
(1965) 01 CAL CK 0028
In the Calcutta High Court
Case No : Wealth Tax Matter No. 227 of 1962

Tea Estates India Private Ltd.

APPELLANT

Vs

Commissioner of Wealth Tax

RESPONDENT

Date of Decision : 29-01-1965

Acts Referred:

Wealth Tax Act, 1957 — Section 2, 7(2)

Citation : AIR 1966 Cal 9 : 69 CWN 428 : (1966) 59 ITR 428

Hon'ble Judges : S.A. Masud, J;G.K. Mitter, J

Bench : Division Bench

Advocate : D. Pal and M. Seal, for the Appellant; B.L. Pal and B. Gupta, for the Respondent

Judgement

Masud, J.—The facts relevant to this reference u/s 27(1) of the Wealth Tax Act are as follows:

2. The relevant Wealth Tax assessment years relate to 1957-58, 1958-59 and 1959-60, the corresponding valuation dates of which are 30th June 1956, 30th June 1957 and 30th June 1958 respectively. The assessee is a limited company engaged in the business of growing, manufacturing and selling tea and owns tea estates in India. In respect of the assessment for the years 1957-58 and 1958-59, the assessee claimed deductions for the value of their water supply system representing water tanks, pipelines etc. and roads and bridges employed and used in the assessee's tea estates in computing the net wealth of the assessee on the valuation dates. The relevant amounts are Rs. 14,057 and Rs. 16,690 being the value of water supply for the two years respectively and Rs. 33,702 and Rs. 31,948 being the value of roads and bridges respectively for the two years. The assessee also claimed that a part of the tea estate land in which the forest grows spontaneously arid which was not used for growing tea crops was agricultural land within the meaning of Section 2(e)(i) of the Wealth Tax Act and, as such, the value of such land cannot be included in the valuation of the assessee's assets. The Wealth Tax Officer estimated the value of the non-

agricultural land at Rs. 50,000 and included the same in computing the net wealth of the assessee on the valuation dates. Further the assessee had made provisions for its taxation liability in its accounts on the respective valuation dates, the relevant amounts being Rs. 15,02,078, Rs. 18,07,027 and Rupees 30,65,094 for 1957-58, 1958-59 and 1959-60 respectively. The assessee claimed the amounts as a deduction in computing its net wealth. The aforesaid three claims of the assessee under three heads were disallowed by the Wealth Tax Officer and the Appellate Assistant Commissioner. On further appeal, the Tribunal also did not accept the assessee's contention and confirmed the orders of the Wealth Tax Officer. Three questions of law arising out of the aforesaid facts have been referred to us which may be stated as below:

"1. Whether on the facts and in the circumstances of the case, the water supply system representing water tanks and pipelines etc. and roads and bridges employed or used in the assessee's tea estates were agricultural lands within the meaning of Section 2(e)(i) of the Wealth Tax Act?

2. Whether a part of the tea estate land in which the forest grows continuously and which was not used for growing tea bushes was agricultural land within the meaning of Section 2(e)(i) of the Wealth Tax Act?

3. Whether on the facts and in the circumstances of the case, the provision for taxation as made by the assessee on the respective valuation dates constituted a debt owed by the assessee within the meaning of Section 2(m) of the Wealth Tax Act and, as such deductible in computing the net wealth?"

3. It may be stated here that the question No. 3 is common to all the three years in the reference, question No. 1 relates to the assessment years 1957-58 and 1958-59 and question No. 2 relates to the assessment years 1958-59 and 1959-60 only. In respect of the first question of law, the learned counsel for the assessee has contended that the water supply system representing water tanks, and pipelines etc. and roads and bridges employed or used in the assessee's tea estates are "agricultural lands" within the meaning of Section 2(e)(i) of the Wealth Tax Act and, as such, the valuation made by the Wealth Tax Officer on this account should be excluded from the net wealth of the assessee as assessed by the Wealth Tax Officer. According to him, the entire water supply system representing water tanks and pipelines etc. as well as roads and bridges used in the assessee's tea estates are necessary incidents of a tea estate inasmuch as it is impossible to run and maintain a tea estate without such water supply system and roads and bridges. The learned counsel for the department, on the contrary, has submitted that the water tanks, pipelines etc. and roads and bridges cannot be held to be agricultural land u/s 2(e)(i) and their values cannot be excluded in calculating the net wealth of the assessee. According to him, the statute has not specifically exempted the water tanks and pipelines and roads and bridges and that, unless they are held to be essential components or elements of "agricultural land", the assessee cannot get the advantage of exemption u/s 2(e)(i).

4. We may at this stage discuss relevant provisions of the Wealth Tax Act 1957. Section 3 is the charging section whereby there shall be charged for every financial year commencing on and from the 1st of April 1957, the tax, known 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 the schedule. The net wealth has been defined in Section 2(m) as

"the amount by which the aggregate values 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 its 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-

(i) debts which u/s 6 are not to be taken into account; and

(ii) debts which are secured on or which have been incurred in relation to, any asset in respect of which wealth tax is not payable under this Act."

"Asset" under Section 2(e)--

"includes property of every description, moveable or immovable, but does not include

(i) agricultural land and growing crops, grass or standing trees on such land."

Section 5 enumerates exemptions in respect of certain assets. In construing the aforesaid sections, it appears that wealth tax is charged on every assessee in respect of all the assets belonging to the assessee on the valuation date, unless, of course, the assessee in computation of his assets gets advantage of certain deductions or exemptions u/s 2(e), 2(m) or Section 5 of the Act. The only controversial point between the parties on the first question is to determine whether "agricultural land" would mean and include water tanks, pipelines, etc. and roads and bridges. "Agricultural land" unfortunately has not been defined in the Act, and accordingly we shall have to determine the exact connotation and meaning of the said expression as applicable under the Act. It is well known that the terms "agricultural" "agricultural purpose" and "agricultural income" have been defined in several English and Indian statutes. But those statutory definitions, although useful for the purpose of understanding the concept of "agricultural land", could not be meticulously applicable to the cases under the Wealth Tax. In fact, even the expression "agricultural land" has also been defined in some enactments; for instance, Section 9 of the Agricultural Rates Act, (59 and 60 Vict., C. 16); provides:

"The expression "agricultural land" means any land used as arable, meadow, or pasture ground, cottage yards exceeding one-quarter of an acre, market gardens, nursery gardens, orchards or allotments but does not include occupied together with a house as a park, gardens other than as aforesaid pleasure grounds or any land kept or preserved mainly or exclusively for the purpose of sports or recreation or land used as a race course."

Similarly, "agricultural land" has been mentioned in items 86 and 18 of Lists 1 and 2 of the 7th Schedule to the Constitution of India. In discussing "agricultural land" as stated in Lists 2 and 3 of Schedule 7 to the Government of India Act, 1935, Patanjali Sastri, J. in *T. Sarojini Devi Vs. T. Sri Kristna*, has opined:

"In such context it seems to us that the expression "agricultural land" must receive the widest meaning for it would be somewhat grotesque to suppose that Parliament intended that lands devoted to the production of one kind of crop should devolve according to laws passed by Provincial Legislatures, while those used for growing other kind should pass according to laws made by the Central Legislature, at that "the circumstances in which the cultivation is carried on" (per Raleigh J. in *Srimath Jagathguru Sringeri Sri Satchithanantha Chandrasekhara Bharati Swamigal* by Agent T.C. Nataraja Mudali Vs. C.P. Duraiswami Naidu (dead) and Others, should determine the law which governs the devolution of the land. Nor could it have been intended that succession to such lands should depend on the degree of tillage or preparation of the soil or of the skill and labour expended in rearing and maintaining the plants. We are of opinion that for the purpose of the relevant entries in Lists 2 and 3 of Schedule 7, the expression "agricultural land" must be taken to include lands which are used or are capable of being used for raising any valuable plants or trees or for any other purposes of husbandry."

Our attention has been drawn to *Commissioner of Income Tax, West Bengal, Calcutta Vs. Raja Benoy Kumar Sahas Roy*, where Justice Bhagwati in construing "agricultural income" u/s 2(1) of the Income Tax Act 1922, has discussed large number of English and Indian cases dwelling on the meanings attributable to the words "agriculture" "agricultural income" "agricultural purpose" and other allied terms. Those cases no doubt throw new light to various aspects of the terms "agriculture", "agricultural income" and "agricultural purpose", yet in view of the fact the words "agricultural land" have not been defined in the Wealth Tax Act and no case has been cited before us on the meaning of "agricultural land" under the Wealth Tax Act, we prefer to have reliance on the plain meaning of "agricultural land" after taking recourse to authoritative dictionaries. According to Murray's Oxford Dictionary, "agricultural" means of or pertaining to agriculture, or connected with husbandry or tillage of the "ground" and "agriculture" has been described as "the science and art of cultivating the soil" "including the allied pursuits of gathering in the crops and rearing live stock or tillage, husbandry and farming (in the widest sense). In Stroud's Judicial Dictionary it is said that "agriculture" and "cultivation" shall include horticulture, and the use of land for any purpose of husbandry, inclusive of the keeping and breeding of livestock, poultry or bees, and the growth of fruits, vegetables and the like. But it may be noted that this description has been made on the basis of Section 20, Small Holdings Act 1892, 55 and 56 V. C. 31. Similarly, according to Wharton's Law Lexicon "agricultural land" means

"any land used as arable, meadow or pasture ground, any cottage gardens

exceeding one quarter of an acre, market gardens, nursery grounds, orchards or allotments, but does not include land occupied together with a house as a park, gardens other than as aforesaid pleasure grounds, or any land kept or preserved mainly or exclusively for the purpose of sports or recreation or land used as a race course."

Unfortunately this description also has been taken from Section 9 of the Agricultural Rates Act 1896. Burrows in his "Words and Phrases" judicially defined in describing "agricultural holding" has quoted Alness, Lord Justice Cleark from his judgment in *Kemp v. Ballachulish Estate Co. Ltd.* 1933 SC 478 :

"The phrase is not a technical term or a term of art. In my judgment the words are used in their ordinary significance as meaning land which is used for agricultural purposes."

Thus, the term "agriculture may be understood in a narrow or wide sense. A meaning; attached to the said term in one statute "does not necessarily throw any light on the meaning that is to be given to the same term in another statute. "Agriculture" may be restricted to only village or cultivation of a land or it may include all activities including horticulture, forestry, husbandry, dairying, butter and cheese making, etc. In view of the fact that there is no decision on the point, we are of opinion that we should restrict ourselves to the ordinary meaning of the term "agricultural land" and not get lost in the woods to find out the tree. As stated earlier "agricultural land" means pertaining to or connected with agriculture. In order to understand which lands pertain to or are connected with agriculture, we should find out whether a particular land is used or earmarked for agricultural operations. Agricultural operations have been defined by the Privy Council in (1948) 16 ITR 330 (Privy Council) as operations where there was some measure of cultivation of the land, some expenditure of skill and labour upon it. We may also usefully refer to the Supreme Court's discussion on this point in *Commissioner of Income Tax, West Bengal, Calcutta Vs. Raja Benoy Kumar Sahas Roy*, where Justice Bhagwati has stated at p. 507 of ITR: (at p. 788 of AIR):

"We have therefore to consider when it can be said that land is used for agricultural purposes or agricultural operations are performed on it. Agriculture is the basic idea underlying the expressions "agricultural purposes" and "agricultural operations" and it is pertinent therefore to enquire what is the connotation of the term agriculture. As we have noted above, the primary sense in which the term "agriculture" is understood is agar--field and cultra--cultivation i.e., cultivation of the field and if the term is understood only in that sense agriculture would be restricted only to cultivation of the land in the strict sense of the term meaning thereby tilling of the land, sowing of the seeds, planting and similar operations on the land. They would be the basic operations and would require the expenditure of human skill and labour upon the land itself. There are, however, other operations which have got to be resorted to by the agriculturists and which are absolutely necessary for the purpose of effectively raising the

produce from the land. They are operations to be performed after the produce sprouts from the land, e.g., weeding, digging the soil around the growth, removal of undesirable under-growths and all operations which foster the growth and preserve the same not only from insects and pests but also from depredation from outside, tending, pruning, cutting, harvesting and rendering the produce fit for the market. The latter would all be agricultural operations when taken in conjunction with the basic operations above described, and it would be futile to urge that they are not agricultural operations at all.

If the term "agriculture" is thus understood as comprising within its scope the basic as well as subsequent operations in the process of agriculture and the raising on the land of products which have some utility either for consumption or for trade and commerce, it would be seen that the term "agriculture" receives a wider interpretation both in regard to its operations as well as results of the same.

Nevertheless there is present all throughout the basic idea that there must be at the bottom of it cultivation of land in the sense of tilling of the land, sowing of the seeds, planting and similar work done on the land itself. This basic conception is the essential sine qua non of any operation performed on the land constituting agricultural operation. If the basic operations are there, the rest of the operations found themselves upon the same. But if these basic operations are wanting, the subsequent operations do not acquire the characteristic of agricultural operations."

5. It is true that this case has dwelt on the meaning of the terms "agriculture", and "agricultural operations" in the context of the Indian Income Tax Act 1922 for the purpose of and with the primary object of finding out the meaning of the term "agricultural income" u/s 2(1) of the Act, but we see no reason why the principles formulated in that case should not be made applicable to cases on "agricultural income" under the Wealth Tax Act also. Further Section 2(e)(i) refers, to "agricultural land and growing crops, grass or standing trees on such land". The term used there is not "land" but "agricultural land". Therefore, lands other than agricultural cannot be exempted. The words, "growing crops, grass or standing trees on such land", also- indicate that the agricultural, land must be land which is tilled for growing crops, grass or trees. If "agricultural land" includes "land" which is used or capable of being used for raising crops, vegetables, fruits, etc. then it is difficult to find out what would be land other than "agricultural land". If the potentiality of -the soil or land to grow crops, vegetables, fruits or trees is accepted as the main test, the legislature could have used the word "land" in place of "agricultural land" in Section 2(e)(i). It is true that it is difficult to lay down a general principle covering all possible cases of "agricultural land" without reference to the facts and circumstances of a case. It is also, true that like other legal concepts there may be border line cases which may fall on this or the other side of the line. But even then taking a synoptic consideration of all the factors, we are of opinion "that agricultural land" should

comprise the following characteristics:

- (a) it must be a land;
- (b) it must pertain to or be connected with cultivation.
- (c) it must involve expenditure of human labour and skill for the purpose of cultivation or for keeping it in a cultivable state.

On consideration of the aforesaid conditions and characteristics it may not be difficult to arrive at a conclusion that a land is an "agricultural land". But difficulties may arise as in the instant case, when lands not under actual tillage or cultivation or moveables connected with the basic agricultural operations are claimed by the assessee to be exempted u/s 2(e)(i). It is common knowledge that all tea estates contain a portion of non-agricultural land, i.e., land where actual cultivation or even any processing for tillage is not done. In our opinion, in solving such difficulties, we must find out whether the asset which is claimed to be exempted by the assessee as "agricultural land" is essentially connected with or is an integral part of primary or basic agricultural operations. To say that any asset which is useful or beneficial to the agricultural operation should be treated as agricultural land or to conclude that any land which is capable of being used as an agricultural land would be too wide an extension of the term "agricultural land" not warranted by the scope and language of the Wealth Tax Act. In all cases where land not under agricultural operation is claimed as agricultural land within the meaning of Section 2(e)(i), there should be a clear finding that the land in question is vitally connected with the basic agricultural operations.

6. Applying the aforesaid principles to the facts of the instant case, in our opinion, agricultural land includes water tank and roads as they comprise not only land, but also are necessary ingredients of and vitally connected with the assessee's tea garden operations. For the same reason the bridges and the water pipes cannot be called "agricultural land" unless there is a clear finding after an enquiry to the effect that the agricultural activity in the particular garden is not feasible without them in that particular locality. It should not be forgotten that tanks and roads cannot be removed although the water pipes and fittings, bridges or culverts can be independently removed or sold.

7. With respect to the second question in this reference, applying the aforesaid principles, we are of opinion that part of the tea estate land in which the forest grows spontaneously and was not used for growing tea bushes was not "agricultural land" within the meaning of Section 2(e)(i) of the Act. Admittedly forests in the instant case have grown spontaneously without any expenditure of human, labour and skill. There is also a clear finding of the Tribunal that no part of it is used for "agricultural purpose" and that the land in its present state is not capable of being used for agricultural purposes. There is neither any finding that effective steps have been taken by the tea garden authorities to put the land in a cultivable condition as a part of their future expansion scheme.

8. The language of the last question of law raised in this reference is exactly similar to the question of law raised in *Kesoram Cotton Mills Ltd., Calcutta Vs. Commissioner of Wealth Tax, Calcutta*, where a Division Bench of this Court has, after elaborate discussion on the point, held that a provision for payment of Income Tax and supertax made in the assessee's balance sheet was not a debt owed on the valuation date within the meaning of Section 2(m) of the Wealth Tax Act and, as such, not deductible in computing the net wealth. Dr. D. Pal, learned counsel for the assessee, on this point, has argued that no argument was made in that case to another aspect, namely, that such provisions for payment of Income Tax and super-tax in the assessee's balance sheet should be deductible in view of the words "net value" in Section 7(2)(a) of the Act. We cannot accept such contention also because this new aspect has not been urged at any earlier stage of the proceedings nor do we propose to reframe the question in a broader language as suggested by him. In any event, this aspect of the question has also been dealt with by us in a judgment of this Court in *Macneill and Berry Ltd. Vs. Commissioner of Wealth Tax*, delivered to-day where on a construction of Section 7(2)(a) we have decided the point against the assessee.

9. For the reasons stated above, the answer to first question is that the water tanks and roads are, and pipelines and bridges are not, "agricultural land" within the meaning of Section 2(e)(i) of the Wealth Tax Act. The answers to the second, and third questions are in the negative and against the assessee. Each party to bear and pay its own costs of this reference.

Mitter, J.

10. I agree.

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