
(1974) 04 DEL CK 0033

In the Delhi High Court

Case No : Wealth-tax Reference No. 5 of 1972

P. N. SIKAND

APPELLANT

Vs

COMMISSIONER OF WEALTH-TAX.

RESPONDENT

Date of Decision : 04-04-1974

Acts Referred:

Citation : (1974) 96 ITR 424

Hon'ble Judges : Khanna, J

Bench : Division Bench

Judgement

KHANNA J. - The question that has been referred to us u/s 27 of the Wealth-tax Act, 1957 is :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in taking the view that 50% of the unearned increase payable to the Lesser of the land, formed part of and was not deductible out of the valuation of the property for the purposes of wealth-tax ?"

The assessed was assessed to wealth-tax as individual for the assessment year 1968-69. The relevant valuation date is December 31, 1967. His total wealth was computed by the Wealth-tax Officer at Rs. 8,10,165. This included, inter alia, a sum of Rs. 6 lakhs, as the value of a house on Plot No. 12, Block No. 39, Kautilya Marg, Chanakya Puri, New Delhi. The assessed had never challenged in the past the determination of the value of this property at Rs. 6 lakhs; but in the relevant assessment year the assessed returned its value at Rs. 4,52,000 on the basis of a certificate from Messrs. Anand Apte Jhabwala, architect and approved valuer of New Delhi. The value of the property was estimated at Rs. 5,82,268 from which a sum of Rs. 1,30,000 was deducted as 50% of the unearned increase in the value of land which was require under the terms of the agreement of lease, to be paid to the Lesser (the President of India), at the time of the transfer of the lessees interest. The Wealth-tax Officer did not accept the assesseds valuation. He estimated the value of the property at Rs. 8,29,560 on rental basis to which the assesseds objection was that the building being very large, it could attract

only a limited number of interested tenants. The Wealth-tax officer, however, determined the value of Rs. 6 lakhs as in the past; and rejected the claim for deduction of 50% of the unearned increase as "based merely on hypothetical presumptions". The Appellate Assistant Commissioner of Wealth-tax in appeal was of the view that the fact that the assessed might have to pay a sum of Rs. 1,30,000 to the Lesser did not affect the valuation of the property u/s 7 of the Wealth-tax Act. According to him, the market value was a price which a prospective buyer was prepared to give in respect of property as on the valuation date and the fact that the assessed may have to part with a part of that money was of no relevance. The Appellate Tribunal, in second appeal, agreed with the Appellate Assistant Commissioner and rejected the pleas of the assessed that, under the terms of the lease, Lesser was entitled, in case of transfer, to claim and recover 50% of the unearned increase in the value of land, that the Lesser had the pre-emptive increase and that the assessed, Therefore, was entitled to deduct 50% of the unearned increase from the total value of the land. It was under these circumstances that the Tribunal, at the instance of the assessed, referred the above question to us for our opinion.

Section 3 of the Wealth-tax Act, 1957, is the charging section, according to which a tax in respect of the net wealth, on the valuation date, of every individual, Hindu undivided family and company is to be charged for every assessment year at the rate or rates specified in the Schedule to the Act. The expression "net wealth" has been defined in section 2(m) of the Act. Shorn of words and phrases which may be considered as superfluous for our immediate purpose, it means the amount by which the aggregate value of all the assets belonging to the assessed on the valuation date "is in excess of the aggregate value of all the debts owned by the assessed" on that date. The word "assets" has been defined in section 2(e) as including property of every description, movable or immovable, but not including certain types of property mentioned in the section. In other words, wealth-tax is charged in respect of the amount by which the aggregate value of all the assets of an assessed is in excess of the aggregate value of all the debts owned by him, on the valuation date. The aggregate value of the assets as also that of debts owned by the assessed has, Therefore, to be determined. The manner of determining the value of the assets is given in section 7(1) of the Act, which reads as follows :

"7. (1) Subject to any rules made in this behalf, 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."

The law thus provides a fictional approach by which an hypothetical sale in the open market of the asset in question is assumed on the valuation date. In this case, the price which the asset in question would so fetch on the valuation date was estimated to be Rs. 6 lakhs. This asset consists of terms and conditions of the agreement for lease dated December 30, 1954, executed between the

President of India as the Lesser and one Smt. Vashesharan Devi from whom the assessed acquired the property, as the lessee, the restrictions, disadvantages and other hazards stipulated in the said agreement are attached to the assessed's interest and form part of his asset. Clause IX, X and XIX of the said agreement of lease, which are relevant for this purpose, read as follows :

"IX. The said intended lessee shall not prior to obtaining a lease from the President under clause XIV hereof, without the consent of the Chief Commissioner signified by writing, directly or indirectly assign, transfer or otherwise part with any interest he may have in the piece of land the subject hereof or in the buildings or materials for the time being thereon or create any sub-interest therein nor shall he underlet the said land or any part thereof;

Provided that in the event of sanction being granted the Chief Commissioner, Delhi, the Lesser, shall be entitled to claim and recover a portion of the unearned increase (i.e., the difference between the premium already paid and current market value) in the value of land, at the time of transfer (whether such transfer is an entire site or only a part thereof), the amount to be recovered being 50 per cent. of the unearned increase.

X. The Lesser shall have a pre-emptive right to purchase the property built on the site after deducting 50 per cent. of the unearned increase as aforesaid.

XIX. In case the said intended lessee shall commit any breach or make default in the performance of all or any one or more of the covenants on his part hereinbefore contained it shall be lawful for the President or any officer in his employ on his behalf to enter into and upon retain possession of the said land and of all such buildings erections and materials as may then be found upon the said land for the absolute use of the President and thereupon this agreement so far as relates to the engagements of the President shall be void and the said security so deposited as and shall be forfeited to the President and may be retained by him and shall belong to him absolutely but without prejudice to all other legal rights and remedies of the President against the said intended lessee."

Mr. J. K. Kohli, the learned counsel for the assessed, contended before us that the asset in question has defects and disadvantages attached to it, which are not irrelevant and cannot be ignored when estimating the price it would fetch if sold in the open market. In order to make a correct estimate of the price, 50% of the unearned increase payable to the Lesser has to be deducted out of the valuation. The assessed, in any case, contended Mr. Kohli in the alternative, incurs the liability to the extent of 50% of the unearned increase, towards the Lesser at the time of sale of the property. This, according to him, is a debt owned by the assessed. The net wealth consists only of excess of the aggregate value of the assets over the aggregate value of the debts owned by him. This amount, he urged, has to be deducted from the value, which the Wealth-tax Officer is required to estimate, in order to arrive at the figure of net wealth of the assessed.

Mr. R. H. Dhebar, the learned counsel for the revenue, on the other hand

contended that the price which the asset would fetch when sold in the open market cannot be interpreted to mean the price which it would fetch to the assessed. It is the price which a willing buyer would be prepared to pay, which will determine the price of the asset, it will be prepared to pay which will determine the price of the asset it will fetch when sold in the open market. In reply to the alternative argument, Mr. Dhebar contended that the question of any debt owed by the assessed does not arise, as he does not incur any liability in this case. The liability arises when there is an actual sale. In the case of hypothetical sale, there arises no liability towards the Lesser. He accordingly submitted that the view taken by the Tribunal was correct.

The learned counsel on both sides referred to certain English decisions in cases dealing with valuation for the purposes of estate duty in England. The language of section 7(5) of the Finance Act, 1894, which levied estate duty in the United Kingdom was in pari materia with the language of section 7(1) of the Wealth Tax Act. It read as follows :

"The principal value of any property shall be estimated to be the price which, in the opinion of the commissioners, such property would fetch if sold in the open market at the time of the death of the deceased."

This provision of the English statute came up for consideration before the House of Lords in *Commissioners of Inland Revenue v. Crossman*. The question before the House was as to what is the proper basis of valuation for purposes of estate duty on shares in a limited company, where the right to transfer is restricted by the articles of association. A member proposing to transfer any share was required to offer it first to other members at a prescribed price. If within three months the company was unable to find a purchaser, the proposing transferor was permitted to sell the shares to any person and at any price. The prescribed price, in that case, worked out to pound 221-4s-5d. It was, however, notified that the share of such a prosperous company, as was being considered, with an unrestricted right of transfer, would probably be worth at least twice as much as pound 355, which was the price fixed by the trial judge. It was held by majority that the value of the shares and was to be fixed at the price which they would fetch in the open market, on the terms that the purchaser would be entitled to be put upon the register as holder of the shares and hold them subject to the provisions of the articles. Viscount Hailsham L.C., before reaching any conclusion on the construction of section 7(5), considered it essential first to determine what was the property which has to be valued, and observed :

"The right to receive the price fixed by the articles in the event of a sale to existing shareholders under sub-section (14a) is only one of the elements which went to make up the value of the shares. In addition to that right, the ownership of the share gave a number of other valuable rights to the holder, including the right to receive the dividends which the company was declaring, the right to transmit the shares in accordance with article 34(1), (2) and (3), and the right to have the shares of other holders who wished to realise offered on the terms of

article 34(14a). All those various rights and privileges go to make up a share and form ingredients in its value. They are just as much part of the share as the restriction upon the sale."

The Lord Chancellor then treated section 7(5) as merely a statutory direction as to the method by which the value of such property was to be ascertained. In complying with that direction, he considered it necessary to make the assumptions which the statute directed, viz., sale in an open market. But in doing that he was careful to again observe : "This is not to ignore the limitations attached to the share." Reversing the judgment of the Court of Appeal, that of the trial judge was restored and the value fixed by him was upheld. This view was reaffirmed by the House of Lords in *Lynall v. Inland Revenue Commissioners*. The House of Lords observed that Crossmans case was rightly decided in that section 7(5) of the Finance Act, 1894, was merely a machinery for estimating value and that, accordingly, the value of the shares for the purpose of estate duty was to be estimated at the price which they would fetch in the open market on the terms that the purchaser should be entitled to be registered and to be regarded as the holder of the shares, and should take and hold them subject to the provisions of the articles of association including those relating to the alienation and transfer of shares in the company.

The majority view in Crossmans case is the correct view, and we are of the opinion that section 7(1) of the Act provides the manner in which the value of any asset. For the purposes of the Act, is to be estimated and sale in the open market on the valuation date. The Supreme Court in *Ahmed G. H. Ariff v. Commissioner of Wealth-tax*. had occasion to observe that the Bombay High Court had rightly made approving references in the case of the House of Lords in Crossmans case on the question of hypothetical sale in the open market. We are also of the view that the asset to be valued has to be considered as comprised of all its advantages and disadvantages. The benefits attached to the lessees rights as also other conditions, restrictions and limitations hedged around them, as spelled out in the agreement for lease, in this case, all put together form the lessees asset, which has to be valued for the purposes of the Act, without ignoring any of them.

Mr. R. H. Dhebar, the learned counsel for the revenue, relied on a judgment of the Supreme Court in *Pandit Lakshmi Kant Jha v. Commissioner of Wealth-tax* wherein, examining the language of section 7(1) of the Act, it was observed :

"It is not, however, the amount which the vendor would receive after deduction of these expense, but the price which the asset would fetch, when sold in the open market, as would constitute the value of the asset for the purpose of section 7(1) of the Act. To accede to the contention advanced on behalf of the appellant would be reading in section 7(1), the words to the assessed, after the words it would fetch, although the legislature has not inserted those words in the statute. Such a course is not permissible."

The appellant in that case had asked for deduction of expenses of sale, such as brokerage commission, which was not allowed. But there is no claim for expenses in the present case, nor is there the question of any net receipt by the assessed. The Lesser has right to recover 50% of the unearned increase in the value of the property, when granting his consent, without which the sale cannot take place. the Lessers entitlement to 50% of the unearned increase cannot be said to be expenses of sale. It is a condition precedent, without which a sale cannot be contemplated. The Lesser has even an overriding right to pre-emption at a price after deduction this amount. A breach of this condition will entail a forfeiture of the lease and give a right of re-entry to the Lesser. It is a restriction or limitation attached to the rights of the assessed and determines the nature and character of property which is to be valued for the purpose of levying wealth-tax. The case of Pandit Lakshmi Kant Jha, Therefore, has no relevance for our present purposes.

It is thus obvious that the argument which appealed to the Tribunal, that the Lessers right to recover 50% of the unearned increase at the time of sale, was not worthy of consideration, as being irrelevant, was not sound. Mr. Dhebar contended that, a part from this disadvantage, the assessed enjoyed some benefits and advantages, too, under the agreement of lease. The only advantage under the said agreement is to hold and enjoy the property which can be measured by the rent the assessed would be able to recover. The annual letting value of the property, Therefore, is the advantage attached to the property. But this has been taken due note of by the Wealth-tax Officer when he determined the value of the attached property. He actually worked out the figure of the annual letting value and reduced it to Rs. 6 lakhs, on considerations other than that of the lessees obligation to pay 50% of the unearned increase to the Lesser. In disregarding this obligation of the assessed on the plea, that it was not relevant for the purpose of valuation, amounted to estimating the value of a property different from the one which was the subject of assessment. For the purpose of making a correct estimate of the price, which the property would fetch if sold in the open market, both advantages and disadvantages have to be considered.

Even if this 50% of the unearned increase payable to the Lesser is not taken into account, while estimate the value of the property, it becomes due from the assessed to the Lesser, all the same, for obtaining the Lessers consent to the proposed sale. It is a liability of the assessed. Mr. Dhebars contention that, as it is not a case of actual sale, nothing is to be paid to the Lesser, is not sound. There is, according to him, no present liability and no debt owed by the assessed. Relying on *Kesoram Industries & Cotton Mills Ltd. v. Commissioner of Wealth-tax*, he contended that the word "owe" in section 7(1) mean "to be under an obligation to pay". The assessed according to him, was under no obligation. There is, of course, no actual sale; but a sale in the open market, as already observed, has to be assumed for the purposes of section 7(1) of the Act. It is something imaginary, in the nature of a fiction, which the section brings into

play, as was observed by the Supreme Court in *Commissioner of Income Tax v. S. Teja Singh*, in construing the scope of a legal fiction, it would be proper and even necessary to assume all those facts on which alone we also assume that the consent of the Lesser has been obtained. This consent under the terms of the lease was not to be granted without entitling the Lesser to recover 50% of the unearned increase in the value of the land at the time of transfer. If we have to assume a sale, as indeed we have to, then there is no escape from assuming the existence of this liability to the extent of 50% of the said unearned increase in the value of the land as well. This would, Therefore, be a debt owed by the assessed on the valuation date. In order to ascertain the amount by which the aggregate value of the assets of the valuation date is in excess of the aggregate value of the debts owed by the assessed on that date, which would be "net wealth", as defined in section 2(m), this 50% of the unearned increase has to be deducted as debt owed by the assessed on the valuation date out of the value which has been determined without considering this condition as an important limitation attached to the property.

In short, this 50% of the unearned increase in the value of land payable to the Lesser, has to be deducted from the valuation whether it is taken as a limitation or restriction attached to the property in question, affecting its value to that extent or as a debt owed by the assessed on the valuation date. The Tribunal was not justified in taking the view that it formed part of and was not deductible out of the valuation of the property for the purposes of wealth-tax. The question referred to us, Therefore, has to be and answered in the negative, that is, in favor of the assessed and against the revenue.

In the peculiar circumstances of the case, however, we propose to make no order as to costs.