
(1968) 04 SC CK 0036

In the Supreme Court Of India

Case No : Writ Petition (Civil) 153 of 1967

Sudhir Chandra Nawn

APPELLANT

Vs

Wealth-tax Officer, Calcutta & Ors

RESPONDENT

Date of Decision : 23-04-1968

Acts Referred:

Wealth Tax Act, 1957 — Section 7(1)

Citation : AIR 1969 SC 59 : (1969) 68 ITR 897 : (1969) 1 SCR 108

Hon'ble Judges : Vishishtha Bhargava, J;V. Ramaswami, J;J. C. Shah, J;G. K. Mitter, J;C. A. Vaidyalingam, J

Bench : Full Bench

Final Decision : dismissed

Judgement

Shah J.

1. For the years 1959-60, 1960-61 and 1961-62 the petitioner was assessed to tax under the Wealth-tax Act, 1957, by the Wealth-tax Officer C-Ward, District II(1) Calcutta. The petitioner failed to pay the tax and proceedings for recovery of tax and penalty were taken against him. The petitioner then moved this court for a writ quashing the order of assessment and penalty and notices of demand for recovery of tax. The petition was sought to be supported on numerous grounds, none of which has, in our judgement, any substance, The plea that wealth-tax is chargeable only on the accretion of wealth during the financial year is contrary to the plain words of the charging section. Section 3 of the Wealth-tax Act, as it stood in the relevant years, declared that there shall be charged for every financial year a 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. The expression "net wealth" is defined in s. 2(m) as meaning "the amount by which the aggregate value computed in accordance with the provisions of the Act of all the assets, wherever located, belonging to the assessee on the valuation date, including assets required to be included in this net wealth as on the date under the 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 hi s. 2(e) as inclusive of property of every description, movable or immovable, but not including agricultural land and growing crops, grass or standing trees on such land. By s. 3 charge is imposed upon the net wealth of an assessee on the corresponding valuation date. The charge thereby imposed is on the "net wealth on the corresponding valuation date" and not on the increase in the wealth of the assessee, or accretion to the wealth of the assessee since the last valuation date.

2. It was urged that Parliament could not have intended that the same assets should continue to be charged to tax year after year. But there is no constitutional prohibition against Parliament levying tax in respect of the same subject-matter or taxing event in successive assessment periods.

3. Parliament enacted the Wealth-tax Act in exercise of the power under List I of the Seventh Schedule, entry 86, "Taxes on the capital value of assets, exclusive of agricultural lands, or individuals and companies : taxes on the capital of companies". That was so assumed in the decision of this court in Seth Banarsi Das etc. Vs. Wealth Tax Officer, Special Circle Meerut, etc., , and counsel for the petitioner accepts that the subject of Wealth-tax Act. falls within the terms of entry 86 List I, of the Seventh Schedule. He says, however, that since the expression "net wealth" includes non-agricultural lands and buildings of an assessee, and power to levy tax on lands and buildings is reserved to the State legislatures by entry 49, List II, of the Seventh Schedule, the Parliament is incompetent to legislate for the levy of wealth-tax on the capital value of assets which include non-agricultural lands and buildings. The argument advanced by counsel for the petitioner is wholly misconceived. The tax which is imposed by entry 86, List I of the 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 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.

4. In *Ralla Ram. v. Province of East Punjab* [1948] F.C.R. 207 the Federal Court held that the tax levied by section 3 of the Punjab Urban Immovable Property Tax Act, 1940 (17 of 1940), on buildings and lands situated in a specified area at such rate not exceeding twenty per centum of the annual value of such buildings and lands, as the Provincial Government may, by notification in the Official Gazette, direct in respect of each such rating area, was not a tax on income but was a tax on lands and buildings within the meaning of item No. 42 of List II of the Seventh Schedule of the Government of India Act, 1935. In that case it was contended that under the provisions of the Punjab Act basis of the tax was the annual value of the buildings and since the same basis was used in the income tax Act for determining the income from property and, generally speaking, the annual value is the fairest standard for measuring income and, in many cases, is indistinguishable from it, the tax levied by the impugned Act was substance a tax on income. The Court pointed out that the annual value is not necessarily actual income, but is only a standard by which income may be measured, and merely because the income tax Act had adopted the annual value as the standard for determining the income, it did not follow that, if the same standard is employed as a measure for any other tax, that latter tax becomes also a tax on income.

5. In the case of a tax on lands and buildings, the value, capital or annual, would be determined by taking the land or building or both as a unit and subjecting the value to a percentage of tax. In the case of wealth-tax the charge is on the valuation of the total assets (inclusive of lands and buildings) less the value of debts and other obligations which the assessee has to discharge. Merely because in determining the taxable quantum under taxing statutes made in exercise of power under entries 86, List I, and 49, List II, the basis of valuation of assets is adopted, trespass on the field of one legislative power over another may not be assumed.

6. Assuming that there is some overlapping between the two entries, it cannot, on that account, be said that Parliament had no power to legislate in respect of levy of wealth-tax in respect of the lands and buildings which may form part of the assets of the assessee. As observed by Gwyer C.J. in *In re Central Provinces and Berar Act No. XIV of 1938* [1939] F.C.R. 18:

"... a general power ought not to be so construed as to make a nullity of a

particular power conferred by the same Act and operating in the same field, when by reading the former in a more restricted sense effect can be given to the latter in its ordinary and natural meaning."

7. Apparently, an entry "taxes on lands and buildings" is a more general entry than the entry in respect of a tax on the capital value of assets of an individual or a company, and by conferring upon Parliament the power to legislate on capital value of the assets including lands and buildings, the power of the State legislature was pro tanto excluded.

8. The scheme of article 246 of the Constitution which distributes legislative powers between Parliament and State legislature must be remembered. Article 246 provides :

"(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.

(2) Notwithstanding anything in clause (3), Parliament, and, subject to clause (1), the legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule.

(3) Subject to clauses (1) and (2), the legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule."

9. Exclusive power to legislate conferred upon Parliament is exercisable, notwithstanding anything contained in clauses (2) and (3), that is made more emphatic by providing in clause (3) that the legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule, but subject to clauses (1) and (2). Exclusive power of the State legislature has, therefore, to be exercised subject to clause (1), i.e., the exclusive power which Parliament has in respect of the matters enumerated in List I. Assuming that there is a conflict between entry 86, List I, and entry 49, List II, which is not capable of reconciliation, the power of Parliament to legislate in respect of a matter which is exclusively entrusted to it must supersede pro tanto the exercise of power of the State legislature. The problem viewed from any angle is incapable of a decision in favour of the assessee.

10. The High Courts have consistently taken the view in cases in which the question under discussion expressly fell to be determined, that the power to levy tax on lands and buildings under entry 49, List II, does not trench upon the power conferred upon Parliament by entry 86, List I, and, therefore, the enactment of the Wealth-tax Act by Parliament is not ultra vires. In KHAN BAHADUR CHOWAKKARAN KELOTH MAMMAD KEYI Vs. WEALTH-TAX OFFICER, CALICUT., , the High Court of Kerala held that wealth-tax in specifically and in substance covered by entry 86 of the Union List of the Seventh Schedule to the

Constitution of India, and there is really no conflict and no overlapping between the jurisdiction of Parliament under entry 80 of the Union List to enact a law levying a tax on the capital value of assets, and of the State legislature under entry 49 of the State List to enact a law levying a tax on lands and buildings. A similar view was expressed by the Orissa High Court in *Vysya Raju Badri Narayanamurthy Vs. Commissioner of Wealth Tax*, ; and also in *Sri Krishna Rao L. Balckai v. Third Wealth-tax Officer* AIR 1963 Mys. 111.

11. Reliance was, however, placed by counsel for the petitioner upon certain observations made by Jagdish Sahai J. in *Oudh Sugar Mills Ltd. v. State of U.P.* In that case the validity of the U.P. Large Land Holdings Act, 1957 (31 of 1957), was challenged on the ground that the power to tax covered by the Act was not conferred upon the State legislature by List II, entry 49. The court in that case held that the tax under the Act was a tax on the holding and not on the annual value or the capitalised value of the land and the annual value was only the measure of the tax. Jagdish Sahai J. proceeded, however, to observe that the meaning of the word "assets" in entry 86 of List I should exclude land, both agricultural as well as non-agricultural, from its ambit in order to give full scope to the expression "taxes on land" occurring in entry 49 of List II. But it was not necessary for deciding the question falling to be determined in that case to enter upon the question whether a tax on the capitalised value of non-agricultural lands forming part of the assets of an assessee is covered by entry 86 List I or entry 49 List II. That is so expressly stated by the learned Judge. The Court was concerned only to deal with the question whether the U.P. Large Land Holdings Act fell within entry 49 of List II. The observations made by the learned Judge were plainly obiter, and, in our judgment, do not correctly interpret entry 86 List I.

12. The plea that section 7(1) of the Wealth-tax Act is ultra vires Parliament is also wholly without substance. That clause provides :

"Subject to any rules made in this behalf, the value of any assets, 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."

13. It was urged that no rules were framed in respect of the valuation of lands and buildings. But section 7 only directs that the valuation of any asset other than cash has to be made subject to the rules. It does not contemplate that there shall be rules before an asset can be valued. Failure to make rules for valuation of a type of asset cannot therefore affect the vires of section 7. It was also said that section 7(1) which requires that the asset shall be valued at the price which it would fetch if sold in the open market on the valuation date, was expropriatory. This contention was not raised in the petition, and no ground is made out for holding that the rate at which wealth-tax is levied is expropriatory.

14. The petitions fail and are dismissed with costs. One hearing fee.

15. Petitions dismissed.