assessee on the valuation date and yet they are included in the net wealth of the individual. A perusal of sub-cl. (i), (ii), (iii), (iv) and (v) above referred unmistakably indicates that all the categories of assets referred to in the above sub-clauses do not belong to the assessee on the valuation date, because they were transferred by the assessee to some other persons. As such assets were transferred, they cannot be held to belong to an assessee on the valuation date. Even so, power is conferred on the WTO to include the value of such assets in computing the net wealth. It would thus be seen that ss. 3 and 4 of the Act operate in different directions. Section 4 is designed to bring within the tax-net assets transferred by an assessee to wife and minor children and other persons without adequate consideration, act., and is designed to check tax avoidance by the assessee by the assessee by transferring the assets to the wife and minor children without adequate consideration and retaining domain and control over the assets while purporting to transfer to persons other than wife and minor children.

28. It would, therefore, be seen that s. 4 is not designed to exclude assets which fall to be included in the net wealth under the charging provisions, s. 3. Indeed, s. 4 supplements the inclusion of assets not falling under the charging s. 3 of the Act. We are unable to accept the submission of Sri Dasaratharama Reddy, Id. counsel for the assessee, that s. 3 is subject to the other provisions of the Act and, therefore, the applicability of s. 4 also arises for assessment under s. 3, the argument would be relevant. We have already pointed out that s. 4 is not

exclusionary in character. The WTO cannot be compelled to apply s. 4 and include assets if the assets fall to be included in the net wealth under the provisions of s. 3 itself.

29. On the facts stated above, we have no hesitation in coming to the conclusion that the agricultural lands covered by the agreement dt. 15-7-1968 belonged to the assessee on the valuation dates corresponding to the assessment years under consideration. In *Commissioner of Wealth Tax, Gujarat-1 Vs. Manna G. Sarabhai*, , the scope of the expression "belonging to" occurring in s. 3 of the Act has come up for consideration before the Gujarat High Court. Bhagwati, C.J. (as he then was) speaking for the Court, referred to the decision of the House of Lords in *Heritable Reversionary Co. Ltd. v. Millar* (1892) A.C. 598 and quoted the following observations of Lord Macnaghten with approval :

"The words "property" and "belonging to" are not technical words in the law of Scotland. They are to be understood, I think, in their ordinary signification. They are in fact convertible terms; you can hardly explain the one except by using the other. A man's property is that which is his own, that which belongs to him. What belongs to him is his property." (P. 174 of the report)

In *The Commissioner of Wealth Tax, Andhra Pradesh, Hyderabad Vs. Trustees of H.E.H. Nizam's Family Hyderabad*, the Supreme Court referred to, with approval, the Judgment of the Gujarat High Court in *Commissioner of Wealth Tax, Gujarat-1 Vs. Manna G. Sarabhai*, and to the observations of Lord Macnaghten referred to above (pp. 590-591 of the report).

30. In the present case, the agreement dt. 15-1-1968 did not divest the assessee of ownership of the lands. Her obligation to execute a sale deed and convey title to the agreement, arises only when the sale consideration was paid to her in full, as specifically provided in clause 6 of the agreement. It must be remembered that, if there was failure on the part of the agreement-holders to pay the consideration, the assessee was under no obligation to execute the sale deed conveying title to the agreement-holders. It must, therefore, be said that the assessee continued to be the owner of the lands covered by the agreement dt. 15-7-1968 and, in that sense, the lands belonged to her on the valuation dates corresponding to the assessment years under consideration. The value of these lands so belonging to her would certainly form part of her net wealth and would be liable to be charged to wealth-tax under s. 3 of the Act. We may refer to the decision of a Division Bench of this Court in *CWT, Andhra Pradesh v. Mir Osman Ali Khan Bahadur* 1974 Tax LR 367. In that case, the assessee sold certain immovable properties, received full sale consideration and delivered possession of the properties to the purchasers without executing formal sale deeds. The revenue held that, in the absence of sale deeds, the properties continued to belong to the assessee and accordingly included the value of the properties continued to belong to the assessee and accordingly included the value of the properties under s. 3 of the Act in the wealth-tax assessments of the assessee. This Court upheld the assessment of the value of the value of the

properties sold by the assessee without executing and registering sale deeds on the ground that the properties continued to belong to the assessee in the absence of registered sale deeds. This case directly governs the question for consideration in the present reference. Attention of the Tribunal was invited to this decision; but the Tribunal sought to distinguish that decision on the ground that the possession of the properties remained with the assessee in that case. The Tribunal was clearly in error in thinking that, in the decision above referred, the possession of the properties remained with the assessee. The facts concerning the above sale of the properties were discussed in the judgment relating to Income Tax matters, as the income from such properties was included in the assessment of the assessee in that case on the ground that the assessee continued to be the owner of the properties in the absence of registered sale deeds. The relevant judgment was reported in CIT, Andhra Pradesh v. Nawab Mri Barkat Ali Khan 1974 Tax LR 90. In paragraph 18 at p. 93 of the report, this Court specifically referred to the fact that "no registered sale deeds admittedly are executed although possession of the properties has been delivered to the purchasers". As the relevant facts were dealt with in the judgment relating to income tax, this Court did not once again deal with the facts concerning the wealth-tax assessments. Obviously, the Tribunal failed to notice the above observations of this Court in CIT, Andhra Pradesh v. Nawab Mir Barkat Ali Khan (supra) at p. 93 of the report and erroneously concluded that possession remained with the assessee in that case and, on that ground, the case was distinguishable. We, therefore, reject the assessee's contention that s. 4(1)(a) (iv) has any application to the facts of the present case.

31. Finally, Sri Dasaratharama Reddy, Id. counsel for the assessee, contended that, even in the view that chargeability arises straightway under s. 3 of the Act, still the provision contained in s. 53A of the Transfer of Property Act come into operation in the present case and consequently it must be held that the assessee was not the owner of the lands covered by the agreement dt. 15-7-1968 and, therefore, the lands did not belong to the assessee. We do not agree. An identical contention was raised in CIT, Andhra Pradesh v. Nawab Mir Barkat Ali Khan (supra) above referred and this Court repelled that contention. All that s. 53A of the Transfer of Property Act provides is that the transferee can defend his possession under the doctrine of part performance. It created no real right and much less deprives the transferor of the ownership of the lands, therefore, continued to belong to her.

32. Even otherwise, we are satisfied that the provisions of s. 53A of the Transfer of Property Act do not come into operation in this case for another reason. Except the averment in the agreement dt. 15-7-1968 that possession of the lands was delivered to the agreement-holders, there is not a shred of evidence to indicate the the agreement-holders were in possession of the lands, On the contrary, there is evidence to indicate that possession of the lands remained with the assessee factually. The AAC has pointed out that, notwithstanding the averment in the agreement that possession as handed over, the assessee

continued to be in possession of the lands, as evidenced by the fact that she herself participated in the enquiry following the acquisition of the lands subsequent to the agreement, that she made the claims and that possession of the lands was delivered by her on 25-8-1972 to the Port Trust. The Tribunal considered this aspect and explained it away lightly on the ground that a common Advocate appeared before the Land Acquisition Authorities representing to assessee as well as the agreement holders and the signatures of the Advocate on the various documents caused some confusion on the question as to whom he was representing. But then, the Tribunal has, in its order, referred to the finding of the WTO that the agreement-holders had come to the scene before the Land Acquisition Officer for the first time only on 12-7-1972 and not earlier. In the absence of incontrovertible evidence that the agreement-holders were in possession of the property factually, the Tribunal should not have lightly brushed aside the finding of the WTO and the AAC that possession continued to remain with the assessee notwithstanding the averment in the agreement dt. 15-7-1968 that possession was delivered to the agreement-holders. In the absence of positive evidence that the assessee delivered possession of the lands and the agreement-holders retained such possession to the entire exclusion of the assessee after the agreement was entered into, the provisions of s. 53A of the Transfer of Property Act will have no application. For the reasons mentioned above, we hold that the Tribunal was in error in excluding the value of Ac. 111.72 of land from the net wealth of the assessee. We answer question No. 9 referred in the negative, that is to say, in favour of the revenue and against the assessee.

33. Learned counsel for the assessee represented that, in the view that the value of the lands did not fall to be included in the net wealth of the assessee under s. 4(1)(a)(iv) of the Act, the Tribunal did not go into the question of valuation of the lands as upheld by the AAC. Learned counsel requests that we should give a direction to the Appellate Tribunal to go into this question now. There is no indication in the Tribunal's order whether the grounds of appeal filed by the assessee against the order of the AAC included the ground against the valuation of the lands sustained by the AAC at Rs. 31,62,000 and, even if such a ground was included, whether the assessee pressed the above points, we cannot straightway give any direction to the Appellate Tribunal to consider the question regarding the valuation of the lands. The Tribunal will, however, look into the grounds of appeal and other connected papers and if the question regarding valuation of the lands was raised by the assessee in the grounds of appeal and was pressed at the time of hearing and there was omission on the part of the Tribunal to consider this ground, the Tribunal shall go into the question of valuation while passing an order conformably to this judgment.

34. Before parting with this case, we must express our appreciation of the thorough and exhaustive investigation made by the WTO (Sir G. Ramadass) to bring home to the assessee the falsity of the claims made. Investigation was conducted with meticulous care and attention.

35. To sum up, question Nos. 1 to 7 referred to this Court are answered in the affirmative, that is to say, in favour of the revenue and against the assessee. Question No. 8 is answered in the negative, that is to say, in favour of the assessee and against the revenue. Question No. 9 is answered in the negative, that is to say, in favour of the Revenue and against the assessee. As the revenue has substantially succeeded, the assessee shall pay the revenue's costs. Advocate's fee Rs. 750.