
(1970) 12 AP CK 0011

In the Andhra Pradesh High Court

Case No : Case Referred No. 47 of 1968

M. Sulochanamma and Others

APPELLANT

Vs

Commissioner of Wealth-tax

RESPONDENT

Date of Decision : 29-12-1970

Acts Referred:

Wealth Tax Act, 1957 — Section 2, 4(1)

Citation : (1972) 85 ITR 201

Hon'ble Judges : Sriramulu, J;Kondaiah, J

Bench : Division Bench

Advocate : S. Dasaratharama Reddy, for the Appellant; P. Rama Rao, for the Respondent

Judgement

Kondaiah, J.—The following four questions have been referred u/s 27(1) of the Wealth-tax Act, 1957, at the instance of the assesseees by the Income Tax Appellate Tribunal, Hyderabad Bench, for the opinion of this court :

"(1) Whether, on the facts and in the circumstances of the case, the leasehold right of the assesseees in respect of the lands in question with the right to win mica therefrom constitutes an asset within the meaning of the Wealth-tax Act?

(2) Whether, on the facts and in the circumstances of the case, the assesseees are entitled to exemption from wealth-tax u/s 2(e)(v) of the Act in respect of the leasehold interest in the Sitarama Mica Mine?

(3) Whether, on the facts and in the circumstances of the case, the valuation upheld by the Tribunal in respect of Siddeswara, Rajyalakshmi and Satyanarayana Mines are reasonable and proper, while those assets were assessed at a different value in the estate duty proceedings of the applicant's mother?

(4) Whether, on the facts and in the circumstances of the case, the value of the rice mill at Kota and of the house property in Madras gifted by the applicant to her minor sons is liable to inclusion in the net wealth of the applicant?"

2. In order to appreciate the scope of the reference, it is necessary to refer to the material facts which gave rise to the aforesaid questions : M. Sulochanamma, A. Jayalakshamma and A. Sudarsanamma, the assesseees, are three sisters who inherited the rights to exploit and win mica from the mines known as the Sitarama Mica Mine, the Siddeswara Mica Mine, the Rajyalakshmi Mica Mine and the Satyanarayana Mica Mine, in respect of which each of them had a one-third share. The Sitarama Mica Mine was granted on lease to the assesseees' predecessor-in-title by the Central Government for a period of thirty years with effect from October 30, 1939. Parliament enacted the Mines and Minerals (Regulation and Development) Act, 1948 (53 of 1948), which came into force on September 8, 1948, for the purpose of regulating the mines and oil fields and to develop minerals. In exercise of its rule-making power u/s 5 of that Act, the Mineral Concession Rules, 1949, which came into force on October 25, 1949, for regulating the grant of prospecting licences and joining leases for minerals other than petroleum and natural gas, have been promulgated by the Central Government. Under Rule 40 of the Mineral Concession Rules, 1949, the period for which a mining lease may be granted shall be 20 years in the case of minerals other than coal, iron ore and bauxite. The lessee shall have the option of renewal for one or two periods each not exceeding the duration of the original period.

3. The Central Government, by virtue of the powers vested in it u/s 7 of Act 53 of 1948 to make rules for the purpose of modifying or altering the terms and conditions of any mining lease granted prior to the Act so as to bring the terms of such lease in conformity with the Rules made under Sections 5 and 6 thereof, framed the Mining Leases (Modification of Terms) Rules, 1956, and published on September 15, 1956. Rule 4 of the aforesaid Rules requires the Controller of Mining Leases to pass an order, after issuing show cause notice and affording an opportunity to the lessee, making such modifications and alterations in the terms and conditions of the existing mining leases as may be necessary for the purpose of bringing into conformity with the Mineral Concession Rules, 1949. Sub-rule (4) of Rule 6 of the Rules prohibited the Controller of Mining Leases from reducing the term of any existing mining lease due to expire within 15 years from September 15, 1956, when the Rules came into force. However, the aforesaid sub-rule, along with Sub-rules (2), (3) and (5) to (9), has been omitted by G.S.R. No. 437, dated June 1, 1958.

4. On August 26, 1958, a notice to the assesseees to show cause as to why the period of the lease relating to Sitararaa Mica Mine should not be curtailed to 20 years, was issued by the Controller of Mining Leases under Rule 4 of the Mining Leases (Modification of Terms) Rules, 1956. After considering the representations of the assesseees, the Controller of Mining Leases, by his order, dated June 27, 1959, reduced the term of the lease from 30 years to 21 years. The lease thus became terminable on October 30, 1960. On June 30, 1960, the assesseees were granted renewal of the lease for a period of 20 years with effect from October 30, 1960.

5. For the assessment years 1957-58, 1959-60 and 1960-61, whose relevant valuation dates are on March 31, 1957, March 31, 1958, March 31, 1959, and March 31, 1960, respectively, each of the assessees, in the status of an individual, originally returned a one-third share in the Sitarama Mica Mine and valued the asset at Rs. 1,50,000. However, they sought to reduce the figure to Rs. 50,000 by a letter dated February 9, 1961, on the ground that the lease of the mine available to them was of a short duration on the respective valuation dates. The claim of the assessees that the un-expired portion of the lease on the relevant valuation dates was less than six years and, hence, no value at all should be adopted for that asset, was rejected by the Wealth-tax Officer who valued the one-third share of each assessee in the mine at Rs. 2,47,969, Rs. 2,50,421, Rs. 2,45,435 and Rs. 2,47,354, respectively, for the four assessment years on the basis of taking the unexpired leasehold periods on the relevant valuation dates as 13, 12, 11 and 10 years respectively.

6. The Wealth-tax Officer, however, valued the Siddeswara, Rajyalakshmi and Satyanarayana Mica Mines at Rs. 60,000, Rs. 7,500 and Rs. 7,500 respectively for the assessment years 1957-58 and 1958-59 subsequent to which they (mines) were gifted away by the applicants.

7. In the case of Sudarsanamma, the assessee had gifted away a rice mill at Kota and a property at Madras in favour of her minor sons, in the year of account relevant for the assessment year 1959-60. The value of the house property. No. 67, Md. Osman Road, Thyagarayanagar, Madras, purchased by the assessee in the year 1958 in the names of her minor sons, Dayakar Reddy and Rajasekhara Reddy, was added in her net wealth by virtue of the provisions of Section 4(1)(a) of the Wealth-tax Act. The value of the aforesaid two items, i.e., Rs. 70,000 and Rs. 7,500 respectively, was included in the assessments for the assessment years 1959-60 and 1960-61.

8. The appeals to the Appellate Assistant Commissioner were not successful. On further appeals to the Tribunal, the plea of the assessees that their leasehold right in respect of the mines to win mica does not constitute an asset within the meaning of Section 2(e) of the Wealth-tax Act, and, in any event, they are entitled to exemption from wealth-tax u/s 2(e)(v) of the Act in respect of the leasehold interest in the Sitarama Mica Mine as the period of lease on the respective valuation dates was less than six years, was rejected by the Tribunal. The Tribunal also has found that the valuation adopted by the Wealth-tax Officer relating to Siddeswara, Rajyalakshmi and Satyanarayana Mica Mines was proper and reasonable. It was also held that the value of the rice mill at Kota and the house property in Madras gifted by Sudarsanamma in the relevant previous years 1959-60 and 1960-61 in favour of her minor sons is liable to be included by virtue of the provisions of Section 4(1)(a) of the Wealth-tax Act in her net wealth. Hence, this reference.

9. We shall first take up question No. 1. The answer to it turns upon the definition of "assets" u/s 2(e) of the Wealth-tax Act, which reads thus :

""Assets" includes property of every description, movable or immovable. . . ."

10. Undoubtedly, the definition of "assets" is wide enough to take property of every description. It is an inclusive definition. The expression "property of every description" is of the widest import so as to take in every possible interest which a person can acquire, hold or enjoy. The leasehold interest in a mica mine is property which can be owned and enjoyed by a person for a specific period. A mining lease for mica can be granted for a period of 20 years. On the facts and in the circumstances, we must answer question No. 1 in the affirmative and against the assessee.

11. We feel it convenient to dispose of question No. 3 which lies in a short compass. The question relates to the reasonableness and propriety of the valuations of the Siddeswara, Rajyalakshmi and Satyanarayana Mines on the respective valuation dates. The finding of the Tribunal relating to the valuation of the aforesaid assets is one of fact supported by ample material on record. Hence, we have no hesitation to answer question No. 3 in the affirmative and against the assessee.

12. We shall now turn to questions Nos, 2 and 4 in seriatim. Question No. 2 relates to all the assessees in respect of all the assessment years. The answer to this question depends upon the scope of the provisions of Section 2(e)(v) of the Act and their application to the facts of the present case. It is profitable to notice Clause (v) of Section 2(e), which reads thus:

""Assets" includes property of every description, movable or immovable, but does not include--....

(v) any interest in property where the interest is available to an assessee for a period not exceeding six years from the date the interest vests in the assessee."

13. The principal contention of Mr. Dasaratharama Reddy for the assessees was that Rules 4 and 6 of the Mining Lease (Modification of Terms) Rules, 1956, which came into force on September 15, 1956, empowered the Controller of Mining Leases to reduce the period of every existing mining lease so as to bring it into conformity with the Mines and Minerals (Regulation and Development) Act, and Rule 40 of the Mineral Concession Rules, by which the lease period was reduced to 21 years ending with October 30, 1960, and, therefore, the interest available to the assessees in the mine on the respective valuation dates was for a period not exceeding six years so as to bring their case within Section 2(e)(v) of the Act. This claim of the assessees was resisted by Sri P. Rama Rao appearing for the revenue contending, inter alia, that on the valuation dates for the assessment years 1957-58, 1958-59 and 1959-60, the order reducing the period of 30 years lease to 21 years passed by the Controller of Mining Leases was in fact not passed and for the assessment year 1960-61, the renewal for another 20 years of the lease was already granted by the Government and, hence, the assessees are not entitled to claim the advantage u/s 2(e)(v) of the Act and the Tribunal has rightly included these assets in the total value computed for the

respective assessment years.

14. The corresponding valuation date for the assessment years 1957-58 to 1960-61 are March 31, 1957, March 31, 1958, March 31, 1959, and March 31, 1960, respectively. True, as contended by Sri Dasaratharama Reddy, Rules 4 and 6 of the Mining Leases (Modification of Terms) Rules, 1956, have been published on September 15, 1956. But, it is pertinent to notice in this connection that Sub-rule (4) of Rule 6 of the said rules prohibited the Controller of Mining Leases from exercising his power vested under Rule 4 to reduce the period of any lease granted prior to the commencement of the Mines and Minerals (Regulation and Development) Act, 1948, to 20 years so as to bring it in conformity with Rule 40 of the Mineral Concession Rules, 1949, if the unexpired portion of the lease was less than 15 years. There was, therefore, a prohibition under Sub-rule (4) of Rule 6 of the Mining Leases (Modification of Terms) Rules, 1956, from exercising the power vested in the Controller of Mining Leases under Rule 4 till that was deleted by the rule-making authority by G.S.R. No. 437 dated 1st June, 1958. However, we have to bear in mind the aforesaid admitted facts that on March 31, 1957, and March 31, 1958, there was neither an order passed by the Controller under Rule 4, nor any threat or possibility of curtailing the period of lease in the instant case from 30 to 21 years. After the omission of Rule 6(4) on June 1, 1958, the Controller was empowered to reduce the period of the lease granted in favour of the predecessor-in-interest of the assessee. However, we may add that mere threat or possibility of reducing the period of the mining lease by the Controller of Mining Leases by virtue of his power under Rules 4 and 6 of the Mining Leases (Modification of Terms) Rules, 1956, read with Rule 40 of the Mineral Concession Rules, cannot be equated to the passing of an order by him so as to reduce the period of lease granted for 30 years on October 30, 1939, to 21 years. It was only on August 26, 1958, that notice under Rule 4 to show cause why the period of the lease should not be curtailed was issued by the Controller who actually passed the order on June 27, 1959, reducing, the period of lease from 30 years to 21 years. The facts of the case do not disclose that the order of the Controller passed on June 27, 1959, was retrospective in operation. It is pertinent to notice clauses 2, 5 and 6 of the Order of the Government of India under Rule 6 of the Mining Leases (Modification of Terms) Rules, 1956 :

"2. It is hereby ordered under Rule 6 of the aforesaid Rules that the terms and conditions of the above lease shall stand modified as follows:--

- (i) Period.--Period of the lease shall be 21 years counting from October 30, 1939, renewal to be regulated according to the law and rules in force when it falls due,
- (ii) Dead rent.--Dead rent shall be payable at, the rate of Rs. 8 per annum.
- (iii) The following clause shall be deemed to be inserted in the lease deed and shall form part thereof :

"Except for the modification made by this order, the lease shall be subject" to the Rules made or deemed to have been made under Sections 13 and 18 of the

Mines and Minerals (Regulation and Development) Act, 1957 (No. 67 of 1957)."

5. This order shall take effect from the date of this order.

6. It is further ordered that this order be published in the Official Gazette of Andhra Pradesh State and copies thereof be sent to the lessee and the State Government.

(Sd.) K. B. L. Seth CONTROLLER OF MINING LEASES FOR INDIA.

Dated: Nagpur, 27 June, 1959."

15. Clause 2(i) of the aforesaid order states that the period of the lease shall be 21 years counting from October 30, 1939. The right to renew the lease is regulated according to the law and the Rules in force when the renewal falls due. Clause 5 of the order makes it abundantly clear that the order shall take effect from 27th June, 1959, when it was made. It is only prospective but not retrospective in operation. The right of the assessee relating to the period specified under the lease dated October 30, 1939, cannot, in the circumstances, be said to have been reduced or curtailed until and unless the order of the Controller dated June 27, 1959, came into force. The submission of Sri Dasaratharama Reddy that the terms of the order reducing the period of lease from 30 to 21 years shall be deemed to have been inserted in the lease deed is not correct. The assessee's counsel relied upon Sub-clause (iii) of Clause 2 of the aforesaid order in support of his claim. Sub-clause (iii) of Clause 2 of the order indicates that the clause following it shall be deemed to have been inserted in the lease deed and shall form part thereof. That has nothing to do with Sub-clause (i) of Clause 2 which preceded it, reducing the period of lease from 30 to 21 years. Such an interpretation as sought to be placed by the counsel for the assessee is not permissible in view of the specific provision made in Clause 5 to the effect that the order shall take effect from its date, i.e., June 27, 1959.

16. We shall now turn to the decision of this court in R. C. No. 23/64 on the basis of which it was contended by Mr. Dasaratharama Reddy that question No. 2 must be answered in favour of his clients on the application of the principle of res judicata. In that case, the question referred for the opinion of the High Court was whether the Tribunal was justified in law in adopting a period of 8 years as the basis for the valuation of the mines instead of 4 years. The Deputy Controller took the view that the unexpired portion of the mining lease granted to Ramanamma on October 30, 1939, was 13 years on September 5, 1956, when she died as there were neither rules empowering the Controller of Mining Leases to reduce the period of the lease in force, nor the notification reducing the term to 21 years was made by that date. The Appellate Controller, however, reduced the period of the unexpired lease to 4 years on the ground that the Rules came into effect on September 15, 1956. The Tribunal had arbitrarily fixed the period of 8 years as reasonable. In those circumstances, this court had answered the question in favour of the assessee holding that the Tribunal was not justified in law in adopting a period of 8 years for the valuation of the mines and the proper

valuation it should adopt was 4 years: We may point out that the question now before us is not the same that was (1) Smt. A. Jayalakshmamma Vs. Controller of Estate Duty, (Appendix) called upon to be decided by this court in R. C. No. 23/64. This may be noticed from the following observations of the learned judges in that case :

"But the Appellate Tribunal in our view without laying down any principle neither accepted the four years nor 13 years, but arbitrarily fixed 8 years as a reasonable period of the unexpired lease. The learned advocate for the department is unable to sustain this 8 year period, though he contends that the valuation of the unexpired lease must be taken as on the date of the death of the deceased which according to him is 13 years. This question is not before us. We cannot consider this question as the Tribunal has not referred this specific matter to us for our opinion."

17. The aforesaid passage from the judgment of this court in R. C. No. 23/ 64 would furnish the answer to the plea of the assessee's counsel that that decision would cover the point in favour of his clients on question No. 2 either on the application of the principle of res judicata or on merits. Those proceedings have arisen under the Estate Duty Act where one of the assessees herein, i.e., A. Jayalakshmamma, was the accountable person. For wealth-tax assessments, just like Income Tax assessments, each year is a distinct and specific unit for the purpose of assessment. Any decision relating to a point in a particular year of assessment is not binding on the parties in the next assessment year although the rule of res judicata is applicable in respect of matters or decisions relating to the same assessment year. See *Amalgamated Coalfields v. Janapada "Sabha and Devilal Modi v. Sales Tax Officer*.

18. That apart, on merits, with great respect to the learned judges, we are unable to subscribe to the view expressed by them that the order of the Controller of Mining Leases for India passed on June 27, 1959, was retrospective in operation and the accountable person could successfully urge in the appeal that the unexpired portion of the lease was only 4 years on the valuation date on the basis of the notification dated June 27, 1959. As pointed out earlier, Clause 5 of the order specifically says that it will come to effect from the date of that order. There is no ambiguity in that regard. The order of the Controller reducing the period of the mining lease to 21 years was only prospective but not retrospective in operation. We are unable to find from the judgment of this court in R.C. No. 23/64 that this particular aspect was being considered. Further, the provisions of Sub-rule (4) of Rule 6, prohibiting the Controller from passing any order reducing the period of lease granted prior to the Rules coming into force, which was deleted only on June 1, 1958, was not taken notice of by the learned judges who decided R. C. No. 23/64. No material has been placed before us to indicate that the aforesaid facts have been stated by the Tribunal in R. C No. 23/64. On a consideration of the facts and circumstances referred to in the statement of the case submitted to us, we are unable to agree with the

submission of Sri Dasaratharama Reddy that the interest in the asset of the mining lease was not available to the assesseees on the respective valuation dates.

19. It is well-settled that the income charged to tax under the Indian Income Tax Act is that of the previous year. The law that is applicable is that in force in the year of assessment unless otherwise stated or implied. See *Commissioner of Income Tax v. Isthmian Steamship Lines*. The provisions of the Income Tax Act as they stand amended on the 1st of April of a financial year are applicable to the assessment of that year. See *Maharajah of Pithapuram v. Commissioner of Income Tax*. However, any amendments in the Act made subsequent to the 1st April of the financial year, unless retrospective effect expressly or by necessary intendment was given, are not applicable to the assessment of that year. See *Commissioner of Income Tax v. Scindia Steam Navigation Co. Ltd.* and *Karimtharuvi Tea Estate Ltd. v. State of Kerala*. If the amendments relate not to substantive provisions but purely provisions of procedural character, they must be given retrospective effect to pending assessments before the authorities. If the amendment has been specifically made retrospectively applicable to a particular assessment year, the tribunals, before whom the appeals relating to that assessment year were pending, must give effect to the amended law though enacted after the close of the assessment year. Vide *S.C. Prashar v. Vasantsen Dwarkadas*. The aforesaid principles made applicable to Income Tax assessments must be applied to the wealth-tax assessments also. The law, therefore, that is applicable to the assessments under the Wealth-tax Act is the law that is prevalent on the relevant valuation dates. This view gains support from the provisions of Section 2(q) which defines the valuation date which is one of the important concepts in the scheme of wealth-tax and Sections 3 and 4 which deal with the computation of net wealth. Section 3 charges the net wealth on the corresponding valuation date of every individual, Hindu undivided family and company to wealth-tax at the rate or rates specified in the Schedule. The net wealth should be valued as on the corresponding valuation date pertaining to the assessment. The statement of facts referred to above manifests that there is no amendment of the Wealth-tax Act relating to the valuation date. Any subsequent events occurring after the relevant valuation dates relating to facts are neither relevant nor material for the purpose of ascertaining the value of the assets to be determined by the wealth-tax authorities under the Act. Even the law, if amended subsequent to the valuation dates prospectively and without express intendment or necessary implication giving retrospective effect applicable to those particular assessment years, can have no effect or application in determining the net wealth of any particular asset on the respective valuation dates for those assessment years.

20. Applying the aforesaid principles, we shall consider the question whether the assesseees are entitled to exemption u/s 2(e)(v) of the Wealth-tax Act. u/s 4(1) (a), the value of the assets as on the valuation date must be included in computing the net wealth of an individual. In our judgment, the crucial dates being the respective valuation dates for purposes of computing the total net

wealth of the assesseees for assessing under the Act, the subsequent events in the instant case cannot be taken note of. They are neither relevant nor material for the purpose of computing the net wealth of the assesseees under the Wealth-tax Act. For all these reasons, we are unable to agree with the contention of the assesseees that for the assessment years 1957-58, 1958-59 and 1959-60, the unexpired portion of the lease for the Sitarama Mica Mine was less than six years and not an asset within the meaning of Section 2(e) of the Act, as the order passed by the Controller of Mining Leases on 27th June, 1959, was not available on the relevant valuation dates reducing the period of lease from 30 to 21 years.

21. We shall now deal with the assessment year 1960-61. For this year, the respective valuation date was March 31, 1960. The order, annexure "A-3", the proceeding of the Collector, Nellore, whereunder sanction to continue the mining operations for a period of 20 years from October 30, 1960, was accorded to the assessee discloses a reference to G.O, Ms. No. 30 dated January 5, 1960. It is represented by Sri P. Rama Rao, counsel for the revenue, that the State Government had granted the renewal for a period of 20 years in G. O. Ms. No. 30 dated January 5, 1960, itself. Pursuant to that order, the Collector had obtained a lease deed executed on May 26, 1960, and registered on May 31, 1960, and, thereafter, the annexure "A-3" dated June 30, 1960, was passed. The sum and substance of this contention of Sri P. Rama Rao is that the State Government in fact had passed the effective order granting renewal in favour of the assesseees as early as on January 5, 1960, that is, admittedly prior to March 31, 1960, the valuation date for the assessment year 1960-61, and, hence, the assesseees are not entitled to claim that the period of lease was going to expire on October 30, 1960, and it was not an asset within the meaning of Section 2(e). Sri Dasaratharama Reddy for the assesseees is not able to persuade us to reject the submission of Sri P. Rama Rao, except stating that the assesseees were not aware of the order prior to October 31, 1960. He was unable to explain the reference to the G. O. and the execution, of the registered lease deeds in the very same year. In the circumstances, the right of the assesseees must undoubtedly be held to be an interest in property and the same has to be included in the net wealth for the assessment year 1960-61. We, therefore, answer question No. 2 in the negative and against the assessee.

22. With regard to question No. 4, it is argued by Mr. Dasaratharama Reddy that the decision of the Supreme Court in Commissioner of Income Tax v. Sodra Devi concludes the matter in favour of the assessee. We may refer to the provisions of Section 4(1)(a) of the Wealth-tax Act as it stood on the relevant valuation date, to the extent it is relevant and material for the point at issue and the provisions of Section 16(3)(a) of the Indian Income Tax Act, 1922, which gave rise to the decision in Sodra Devi's case.

23. Section 4(1)(a) of the Wealth-tax Act, 1957, is as follows:

"In computing the net wealth of an individual, there shall be included, as belonging to him-

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

(i) by his wife 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 separately, or

(ii) by a minor child not being a married daughter to whom such assets have been transferred by the individual otherwise than for adequate consideration."

24. Section 16(3)(a) of the Indian Income Tax Act, 1922:

"In computing the total income of any individual for the purpose of assessment, there shall be included-

(a) so much of the income of a wife or minor child of such individual as arises directly or indirectly-

(i) from the membership of the wife in a firm of which her husband is a partner ;

(ii) from the admission of the minor to the benefits of partnership in a firm of which such individual is a partner."

25. A close reading of Section 4(1)(a) of the Wealth-tax Act and Section 16(3)(a) of the Indian Income Tax Act, 1922, manifests that the provisions of both the sections, in so far as they relate to the minor children are concerned, are not identical but they are different. The view of the Supreme Court in *Sodra Devi's* case was that the words "any individual" and "such individual" in Section 16(3) of the Indian Income Tax Act, 1922, are restricted in their meaning so as to take in only the male of the species and do not include the female of the species. The learned judges laid much stress on the use of the words "such individual" in the opening part of Clause (a) of Sub-section (3) to Section 16 in arriving at such a conclusion. The use of the words "the income of a wife or a minor child of such individual" in one and the same clause, i.e., Section 16(3)(a), has made the Supreme Court to construe the expression "any individual" as only a male of the species. This decision does not support the plea of the assessees in the instant case as the provisions of Section 4(1)(a) of the Wealth- tax Act are not identical wither similar to those of Section 16(3)(a) of the Indian Income Tax Act, 1922. We may notice that the words "such individual" are not used in Section 4(1)(a) of the Wealth-tax Act. The words used are "the individual". The word "the" cannot be equated to "such". That apart, the provisions of Sub-clauses (i) and (ii) relate to the assets held by the wife and a minor child, respectively. Each clause is independent of the other and one has no connection or reference to the other. The provisions with which we are concerned in the instant case are Section 4(1)(a)(ii) of the Wealth-tax Act. The provisions of Section 4(1)(a)(i) may be ignored for the present controversy. If Section 4(1)(a)(ii) is construed disjunctively we have no hesitation to hold that the words "an individual" occurring in the opening part of Section 4(1) would refer to both a male and a female of the species. The value of the assets held by a minor child to whom such assets have been transferred by the individual otherwise than for adequate consideration shall be

included in the net wealth of an individual. If Sub-clause (ii) of Clause (a) of Sub-section (1) to Section 4 is construed independently, we are of the opinion that the expression "the individual would refer only to "an individual" specified in the beginning of Section 4 and it may refer to a male or a female. The provisions of Section 4(1)(a)(ii) are exactly in pari materia with Section 16(3)(a) of the Income Tax Act referred by the Supreme Court in Sodra Devi's case. We may notice the following passage in the judgment of Bhagwati J. in Sodra Devi's case while dealing with the plea advanced on behalf of the revenue that "such individual" indicated both male as well as female of the species :

"The crux of the question, therefore, is whether the words "such individual" used in the opening part of Section 16(3)(a) are used to mean a male of the species when they are read in juxtaposition with the words "a wife" and are used to mean both a male as well as a female of the species, as the case may be, when used in juxtaposition with the words "minor child".

26. If that was the intention of the legislature there was nothing to prevent it from dividing Clause (a) into two sub-clauses whether they were numbered (a) and (ai) or (a) and (b) respectively. The legislature could as well have enacted the provisions in the manner following:

(a) So much of the income of a wife of such individual as arises directly or indirectly;.....

(ii) from assets transferred directly or indirectly to the wife by the husband (or such individual) otherwise than for adequate consideration or in connection with an agreement to live apart;

(ai) or (b) So much of the income of a minor child of such individual as arises directly or indirectly ;.....

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

If these provisions had been enacted in the manner aforesaid, it would have been possible to urge, as has been urged before us by the revenue, that Clause (a) referred only to a male of the species who only could have a wife and Clause (ai) or (b) referred to a male and/or a female of the species.

The legislature, however, chose to adopt a peculiar mode of enactment either for the purpose of economy of words or structural beauty and mixed up both these sets of provisions into the enactment of Clause (a) of Section 16(3) of the Act as it stands at present.

It rolled in both these sets of cases and used the words "a wife" or "minor child" of "such individual" raising thus the question of construction which has got to be determined by us. " Such individual" as is talked of in Section 16(3)(a) may have a wife, may have a minor child or may have both a wife and a minor child.

We are of opinion that the very manner in which all the four sub-clauses have

been grouped together in Section 16(3)(a) and the manner in which the expression "for the benefit of his wife, a minor child or both" is used in Section 16(3)(b) renders the words "any individual" or "such individual" ambiguous."

27. The same word or expression in a statute or a section of an enactment may be differently used depending upon the context and set up in which they have been used. See Maxwell's Interpretation of Statutes (twelfth edition, pages 61 and 141). Sri Dasaratharama Reddy, appearing for the assesseees, realising this difficulty, had to concede that the provisions of Section 4(1)(a)(ii) are similar and analogous to those of Section 16(3)(a) or (b) of the re-framed section pointed out by the Supreme Court in Sodra Qevi's case but laid stress on the use of the words "as belonging to him" in Section 4(1) so as to connote the expression "individual" to only a male but not a female. This submission of the assesseees is devoid of any merit. It is well settled that the words implying masculine gender used in a statute shall, unless a contrary intention either expressly or by necessary intendment is specified, include feminine and the word singular means plural. See Section 13 of the General Clauses Act, 1897 (X of 1897). In Section 4(1), the use of the words "belonging to him" must be construed as "belonging to the individual" as they relate only to "an individual" used in the same clause. The use of the word "individual" in Section 3 must undoubtedly be construed to have been used in a generic sense so as to take in a male as well as a female of the species. This view of ours gains support from the use of the words "any property held by him" in Clause (i), "he is a member" in Clause (iii), "his official residence" in Clause (iii), "exclusively used by him" in Clause (iv) and "benefit accrues to him" in, Clause (v) of Section 5. The use of the words "he", "him" or "his" in the aforesaid provisions would certainly take in both a male and a female as Section 5 relates to exemptions in respect of certain assets. Hence, we are of the opinion that the use of the words "belonging to him" in Section 4 does not advance the case of the assesseees in this regard. The opening words "belonging to him" do not indicate that "an individual" occurring in Section 4(1)(a) means only a male of the species. We are of the firm view that the words have been used in a generic sense and the same would mean a male as well as a female. In so far as Clause (i) relating to the wife is concerned, "an individual" must be construed as "the husband" but when it is referred to in Clause (ii) dealing with the minor child, it must be interpreted in a broad generic sense so as to take in both a male and a female of the species. True, as contended by Sri Dasaratharama Reddy that the benefit should go to the subject if the provisions of Section 4(1)(a) are ambiguous, capable of two interpretations, one favourable to the subject and the other in favour of the State. But, as we are satisfied that there is no ambiguity in the provisions, we cannot accede to this request of the assessee. It is pertinent to notice in this context that the ambiguity of the exact use of the words "any individual" also is a factor which weighed with the Supreme Court in Sodra Devi's case, to accept the interpretation favourable to the subject.

28. This view of ours finds support in a decision of the Madras High Court in

Commissioner of Wealth-tax v. T. Meenakshi Achi, wherein it was held that the words "an individual" used in the beginning of Section 4(1) of the Act should be read in a distributive sense and in the particular context in each of the clauses and they take their meaning, whether it is a male or a female, from the context and there is no reason why it should be confined to a male. Reliance also was placed on the use of the article "the" before the word "individual" instead of "such" employed in Section 16(3)(a) of the Indian Income Tax Act, 1922. While dealing with the submission of the assessee relating to the use of the words "as belonging to him", it was observed by the learned judge, Veeraswami J. (as he then was), who spoke for the court, at page 124 thus :

"The opening words of Section 4 of the Wealth-tax Act speaks of " an individual" followed by the words "as belonging to him". But Section 13 of the General Clauses Act, 1897 (X of 1897), says that the words importing the masculine gender shall be taken to include females. That is also in consonance with the object of the Wealth-tax Act, for it is not conceivable that the legislature thought, for purposes of avoidance of evasion, a female should be treated exceptionally and left out of the purview of the net for evaders. The charging section, as we already mentioned, speaks of " every individual" which, we have no doubt, includes a male and a female. When in the next section "an individual" is mentioned, though followed by the words, "as belonging to him", we can find no adequate reason why it should be confined to a male, unless the context of each of the following clauses demands that interpretation. One need not be surprised that statutes do contain the same words, which, used in different contexts, convey different significance or meaning, even in the same section. Section 4 of the Wealth-tax Act is illustrative of that."

29. We are, therefore, unable to agree with the contention of Sri Dasa-ratharama Reddy that the aforesaid decision of the Madras High Court is contrary to the decision of the Supreme Court in Sodra Devi's case.

30. The further submission of the counsel for the assesseees that there would not have been any necessity for the amendment of Section 4(1) in the year 1964 by the Wealth-tax (Amendment) Act, 1964 (46 of 1964), if the construction sought to be placed by the revenue is correct, merits rejection. It is felt necessary as Parliament intended to make the provisions applicable to the male as well as the female of the species. Hence, the amendment was made to Section 4(1)(a). The amended provision applicable the minor children has been clarified without giving room for any doubt in future. The word used in the amendment being the spouse, the provisions would apply to the assets held by the wife as well as the husband which have been transferred by the other spouse. We, therefore, hold that there is no merit in the submission of the assesseees and the question must be answered in the affirmative and against the assesseees.

31. The assesseees shall pay the costs of the Commissioner of Wealth-tax. Counsel's fee is fixed at Rs. 400.