

(2003) 03 KL CK 0024

In the High Court Of Kerala

Case No : WT Appeal No. 2 of 2003 17 March 2003

P.N. Jacob

APPELLANT

Vs

CWT

RESPONDENT

Date of Decision : 17-03-2003

Acts Referred:

Citation : (2003) 131 TAXMAN 313

Hon'ble Judges : J.M. James, J;G. Sivarajan, J

Bench : Full Bench

Advocate : M.P. Abraham and N. Sreenivasan, for the Assessee P.K.R. Menon, for the Revenue, for the Appellant;

Judgement

G. Sivarajan, J.

The matter arises under the Wealth Tax Act, 1957, (hereinafter referred to as the Act). The assessee under the Act is the appellant. He was a partner in a Firm styled as M/s. Varkey Jacob & Co., which took on lease the estate styled as Velanikkara Thattil Estate to the extent of 1/3rd share in the said estate. The said estate belonged to the mother of the appellant. The State Government acquired the Estate in the year 1970 and the possession was taken over by government in 1973. The business of the firm M/s. Varkey Jacob & Co. came to an end with the acquisition of the said estate. In the present case, we are concerned with the assessment of the appellant under the Act for the year 1986-87. The appellant filed a return of wealth for the assessment year 1986-87 on 23-10-1990. In the said return, the assessee had shown the value of right to receive enhanced compensation and interest in respect of appellant's right on the acquired property at Rs. 10,82,015. Later, the assessee filed a revised return in which the right to receive enhanced compensation and interest was shown only at Rs. 3,31,758. Here, it is relevant to note that in the appeals filed by the state, and cross objection filed by the appellant and others, this court has determined the compensation as also the interest payable in respect of the acquisition of the estate by judgment dated 28-1-1987. The appellant in the

return filed on 23-10-1990 had adopted 50 per cent of the compensation amount and 50 per cent of the interest awarded by the High Court in the said judgment, as the value of the right to receive enhanced compensation and interest. However, the assessing officer completed the assessment as per order dated 25-3-1991 (Annexure-A) by evaluating the right to receive compensation and interest at Rs. 19,65,628 which is made up of Rs. 3,85,550 representing 90 per cent of the enhanced compensation and Rs. 15,80,078 representing 90 per cent of the accrued interest as per the judgment of the High Court. The appellant, being aggrieved by the said judgment, filed appeal before the Commissioner (Appeals), who by his order dated 23-9-1998, upheld the adoption of the interest based on the decision of the High Court. In further appeal by the assessee, the Tribunal confirmed the order of the two authorities holding that since the assessee had filed the return on 23-10-1990, that is much after the decision of the High Court rendered on January, 1987, there was no risk factor as claimed by the assessee to offer only 50 per cent of the enhanced compensation and interest thereon at 15 per cent. It is against the order of the Tribunal, the assessee is in appeal.

2. Shri N. Sreenivasan, senior counsel appearing for the appellant submits that the relevant date for valuation of the assets is the valuation date in respect of the concerned assessment year, that on the valuation date, the only decision that was available was the decision of the Sub-court which has awarded interest at 4 per cent, apart from the compensation fixed and that the said award was also subject to appeal by the department and by the assessee before this court. The senior counsel therefore, submitted that in view of this nebulous situation, particularly in view of the fact that the very question of entitlement of interest under the Land Acquisition Amendment Act, 1984 was doubtful, and at any rate discretionary, the assessee was not obliged to estimate the right to receive interest at 15 per cent as provided under the Amendment Act, and therefore, the assessee had estimated the right to receive interest only at 4 per cent as awarded by the Sub court and written the same in the revised return filed for this year. The senior counsel also took us to the provisions of section 3 of the Act and also to section 2(m) of the Act defining "Net Wealth". The senior counsel further submitted that at any rate, the Tribunal should have accepted the contention of the assessee that in the nebulous situation obtained as on the valuation date, the offer of 50 per cent of the interest awarded by the High Court should have been accepted.

3. Shri P.K.R. Menon, senior Central Government standing counsel for Taxes, appearing for the respondent, submits that in the instant case, the appellant had filed the return for the assessment year 1986-87 only after the judgment of the High Court in the Land Acquisition Appeals filed by the department and by the assessee, that in the said judgment, this court has awarded interest at the rate of 15 per cent on the compensation as provided under the Land Acquisition Amendment Act, 1984, and therefore, the stand of the appellant that the correct figure was not available as on the valuation date was not justified. The senior

counsel also submitted that the assessing officer has adopted only 90 per cent of the interest awarded by this court as representing the right to receive interest. The senior counsel further submits that both the appellate authorities have rightly upheld the order of the assessing officer.

4. We have considered the rival submissions. The assessment year concerned is 1986-87. The relevant valuation date is 31-3-1986. As on that date, there was only the award of the sub court in which only 4 per cent interest was awarded on the compensation amount. The decision of the High Court in the appeal was rendered only on 28-1-1987, after the valuation date. Section 3 which is the charging section, sub-section (1) thereof reads as follows :

"Charge of Wealth Tax.(1) Subject to the other provisions (including provisions For the levy of additional wealth tax) contained in this Act, there shall be charged for every assessment year commencing on and from the 1-4-1957 but before the 1-4-1993, a tax (herein after 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 Schedule I".

5. The senior counsel raised two arguments, one is that so far as the interest is concerned, no assets was in existence as on the valuation date, and the other is that it is only on the net wealth as obtained on the valuation date, it could be subjected to wealth tax as provided u/s 3 of the Act. The first contention according to us, cannot be sustained for the reason that the appellant had obtained a right to receive compensation and interest as per the award of the sub court, of course, subject to appeal, either by the appellant or by the state. The right to receive compensation and interest accrued as per the judgment of the sub court is an asset within the meaning of section 2(e) of the Act. The second question is regarding the valuation of the net wealth on the corresponding valuation date, that is on 31-3-1980. As already noted, as on that date, there was only the award of the sub court under which 4 per cent interest was awarded. However, the appellant and other owners of the Estate have filed a cross appeal against the award of the sub court claiming enhanced compensation and interest provided under Land Acquisition Amendment Act, 1984, which was pending as on the valuation date. In the above circumstances, the appellant was certainly obliged to estimate the net wealth as on the valuation date. The expression "net wealth" as defined means the amount by which the aggregate value computed in accordance with the provisions of this Act of all the assets belonging to the assessee on the valuation date is in excess of the aggregate value of all the debts owed by the assessee on the valuation date. The computation of the value of assets is provided u/s 7 of the Act, which in turn refers to the Schedule 3. It is unnecessary for us to go into the provisions of section 7 or Schedule 3 in detail, since it is the market value of the asset which has to be taken as per the said provisions. Thus, in arriving at the market value of the asset in the present case, the interest, in view of the fact that the assessee had filed a cross objection claiming enhanced rate of interest provided

under the Land Acquisition Amendment Act, 1984, which is at 15% and the hazards involved in getting the said amount, the appellant has neither estimated the market value taking into account the enhanced amount of 15 per cent nor at any lesser rate which will depend on the provisions of the Land Acquisition Amendment Act. In this case, as we have already noted, this court has passed the award granting enhanced interest in January, 1987, and the appellant had filed the return only in 1990. Nonetheless, since the market value of the asset, viz., the right to receive interest has to be ascertained with reference to the valuation date, that is 31-3-1986, the appellant had estimated the right to receive interest at 50 per cent of the interest awarded by this court in the judgment rendered in January, 1987. However, the appellant had chosen to file a revised return under which the appellant had shown the interest only at the rate of 4 per cent of the award passed by the sub court.

6. In these circumstances, particularly, having regard to the fact that on the crucial date, i.e., the valuation date, the award passed by this Court was not available, certainly, it was for the assessing officer to consider the question of reasonableness of the valuation made by the appellant and to take a decision with reference to the fact situation, and the provisions of the Land Acquisition Amendment Act, 1984, under which enhanced interest was provided. In other words, it was for the assessing officer to consider whether, in law, the appellant was entitled to get enhanced interest at the rate of 15 per cent provided under the amended Act in respect of an acquisition made in 1970 and possession taken on in 1973. As we have already noted, the assessing officer had straightaway adopted 90 per cent of the interest awarded by the sub court as the right to receive interest on the valuation date. Probably, the 10 per cent reduction was made on account of the fact that the valuation date was 31-3-1986, and the judgment was rendered on 28-1-1987. According to us, the crucial question which should have been considered by the assessing officer was as to whether the appellant was entitled as of right to receive interest at the rate of 15 per cent on the valuation date, or as to whether the grant of interest under the amended Act was discretionary. These aspects were not considered by the assessing officer or by the two appellate authorities. All the authorities have decided the issue based on the subsequent decision of this court, fixing the interest on the compensation amount. Since none of the authorities including the Tribunal has considered the question in the proper perspective, we are of the view that the matter requires consideration at the hands of the assessing officer himself. For the said purpose, we set aside the orders of the two appellate authorities on this issue, and direct the assessing officer to consider the correct valuation of the asset, namely, the right to receive interest as on the valuation date, in accordance with law, and in the light of the observations made in this judgment. The assessing officer will afford a reasonable opportunity of being heard to the assessee before taking a final decision in the matter.

The Wealth Tax Appeal is disposed of as above.