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**(1995) 09 MAD CK 0065**

**In the Madras High Court**

**Case No :** Tax Cases No"s. 1463 and 1556 to 1560 of 1981 (References No"s. 801, 806, 802, 803, 804 and 805 of 1981)

M. Rangaswamy

APPELLANT

Vs

Commissioner of Wealth-tax

RESPONDENT

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**Date of Decision :** 25-09-1995

**Acts Referred:**

Wealth Tax Act, 1957 — Section 2, 28, 5, 5(1)

**Citation :** (1996) 221 ITR 39

**Hon'ble Judges :** Raju, J;K.A. Swami, J

**Bench :** Division Bench

**Advocate :** C.V. Rajan, Deokinandan, K.M.L. Majele, Public ProsecutorS.  
Janarthana Raja for M/s. Subbaraya Aiyar, Padmanabhan and Ramamani, for the Respondent

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## Judgement

Raju J.

1. The above tax cases are by way of reference to this court from the Income Tax Appellate Tribunal, Madras Bench, u/s of the Wealth-tax Act,

1957 (hereinafter referred to as ""the Act""), referring the following two questions for the opinion of this court :

(i) Whether, on the facts and in the circumstances of the case, the assessee-individual is entitled to deduction u/s 5(1)(iv)(a) in respect of the

exempted asset, namely, agricultural land held by the firm in which the assessee is a partner, in computing the net wealth of the assessee ?

(ii) Whether, on the facts and in the circumstances of the case, the entire coffee and tea bushes fall within the expression "growing crops" in section

5(1)(viii) of the Act ?

2. The facts and circumstances in which these questions arose and were referred

to this court are almost similar, except perhaps that they relate to different assessees, assessment years and with reference to a different quantum of net wealth in individual cases. The broad and relevant facts necessary to appreciate the problems posed for our opinion may be set out hereinafter before undertaking a consideration of the relevant questions themselves. The assessees are individuals who are partners in firms owning estates and holding tea or coffee gardens. While computing the net wealth of the respective assessees, the Wealth-tax Officers concerned added the value of the interest of the assessee-partner in the firm as movable property and computed it as a share of net wealth of the firm. While doing so, the Wealth-tax Officer excluded the exempted assets to the extent provided u/s 5 of the Act. The assessees also claimed that the tea and coffee bushes in the gardens of the estates must be treated as standing crops and exempted u/s 5(1)(viii) of the Act without any limit unlike the agricultural lands which were exempt u/s 5(1)(iv)(a) of the Act only up to the specified and prescribed limit.

3. The assessing authority was of the view that the standing crops in the case of tea bushes would mean only the two leaves and a bud and, therefore, rejected the contention of the assessee to the contrary. On appeals preferred before the Appellate Assistant Commissioner, the appellate authority accepted the contention of the assessee that it was the partner who was the real owner of the asset held by the firm and inasmuch as it was only the partner who would be the assessee and not the firms for the purposes of assessment under the Wealth-tax Act, 1957, the deduction u/s 5 of the Act should be given only while computing the net wealth of the assessee and not while computing the net wealth of the firm. The appellate authority was also of the view that in common parlance the crop meant, the entire plant with leaves and, therefore, the entire value of the bushes had to be exempted u/s 5(1)(viii) of the Act.

4. Aggrieved, to the extent those orders of the appellate authority went against the interest and claims of the Revenue as well as the assessee, appeals were filed by both to the Appellate Tribunal. The Appellate Tribunal held that the share of a partner in a firm has to be taken to be a share in every asset of the firm and, therefore, the partner was entitled to exemption in respect of a share in an exempted asset held by the firm. The

Tribunal was also of the view that under the Wealth-tax Act, a firm was not an assessee and, therefore, the exemption would be available in the hands of the partners who were the assessees and, consequently, the exemption would be available in the hands of the partners, who were the assessees. As far as the claim relating to exemption u/s 5(1)(viii) of the Act, the Tribunal held that in the context of the Wealth-tax Act, the difference between the asset and yield was vital and, therefore, the growing crop could not mean the "plants collectively", which was an asset, whereas the exemption was intended to be granted in respect of the yield, such as fruits on trees. On that view, the Tribunal also held that "growing crop" would not include tea and coffee bushes and that the same would be confined only to the two leaves and a bud in the case of tea and berries in the case of coffee. It is in the above background of events, references were sought both by the Revenue and the assessee to this court of the above noticed two questions for the opinion of this court.

5. Heard Mr. C. V. Rajan, learned counsel for the Revenue, and Mr. Janarthana Raja, for the assessees. So far as the first of the two questions are concerned, which came to be referred jointly with the other question at the instance of the Revenue, our attention has been brought to the decision of an earlier Division Bench of this court in R. Venkatavaradha Reddiar Vs. Commissioner of Income Tax, in which an identical question came up for decision and already a considered judgment has been rendered sustaining the view of the Tribunal in similar cases and rejection the plea of the Revenue, to the contra. There is no controversy before this court that the ratio of the said decision squarely applies and governs the first of the questions raised in these cases. Applying the ratio of the said decision to the facts and circumstances of the cases before us and to the first of the questions referred for our opinion, we answer the question in the affirmative and in favour of the assessee and against the Revenue, that the Appellate Tribunal was right in its conclusion that the assessee individual is entitled to the exemption by way of deduction u/s 5(1)(iv)(a) of the Act in respect of his share of the agricultural land held by the firm, in which the assessee is a partner, while computing the net wealth of the assessee-individual and that the assessees are entitled to the exemption as claimed by them u/s 5(1)(iv)(a) of the Act.

6. Learned counsel appearing on either side placed some of the relevant decisions and other materials so as to enable us to adjudicate on the second of the two questions referred for our opinion. This involves an interpretation of the scope of section 5(1)(viiiia) of the Act, which reads as follows :

5. Exemption in respect of certain assets. - (1) Subject to the provisions of sub-section (1A), wealth-tax shall not be payable by an assessee in respect of the following assets, and such assets shall not be included in the net wealth of the assessee - ....

(viiiia) growing crops (including fruits on trees) on agricultural land and grass on such land;....

(unnecessary portions and provisions omitted).

7. It is also necessary to set out section 2(e) of the Act, which reads hereunder :

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

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

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

8. Having regard to the controversy now set in motion, it would be appropriate to refer to the Explanatory Notes to the relevant Fiance Act, 1969,

which inserted section 5(1)(viiiia) with effect from 1st April, 1970 (assessment year 1970-71 onwards). The Explanatory Notes reads thus -

Under the new clause (viiiia) inserted in section 5(1), a specific exemption is provided in respect of the value of growing crops (including fruits on trees) on agricultural land and grass on such land.

It may be noted that the trees themselves, whether fruit-bearing or otherwise, are outside the purview of exemption. Hence, in the case of land

having standing fruit trees, such as coconut, arecanut, mango, jack, tamarind, cashew, etc., or timber, such as teak, rosewood, etc., or plantations

such as tea, coffee, rubber, etc., the value of the trees or plants will have to be taken into account in valuing the land.

9. Learned counsel invited our attention to the decisions of the Kerala High Court reported in :

E.K. Joseph, E.K. Mathew and Bros. Vs. Commissioner of Wealth Tax, and E K MATHEW Vs. COMMISSIONER OF WEALTH-TAX., .

10. On going through those two decisions, we find the question that fell for the decisions of the High Court of Kerala in those cases was not in the same terms and the manner in which it is now raised before us. As a matter of fact, there was no dispute of the nature now before us, in those cases and the decisions in those cases are of no assistance to us. Therefore, the matter has got to be considered independently, as raised before us :

The crucial question is as to the scope of the words "'growing crops'" (including fruits on trees). In *Imamali Abdul Kadar v. Rani Priyawati Devi*,

AIR 1937 Nag 289, the words "'growing crops'" came up for consideration in the context of a contract of lease of land for cultivation of lac. While

adverting to the earlier view taken by the very court, Vivian Bose J. (as the learned judge then was) held as follows (at page 290) :

But it is doubtful whether the reasoning on which that decision if based can be sustained any longer. The view take there is the old view that lac

produce cannot be regarded as a growing crop. That is no longer the law. It is now looked upon as a "periodical crop" and consequently until

gathered must be "growing crop". But that is not what was leased in this case. A "growing crop" necessarily means a crop which is in existence

and which is in the process of coming to fruition. What was leased was "the right of planting lac on the trees" as exhibit P-7 states, that is to say,

the right of sowing, cultivating, and harvesting the crop. Therefore the lease is of the trees themselves for a particular purpose, and not of a

particular crop which is ripening on them. I cannot see how this differs from a lease of land for the purpose of cotton, wheat, or any other kind of

cultivation. Trees are undoubtedly immovable property unless severed from the ground ; and, unless the intention of a lease is that the trees should

be cut down and the wood removed, the lease must be a lease of immovable property. That being so, it requires registration if reduced to writing.

11. In *Chhatradharilal Gangaram Supedar Vs. Shyamabai Ramsewaklal Agrawal*, , a Division Bench of the Madhya Pradesh High Court has

considered the question as to what passes at a court auction sale while dealing with a claim under Order 21, rule 94 of the Civil Procedure Code.

It was held therein that in cases where the land is sold in execution of a decree the property in the growing crops does not pass to the purchaser,

ipso facto, unless the growing crops are specifically sold along with the land.

12. In *Mahadeo Vs. The State of Bombay*, , a Constitution Bench of the Supreme Court has considered the question in the context of a claim to a

right under an agreement granted by some of the proprietors in the former State of Madhya Pradesh to certain contractors of the right to take

forest produce including tendu leaves from the forests included in the Zamindari and Malguzari villages of the grantors prior to the vesting of their

rights in the estates in the State under the Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals and Alienated Lands) Act, 1951. It

was held therein by the apex court, as hereunder :

The expression "growing crop" might appropriately comprehend tendu leaves, but would not include "Adjat Timber", "bamboos", nor even tendu

plants.

13. Mr. Janarthana Raja contended while challenging the conclusion of the Appellate Tribunal that the words ""growing crops"" require to the

construed by giving a meaning in ordinary common parlance and not by adopting any special definition or attributing technical or scientific meaning

to those words. Per contra, Mr. C. V. Rajan, learned counsel appearing for the Revenue, contended that the reasons assigned by the Appellate

Tribunal to sustain the construction placed by the Revenue are sound and acceptable in law and there is no justification to interfere with the order

of the Tribunal. We have carefully considered the submissions of learned counsel appearing on either side. From the history of the legislation and

the provision under consideration, we find that up to the assessment year 1969-70, these assets seem to have been specifically exempted under

clause (e) of section 2 of the Act and the value of such assets was not at all includible in the assessable wealth. With the insertion of section 5(1)

(viiiia) of the Act, section 2(e) also underwent a change by the very same Finance Act and the exclusion provided u/s 2(e) was specifically

restricted to years up to 1969-70 and not extended thereafter apparently in view of a specific provision inserted in section 5(1)(viiiia) of the Act. In

the light of the exposition contained in the decision of the Supreme Court in *Mahadeo Vs. The State of Bombay*, , and the opinion of Vivian Bose

J., the erudite learned judge in *Imamali Abdul Kadar v. Rani Priyawati Devi*, AIR 1937 Nag 289, which in our view would squarely apply to the

case on hand we have no difficulty in approving the view taken by the Appellate Tribunal on the scope of section 5(1)(viii) of the Act, in these cases.

14. That apart, it is now very well-accepted that in cases of doubt or difficulties encountered in ascribing proper meaning to a provision or word in

a provision, the Statement of Objects and Reasons or the Explanatory Notes on Clauses relating to the amendment or the report of the Joint

Parliamentary Committee which preceded the legislation concerned will be useful to ascertain the intention of the Legislature in enacting a particular

provision. We have already referred to the Explanatory Notes on Clauses to the Finance Act, 1969. From the above, it is seen that what was

intended to be exempted was the growing crops, fruits on trees and grass on agricultural land. In our view, even applying the commonsense

concept of "crops", the same can by no stretch of imagination be extended to tree or plant concerned and merely because the word used is

growing crop it will not make anything which grows, including the tree or plant also a crop merely because the crop is a yield from the tree or plant

concerned and till the crop is severed or plucked, it forms part of the tree. Though trees standing on and embedded in the earth are considered to

be ordinarily immovable property, crops or yield from such are only treated as movable property (vide section 3 of the Transfer of Property Act,

1882, and section 2(7) of the Sale of Goods Act, 1930). Normally, the expression, "growing crop" is said to include all vegetable growths whether

in the form of fruits, leaf, bark or roots and there has been always a well-settled difference and distinction between trees and shrubs which have a

recognised existence apart from any produce they may bear and plants which have a recognised existence apart from their produce. The only

significance of the word "growing" used in conjunction with the word "crop" is to lay emphasis upon its existence in presenting and to indicate that it

is in the process of growing and proceeding to reach the stage of fruition and not to make all that grows including the tree or shrub or plant which

bears the crop also a growing crop. Consequently, in our view, tea or coffee bushes or plants, apart from the two leaves and the bud of tea plant

or the berries of the coffee plant, cannot be considered as "growing crops" within the meaning of section 5(1)(viii) of the Act. The construction

placed by us above is not only in conformity with the commonsense understanding of the words ""growing crops"", but also accords with the intention of the Legislature as well and makes the provision in tune with the specific purpose and object of the recasting of section 2(e) of the Act by the Finance Act, 1969.

15. For all the reasons stated above, we answer question No. (2) referred for our opinion in the negative and against the assessee, but in favour of the Revenue and hold that the entire coffee and tea bushes apart from the two leaves and a bud of the tea bush and the berries of the coffee bush, do not fall within the expression ""growing crops"" for exemption u/s 5(1)(viii) of the Wealth-tax Act, 1957. No. costs.