

(1971) 09 PAT CK 0002

In the Patna High Court

Case No : Tax Case No's. 2 of 1965 and 19 and 20 of 1966

Maharaj Kumar Kamal Singh

APPELLANT

Vs

Commissioner of Wealth Tax

RESPONDENT

Date of Decision : 17-09-1971

Acts Referred:

Wealth Tax Act, 1957 — Section 2(m), 27(1), 3

Citation : (1972) 84 ITR 240

Hon'ble Judges : Shambhu Prasad Singh, J;S.P. Sinha, J;B.D. Singh, J

Bench : Full Bench

Advocate : Lal Narain Sinha, Rameshwar Prasad No. 2, B.P. Gupta and K.N. Jain, for the Appellant; Tarkeshwar Prasad, Shambhu Sharan and Surendra Prasad Sinha No. 2, for the Respondent

Judgement

B.D. Singh, J.—These three references u/s 27(1) of the Wealth-tax Act by the Income Tax Appellate Tribunal, Patna, are in relation to the assessment years 1959-60, 1960-61 and 1961-62, corresponding valuation dates of which were the 31st October, 1958, 31st October, 1959, and 31st October, 1960. The petitioner is an individual. His estate vested in the State of Bihar under the Bihar Land Reforms Act on and from 1st July, 1952, and he is entitled to receive compensation under the Act from the Government. u/s 3 of the Wealth-tax Act (hereinafter referred to as "the Act"), wealth-tax is payable by every individual, Hindu undivided family and company in respect of his or its "net wealth", as on the corresponding valuation date. Therefore, the question arose about the inclusion in the assessee's "net wealth" of the value of the estimated amount of compensation receivable by him from the Bihar Government under the Bihar Land Reforms Act. In the assessment year 1959-60 the Wealth-tax Officer estimated the value at Rs. 10,25,123 and included it in the net wealth of the assessee. For the assessment years 1960-61 and 1961-62 the assessee produced a letter from the District Collector, Arrah, to show that the assessee is entitled to compensation of Rs. 4,39,713 only. The Wealth-tax Officer estimated 75% thereof as the market value of the right of the assessee to receive the

compensation. Accordingly, he included in the assessee's net wealth Rs. 3,29,784. On appeal, the Appellate Assistant Commissioner reduced the valuation for the first year to Rs. 3,29,784. For the next two years (1960-61 and 1961-62) the Appellate Assistant Commissioner held that it would be reasonable to estimate the market value of the compensation to be received by the assessee at 65% of the face value.

2. The assessee preferred appeals before the Appellate Tribunal regarding assessments for the aforesaid three years and reiterated his contention that the right to receive compensation under the Land Reforms Act was not asset within the meaning of Section 2(m) of the Act and could not be included in the assessee's net wealth. The Tribunal has held that the estimated amount of zamindari compensation payable to the assessee is an asset, and has to be included in the assessee's net wealth. However, it directed the Wealth-tax Officer to estimate the value and compensation to be received by the assessee at 65% even for the first year, i.e., 1959-60, as it was done by the Appellate Assistant Commissioner in regard to the second and third years (1960-61 and 1961-62).

3. The contention of the assessee further was that the unpaid agricultural Income Tax as a debt was deductible while computing his net wealth. His claim was that this debt was Rs. 5,10,831 in the first year, Rs. 4,76,461 in the second year and Rs. 4,75,906 in the third year. A sum of Rs. 24,430 being agricultural Income Tax demand for 1363 Falsi was allowed to be deducted by the Wealth-tax Officer. For the second and third years' arrears of agricultural Income Tax, the assessee had produced Government letter No. A 1735/59 dated the 25th April, 1959, to show that the amount of compensation receivable by the assessee would be nil. According to the enquiries from the revenue department it also appeared that the final compensation money payable in respect of the assessee's zamindari was less than the agricultural Income Tax dues outstanding against him, and so it was not possible to effect realisation of the dues only by adjustment from the final compensation money. The Tribunal held that except Rs. 24,430, which was agricultural income-tax demand for 1363 Fasli and which was allowed to be deducted by the Wealth-tax Officer, the other amount as claimed by the assessee was not deductible as the arrears were outstanding for more than 12 months ; in view of the provisions contained u/s 2(m) of the Act the Government letter was not at all helpful to the assessee. The assessee had also contended before the Tribunal that Section 2(m)(iii) prohibiting deduction of unpaid tax in computing the net wealth was ultra vires of the Indian Constitution. Since no specific argument was advanced in this regard before the Tribunal, it decided this issue also against the assessee by its order dated the 3rd May, 1963.

4. The assessee then asked the Tribunal to make a reference to this court u/s 27(1) of the Act which was allowed and the following questions were framed for reference:

"(i) Whether, on the facts and circumstances of the case, the amount of compensation payable to the assessee under the Bihar Land Reforms Act (Act 30

of 1950), constituted an "asset" within the meaning of Section 2(e) of the Wealth-tax Act and so liable to be included in the assessee's net wealth on the three valuation dates relevant for the assessment years 1959-60, 1960-61 and 1961-62.

(ii) Whether, on the facts and circumstances of the case, the sums of Rs. 5/10,831, Rs. 4,76,461 and Rs. 4,52,476 being amount of agricultural Income Tax outstanding from the assessee for a period of more than 12 months as on the valuation dates, were deductible as debts owed by the assessee in computing his net wealth u/s 2(m) of the Wealth-tax Act ?

(iii) Whether, on the facts and circumstances of the case, the Tribunal was right in including in the assessee's net wealth a positive figure, on account of zamindari compensation without taking into consideration the arrears of agricultural Income Tax instead of taking the figure of compensation receivable from the Government of Bihar at nil ?

(iv) Whether, on the facts and circumstances of the case, the amended Section 2(m)(iii) prohibiting deduction of unpaid agricultural Income Tax outstanding from the assessee for a period of more than 12 months on the valuation dates while computing the assessee's net wealth was ultra vires of the Indian Constitution ?

5. Before this court, Mr. S. N. Dutta, the then standing counsel, appearing for the department, pressed for an additional question and by an order dated 12th July, 1967, passed by R.L. Narasimham (the then Chief Justice) and K. B. N. Singh J., the Tribunal was required to refer a further question, which is as follows:

"(v) Whether the arrear agricultural Income Tax due from the assessee in relation to his zamindari property is a "debt" which is not liable to be deducted by virtue of Sub-clause (ii) of Clause (m) of Section 2 of the Act irrespective of whether such an arrear was outstanding for a period of more than twelve months or for a lesser period ?"

6. Thus, we have altogether five questions to answer. In Maharaj Kumar Kamal Singh Vs. The Commissioner of Wealth Tax, H. Mahapatra and S. N. P. Singh JJ. had occasion to deal with this very petitioner-assessee's two references u/s 27(1) of the Act in relation to the assessment years 1957-58 and 1958-59. Similar to question Nos. (i) and (ii) were the questions before their Lordships for consideration. Regarding question No. (i) their Lordships observed that the right to receive compensation under the Bihar Land Reforms Act constituted an asset to be included in the net wealth of which value was to be determined according to Section 7 of the Act both for the assessment years 1957-58 and 1958-59 so far as the assessee was concerned. With regard to question No. (ii) their Lordships held that there could not be any doubt that the amount of tax, which was outstanding for more than 12 months against the assessee under the Bihar Agricultural Income Tax Act, which is a law relating to taxation of income or profits, could not be included in the debts for calculating his net wealth.

7. By the aforesaid order dated 12th July, 1967, R. L. Narasimham (the then Chief Justice) and K. B. N. Singh J. also observed that as the correctness of the decision in Maharajkumar Kamal Singh v. Commissioner of Wealth-tax was challenged, it would be necessary to place these references before a larger Bench. This is how they have come before us.

8. It will be convenient to deal with question No. (iii) first as it has been contended by Mr. Lal Narain Sinha, learned counsel, appearing on behalf of the petitioner-assessee, that it is important from the point of view of the assessee. He drew our attention to Section 3 of the Act, which reads as follows:

"Subject to the other provisions contained in this Act, there shall be charged for every assessment year commencing on and from the first day of April, 1957, a tax (hereinafter referred to as wealth-tax) in respect of the net wealth on the corresponding valuation date of every individual. Hindu undivided family and company at the rate or rates specified in the Schedule."

9. He submitted that Section 3 is the charging section which requires ascertainment of net wealth of the assessee on the corresponding valuation date. The expression "net wealth" is defined u/s 2(m), the relevant portion of which is to this effect :

" "Net wealth" means the amount by which the aggregate value computed in accordance with the provisions of this Act of all the assets, where-ever located, belonging to the assessee on the valuation date, including assets required to be included in his net wealth as on that date under this Act, is in excess of the aggregate value of all the debts owed by the assessee on the valuation date other than--

(iii) the amount of the tax, penalty or interest payable in consequence of any order passed under or in pursuance of this Act or any law relating to taxation of income or profits, or the Estate Duty Act, 1953, the Expenditure-tax Act, 1957, or the Gift-tax Act, 1958,--

(a) which is outstanding on the valuation date and is claimed by the assessee in appeal, revision or other proceeding as not being payable by him, or

(b) which, although not claimed by the assessee as not being payable by him, is nevertheless outstanding for a period of more than twelve months on the valuation date."

10. How value of assets is to be determined is to be found under the provisions contained in Section 7 of the Act, the relevant portion of which reads as:

"..... the value of any asset, other than cash, for the purposes of this Act, shall be estimated to be the price which in the opinion of the Wealth-tax Officer it would fetch if sold in the open market on the valuation date."

11. In view of the aforesaid provisions, learned counsel urged that it is of paramount importance to find out what price the ad interim compensation

payable to the assessee under the Land Reforms Act would have fetched in open market on the valuation date. Section 4(c) of the Bihar Land Reforms Act provides as follows :

"All arrears of revenue and cesses remaining lawfully due in respect of the estate or tenure on the date of vesting and all other amounts recoverable by the State Government from the outgoing intermediary under any law for the time being in force, shall continue to be recoverable from him and shall, without prejudice to any other mode of recovery, be recoverable, when so ordered by the Collector, by the deduction thereof from the amount payable to such intermediary u/s 32, Section 32A or Section 33."

12. It may be noticed that this was substituted by Amending Act 1959 (Bihar Act 16 of 1959) to the effect that the same shall be deemed always to have been substituted.

13. According to the above provision all arrears of revenue and cesses, which include agricultural tax, are recoverable by the State Government from the petitioner, who is an outgoing intermediary, out of the compensation including ad interim compensation payable to him. Learned counsel urged that the said Section imposes a sort of burden or restriction upon the compensation payable to the petitioner and that is bound to affect the market value of that compensation in the open market. None would be ready to purchase the right of the petitioner to receive the compensation and offer its price as much as it would have been offered to him if there would not have been such restriction under the said section. The restriction so placed in the section is definitely a disadvantage attached to it which will affect its market value.

14. Mr. Tarkeshwar Prasad, learned counsel appearing on behalf of the opposite party, on the other hand, raised a preliminary objection to the petitioner's submission with regard to question No. (iii) on the ground that the petitioner had not pleaded about it at the earlier stage. In my opinion, this objection is not tenable. Reference may be made to paragraph 7 of the statement of facts dated 5th September, 1963, submitted by the Appellate Tribunal which clearly mentions that the assessee pleaded before the Tribunal whether the department could interpret the provisions of the Wealth-tax Act to its own advantage only, ignoring other important provisions like the one contained u/s 7 of the Act. The Tribunal is the best person to say whether the same was pleaded by the assessee before it or not. Since it has clearly stated that it was so pleaded, and has made a reference about it to this court, no objection can be taken by learned counsel for the opposite party on this score. While making reference also u/s 27(1) of the Act, in paragraph 13 of the reference dated 3rd July, 1964, the Tribunal has further "mentioned that it was suggested on behalf of the assessee that if the amount of unpaid agricultural Income Tax was equal to or more than the zamindari compensation payable, the amount of zamindari compensation to be included in the assessee's net wealth would be "nil". In that view of the matter we have to answer question No. (iii) also by examining the same on merits.

15. Mr. Prasad submitted that Section 4(c) of the Land Reforms Act mentions only arrears of revenue and cess remaining lawfully due. It does not mention the dues regarding agricultural Income Tax with which we are concerned in the present case. In my view, that is not the correct interpretation of Section 4(c), as it also clearly mentions "and all other amounts recoverable by the State Government from the outgoing intermediary under any law for the time being in force". That, obviously, includes dues regarding agricultural Income Tax. Mr. Prasad then submitted that in the instant case when the Collector has mentioned in his letter a specific amount as dues of agricultural tax against that petitioner, that should be treated as conclusive, and that discharges the petitioner from further liability on his right to receive ad interim compensation.

16. In my judgment, this submission of the learned counsel is also not tenable. Under question No. (iii) we have to answer an abstract proposition of law. The letter given by the Collector is not, therefore, of any importance. The market value of the right of the petitioner to receive ad interim compensation would be determined more in view of the provision u/s 4(c) than on any correspondence passing between the Collector and the petitioner. Section 33 of the Land Reforms Act contains provisions for making ad interim payments to the outgoing intermediary in between the time of the vesting of the estate or tenure of the outgoing intermediary till he receives final zamindari compensation bonds u/s 32 of the said Act.

17. There is still another disadvantage attached to the right of the outgoing landlord to receive ad interim compensation. The third proviso to Section 33 reads as :

"Provided that the Collector shall have the power to refuse, suspend or stop any such ad interim payment in the case of any proprietor or tenure-holder who in his opinion has failed or neglected to comply with any order u/s 40."

18. Section 40 empowers the Collector, claims officer and compensation officer to ask for any information from the outgoing intermediary and may also direct him to produce any documents. In *Kumar Shyamnand Sinha v. State of Bihar* [1966] B.L.J.R. 676 (Pat.), it was held that even if the petitioner's case that the tauzis vested only from the dates of the two later notifications was accepted, the jurisdiction of the Collector to call for information from 1952 and 1953 in respect of the said tauzis was beyond question. Section 40(1) gives him wide discretion to call for information and papers from the intermediaries or any other persons in possession of the estates for any of the purposes of the Bihar Land Reforms Act or for giving effect to any provision thereof. Hence, irrespective of the actual date of vesting, on which there was acute controversy, it must be held that the information called for u/s 40(1) of the Act was justified and the petitioners of that case were bound to supply the same so far as might be available with them. Thus, it may be seen that Section 40(1) gives a very wide discretion to the authority to call for any paper from the outgoing landlord. On non-compliance the authority is empowered even to stop or suspend payment of ad interim

compensation under the third proviso to Section 33, referred to above. His right to receive ad interim compensation is, therefore, precarious and surrounded with uncertainty. In such circumstances, it is quite natural that those restrictions and disadvantages attached to his right to receive compensation would deter the purchaser, and he would offer its price much less than what he could have offered had there been no such restrictions. As an illustration let us suppose there are black acre and white acre, two pieces of land commanding similar situation and possessing the same quality. With respect to black acre there is an enactment providing that any Government dues against the owner of the black acre would be realisable from the yield of the black acre: whereas there is no such enactment with regard to the white acre. Evidently, due to the restrictions imposed upon the yield of the black acre its value "would be much less than that of the white acre. In *Corrie v. MacDermott* [1914] A. C. 1056 (P.C.), it was observed that if an owner holds the property subject to restrictions it is a necessary point of enquiry how far those restrictions affected the value. Therefore, in my opinion, the taxing authority has erred in assessing ad interim compensation payable to the petitioner at 65% of the face value without taking into account that the restrictions and disadvantages attached to his right due to the provisions of the aforesaid section would affect its market value. No doubt assessment at 65% of the face value may be the market value of the final zamindari compensation bond which is payable in 40 yearly instalments, issued to the outgoing intermediary, under Sections 35, 32A and 32B of the Land Reforms Act, which is handed over to him only after all the arrears of the dues of the State Government are realised from him either by set-off or otherwise, and after due verification of the jamabandi return filed by him. At that stage his right to hold and possess the zamindari bond is not affected by the restrictions contained u/s 4(c) and the third proviso to Section 33 read with Section 40 of the Land Reforms Act, But, so long as he does not receive the bonds, his right to receive ad interim compensation as provided u/s 33, is restricted according to the provisions contained u/s 4(c) and the third proviso to Section 33 read with Section 40 of the Land Reforms Act, and those restrictions are enough to affect the market value of the petitioner's right to receive compensation. In the result, question No. (iii) is answered in favour of the assessee.

19. Now I turn to consider question No. (ii). Mr. Sinha drew our attention to the definition of "net wealth" u/s 2(m) of the Act the relevant portion of which I have quoted earlier. He submitted that Sub-clause (iii) of Clause (m) in the Act does not include Bihar Agricultural Income Tax Act. He urged that the intention of the legislature is to include only the Central Acts in Sub-clause (iii) as it is evident from the words used therein "the amount of the tax, penalty or interest payable in consequence, of any order passed under or in pursuance of this Act or any law relating to taxation of income or profits, or the Estate Duty Act, 1953, the Expenditure-tax Act, 1957, or the Gift-tax Act, 1958". The expression "any law relating to taxation of income or profits" refers only to those taxes which are ancillary to wealth-tax. On the other hand, Mr. Prasad contended that the

expression "any law relating to taxation" is wide enough to include also agricultural Income Tax and its dues are not deductible by the assessee if the arrear of agricultural Income Tax was outstanding for a period of more than twelve months on the valuation date as provided under Clause (m)(iii)(b) of Section 2 of the Act. He submitted that the intention of the legislature is to define "net wealth" and the assessee is permitted to deduct agricultural Income Tax payable to the State of Bihar from his net wealth only if he has paid all the dues of agricultural Income Tax to the State of Bihar within twelve months from the valuation date. The whole object of the said provision is to expedite payment of the dues of taxes of the assessee within the prescribed period of twelve months. If he has done so the dues of agricultural Income Tax would be deductible from the net wealth of the assessee for the purpose of the Act. It was not possible for the legislature to have defined net wealth of the assessee unless all laws relating to taxation of income or profits are taken into account irrespective of the consideration whether these arise out of the Central Acts or State Acts. In order to find support to his contention Mr. Prasad referred to *Maharajkumar Kamal Singh v. Commissioner of Wealth-tax*, where this question was answered by their Lordships against the assessee in paragraphs 4 and 5 of their judgment. Before their Lordships also the assessee similarly contended that the amount was not covered. In that case there were certain amounts of taxes due from the assessee under the Bihar Agricultural Income Tax Act outstanding on the valuation dates of the wealth-tax assessment years. It was contended that the amount was not covered by Section 2(m)(iii) and that was by way of tax imposed not under the Central enactment relating to legislation of income or profits but a law made by the State. His point was and is in the instant case also that laws relating to taxation of income or profits, as mentioned in that sub-clause, should be taken as laws, such as Estate Duty Act, the Expenditure-tax Act or the Gift-tax Act. Their Lordships observed that if that was the intention of Parliament they would have specifically mentioned the Central Act like the Income Tax Act also when they mentioned other Central Acts like the Estate Duty Act, the Expenditure-tax Act and the Gift-tax Act. The very fact that Parliament chose to leave laws relating to taxation of income or profits without any qualification is clearly indicative of its wider scope. All kinds of laws relating to such taxation whether by the State legislature or by Parliament, therefore, are included in that provision. Their Lordships, therefore, held that the agricultural Income Tax due from the assessee and outstanding for a period of more than twelve months on the valuation dates was not to be comprised with the aggregate value of the debts owed by him for determining "net wealth".

20. Mr. Sinha, however, urged that their Lordships have put a wrong interpretation on the expression "any law relating to taxation of income or profits" occurring in Sub-clause (iii) of Clause (m) of Section 2 of the Act. He submitted that the said expression contained generic words following a specific Act, that is, the Wealth-tax Act. Therefore, it has to be interpreted on the principle of *ejusdem generis* to be found at page 337 of Maxwell on the

Interpretation of Statutes, ninth edition, which reads as :

"... the general word which follows particular and specific words of the same nature as itself takes its meaning from them, and is presumed to be restricted to the same genus as those words. In other words, it is to be read as comprehending only things of the same kind as those designated by them, unless, of course, there be something to show that a wider sense was intended ..."

21. Learned counsel submitted that the said expression would refer to those Acts only which are ancillary to the Wealth-tax Act. The Bihar Agricultural Income Tax Act is not an ancillary to the Wealth-tax Act. Therefore, Parliament would not have intended to include the Bihar Agricultural Income Tax Act under the said expression. He also referred to item No. 46 of List II of the Seventh Schedule of the Constitution of India which falls under the State List. Therefore, he submitted that it is doubtful if Parliament would have intended to legislate regarding the Bihar agricultural Income Tax also, and could have included it under the said expression. He, however, contended that if there is any ambiguity of the language of a provision, the benefit of that ambiguity must be given to the assessee. In order to find support to his contention he referred to the case of Commissioner of Income Tax, Ahmedabad Vs. Karamchand Premchand Ltd., Ahmedabad, wherein their Lordships, while interpreting taxation statutes, observed that if there is any ambiguity of language of a provision, the benefit of that ambiguity must be given to the assessee. I am unable to accept the contention of learned counsel in this regard. In my view, there is no ambiguity in the said expression. The words "any law relating to taxation of income or profits" are wide enough to include the Bihar Agricultural Income Tax Act, as held by their Lordships in Maharajkumar Kamal Singh v. Commissioner of Wealth-tax. Further, it may be noticed that the rule of ejusdem generis has its own limitations. In Crawford's Statutory Construction and Interpretation of Laws printed in 1940, at pages 327 to 329, those limitations are pointed out thus :

"It is especially applicable to penal statutes. But, under no circumstances, and regardless of the type of statute involved, must the rule be used where the language of the statute under consideration is plain and there is no uncertainty. Its use is permissible only as an aid to the court in the attempt to ascertain the intent of the law makers. Nor will it be proper for the court to follow the rule where to do so will defeat or impair the plain purpose of the legislature. It cannot be employed to restrict the operation of an Act within narrower limits than was intended by the law makers.....To hold otherwise, would make the legislative intent subordinate to the rule."

22. In Baidyanath Ayurved Bhawan (Pvt) Ltd., Jhansi Vs. The Excise Commissioner, U. P. and Others, , their Lordships observed that in a taxing statute one has to look at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the

language used. Their Lordships with approval also relied on *Cape Brandy Syndicate v. Inland Revenue Commissioners* [1921] 1 K.B. 64 : [1920] 12 T.C. 358 (C.A.). Therefore, we have to see merely the language used in the expression. We cannot presume by reference to item No. 46 of List II of the Seventh Schedule of the Constitution of India that Parliament could not have intended to include the Bihar Agricultural Income Tax Act in the said expression. When the language is clear in the expression, there is no scope for such presumption or construction. It follows, therefore, that the amounts of agricultural Income Tax, which are outstanding from the assessee for a period of more than twelve months, as on the valuation dates, are not deductible as debt owed by the assessee for computing his net wealth u/s 2(m) of the Act. Thus question No. (ii) is answered against the assessee.

23. Now I propose to deal with question No. (iv). The argument advanced on behalf of the assessee is that if Parliament included also the Bihar Agricultural Income Tax Act in the expression "any law relating to taxation of income or profits", referred to above, that Act being a subject of the State List, it is ultra vires. It is well established that this court in a reference u/s 27(1) of the Act cannot deal with the question of ultra vires nor any such question can be referred by the Tribunal to this court. In *K.S. Venkataraman and Co. Vs. State of Madras*, , their Lordships, while dealing with Sections 66 and 66A(2) of the Income Tax Act, 1922, observed at page 130:

"It has been held by this court that the jurisdiction conferred upon the High Court by Section 66 of the Income Tax Act is a special advisory jurisdiction and its scope is strictly limited by the Section conferring the jurisdiction. It can only decide questions of law that arise out of the order of the Tribunal and that are referred to it. Can it be said that a question whether a provision of the Act is ultra vires of the legislature arises out of the Tribunal's order ? As the Tribunal is a creature of the statute, it can only decide the dispute between the assessee and the Commissioner in terms of the provisions of the Act. The question of ultra vires is foreign to the scope of its jurisdiction. If an assessee raises such a question, the Tribunal can only reject it on the ground that it has no jurisdiction to entertain the said objection or decide on it. As no such question can be raised or can arise on the Tribunal's order, the High Court cannot possibly give any decision on the question of the ultra vires of a provision. At the most the only question that it may be called upon to decide is whether the Tribunal has jurisdiction to decide the said question." (Vide also *Commissioner of Income Tax, Madhya Pradesh etc. Vs. Straw Products Ltd., Bhopal*, . and *C.T. Senthilnathan Chettiar Vs. State of Madras*,). The same principle applies in the case of a reference u/s 27(1) of the Act. Thus, this question could not have been referred by the Tribunal to this court; nor this court can investigate into the question of ultra vires in its advisory jurisdiction. Therefore, this question is not entertainable at all.

24. Now, I advert to consider question No. (i). Here it has to be decided whether

the ad interim compensation payable to the assessee under the Land Reforms Act can be considered as "assets" within the meaning of Section 2(e) of the Wealth-tax Act, which defines it thus :

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

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

(ii) any building owned or occupied by a cultivator of, or receiver of rent or revenue out of, agricultural land :

Provided that the building is on or in the immediate vicinity of the land and is a building which the cultivator or the receiver of rent or revenue by reason of his connection with the land requires as a dwelling-house or a store-house or an outhouse ;

(iii) animals;

(iv) a right to any annuity in any case where the terms and conditions relating thereto preclude the commutation of any portion thereof into a lump sum grant;

(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".

25. This question also came up for consideration before their Lordships in *Maharajkumar Kamal Singh v. Commissioner of Wealth-tax* as mentioned earlier. Their Lordships held that Parliament did not give an exhaustive definition, but only indicated that that shall be taken as included in "assets". The definition is, therefore, enumerative and extensive in scope. Immovable property has not been defined under the Act. Its definition in the General Clauses Act, 1897, includes land, benefits arising out of the land and the things attached to the earth or permanently fastened to anything attached to the earth. That, again, is not exhaustive. Movable property is defined under the General Clauses Act as meaning property of every description except immovable property. "Property" is very comprehensive in its meaning ; it includes real and personal property and debt, anything in action and any other right or interest in the nature of property. It includes not only physical object but also rights and interests existing or derived out of physical objects. "Assets", as defined in the Wealth-tax Act, is very wide in import as it includes property in general sense, which can bring within its scope rights relating to property. The exceptions mentioned in the definition of "assets" in the Act u/s 2(e) show that a right to any annuity in some given cases and interest in property where the interest is available for a period of less than six years are not to be treated as assets; but for this exception, they could have been brought under the definition. That clearly indicated that rights relating to and interest in movable and immovable property, if not specifically excluded, are to be taken as assets of an assessee. An "estate" was undoubtedly a property before it vested in the State under the Bihar Land Reforms Act. On vesting, the ex-proprietor became entitled "to receive compensation, the amount of which

has been shown in the Act itself how to be computed and paid. That would be, without any doubt, a right relating to property, and, therefore, within the definition of "assets" as given in Section 2(e) of the Act. The right to receive compensation arises immediately on vesting of the estate. It is true that the date of payment of compensation or the manner in which it will be paid, has been left within the domain of the State Government, but all the same, until it is paid, the right of the ex-proprietor to that remains unabated. "It may appear," their Lordships observed, "inequitable to charge a subject to tax on that right before any benefit in the shape of any payment, either in cash or in bond, is received by him. But that was a matter for Parliament to take into account. A taxing statute has to be enforced in its letter; and whether that will bring any inequitable consideration against the subject is not for the court to mediate upon... If the right to compensation from the State in lieu of the estate of which the proprietor was divested is property and is, therefore, included in the definition of "assets" as given in the Act, there is no escape for that from computation of the net wealth of the assessee."

26. I am in full agreement with the above observations of their Lordships. In my view, their Lordships have correctly decided that right of the petitioner to receive ad interim compensation from the State of Bihar under Bihar Land Reforms Act is an asset within the meaning of Section 2(e) of the Act. Mr. Sinha, in this connection, however, referred again to the provisions contained under Sections 4(c), 33 and 40(1) of the Land Reforms Act, which I have discussed earlier. He further drew our attention to Section 33, Clause (2) of the Land Reforms Act, which provides:

"Where any ad interim payment has been made to any outgoing intermediary under this section, any such payment in excess of 2 1/2 per centum per annum of the amount of compensation payable u/s 32 shall be deducted from such compensation."

27. On the basis of the provisions of these sections learned counsel submitted that there is great uncertainty attached to his rights to receive ad interim compensation. In order to find support to his contention he relied on Commissioner of Wealth Tax, West Bengal II Vs. U.C. Mahatab, . In my view, the observation of their Lordships in the above case is not at all helpful to the contention of the learned counsel in the instant case. It may be seen that their Lordships were dealing with Section 21 of the West Bengal Estates Acquisition Act, 1953 (Act 1 of 1954), According to that section intermediary has no right to receive compensation until compensation assessment roll is prepared, while u/s 33 of the Bihar Land Reforms Act, as already mentioned above, an outgoing intermediary has right to receive ad interim compensation till the final compensation either in cash or in bond is paid to him u/s 32 of the Land Reforms Act. It will be pertinent to refer to paragraph 14 of the judgment in Commissioner of Wealth-tax v. U. C. Mahatab, where their Lordships had pointed out the distinction between the West Bengal Estates Acquisition Act and the Bihar

Land Reforms Act. Before their Lordships also the observation made in *Maharajkumar Kamal Singh v. Commissioner of Wealth-tax* was referred to. Their Lordships held that the decision of the Patna High Court was that the right to receive compensation was one relating to property and hence fell within the definition of "asset" in the Wealth-tax Act and its value had to be Computed for inclusion in the net wealth. In the Patna case also the basis of calculation for wealth-tax valuation was the agricultural Income Tax paid on the assessee's zamindari income. They emphasised that the assessee in the Patna case had admittedly received ad interim compensation of Rs. 41,000 from the State of Bihar, That was the approximate amount of compensation payable to the assessee according to Section 33 of the Bihar Land Reforms Act, Their Lordships further observed that there was no such provision under the West Bengal Act and that clearly was the distinctive feature between the West Bengal Act and the Bihar Land Reforms Act.

28. That clearly indicates that their Lordships have not differed from the views expressed in *Commissioner of Wealth Tax, West Bengal II Vs. U.C. Mahatab*, . On the contrary, their Lordships have approved the view expressed therein on the ground that the provisions contained in the two Acts were different. It is true that the assessee's right to receive ad interim compensation is surrounded with uncertainty and restrictions, as observed earlier. Those may be relevant considerations while ascertaining the market value; but those are not relevant for the consideration whether his right to receive ad interim compensation is asset or not. In spite of those restrictions and uncertainty the assessee's right to receive it is preserved u/s 33 of the Land Reforms Act.

29. The dictionary meaning of the word "assets", to be found in *Oxford English Dictionary*, Vol. 1 reprinted in 1961, at page 507, is "any property or effects liable to be applied without regard to its being sufficient". After due consideration I hold that the ad interim compensation payable to the assessee is an asset within the meaning of Section 2(e) of the Act. Therefore, question No. (i) is answered against the assessee.

30. The last question to be answered is question No. (v). Mr. Prasad for the opposite party fairly conceded that, on the facts and circumstances of the case, the question itself was misconceived and no answer is called for. Therefore, in my opinion, it is not necessary for this court to answer this question.

31. To sum up, question Nos. (i) and (ii) are answered against the assessee; question No. (iii) is answered in favour of the assessee ; question No. (iv) is not entertainable and question No. (v) being misconceived is not required to be answered. Thus, the references are answered accordingly. In the circumstances of the case, there will be no order as to costs.

Shambhu Prasad Singh, J.

32. I agree with my learned brother B. D. Singh J. that question Nos. (i) and (ii) be answered against the assessee ; No. (iii) in favour of the assessee; No. (iv) is

not entertainable and No. (v) really does not arise and, therefore, need not be answered. I would, however, like to add a few observations of my own.

33. With reference to question No. (ii), reliance was placed on behalf of the assessee on the principle of *ejusdem generis* and it was contended that, as the Wealth-tax Act is a Central statute and in Section 2(m)(iii) it uses the expression "any law relating to taxation of income or profits" together with the Wealth-tax Act, Estate Duty Act, Expenditure-tax Act or Gift-tax Act, which are all Central enactments, it should be held that the law relating to taxation means a law enacted by Parliament and excludes a law on the subject by State legislatures. The Wealth-tax Act, Estate Duty Act, Expenditure-tax Act or Gift-tax Act are not laws relating to taxation of income or profits. If Parliament would have intended that Section 2(m)(iii) of the Act should relate to only laws made by Parliament, it could have very well specifically mentioned the Income Tax Act also in that section. Omission to specifically mention the Income Tax Act, which is the main Central enactment relating to taxation of income or profits and using "any" which expression is wide enough to cover all laws relating to taxation of income or profits, whether they are enacted by Parliament or by State legislatures, manifestly suggests that the intention of Parliament was not to exclude laws relating to taxation of income or profits made by the State legislatures. Amount of tax payable under any law relating to taxation of income or profits passed by the State legislatures is, undoubtedly, a debt and the intention behind the enacting Clause (iii) of Section 2(m) obviously was that the assessee under the Wealth-tax Act should not fall in arrears in respect of taxes to get them excluded for the purposes of taxation under the Wealth-tax Act. Parliament would have been partial to the Central Government if it would have provided only for Central laws relating to taxation of income or profits and not for State laws. As it could not have enumerated all the laws relating to taxation of income or profits passed by various State legislatures, it appears, it used the expression "any" to cover all of them. It is not a case, therefore, where the principle of *ejusdem generis* can be called in aid of the assessee. That principle can be invoked only if there is some ambiguity in the language of the law under interpretation. In my opinion, the expression "any law relating to taxation of income or profits" in Section 2(m)(iii) of the Wealth-tax Act does not admit of two interpretations and in such cases the principle of *ejusdem generis* does not come into the picture at all. For the same reasons, the doctrine that where two interpretations are possible of any provision of a statute, the interpretation in favour of the assessee should be adopted is also not of any aid to the assessee.

34. Our attention was also drawn by learned counsel for the assessee to relevant entries in the various Lists of the Seventh Schedule to the Constitution of India with the purpose that we should hold that, as Parliament could not have enacted any law relating to taxation of income from agricultural lands, it could not have intended to include such a law while enacting Section 2(m)(iii) of the Wealth-tax Act. It was not contended and could not be contended that Parliament was not competent to pass a law relating to taxation of wealth. The pith and substance of

the entire Act is taxation of wealth and in that connection Parliament certainly could have referred to laws relating to taxation of income or profits by State legislatures for the purpose of deciding what could be debt and what could not be debt in determining "net wealth". So far as question No. (iii) is concerned, it was strenuously urged by learned counsel for the department that what could not be excluded as debt in determining net wealth u/s 2(m) of the Act could not be taken into consideration in estimating the value of any asset u/s 7 of the Act. This argument, though attractive, in my opinion, cannot be accepted in view of the language of Section 7 ; rather, it is the converse which appears to be true, that is, what is debt within the meaning of Section 2(m) of the Act cannot be taken into account in estimating the value of any asset u/s 7 of the Act. In determining net wealth with reference to the valuation date for the purpose of taxation under the Act, the value of the asset, as estimated u/s 7, is to be put on the credit side and debts on the debit side. The balance is the net wealth which is liable to be taxed under the Act. If something which is debt within the meaning of Section 2(m) of the Act is taken into consideration in determining the value of any asset u/s 7, then the assessee will get advantage of that debt twice over, but that is not debt within the meaning of Section 2(m) of the Act is taken into consideration in estimating the value of the asset u/s 7, the assessee will not get any double advantage. Section 7 lays down that the estimated value of any asset, for the purposes of the Act, is the price which the asset would fetch if sold in the open market on the valuation date. If the asset is subject to certain disadvantage or restriction on the valuation date, certainly the price which it would fetch in the open market will be less than the price it would fetch if it would have been free from such disadvantage and restriction. My learned brother B. D. Singh J. has discussed in detail with reference to the relevant provisions of the Bihar Land Reforms Act and held that the dues which an intermediary owes to the State Government are liable to be deducted from the amount of compensation payable to him by the State Government, The intermediary's right to receive compensation as an asset, therefore, is subject to those disadvantages and restrictions and liable to fetch a lower price in open market than what it can fetch, had it been free from those disadvantages and restrictions. The dues of agricultural Income Tax which the assessee was liable to pay to the State Government are certainly, therefore, to be taken into account in estimating the value of his compensation as an asset. This view is not in conflict with the Bench decision of this court in *Maharajkumar Kamal Singh v. Commissioner of Wealth-tax*. Their Lordships were concerned merely with the question whether the dues under the Agricultural Income Tax Act payable by the assessee but outstanding for a period of more than 12 months on the valuation date, were debt or not within the meaning of Section 2(m) of the Act. The question whether such dues, though not a debt within the meaning of the said Section, could be taken into consideration in estimating u/s 7 of the Act the value of compensation as an asset for determining "net wealth" was not before them ; rather the Appellate Tribunal itself had remanded the case for estimating the value of compensation as an asset. That question could have arisen only if after remand the dues of the

agricultural Income Tax against the assessee outstanding for a period of more than 12 months on the relevant date would have been excluded from consideration in estimating the value of compensation as an asset. It has rightly been conceded by learned counsel for the department that question No. (v) does not arise for decision in this case. Agricultural Income Tax is not secured on or incurred in relation to any property in respect of which wealth-tax is not chargeable under the Act. No doubt, according to Section 2(e), "assets" does not include agricultural land and growing crops, grass or standing trees on such land, but agricultural Income Tax is not a debt incurred in relation to agricultural land. It is a tax on the income from agricultural land.

S.P. Sinha, J.

36. I have had the benefit of reading the judgment of my learned brothers. I agree to the answers given to the question Nos. (i), (ii), (iv) and (v). I generally agree with the answers given to question No. (iii) also but I wish to add that the answer to this question in favour of the assessee can only be of an academic nature.

37. Agricultural Income Tax remaining unpaid, even though for more than 12 months is a factor which cannot be excluded from consideration in determining the market value of the zamindari compensation bonds, in terms of Section 7(1) of the Wealth-tax Act, 1957. In that sense I would say that the Tribunal was not justified in ignoring the agricultural Income Tax outstanding while determining the value of the said asset and the answer to question No. (iii) would to that extent be in favour of the assessee. The question, however does not stop at that, but asks a further question as to whether in consideration of such a factor, the value of the said asset would be a positive figure or a nil figure. In my opinion, this is a question of fact, which this court cannot answer. What is the value of an asset, in consideration of certain factors, is a question of fact, but whether certain factors are to be considered in determining the value of an asset is a question of law.

38. The answer to question No. (iii) in favour of the assessee has, therefore, to be understood only as answering the legal part of the question.