

(1983) 04 J&K CK 0007

In the Jammu And Kashmir High Court

Case No : Writ Petition No's. 528, 296 of 1977, 55 of 1978, 70 to 73, 59, 108 to 111, 153, 204 of 1979, 227 to 231, 283, 285, 429 to 431, 382, 384, 435, 142, 406 to 409 of 1980, 157 to 161, 259, 525, 551, 260, 608, 120, 69, 404, 651, 438, 650, 432, 437, 436, 364 of

P.C. Oswal

APPELLANT

Vs

S.P. Mehta, WTO

RESPONDENT

Date of Decision : 19-04-1983

Acts Referred:

Constitution of India, 1950 — Article 246, 248, 248(1)
Wealth Tax Act, 1957 — Section 2(e), 2(m), 3

Citation : (1983) 14 TAXMAN 168

Hon'ble Judges : Mufti Bha-ud-Din Farooqi, C.J.; I.K. Kotwal, J

Bench : Division Bench

Advocate : J.M. Gupta, M.M. Gupta, S. Grover, A.V. Gupta, U.B.S. Bedi, K. Kundan, Joginder Singh, H.L. Bhagotra, G.P. Gupta and V.S. Malhotra, for the Appellant; T.S. Thakur and S. Dutt, for the Respondent

Judgement

1. The common question of law arising for our determination in this group of writ petitions is: Whether the Wealth-tax Act, 1957 ('the Act'), insofar

it purports to be applicable to the State of Jammu and Kashmir, is constitutionally valid? The ground of challenge urged in the petition is that the

Parliament has no Legislative competence to enact the said Act in relation to our State. Section 3 of the Act, declares that there shall be charged

for every assessment year a tax in respect of the net wealth on the corresponding valuation date of every individual, HUF and company at the rate

or rates specified in the Schedule. The expression 'net wealth' is defined in section 2 (m) of the Act, as meaning "the amount by which the

aggregate value computed in accordance with the provisions of this Act of all the assets, wherever 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". The expression 'assets' is defined in section 2(e) as inclusive property of every

description, movable or immovable, but does not include agricultural land and growing crops, grass or standing trees on such land or any building

owned or occupied by a cultivator of, or receiver of rent of revenue out of agricultural land. The definition of the expression 'assets' has been so

circumscribed in relation to the State of Jammu and Kashmir but in respect of other States the definition is of wider amplitude and includes

agricultural land, growing crops, grass or standing trees on such land and any building owned or occupied by a cultivator of, or receiver of rent or

revenue out of agricultural land. The constitutional provisions having bearing on the determination of the question before us may now be set out.

2. Articles 246 and 248 of the Constitution, which govern the division of legislative powers between Union and States, apply to the State of

Jammu and Kashmir in a modified form. Article 246, as applicable to the State, reads:

(1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in

List I in the Seventh Schedule (in this Constitution referred to as the 'Union List').

(2).... Parliament, and subject to clause (1), the Legislature of any State... have power to make laws with respect to any of the matters enumerated

in List III in the Seventh Schedule (in this constitution referred to as the 'Concurrent List').

In its application to the State, for article 248, the following article has been substituted, namely:

Residuary power of legislation- (1) Parliament has exclusive power to make any law with respect to -

(a) prevention of activities directed towards disclaiming, questioning, or disrupting the sovereignty and territorial integrity of India or bringing about

cession of a part of the territory of India or secession of a part of the territory of India from the Union or causing insult to the Indian National Flag,

the Indian National Anthem and this Constitution; and,

(b) taxes on -

- (i) foreign travel by sea or air;
- (ii) inland air travel;
- (iii) postal articles, including money orders -
phonograms, and telegrams

Entry 86 of List I applies to the State in its original form and reads as follows:

Taxes on the capital value of the assets, exclusive of agricultural land, of individuals and companies; taxes on the capital of companies

In its application to the State of Jammu and Kashmir entry 97 has been substituted by the following entry, namely:

Prevention of activities directed towards disclaiming, questioning or disrupting the sovereignty and territorial integrity of India or bringing about

cession of a part of the territory of India or secession of a part of the territory of India from the Union or causing insult to the Indian National Flag,

the Indian National Anthem and this Constitution; taxes on foreign travel by sea or air, on inland air travel and on postal articles, including money-

orders, phonograms and telegrams.

The effect of the provisions of articles 246 and 248, as applicable to the State of Jammu and Kashmir, is that Parliament has power to legislate in

respect of the State with regard to the matters included in List I and List III of the Seventh Schedule, as applicable to the State. The residuary

powers of legislation exclusively belong to the State Legislature. Consequently, if the impugned legislation falls within any entry in List I and List III

as applicable to the State, it would be constitutionally valid. On the other hand, if it does not fall within the domain of those lists, it will be beyond

the Legislative competence of the Parliament. Before us, the Union has sought to sustain the validity of the impugned Act under entry 86 of List I.

For the petitioners, however, it has been contended that the subject-matter of the impugned Act falls within the residuary powers of legislation

enjoyed by the State Legislature and not under entry 86 of List I. It has been maintained that entry 86 of List I is not strictly concerned with taxes

on net wealth. The submission is that there is a -real distinction between a true net wealth and the tax which can be levied under entry 86 of List I

and that while legislating in respect of the said entry, it is not incumbent on the Parliament to provide for deduction of debts in ascertaining the

capital value of the assets. In this connection, reliance has been placed on the judgment of the Supreme Court in *Union of India (UOI) Vs. Shri*

Harbhajan Singh Dhillon, .

In the case of *Harbhajan Singh Dhillon (supra)*, the legislative competence of Parliament in relation to the amendment of the relevant provisions of

the Wealth-tax Act having the effect of including the capital value of agricultural lands in computing the net wealth for the purposes of wealth-tax

was challenged. The Supreme Court by a majority decision rejected the challenge and held that the Act, as it stood prior to and after the impugned

amendment, fell within the residuary powers of legislation enjoyed by the Parliament under entry 97 of List I. His Lordship Sikri, C.J., speaking for

himself and Palekar, J. observed:

... It seems to us that there is a distinction between a true net wealth-tax and a tax which can be levied under entry 86, List I. While legislating in

respect of entry 86, List I, it is not incumbent on Parliament to provide for deduction of debts in ascertaining the capital value of assets. Similarly, it

is not incumbent on State Legislature to provide for deduction of debts while legislating in respect of the entry 49, List II. For example, the State

Legislature need not, while levying tax under entry 49, List II, provide for deduction of debts owed by the owner of the property. It seems to us

that the other part of entry, i.e., 'tax on the capital or companies' in entry 86, List I, also seems to indicate that this entry is not strictly concerned

with taxation of net wealth because capital of a company is in one sense a liability of the company and not its asset. Even if it is regarded as an

asset, there is nothing in the entry to compel Parliament to provide for deduction of debts. It would also be noticed that entry 86, List I, deals only

with individuals and companies but net wealth-tax can be levied not only on individuals but on other entities and associations also. It is true that

under entry 86, List I, aggregation is necessary because it is a tax on the capital value of assets of an individual but it does not follow from this that

Parliament is obliged to provide for deduction of debts in order to determine the capital value of assets of an individual or a company. Therefore, it

seems to us that the whole of the impugned Act clearly falls within entry 97, List I. We may mention that this Court has never held that the original

Wealth-tax Act fell under entry 86, List I. It was only assumed that the original

Wealth-tax Act fell within entry 86, List I, and on that assumption that entry was analysed and contrasted with entry 49, List II. Be that as it may, we are clearly of the opinion that no part of the impugned legislation falls within entry 86, List I"" (p. 615)

His Lordship Mitter, J. delivered a separate concurring judgment and, inter alia, observed as follows:

The subject-matter of wealth-tax including or excluding agricultural lands, etc., is not covered by entry 86 of List I read with article 246 of the Constitution, but by entry 97 of List I, read with article 248. Although read by itself entry 97 may seem to suggest that the expression 'any other matter' has reference to other entries in List I, article 248(1) makes it clear beyond doubt that such matters are those which are not covered by entries in List II or List III. The Constitution has not denied to the Union power to levy wealth-tax inclusive of agricultural land as was contended for on behalf of the respondents.

The residuary field of legislation no longer lies barren or unproductive. It has already yielded fruitful sources of taxation like the Gift-tax Act. The Expenditure-tax Act and borrowings as under the scheme of annuity deposits."" (p. 677)

It necessarily follows that the Act, it referable to the field of residuary powers of legislation and not to entry 86 of List I of the Seventh Schedule and, that being so, the Parliament had no legislative competence to enact the said Act in relation to the State of Jammu and Kashmir because the residuary power to legislation, unlike other States in India, belongs to the Jammu and Kashmir State Legislature and not to the Union Parliament.

For a contrary view reliance was, however, placed on the judgments of the Supreme Court in Seth Banarsi Das etc. Vs. Wealth Tax Officer, Special Circle Meerut, etc., , SUDHIR CHANDRA NAWN Vs. WEALTH-TAX OFFICER, CALCUTTA, AND OTHERS. INTERVENERS

: (1) STATE OF ASSAM; (2) STATE OF KERALA; AND (3) STATE OF UTTAR PRADESH., . The Assistant Commissioner of Urban Land Tax and Others Vs. The Buckingham and Carnatic Co. Ltd., etc., , Shri Prithvi Cotton Mills Ltd. and Another Vs. Broach Borough Municipality and Others, and D.C. Gouse & Co. v. State of Kerala [1980] 1 SCR 804.

In the case of Banarsi Dass (supra) the petitioners, who constituted HUFs,

challenged the provisions of section 3 of the Act with reference to entry 86 of List I on the ground that the word 'individual' used in the entry could not take in HUF. The Court rejected the challenge and observed:

... If the individuals constitute themselves into a group and such group owns capital assets, it is not easy to understand why the value of such assets should not be included within the legislative field covered by entry 86. The Constitution makers were fully aware that the Hindu citizens of this country normally form Hindu undivided families and if the object was to levy taxes on the capital value of the assets, it is inconceivable that the word 'individuals' was introduced in the entry with the object of (excluding) from its scope such a large and extensive area which would be covered by Hindu undivided families. We are, therefore, satisfied that the impugned section is valid, because Parliament was competent to legislate in respect of Hindu undivided families under entry 86." (p. 232)

In Sudhir Chandra's case (supra), the petitioner challenged the demand for the recovery of wealth-tax on the ground that since the expression 'net wealth' included the lands and buildings of the assessee and the power to levy tax on them was reserved to State Legislature under entry 49, List

II, Parliament was not competent to levy the tax under entry 86 of List I. The Court rejected the challenge, observing:

... The tax which is imposed by entry 86, List I, of Seventh Schedule is not directly a tax on lands and buildings. It is a tax imposed on the capital value of the assets of individuals and companies, on the valuation date. The tax is not imposed on the components of the assets of the assessee: it is imposed on the total assets which the assessee owns, and in determining the net wealth not only the encumbrances specifically charged against any item of asset, but the general liability of the assessee to pay his debts and to discharge his lawful obligations have to be taken into account. In certain exceptional cases, where a person owes no debts and is under no enforceable obligation to discharge any liability out of his assets, it may be possible to break up the tax which is leviable on the total assets into components and attribute a component to lands and buildings owned by an assessee. In such a case, the component out of the total tax attributable to lands and buildings may in the matter of computation bear similarity to a tax on lands and buildings levied on the capital or annual value under entry 49,

List II. But the legislative authority of Parliament is not determined by visualizing the possibility of exceptional cases of taxes under two different heads operating similarly on tax payers. Again entry 49, List II, of the Seventh Schedule contemplates the levy of tax on lands and buildings or both as units. It is normally not concerned with the division of interest or ownership in the units of lands or buildings which are brought to tax. Tax on lands and buildings is directly imposed on lands and buildings, and bears a definite relation to it. Tax on the capital value of assets bears no definable relation to lands and buildings which may form a component of the total assets of the assessee. By legislation in exercise of power under entry 86, List I, tax is contemplated to be levied on the value of the assets. For the purpose of levying tax under entry 49, List II, the State Legislature may adopt for determining the incidence of tax the annual or the capital value of the lands and buildings but the adoption of the annual or capital value of lands and buildings for determining tax liability will not, in our judgment, make the fields of legislation under the two entries overlapping." (pp. 900-01)

In the case of *Buckingham & Carnatic* (supra), the vires of Madras Urban Land Tax Act was challenged with reference to entry 86 of List I of the Seventh Schedule. The Court rejected the challenge and explained the legal position in these words:

...In our opinion there is no conflict between entry 86 of List I and entry 49 of List II. The basis of taxation under the two entries is quite distinct.

As regards entry 86 of List I the basis of the taxation is the capital value of the asset. It is not a tax directly on the capital value of assets of

individuals and companies on the valuation date. The tax is not imposed on the components of the assets of the assessee. The tax under entry 86

proceeds on the principle of aggregation and is imposed on the totality of the value of all the assets. It is imposed on the total assets which the

assessee owns and in determining the net wealth not only the encumbrances specifically charged against any item of asset, but the general liability of

the assessee to pay his debts and to discharge his lawful obligations have to be taken into account. In certain exceptional cases, where a person

owes no debts and is under no enforceable obligation to discharge any liability out of his assets it may be possible to break up the tax which is

leviable on the total assets into components and attribute a component to lands and buildings owned by an assessee. In such a case, the

component out of the total tax attributable to lands and buildings may in the matter of computation bear similarity to a tax on lands and buildings

levied on the capital or annual value under entry 49, List II. But in a normal case a tax on capital value of assets bears no definable relation to lands

and buildings which may or may not form a component of the total assets of the assessee. But entry 49 of List II contemplates a levy of tax on

lands and buildings or both as units. It is not concerned with the division of interest or ownership in the units of lands or buildings which are brought

to tax. Tax on lands and buildings is directly imposed on lands and buildings, and bears a definite relation to it. Tax on the capital value of assets

bears no definable relation to lands and buildings which may form a component of the total assets of the assessee. By legislation in exercise of

power under entry 86, List I, tax is contemplated to be levied on the value of the assets. For the purpose of levying tax under entry 49, List II, the

State Legislature may adopt for determining the incidence of tax the annual or the capital value of the lands and buildings. But the adoption of the

annual or capital value of lands and buildings for determining tax liability will not make the fields of legislation under the two entries overlapping.

The two taxes are entirely different in their basic concept and fall on different Subject matters." (pp. 612-13)

In the case of *Shri Prithivi Cotton Mills (supra)*, the constitutional validity of section 3 of Gujarat Imposition of Taxes by Municipalities (Validation)

Act was challenged with reference to entry 86 of List I. The Court rejected the challenged observing as follows:

The inquiry in this case may begin by asking whether the Legislature possesses competence to pass a law imposing a tax on lands and buildings on

the basis of a percentage of their capital value. If the Legislature possesses that power then it can authorise the Municipality to levy that tax. To test

the proposition we may consider section 99 which has now been enacted in the Gujarat Municipality Act. It reads:

'99. Taxes which may be imposed, -

(1) Subject to any general or special orders which the State Government may make in this behalf and to the provisions of sections 101 and 102, a

municipality may impose for the purposes of this Act any of the following taxes, namely:--

(i) a tax on buildings or lands situate within the municipal borough to be based on the annual letting value or the capital value or a percentage of

capital value of the buildings or lands or both;...,

Learned counsel for the appellants did not contend that this section was outside the powers of the Legislature. In fact, he could not, in view of

entry 49 of List II of the Seventh Schedule to the Constitution. That entry reads: 'Taxes on lands and buildings' and a tax on lands and buildings

based upon capital value falls squarely within the entry. The doubt which is created by entry 86 of List I 'Taxes on the capital value of assets', no

longer exists after the decision of this Court in SUDHIR CHANDRA NAWN Vs. WEALTH-TAX OFFICER, CALCUTTA, AND OTHERS.

INTERVENERS : (1) STATE OF ASSAM; (2) STATE OF KERALA; AND (3) STATE OF UTTAR PRADESH., . In that case the respective

ambits of the two entries are explained. It is pointed out that unlike the tax contemplated by entry 49 List II the tax under entry 86 (List I) is not a

direct tax on lands and buildings but on net assets, the components of which may be lands and buildings and other items of assets, excluding such

liabilities as may exist. The incidence of the tax is not on lands and buildings as units of taxation but on the net assets of which lands and buildings

are only some of the components. This is not the case under entry 49 (List II) where the tax can be laid directly on lands and buildings as units of

taxation. Therefore, a tax on lands and buildings is fully within the competence of the Legislature and it is open to it to authorise the municipality to

levy the same tax indicating the mode of levy. This the Legislature has done by indicating the different modes which may be adopted in making the

levy, one such mode being a percentage of the capital value."" (p. 141).

In D.C. Gouse & Co.' case (supra), the vires of Kerala Building Tax Act, 1975 was challenged on the ground that the subject-matter of the tax

being a tax on buildings, it was a tax on the capital value of the assets of an individual or company and fell within the scope of entry 86 of List I and

not under entry 49 of List II, so that it was beyond the legislative competence of the State Legislature. The Court repelled the contention and

upheld the validity of the Act, observing: -

Chapter I of Part XI of the Constitution deals with the distribution of legislative powers. Article 246 of that Chapter states, inter alia, the exclusive

powers of the Parliament and the State Legislatures according as the matter is enumerated in List I or List II of the Seventh Schedule. Entry 86 of

List I, on which reliance has been placed by Mr. Francis, reads as follows: -

'86. Taxes on the capital value of assets, exclusive of agricultural land, of individuals and companies; taxes on the capital of companies.'

Now the word 'assets' has been defined in the Century Dictionary (which is an encyclopaedic lexicon of the English language) as follows:

'Property in general; all that one owns, considered as applicable to the payment of his debts... as a singular. Any portion of one's property or effects so considered.'

So if a tax is levied on all that one owns, or his total assets, it would fall within purview of entry 86 of List I, and would be outside the legislative

competence of a State Legislature, e.g., a tax on one's entire wealth. That entry would not authorise a tax imposed on any of the components of

the assets of the assessee. A tax directly on one's lands and buildings will not therefore be a tax under entry 86.

On the other hand, entry 49 of List II is as follows:

'49. Taxes on lands and buildings'.

It therefore a tax is directly imposed on 'buildings', it will bear a direct relation to the buildings owned by the assessee. It may be that the building

owned by an assessee may be a component of his total assets, but a tax under entry 86 will not bear any direct or definable relation to his building.

A tax on 'buildings' is therefore a direct tax on the assessee's buildings as such, and is not a personal tax without reference to any particular

property.'" (pp. 815-16)

It will be noticed that in these cases, the validity of the Act was nowhere under challenge with reference to entry 86 of List I on the ground that the

said entry did not take in legislation regarding imposition of tax on net wealth. Consequently, these cases are distinguishable in the present case.

Reliance on these cases on behalf of the Union, in our opinion, is misplaced.

Summing up, we, therefore, hold that the Act insofar as it purports to be applicable to the State of Jammu and Kashmir, is ultra vires the

Constitution of India, as applied to the State.

We now proceed to deal with the writ petitions specifically. In these petitions, the respective petitioners have challenged the validity of the

assessment proceedings under the Act which are either complete or still incomplete but no tax has been recovered from them on the basis of those

proceedings so far. They have applied for certiorari to quash the assessment proceedings and also prayed for a writ of prohibition restraining

respondents from proceeding further in the matter of levying and collecting wealth-tax from them. In the view that we have expressed above, the

petitioners are entitled to the relief claimed by them. We, therefore, allow these writ petitions and quash the impugned assessment proceedings in

each case, and restrain respondents from levying and collecting and wealth-tax from the respective petitioners on the basis of such proceedings.

We, however, leave the parties to bear their own costs.