
(1982) 02 AHC CK 0041
In the Allahabad High Court
Case No : Wealth-tax Reference No. 179 of 1978

P.S. Gandhi

APPELLANT

Vs

Commissioner of Wealth-tax

RESPONDENT

Date of Decision : 02-02-1982

Acts Referred:

Transfer of Property Act, 1882 — Section 106, 116

Citation : (1982) 28 CTR 71 : (1983) 141 ITR 105 : (1982) 11 TAXMAN 114

Hon'ble Judges : R.R. Rastogi, J;C.S.P. Singh, J

Bench : Division Bench

Advocate : Raja Ram Agrawal and S. Chopra, for the Appellant; M. Katju, for the Respondent

Judgement

This Judgment has been overruled by : F. S. Gandhi (Dead) by LR's. Vs. Commissioner of Wealth tax, Allahabad, AIR 1991 SC 1866 : (1990) 84 CTR 35 : (1990) 18 ITR 34 : (1990) 3 JT 476 : (1990) 3 SCC 624 : (1990) 2 SCR 886

Rastogi, J.—In compliance with the direction of this court, the Income Tax Appellate Tribunal, A Bench, Allahabad, has referred the following questions of law to this court:

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that properties in respect of which leases had expired in 1958 and 1963, and notices had been received to hand over the possession were assets within the meaning of Section 2(e)(v) of the Wealth-tax Act and its value was liable to be included in the net wealth of the assessee ?

2. Whether, on a correct interpretation of Section 2(e)(v) and the relevant provisions of Transfer of Property Act, the Tribunal was right in holding that the interest of the applicant in respect of the properties in dispute was for a period of over six years ?

3. Whether there was any material before the Tribunal to hold that on the relevant valuation date the property situated at 30A, Mahatma Gandhi Marg, was

worth ten times of its annual rental income while in previous years the value of the said property was shown and accepted at Rs. 1,19,000.?

4. Whether the Tribunal was right in holding that the property at 30A, Mahatma Gandhi Marg, was to be valued on the basis of its annual income along with other properties notwithstanding the property in question was commercial property while other properties were residential houses and whether the multiple upheld by the Tribunal is justified in law and on facts ?

5. Whether, on the facts and in the circumstances of the case, the multiple of ten times of the rental income in respect of property, 30A, Mahatma Gandhi Marg, is not excessive and wholly unjustified ?"

2. The facts briefly stated are that the assessee, P.G. Gandhi, an individual, owns a number of properties, viz., 28/22A, Mahatma Gandhi Marg, 30/22, Mahatma Gandhi Marg, 30A, Mahatma Gandhi Marg, 17/9A, Sardar Patel Marg, 19/9, Sardar Patel Marg, 21/9C, Sardar Patel Marg, 23/9B, Sardar Patel Marg, 32/18B, Lal Bahadur Shastri Marg and 30/18A, Lal Bahadur Shastri Marg. Out of these, property No. 30/18A, Lal Bahadur Shastri Marg is the residential house of the assessee while the remaining are under tenancies. For the assessment years 1972-73 to 1974-75, the assessee valued these properties, except property No. 30A, Mahatma Gandhi Marg, at ten times of the rental income. As for the properties at 30A, Mahatma Gandhi Marg, which was constructed in 1962, at a cost of Rs. 1,19,000 and which was let out to the Bank of Baroda, the basis adopted was the cost of construction. It may be noted that for the assessment year 1961-62, the Income Tax Appellate Tribunal had adopted the multiple of ten times of the rental income in regard to the aforesaid properties, except property at 30A, Mahatma Gandhi Marg, for which the cost of construction was taken as the basis. Thereafter, up to the assessment year 1970-71, the aforesaid constituted the basis for determining the value of these properties for purposes of assessment under the W.T. Act. The assessee had claimed that the value of these properties, as shown by him in the return, should be accepted because they stood on leasehold lands and the leases in respect of the same had expired and had not been renewed. That being so, the right of the assessee in these lands was in jeopardy and in case the lessor required the assessee to remove his constructions from these lands, the buildings would have only scrap value.

3. The WTO, in view of the net income earned by the assessee from these properties as also of the fact that though the leases had expired in 1958 and 1963, no action had been taken by the Government of Uttar Pradesh to get vacant possession of the lands occupied by these buildings nor was there any likelihood for any such action, did not accept this contention. The net income from these properties as per Income Tax records had been shown as under :

"1971-72-58,044 (As per assessment) 1972-73-58,394 (As per assessment)
1973-74-58,234 (As per return) 1974-75-62,090 (As per return)

4. The WTO, accordingly, adopted the multiple of fifteen times of the net annual

rent in respect of all these properties including the property situated at 30A, Mahatma Gandhi Marg.

5. Aggrieved, the assessee filed appeals before the AAC. The AAC considered that it will be more fair and proper to value the properties at 12 1/2 times of the annual value thereof and allowed the appeals in part. From that order, both the assessee and the Department filed appeals before the Income Tax Appellate Tribunal.

6. The case taken on behalf of the assessee before the Appellate Tribunal was that the basis of valuation of these properties at ten times their annual income except the property at 30A, Mahatma Gandhi Marg, for which the basis was the cost of construction, had been accepted by the assessee as also by the Department up to the assessment year 1970-71, and there was no proper justification for making any departure therefrom, In regard to property at 30A, Mahatma Gandhi Marg, it was contended that it was fetching a higher rent because of its location and not because of the intrinsic value of the building and, therefore, the cost of construction should be treated as the proper basis as had been done in the past. In the alternative it was contended that since all the properties stood on leasehold lands, the leases whereof had expired, they had no market value and the assessee, being a tenant at sufferance or by holding over, had no interest in the properties and as such the same did not constitute an "asset" within the meaning of Section 2(e)(v) of the Act. The Tribunal did not accept these contentions and held that the disputed properties constituted "assets" of the assessee within the meaning of the aforesaid provision and, as for the valuation of the same, adopted the multiple of ten times the rental income in respect of all of them. Now, at the instance of the assessee, the aforesaid questions have been referred to this court.

7. So far as questions Nos. 1 and 2 are concerned, the undisputed facts found by the Appellate Tribunal are that the leases of the lands on which these buildings stand expired in 1958, except of 30A, Mahatma Gandhi Marg, the lease of which expired in 1963. The building standing on this land was constructed in 1962 at a cost of RS. 1,19,000. It was some time in 1958, that a notice was received by the assessee from the State Government. A copy of that notice has not been made an annexure to the statement of the case, nor the substance thereof, is contained in the order of the Appellate Tribunal or in the statement of the case. However, apart from that notice, no other action appears to have been taken by the State Govt. up till now to obtain vacant possession of these lands from the assessee. The questions which thus fall for our consideration are : Firstly, what is the status of the assessee qua these properties ? and, secondly, whether the interest which the assessee has in these properties is an asset within the meaning of Section 2(e)(v) of the Act liable to be included in the net wealth under Clause (m) of that section for purposes of assessment to wealth-tax ? We shall examine these two questions separately.

8. Taking up the first question, u/s 105 of the Transfer of Property Act, a lease of

immovable property is a transfer of a right to enjoy such property. This right is heritable and transferable. A lease may be in perpetuity or may be for a certain term. If the lease is for a fixed period with an option of renewal, whether of the tenant or of the lessor, it does not affect the duration of the term, the reason being that the option until exercised creates no interest in the leased property. Under Clause (q) of Section 108, on the determination of the lease, whether by notice or by efflux of time, the lessee is bound to put the lessor in vacant possession. If the lessee fails to restore vacant possession, he is liable in damages for the breach of this obligation. As for the effect of holding over, we may read Section 116 of the Transfer of Property Act at this place. This section reads :

"If a lessee or under-lessee of property remains in possession thereof after the determination of the lease granted to the lessee, and the lessor or his legal representative accepts rent "from the lessee or under-lessee, or otherwise assents to his continuing in possession, the lease is, in the absence of an agreement to the contrary, renewed from year to year, or from month to month, according to the purpose for which the property is leased, as specified in Section 106."

9. The expression "holding over" is used in the sense of retaining possession. A distinction should be drawn between a tenant continuing in possession after the determination of the lease, without the consent of the landlord and a tenant doing so with the landlord's consent. The former is called a tenant by sufferance and the latter is a tenant holding over. In our opinion, a lessee holding over with the consent of the lessor is in a better position than a mere tenant at sufferance or a tenant at will. A tenancy by sufferance is converted into a tenancy at will by the assent of the landlord. Such assent may be expressed by acceptance of rent by the lessor from the lessee, or otherwise assenting to his possession. Such assent, after the determination of the tenancy, would create a new tenancy. It would be useful in this connection to refer to a decision of the Supreme Court in *Yeshwant Singh v. Rao Jagdish Singh* AIR 1968 SC 620. The question for consideration in that case was as to whether a tenant continuing in possession after the determination of tenancy is entitled to recover possession if he is dispossessed by the landlord from prior juridical possession within six months from the suit. In other words, whether a landlord can forcibly enter and drive out the tenant whose tenancy is alleged to have been extinguished ? The court gave an answer to these questions in favour of the tenant and in doing so approved the decision of the Privy Council rendered in *Midnapur Zamindary Co. Ltd. v. Naresh Narayan Roy* AIR 1924 PC 144 , of the Bombay High Court in *K.K. Verma and Another Vs. Union of India and Another* , and of a Full Bench of this court in *Yar Muhammad and Another Vs. Lakshmi Das and Others* , . Chagla C.J. in *K.K. Verma's* case had observed (p. 360):

"Under the Indian law, the possession of a tenant who has ceased to be a tenant is protected by law. Although he may not have a right to continue in possession

after the termination of the tenancy, his possession is juridical and that possession is protected by statute. u/s 9 of the Specific Relief Act, a tenant who has ceased to be a tenant may sue for possession against his landlord if the landlord deprives him of possession otherwise than in due course of law, but a trespasser who has been thrown out of possession cannot go to court u/s 9 and claim possession against the true owner."

10. The principle of law laid down in Yar Muhammad"s case by this court was (p. 4):

"No question of title either of the plaintiff or of the defendant can be raised or gone into in that case (under Section 9 of the Specific Relief Act). The plaintiff will be entitled to succeed without proving any title on which he can fall back upon and the defendant cannot succeed even though he may be in a position to establish the best of all titles. The restoration of possession in such a suit is, however, always subject to a regular title suit and the person who has the real title or even the better title cannot, therefore, be prejudiced in any way by a decree in such a suit. It will always be open to him to establish his title in a regular suit and to recover back possession."

11. The court further observed :

"Law respects possession even if there is no title to support it. It will not permit any person to take the law in his own hands and to dispossess a person in actual possession without having recourse to a court. No person can be allowed to become a judge in his own cause."

12. It is thus established that even a tenant by sufferance has a juridical title and his possession is protected by Section 9 Section 6 of the Specific Relief Act. He is entitled to continue in possession of the tenanted property unless he is evicted by the landlord by due process of law. The landlord cannot deprive him of his possession otherwise than by taking recourse to legal proceedings. In other words he is not a trespasser. So far as a tenant holding over is concerned, a new tenancy is created by the assent of the landlord to the continuance of his tenancy after the determination thereof. This assent may be expressed by acceptance of rent from the tenant by the landlord or his otherwise assenting to the tenant continuing in possession. The basis of Section 116 is a bilateral contract between the erstwhile landlord and the erstwhile tenant. The assent of the lessor maybe inferred from numerous circumstances, for instance, acceptance of rent, demand of rent, suit for rent and the like. These circumstances certainly create a presumption which may be rebuttable. The assent of the landlord cannot be inferred merely from his delay in taking steps to evict the lessee but if a tenant is allowed to retain possession for a considerably long period, the court would be justified in inferring that there was a tenancy by holding over.

13. It was urged by Sri Raja Ram Agrawal, learned counsel for the asses-see, that in the event of determination of tenancy by efflux of time, if the tenant continues in possession, he will be called a tenant by sufferance but in case the

landlord consents to his continuing in possession, he will be a tenant holding over or becomes a statutory tenant on account of some statutory provision. According to the learned counsel, the assessee in the present case was only a tenant by sufferance and only his dispossession was secured except in due course of law. According to the counsel, juridical right is in the nature of a negative right inasmuch as the landlord cannot evict the tenant otherwise than in due course of law and thus it is not a positive right as such. In other words, its origin will not be in some legal right or legal interest. In support of his contentions learned counsel invited our attention to certain decisions of the Supreme Court. In *Badrilal Vs. Municipal Corporation of Indore*, , the question for consideration was as to whether a tenant at sufferance was entitled to a notice before he could be evicted. Their Lordships approved the principle that a person lawfully in occupation does not become a trespasser even if he does not become a tenant by holding over but is a tenant by sufferance. The position at law explained in AIR 1949 124 (Federal Court) , was followed. That principle is as follows (p. 127, Col. 1) :

"On the determination of a lease, it is the duty of the lessee to deliver up possession of the demised premises to the lessor. If the lessee or a sub-lessee under him continues in possession even after the determination of the lease, the landlord undoubtedly has the right to eject him forthwith; but if he does not, and there is neither assent nor dissent on his part to the continuance of occupation of such person, the latter becomes in the language of English law a tenant on sufferance who has no lawful title to the land but holds it merely through the laches of the landlord. If now the landlord accepts rent from such person or otherwise expresses assent to the continuance of his possession, a new tenancy comes into existence as is contemplated by Section 116, Transfer of Property Act, and unless there is an agreement to the contrary, such tenancy would be regarded as one from year to year or from month to month in accordance with the provisions of Section 106 of the Act."

14. The same position was accepted in *Bhawanji Lakhamshi and Others Vs. Himatlal Jamnadas Dani and Others*, it has been observed :

"The act of holding over after the expiration of the term does not create a tenancy of any kind. If a tenant remains in possession after the determination of the lease, the common law rule is that he is a tenant on sufferance. A distinction should be drawn between a tenant continuing in possession after the determination of the term with the consent of the landlord and a tenant doing so without his consent. The former (sic) flatter ?) is a tenant at sufferance in English law and the latter (sic) (former ?) a tenant holding over or a tenant at will. In view of the concluding words of Section 116 of the Transfer of Property Act, a lessee holding over is in a better position than a tenant at will. The assent of the landlord to the continuance of possession after the determination of the tenancy will create a new tenancy. What the section contemplates is that on one side there should be an offer of taking a new lease evidenced by the lessee or sub-

lessee remaining in possession of the property after his term was over and on the other side there must be a definite consent to the continuance of possession by the landlord expressed by acceptance of rent or otherwise."

15. The view taken in AIR 1949 124 (Federal Court) , was quoted with approval by their Lordships in Bhawanji's case thereafter. After quoting these two decisions the court in Badrilal Vs. Municipal Corporation of Indore, , held that the appellant being merely a tenant by sufferance there was no need for any notice before he could be evicted.

16. From these decisions, therefore, it is now a settled principle of law that on the determination of a lease by efflux of time or by notice, it is the duty of the lessee to deliver vacant possession of the demised premises to the lessor. If he continues in possession even after the determination of the lease, his possession is secured inasmuch as the lessor cannot evict him otherwise than in due course of law. If he continues in possession without the assent or dissent of the landlord, he would be tenant at sufferance. His possession would be wrongful but not unlawful. It is wrongful because the erstwhile tenant continues in possession beyond the expiry of the period fixed in the lease. It is not unlawful because the landlord cannot take the law into his own hands and evict him. But in case the landlord expresses his assent by acceptance of rent or otherwise to his continuing in possession his wrongful possession would be converted into a lawful one. The landlord's assent may be express or implied. There may be direct evidence in support of such assent or it may be inferred from the circumstances as well. One such circumstance is the length of the tenant's possession. In other words, the absence of a dissent, if it continues for a sufficiently long period, may with the aid of other circumstances and in the absence of any contrary intention, reasonably give rise to an inference of assent. In Ram Barai Singh Vs. Tirtha Pada Misra, , where the tenant retained possession for 11 years after the expiration of the lease, the court inferred that there was a tenancy by holding over.

17. If the facts and circumstances of the instant case are examined in the background of this legal position, it would appear that the assent of the landlord to the assessee's continuing in possession of these properties after, the determination of the leases thereof by efflux of time can be reasonably inferred. As noted above, the leases of these properties expired in 1958 and that of 30A, Mahatma Gandhi Marg, in 1963. Even though the lease of this property was going to expire in 1963 and in respect of other leasehold properties the assessee had received notice from the Collector in 1958, the assessee constructed a property on this land at a huge cost of Rs 1,19,000. The notice was given only in 1958. There is nothing on the record to show that any attempt was made whatsoever by the State Govt. to enforce that notice. The assessee has continued in peaceful possession and enjoyment of these properties all along. In our opinion, therefore, assent of the landlord to the assessee's continuing in possession of these properties can be inferred and that being so the assessee would be treated

to be a tenant of the same by holding over.

18. In this behalf it was also urged by Sri Raja Ram Agrawal that the decision in Yeshwant Singh's case AIR 1968 SC 620 , has been subsequently explained by that court in M.C. Chockalingam and Others Vs. V. Manickavasagam and Others, . We do not think that in this latter case the ratio of Yeshwant Singh's case has been overruled. In Yeshwant Singh's case the nature of the possession of a tenant after the determination of a lease was explained and it was held that that it was juridical. In M.C. Chockalingam's case their Lordships have said that the question of rightful possession of such a lessee does not enter the issue at the stage of a suit u/s 6(new) of the Specific Relief Act. It has been laid down ;

"We are clearly of opinion that juridical possession is possession protected by law against wrongful dispossession but cannot per se always be equated with lawful possession." (para 15).

19. We have also taken the view above that the possession of a tenant at sufferance is juridical but it is not rightful. The nature of the possession of the assessee is not that of a tenant at sufferance but is that of a tenant holding over. In other words, the assessee is a lessee of these properties, after the determination of the earlier leases under a new contract of tenancy. This tenancy is a tenancy from month to month u/s 116 read with Section 106 of the Transfer of Property Act. This tenancy is both heritable and transferable, vide Ram Barai Singh Vs. Tirtha Pada Misra, . In Arshad Waliullah Vs. Controller of Estate Duty, , our court held that the interest of such a tenant, upon his death, passes to his heirs and is subject to estate duty. Such a lease is described in Section 108, Sub-clause (i), of the Transfer of Property Act as a lease of uncertain duration and under Article 35 of the Stamp Act as a lease which does not purport to be for any definite period. The interest of the lessee, therefore, does not terminate at the end of the period. In The Utility Articles Manufacturing Company Vs. The Raja Bahadur Motilal Bombay Mills Ltd., , this is what Beaumont C.J. said in regard to the nature of periodical leases (p. 309):

"A monthly tenancy, that is a tenancy subject to a month's notice, creates, in the first instance, a tenancy for two months certain. But as soon as the third month commences, that is not a new tenancy; it turns the original tenancy into a three months' tenancy, and when the fourth month begins, the tenancy becomes a four months' tenancy, and so on so long as the tenancy continues, until, that is to say, notice to quit is given."

20. Relying on this decision in Usharani Debi v. Research Industries Ltd. [1945] 50 CWN 461, Gentle J. said i

"A monthly tenancy, in my view, is not a tenancy which commences or begins in one month and on its expiry a fresh tenancy is created in the following month or months, but is one tenancy for an unstated period which is determinable by one or other of the parties giving a notice to quit."

21. The decision of the Patna High Court in *Firm Ganesh Das Ram Gopal v. Jamuna Das* AIR 1945 Pat 385, is to the like effect.

22. The nature of the present tenancy, therefore, is that it is a tenancy for an unstated period and this being so there is no justification for saying, as contended by Sri Agrawal for the assessee, that this tenancy is precarious in nature or that the rights of the lessee are in jeopardy. According to the learned counsel interest in the property howsoever limited should be a legal interest or right. We have amply shown above that the interest of the assessee, which has come into existence as a result of this new contract of tenancy, is a rightful and legal interest. It is not precarious in nature. Though it is a tenancy from month to month, it is a tenancy for an unstated period.

23. This takes us to the second question which is : Whether the interest which the assessee has in these properties is an asset within the meaning of Section 2(e)(v) of the Act liable to be included in his net wealth for purposes of assessment to wealth-tax ? The answer to this question has now become rather quite easy because of the nature of the assessee's right discussed above. u/s 3 of the Act, the charge is for every assessment year commencing on and from the first day of April, 1957, in respect of the net wealth on the corresponding valuation date of every individual, HUF and company. The expression "net wealth" is defined in Clause (m) of Section 2 of the Act to mean:

"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..."

24. There are two key words in this provision and they are "assets" and "belonging to". There can be no dispute that the expression "belonging to the assessee" connotes both complete ownership and limited ownership or interest, e.g., right of user vesting in a tenant or leasehold rights. It includes contingent interest as well as beneficial interest or ownership in respect of trusts settled on trustees who are legal owners. What we mean to emphasise is that the expression "belonging to the assessee" embraces within its scope leasehold rights or the right of user which a tenant has in a demised property. Clause (e) of Section 2 of the Act defines the expression "assets". The relevant provision reads ;

"(e) "Assets" include property of every description, movable or immovable, but does not include--

(1) in relation to the assessment year commencing on the 1st day of April, 1969, or any earlier assessment year--...

(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. In Sub-clause (v) of Clause (e) aforesaid, the words "from the date the interest vests in the assessee" were inserted by Section 2(b) of the W.T. (Amend.) Act of 1964. This sub-clause prior to its amendment stood as under :

"(v) Any interest in property where the interest is available to an assessee for a period not exceeding six years."

26. It would be seen that in effect this Clause does not define the word "assets", but equates it with property. That expression has not been defined. Even the Transfer of Property Act has not defined it. However, in J.K. Trust, Bombay Vs. Commissioner of Income Tax, Excess Profits Tax, Bombay City, , the Supreme Court observed that this expression is a term of the widest import and subject to any limitation or qualification which the context might require, it signifies every possible interest which a person can acquire, hold or enjoy. In Amar Singh Vs. Custodian, Evacuee Property, Punjab, , where their Lordships had occasion to consider whether the incidence of quasi-permanent allotment showed that the sum total thereof constituted even a qualified ownership to the land allotted, took the view that the word "property" is one of very general meaning and comprehensiveness. In other words, therefore, the expression "property" is a term of the widest import and subject to any limitation which the context may require it signifies every possible interest which a person can acquire hold or enjoy. Also see The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt., and Ahmed G.H. Ariff and Others Vs. Commissioner of Wealth Tax, Calcutta, . In Ahmed G.H. Ariff's case it has been further ruled that there is no reason or justification to give any restricted meaning to the word "asset" as defined in Section 2(e) of the Act when the language employed shows that it was intended to include property of every description. In that case the right to receive an aliquot share of the net income of waqf properties was held to be an asset within the meaning of this provision.

27. According to Sri Agrawal, even though the right of a tenant holding over may be treated as an asset within this provision, it would have to be excluded for the reason that the original tenancy came to an end and thereby despite the fact that a fresh contract of tenancy was created, since the nature of this tenancy is precarious and it cannot be said that it has vested in the assessee for over six years, it would have to be excluded under the latter part of Sub-clause (v). After hearing counsel for the parties, we do not find much merit in his submission either. We have already held above that in the circumstances of the present case it can be reasonably inferred that the assessee is a tenant of the properties by holding over. In other words, he is now a tenant of these properties under a fresh contract of tenancy. This tenancy is from month to month. We have also shown that this tenancy is for an unstated period determinable by one or the other party by giving notice to quit. It has continued for over six years. In other words, this interest has been available to the assessee for a period exceeding six years from the date the interest vested in him, as on the relevant valuation dates. In our opinion, therefore, the requirement contained in the sub-clause stands fully

satisfied and the interest which the assessee has in the disputed properties is an asset within the meaning of Section 2(e)(v). It is not a mere hope or expectation which certainly cannot be regarded as a property unless and until it culminates into a definite and indefeasible right or interest in the subject-matter. It is a transferable and heritable right and it has been available to the assessee for a period exceeding six years from the date of its creation.

28. Learned counsel placed reliance on the decision of the Supreme Court in Commissioner of Wealth-tax, Madras Vs. Smt. R.A. Muthukrishna Ammal and Martinammal Machado, . In our opinion that decision is distinguishable because it was rendered under Sub-clause (v) aforesaid as it stood before its amendment in 1964. We have mentioned above that by the aforesaid amendment, the words "from the date the interest vests in the assessee" were added at the end and now if an interest has been available to the assessee for a period exceeding six years from the date the interest vests in the assessee, it would be an asset, while prior to its amendment, if an interest was not available to an assessee for a period not exceeding six years, it could not be treated as an asset. That provision can be interpreted to mean that the interest should be available to an assessee for a period exceeding six years from the relevant valuation date. In other words, if on the relevant valuation date the period for which the interest was available was less than six years, it could not be treated as an asset. In Commissioner of Wealth-tax, Madras Vs. Smt. R.A. Muthukrishna Ammal and Martinammal Machado, , the respondent had taken on lease certain salt pans from the Govt. of India. In the lease, the period was stated to be 25 years "provided that the lessor or the lessee shall be at liberty to determine the lease on giving to the other of them notice in writing at the close of the salt manufacturing season". The question was whether the value of the respondent's leasehold interest in the salt pans was an "asset" within the meaning of Section 2(e)(v) of the Act, as it stood before its amendment, and its value could be included in the net wealth of the respondent for the assessment year 1959-60. These agreements were of January 1, 1943, and January 1, 1945. It was held that the interest of the lessee in the lease was precarious ; it was liable to be determined by notice by the Government on the expiry of any manufacturing season. The leasehold interest in the salt pans was, therefore, not available to the respondent for a period exceeding six years from the valuation date and hence it was not an asset within the meaning of Section 2(e)(v) of the Act as it stood prior to its amendment by the W.T. (Amendment) Act, 1964, and its value could not be included in the net wealth of the respondent.

29. As mentioned above, the requirement under consideration was the availability of the interest for a period not exceeding six years. In other words as on the relevant valuation date of the appropriate year the interest should have been available to an assessee for at least six years. The lease being liable to determination by either party on giving to the other of them a notice in writing at the close of the salt manufacturing season, it could not be said that as on the valuation date of the appropriate year the interest was available for a period not

exceeding six years. The amendment has now introduced a significant alteration inasmuch as the availability of the interest for a period not exceeding six years is to be seen from the date the interest vests in the assessee. In the present case we have shown that the interest available to the assessee in the disputed properties has been for a period exceeding six years from the date the new contract of tenancy came into existence. In our opinion, therefore, this decision does not help the assessee. In view of the discussion above we agree with the view taken by the Appellate Tribunal.

30. Now, coming to questions Nos. 3, 4 and 5, as has been indicated above, the basis of valuation adopted in respect of the properties of the assessee except 30A, Mahatma Gandhi Marg, was a multiple of ten times of the annual rental income. For this property the basis was the cost of its construction. For the years under consideration, for this property as well, the basis of rental income has been adopted. In doing so, the reason given by the Appellate Tribunal is that the value of a building very much depends on its location which is certainly relevant for determining its market value. So far as this property is concerned, looking to its location and the rent which it is fetching, it has been considered proper to estimate its value on the net rental basis. In our opinion, the finding is based on a consideration of relevant facts and there is no occasion for taking a contrary view.

31. Our answers to these questions, therefore, are in the affirmative, in favour of the Department and against the assessee. The respondent, Commissioner, is entitled to costs which we assess at Rs. 750.