
(1973) 04 MAD CK 0019

In the Madras High Court

Case No : Tax Case No. 268 of 1967 (Reference No. 89 of 1967)

M. Thirumani Mudaliar (by Lrs.)

APPELLANT

Vs

Commissioner of Wealth-tax

RESPONDENT

Date of Decision : 19-04-1973

Acts Referred:

Succession Act, 1925 — Section 211

Wealth Tax Act, 1957 — Section 19, 19A, 2, 3

Citation : (1974) ILR (Mad) 410 : (1974) 96 ITR 152

Hon'ble Judges : V. Ramaswami, J;G. Ramanujam, J

Bench : Division Bench

Advocate : D. Srinivasan and K.C. Rajappa, for the Appellant; V. Balasubrahmanyam and J. Jayaraman, for the Respondent

Judgement

R. Amanujam, J.—One Palaniappa Mudaliar owned considerable movable and immovable properties. He died on June 14, 1937, leaving

behind him his only son Pichai alias Shanmugasundaram. The deceased had executed a will on 4th March, 1936, under which the following

persons have been appointed as executors :

1. M. Tirumani Mudaliar
2. P. N. V. Palaniappan
3. P. M. P, Muthukumarappa Mudaliar
4. Veerabhadra Mudaliar
5. S. Palaniappa
6. S. R. Veerappan

2. The will, after providing for certain specific legacies, directed the executors to divide and distribute equally the residue among the aurasa of

Pichai living at the time of his death. Up to the assessment year 1959-60 Income Tax assessments had been made on the executors, hereinafter

referred to as the assesses, in the status of an "" association of persons "". In respect of the assessment years 1957-58 to 1961-62, a notice u/s

14(2) of the Wealth-tax Act, hereinafter referred to as the Act, was served on the assesses, calling for a return of wealth. A return was duly filed

by them in respect of each of the said years declaring that there was no net wealth chargeable to tax under the Act as the executors constituted an

association of persons, that an association of persons was not a "" person "" within the meaning of the Act and as such outside the scope of Section

3 of the Act and that Section 19 of the Act dealing with ""liability of legal representatives "" had no application to the facts of the case.

3. The Wealth-tax Officer, however, held that according to the directions of the testator the properties had vested in the executors during the

lifetime of Pichai subject to the rights and obligations under the will, that the status of the executors would not alter the tax liability of the estate, that

even if the executors constituted an "" association of persons "" that would not confer any exemption on the estate from wealth-tax, and that the

status of the executors had to be determined with reference to the status of the deceased at the time of his death. He, therefore, completed the

assessments to wealth-tax for the said years on the executors in the status of an ""individual "" u/s 16(3) of the Act.

4. The assesses appealed to the Appellate Assistant Commissioner contending, inter alia, that they as executors in charge of the administration of

the estate on and from 1937, were assessed to Income Tax in the status of "" an association of individuals "", that, therefore, the Wealth-tax Officer

was in error in adopting the status of an ""individual"" when in fact the executors constituted "" an association of persons "", that the mere fact that the

testator at the time of his death was an "" individual "" would not alter the status of the executors from that of an association of persons to an

individual, and that there is no provision in the Wealth-tax Act to assess an association of persons. The Appellate Assistant Commissioner repelled

the said contentions and held that the term "" executor "" had been used rather loosely in the will, that the testator might not have been aware of the

distinction between executors and trustees, and that the executorship being only for a limited period and for carrying out the limited functions, the

executors have to be treated as trustees. He was also of the view that after carrying out the first set of directions in the will in respect of the

disposition of monies and creation of a charitable trust, the executors must have become trustees and such trustees as a group of individuals would

come within the scope of Section 3 of the Wealth-tax Act.

5. The executors thereafter appealed to the Appellate Tribunal. Before the Tribunal reference was made to the series of Income Tax assessments

made on the executors in the status of an association of persons in support of their case that their status should be taken as an association of

persons also under the Wealth-tax Act. They also referred to Clause 20 of the will which provided for the ultimate distribution of the estate to the

residuary legatees on the death of Pichai and argued that the residuary legatees could not be known until the death of Pichai and, therefore, the

executorial function had not come to an end and that as such they cannot be treated as trustees functioning as a group of individuals. The revenue

had contended that the executors in the circumstances of the case have shed their character as executors and they have become merely trustees,

that the residue being readily ascertainable, the postponing of the distribution of the estate until after the death of Pichai cannot justify the

continuance of the executors' function, and that even though they continued to function, they should be treated only as trustees. It was also

contended by the revenue that the executors being the legal owners of the property, they were liable to be charged u/s 3 without reference to

Section 19. The Tribunal accepted the stand taken by the revenue that the executors have become *functus officio* and they are only trustees or

managers on behalf of the beneficiaries, that the administration of the estate has reached a stage when the beneficial interest is clear and precise and

no further business is to be carried on, that it is not possible to accept the assessee's contention that till all the residuary legatees are known the

executorial function would not come to an end. The Tribunal also held that if the executors have become trustees, all the trustees can be taken as a

single unit in law and not as an association of persons, and that the trustees being a group of individuals holding the property are assessable u/s 3 of

the Act. In that view the Tribunal upheld the wealth-tax assessments in question.

6. At the instance of the assessee, the following three questions have been

referred to this court u/s 27(1) of the Act:

1. Whether, on the facts and in the circumstances of the case, the decision of the Tribunal that the assesses are assessable under the provisions of

the Wealth-tax Act, 1957, as falling within the charging Section 3 of the Act in respect of the assessment years, . 1957-58 to 1961-62 is valid in

law ?

2. Whether, on the facts and in the circumstances of the case, the decision of the Tribunal that the assesses; acting under the will of late Palaniappa

Mudaliar ceased to be "executors " and have become " trustees " of the said estate is valid in law ?

3. Whether, on the facts and in the circumstances of the case, the decision of the Tribunal that the status of the assesses was " individual" within the

meaning of Section 3 of the Wealth-tax Act, 1957, is valid in law ?

7. So far as the third question is concerned, it has to be answered in the affirmative and against the assessee in view of the decision in Seth Banarsi

Das etc. Vs. Wealth Tax Officer, Special Circle Meerut, etc., and Trustees of Gordhandas Govindram Family Charity Trust Vs. Commissioner of

Income Tax, Bombay, . In the first case the Supreme Court held that the word "" individuals "" in entry 86 of List I of Schedule VII to the

Constitution of India takes within its sweep groups of individuals like Hindu undivided families and that, therefore, Parliament was competent to

levy a tax on the capital value of the assets of the Hindu undivided families and that Section 3 of the Wealth-tax Act, 1957, was, therefore, valid in

so far as it purports to levy wealth-tax in respect of the net wealth of a group of individuals such as a Hindu undivided family. The main contention

in that case was that the word ""individuals"" in entry 86 meant only individuals and not a group or groups of individuals. The Supreme Court,

however, construed the word "" individuals "" as including a group of persons forming a unit. In the second case, the Supreme Court has construed

the word "" individuals "" occurring in Section 3 of the Wealth-tax Act and held that it would include individuals, and that the trustees of the trust as a

group of individuals constituted an assessable unit under the Act. The third question is, therefore, answered accordingly.

8. The second question, however, has to be answered in the negative and in favour of the assessee. The Wealth-tax Officer proceeded on the

basis that the administration of the estate has not come to an end and that, therefore, the assesses continued to be executors during the assessment

years in question. It is only the Appellate Assistant Commissioner who held that the assesses have completed all the executorial functions long ago

and they are holding the estate only as trustees for the ultimate beneficiaries. The Tribunal has also agreed with the Appellate Assistant

Commissioner and held that the assesses have shed their character as executors and have become trustees. We are of the view that it is not

possible to hold that in this case the assesses have shed their character as executors. It is true that the assesses have carried out substantially the

directions contained in the will, but Clause 20 of the will provides that:

after my lifetime my son, Pichai, alias Shanmugasundaram, my executors, shall divide and distribute equally all my properties, including the

augmentations made by them out of income realised during the lifetime of my son, among the aurasa sons living at that time.

9. This clause directs the executors to divide and distribute the residue of the estate equally among the aurasa sons living at the time of the death of

the testator's son, Pichai. Admittedly, Pichai is alive and as to who are the residuary legatees cannot be known until his death. Until distribution of

the estate takes place as directed in Clause 20 of the will, the administration of the estate by the executors cannot be said to be complete, and,

therefore, the executorial functions of the assessee cannot be said to have come to an end as held by the Tribunal.

10. In *V.M. Raghavalu Naidu and Sons by executors, C.G. Krishnaswami Naidu and Another Vs. Commissioner of Income Tax and Excess*

Profits Tax, Satyanarayana Rao and Viswanatha Sastri JJ. considered the question as to whether executors under a will of a deceased person

could be treated as trustees for legatees and beneficiaries and held that the executors would not become trustees for the beneficiaries under the will

in the case of specific bequests until there is an assent on their part; in the case of a residuary legatee until the residue was ascertained and such

assent is given. In *Commissioner of Income Tax, Madras Vs. Estate of Late SRI T.P. Ramaswami Pillai*, , *Ramachandra Iyer C.J.* and *Srinivasan*

J. considered a question as to whether the assesses could be treated as executors or as trustees. In that case a testator created a trust in respect of

his entire properties for various purposes, some of them being for the benefit of his wife and his descendants, and others being for certain religious

and charitable purposes. The son and brother-in-law of the testator were expressly appointed as trustees and certain duties of an executorial

nature were also entrusted to them. Before discharging all the duties the said two persons filed returns as trustees stating that they had ceased to be

executors and claiming that as the trust was wholly for religious and charitable purposes, the income from the properties was exempt from taxation.

The revenue took the view that as the debts had not been fully discharged, they could be assessed only as executors and not as trustees u/s 41 of

the Income Tax Act and that the income was not exempt from tax. On those facts the court held that there is no invariable rule that an executor

cannot shed his character as an executor and assume the character of a trustee before all the debts are discharged and legacies paid, and that it is

open to an executor to vest the property in the legatees with mutual consent and hold the legacies as a trustee even before all the debts are

discharged. In that case the court held that the legacy had been ascertained and the executors have assented to vest the properties in the legatees.

11. The difference between an executor and a trustee is that an executor is the representative of the testator for all purposes while a trustee is a

representative of the legatees or beneficiaries. This is clear from Section 211 of the Indian Succession Act. Having regard to the specific directions

contained in the will as to the ultimate distribution of the estate, the assesses cannot be treated as trustees and it should be taken that the executorial

functions have not been completely performed. The second question is, therefore, answered accordingly.

12. As regards the first question, it is contended by the assesses that before the introduction of Section 19A in the Wealth-tax Act, there was no

provision by which the executor, even as individuals, could be assessed on the value of the estate vested in them for administration except u/s 19.

Section 19 provides for the liability of the executors, administrators or other legal representatives to pay the wealth-tax payable by the deceased.

Section 21 provides for an assessment of a trustee or a manager in like manner and to the same extent as it would be leviable upon and

recoverable from the person on whose behalf or for whose benefit the assets are held by such trustee or manager. But there was no similar

provision like Section 21 to enable an assessment on the executors who in law hold the property as the legal representative of the deceased till

April 1, 1965, when the Central Act 46 of 1964 was enacted. The learned counsel for the assessee refers to the decision in *Jamnadas and Another*

Vs. Commissioner of Wealth Tax, Bombay and Another, in support of his contention that there was no provision in the Wealth-tax Act before the

said date for making an assessment under the Wealth-tax Act on executors subsequent to the financial year during which the deceased died. In that

case it was held that there is no provision in the Wealth-tax Act for charging and assessing wealth-tax in respect of the net wealth of an individual

beyond the financial year in which such person dies, that his executors, administrators and legal representatives are by legal fiction made liable to

pay wealth-tax for that particular financial year, and that there is no further liability to pay wealth-tax attached to the estate of the deceased

continuing in the hands of the executors, administrators or other legal representatives. There the assessee were joint executors appointed under a

will dated 8th April, 1959, of one Sodradevi N, Daga, who died on 15th October, 1959. The deceased had left a large estate amounting to Rs. 9

lakhs and odd. In the financial year ending 31st October, 1959, i.e., the assessment year 1960-61, the executors were assessed by pay wealth-tax

in respect of the estate of the deceased and there was no dispute between the parties as regards that assessment. But the executors were called

upon to submit a return under the Wealth-tax Act for the financial year ending 31st October, 1960, i.e., the assessment year 1961-62, by issuing a

notice u/s 14(2), The executors challenged the validity of that notice. The court held that, apart from Section 19, there is no other provision which

would bring the executors within the charging section, that Section 19 will apply only to the financial year in which the assessee died and that,

therefore, the executors cannot be made liable to wealth-tax for the subsequent years in respect of the estate which is administered by them under

the terms of the will. The court said :

It appears to us that on a true construction of the provisions of Section 3 read with the definitions of the various phrases which we have referred

to above and also read with the provisions in Sections 4 and 5 relating to ascertainment and computation of net wealth for the purposes of wealth-

tax, it is clear that the assessee who is an individual is taxed in respect of wealth of his ownership. There is no direct provision in these sections for taxing a deceased individual with wealth-tax. There is no direct provision in respect of assessing wealth-tax on the estate left by a deceased individual except to the extent as provided in Section 19.....It is clear that the assessment, if it is not made and authorised by the provisions in Section 19, would have to be found to be without any authority of law and jurisdiction. The net wealth that is mentioned in Sections 4 and 5 has reference to the net wealth of an individual.....There is nothing in sections 3, 4 and 5, being sections relating to charging provisions and provisions for computation of assets, to show that wealth which is not of the ownership of the individual assessee can be considered to be the net wealth for the purpose of assessing wealth-tax.

13. The court has further added :

The question is whether there is anything in the charging Section 3 or in Sections 4 and 5 which relate to computation of wealth of an individual to indicate that the wealth-tax could be charged in respect of the estate and/or wealth left by a deceased person who in fact and in law, from and after the moment of his death, ceases to own any property whatsoever. Obviously there is nothing in these sections to indicate that wealth-tax is meant to be charged on an individual who does not own the wealth which is to be charged and in respect whereof tax is payable.

14. The learned counsel for the revenue would, however, contend that the above decision of the Bombay High Court in *Jamnadas and Another*

Vs. Commissioner of Wealth Tax, Bombay and Another, does not lay down the correct legal position and that it requires reconsideration. But,

with respect, we are inclined to agree with the view expressed in that case. Having regard to the position of an executor, he cannot be said to

represent the ultimate legatees. He represents only the deceased. Section 19 creates the liability on the executor only for a limited purpose. It is

only under the Amending Act of 1964, Section 19A was specifically enacted to make the executors liable as persons representing the deceased,

but before the insertion of Section 19A the position appears to be that no liability to pay wealth-tax is attached to the estate of a deceased

individual which continues in the hands of the executors.

15. In *The Commissioner of Income Tax, Bombay City I, Bombay Vs. Amarchand N. Shroff*, by his heirs and Legal Representatives, the

Supreme Court, while construing Section 24B of the Income Tax Act which is similar to Section 19(2) of the Wealth-tax Act, expressed as

follows :

Income Tax is exigible in reference to a person's total income of the previous year.....The assessee under the Act has ordinarily to be a living

person and cannot be a dead person because his legal personality ceases on his death. By Section 24B the legal personality of a deceased

assessee is extended for the duration of the entire previous year in the course of which he died and, therefore, the income received by him before

his death and that received by his heirs and legal representatives after his death but in that previous year becomes assessable to Income Tax in the

relevant assessment year.....Any income received in the year subsequent to the previous or the account year cannot be called "" income received by

the person deceased. The provisions of Section 24B do not extend to tax liability of the estate of a deceased person beyond the previous or the

account year in which that person dies.....The correct position is that apart from Section 24B no assessment can be made in respect of the income

of a person after his death.

16. In *Commissioner of Income Tax, Bombay Vs. James Anderson*, the Supreme Court again considered the scope of Section 24B of the Income

Tax Act and said:

Section 24B in terms refers to the liability of the legal representative to pay tax assessed as payable by such deceased person, or any tax which

would have been payable by him under the Act if he had not died, and if the expression " tax which would have been payable under this Act, if he

had not died " is intended to impose liability for tax on income received in the year of account in the course of which the taxpayer died, a different

interpretation of the same expression in the context of notional income would be impermissible. The legislature not having made any provision

generally for assessment of income receivable by the estate of the deceased person, the expression " any tax which would have been payable by

him under this Act if he had not died " cannot be deemed to have supplied the machinery for taxation of income received by a legal representative

to the estate after the expiry of the year in the course of which such person died.

17. We are of the view that the ratio of the above decisions of the Supreme Court equally applies to the interpretation of Section 19 of the Wealth-tax Act. Dealing with the scope of Section 18 of the Expenditure-tax Act, 1957, which corresponds to Section 19 of the Wealth-tax Act, it was held by the Supreme Court in *J.N. Sharma, First Expenditure-tax Officer, D\I Ward, Bombay, and Another Vs. H.H. Vijayakunverba*, that:

The scheme of Section 18 is that by Sub-section (1) liability of the estate of a person who dies, to satisfy the tax liability if his expenditure in the previous year exceeds the amount which renders him liable to the expenditure-tax, is declared, and by sub-sections (2) and (3) the Expenditure-tax Officer is invested with power to require a return to be made by the legal representative of a deceased person whose estate is liable to pay the tax, or to deal with a return already made, and to determine, after assessment, the tax payable. The legal representative of the person dying may, therefore, be called upon by the tax officer to make a return and on the return so made, the expenditure-tax or any other sum which would have been declared payable, if he had not died, may be assessed or determined, and collected from the estate in the hands of the legal representative.

18. Mr. Balasubrahmanyam for the revenue does not seek to rely on Section 19 for the purpose of supporting the assessment in this case. What he contends is that the above decisions cannot be taken to lay down the proposition that the charge u/s 3 cannot be imposed on the executor directly as a person possessing wealth, that therefore, even without the aid of Section 19, a levy under the Wealth-tax Act on the executor is justified u/s 3 and that an executor has to be treated as an individual in view of the decision of the Supreme Court in *Trustees of Gordhandas Govindram Family Charity Trust Vs. Commissioner of Income Tax, Bombay*, already referred to. The revenue does not dispute the fact that wealth-tax is payable only by an individual who owns wealth in respect of which tax is made payable. But it is said that as the entire property of the deceased had vested in the executors in this case, they as a group of individuals could be assessed u/s 3 in respect of the property which had vested in them. Section 3 of the Act imposes a charge to wealth-tax in respect of the net wealth of every individual or Hindu undivided family and companies and the

expression "net wealth" has been defined in Section 2(m) as meaning the amount by which the aggregate value of all the assets belonging to the

assessee on the valuation date is in excess of the aggregate value of all the debts owed by the assessee. This Section 3 read along with the

definition of "net wealth" in Section 2(m) has to be taken to impose a charge of wealth-tax only on individuals to whom the wealth belongs.

Therefore, the question is whether the properties of the deceased which have vested in the executors belonged to the executors.

19. According to the revenue, in view of the legal vesting of the properties of the deceased on the executors, the properties can be said to belong

to the executors, and the expression "belonging to" occurring in the definition of "net wealth" in Section 2(m) has to be construed in a general

sense of holding or possessing and not in the strict sense of being owned. Reliance has been placed on the decision in *Bhatia Co-operative*

Housing Society v. D. C. Patel, A.T.R. 1953 S.C. 16 in this connection. In that case the scope of the words "belonging to" occurring in the first

part of Section 4(1) of the Bombay Rents Hotel and Lodging House Rates Control Act of 1947 came to be considered. Section 4(1) of the Act

provided for an exemption of premises belonging to Government or local authority from the provisions of the said Act. The question arose as to

whether a sub-lessee of such a premises is entitled to the protection of that Act as against his lesser who was himself a lessee from the local

authority to whom the premises belonged. It was contended by the sub-lessee that the words "belonging to" have not been used in a technical

sense and should be read in their popular sense. The High Court upheld the said contention and held that, although in form the building belongs to

the local authority, in substance it belongs to the chief tenant who had put up the superstructure on the land belonging to the local authority.

Reversing that decision, their Lordships of the Supreme Court held that by virtue of the agreement between the local authority and the tenant the

building became the property of the local authority and that, therefore, the entire premises in law and in fact belonged to the local authority and as

such the Act does not apply to the said premises. Mere possession and enjoyment of the superstructure by the chief tenant was held insufficient to

claim legal ownership of the same. This decision in fact supports the assessee's stand that though the property had vested in them, it did not belong

to them.

20. The following observations of Lord Macnaghten in *Heritable Reversionary Company v. Millar*, [1892] A.C. 598, is quite instructive:

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.

21. The learned counsel for the revenue relies on the following observations of Lord Esher M. R. in *In re Millar: Ex parte Official Receiver*, [1893]

L.R. 1 Q.B. 327, :

The phrase "belonging to the society" in the Friendly Societies Act, 1875, Section 15(7) (repealed) which gave protection to a registered society

upon the bankruptcy of any of its officers having in his possession, by virtue of his office, any money or property, "belonging to the society", is not

a technical term of legal art. The words, "belonging to the society" seem to me as large as could well be used. They point to any money or

property which, in ordinary language, would be said to "belong to" the society. It does not say which is "the property" of the society but any

property "belonging to the society".

22. But, however wide the words "belonging to" are construed, it is not possible for us to say that the properties in the hands of the executors for

administration belong to them. Normally, when we speak of certain physical objects as belonging to a person without any qualifying expression,

the primary natural meaning is that they are his own absolute property. When a person by virtue of a contractual obligation takes up the manage

ment of the properties as per the directions of a testator, he cannot be said to own the property absolutely. This is clear from the unequivocal

observations of Lord Macnaghten referred to earlier. Williams on "Executors and Administrators", 14th edition, volume I, at page 264, says :

The interest which an executor or administrator has in the property of the deceased is very different from the absolute and ordinary interest which

everyone has in his own property, for an executor or administrator has his estate as such in autre droit merely, viz., as the minister of dispenser of

the property of the dead.

23. Administrator-general of West Bengal Vs. Commissioner of Income Tax, Calcutta, is also relied on by the revenue in support of its stand that

executors should be taken to own the property of the deceased that had vested in them for the purpose of the Wealth-tax Act. In that case the

administration of the estate of the deceased was in the hands of the Administrator-General of West Bengal and even when the administration of the

estate was not completed, the income of the estate was sought to be assessed in the hands of the Administrator-General under the Indian Income

Tax Act, 1922. That assessment was challenged on the ground that the assessment could have been made u/s 41. In rejecting that contention the

Supreme Court expressed the view that so long as the administration of the estate was not completed, the Administrator-General received the

income from the estate on his own behalf and not on behalf of the sons of the deceased as residuary beneficiaries so as to attract Section 41, that

the residuary beneficiaries cannot claim a share of the residue of the estate until it is ascertained either in whole or in part and transferred to them,

and that prior to such ascertainment of the residue the income from the residuary estate continues to be that of the executors and that it was not

received by them as trustees on behalf of the residuary beneficiaries. It is true that in that case the income from the estate in charge of the

Administrator-General was treated as income and assessed as such under the Income Tax Act, but that is for the reason that the tax is levied on

the income of a person and the Administrator-General as an individual received income from the estate in his charge. But the same principle is not

applicable in relation to the Wealth-tax Act as wealth-tax is levied on a person who owns wealth and not on persons who merely possess wealth

of another person or persons for specific purposes. The executors as such can never claim any beneficial interest in the property in their charge.

Though in law an executor possesses almost all the rights of an owner, he cannot take the place of the owner, for the property or its income can

never be enjoyed absolutely by him for his own individual benefit. The decision referred to above cannot be applied to the proceedings under the

wealth-tax Act so as to bring the executors within the charge u/s 3 on the basis that the properties belonged to them.

24. Section 19A which has been introduced and which came into force from April 1, 1965, also throws some light as to what was assumed to be

the legal position before by the legislature. Section 19A provides that the net wealth of the estate of the deceased person shall be chargeable to tax

in the hands of the executor or executors and the executor or executors are, for the purpose of the Act, treated as an individual. This provision

shows that the executor as such is not treated as a person owning the wealth and it is the net wealth of the estate of the deceased person that is

subjected to charge in the hands of the executor. The learned counsel for the revenue in a way concedes that Section 19A proceeds on the basis

that the executors are not the owners of the property left by the deceased but he states that the legislature has wrongly assumed that the charging

provision in Section 3 does not impose a levy on the executors directly and that such assumptions of the legislature should not stand in the way of

proper interpretation of Section 3 by this court, and relies on the following passage of Lord Radcliffe in Commissioners of Inland Revenue v.

Dowdall O'Mahony Co. Ltd., [1952] 33 T.C. 259,

The beliefs or assumptions of those who frame Acts of Parliament cannot make the law.

25. We have already expressed our view that Section 3 as such imposes charge only on those who own the wealth and not on those who merely

possess the wealth for specified purposes without any personal or beneficial interest either in the properties or in their income. We are, therefore,

clearly of the view that before the introduction of Section 19A executors cannot be brought to charge u/s 3 of the Wealth-tax Act in respect of the

properties held by them as per the directions in the will except as provided u/s 19. Therefore, the question has to be answered in the negative and

against the revenue. The assesses will be entitled to their costs. Counsel's fee Rs. 250.