

PETITIONER:
COMMISSIONER OF WEALTH TAX ORISSA, BHUBANESHWAR.

Vs.

RESPONDENT:
VYSYARAJU BADREENARAYANA MOORTHY RAJU, BERHAMPUR (GANJAM)-

DATE OF JUDGMENT 13/03/1985

BENCH:
PATHAK, R.S.
BENCH:
PATHAK, R.S.
SEN, A.P. (J)
VENKATARAMIAH, E.S. (J)

CITATION:
1985 AIR 1603 1985 SCR (3) 306
1985 SCC (2) 303 1985 SCALE (1) 451

ACT:
Wealth Tax Act 1957, Sections 2(e), 2(m), 2(q) and 7(2).
Net Wealth'- 'Valuation date'-What are-Accrued interest-whether an asset-Distinction between cash and mercantile system of accounting-Whether relevant for wealth tax.

HEADNOTE:

The respondent- assessee was assessed to wealth tax for the assessment years 1965-66, 1966-67 and 1967-68, in the status of a Hindu Undivided Family'. In each of the assessment years, the Wealth Tax Officer included a sum of Rs. 1.5 lakhs estimated as the accrued interest on the assessee's money lending investments.

The assessee appealed to the Appellate Assistant Commissioner, contending that as the books of account were maintained in accordance with the cash system of accounting, the accrued interest on the money-lending investment could not be included in the Wealth-Tax assessments, the Appellate Assistant Commissioner following the decision of the Orissa High Court in Commissioner of Wealth-tax Bihar and Orissa v. Vysyaraju Badreenarayana Moorthy Raju (Orissa) (1971) 79 ITR 330 deleted the additions representing accrued interest.

The Wealth Tax Officer, appealed to the Appellate Tribunal and contended that the accrued interest was liable to be included in the Wealth Tax assessment of the assessee, relying on the judgment of the Andhra Pradesh High Court in Vedrevu Venkappa Rao v. Commissioner of Wealth Tax A.P. (1968) 69 ITR 552. The Appellate Tribunal dismissed the appeal, as it was bound by the decision of the Orissa High Court. The Commissioner of Wealth Tax applied under Section 27(1) of the Wealth Tax Act, 1957 for a reference to the Supreme Court in view of the conflict of opinions between the Orissa High Court and the Andhra Pradesh High Court and the question: "Whether the Wealth Tax Officer was justified in including in the net wealth of the assessee, interest due on accrual basis (though not realised) on the outstandings
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of the assessee's money-lending business, the accounts being maintained on cash," was referred to this Court.

HELD: 1. Even though the accounts of the assessee are maintained on cash basis interest due on accrual basis, though not realised, on the out standings of the money, lending business is liable to be included in the net wealth of the assessee. [310G]

2. The value of a property refers to the value of the rights in that property. What accrues as a right also falls to be included within the assets of an assessee under the Wealth Tax Act 1957. [310F]

2.1. The system of accounting, mercantile or cash or hybrid, is of no relevance for the purpose of determining the assets of the assessee. That appears plainly from the definition of "net wealth" which speaks of "the aggregate value.. of all the assets" belonging to the assessee on the valuation date. All the assets of the assessee, bar those expressly excepted by the statute, are to be taken into account, and it is immaterial whether the assessee employs one system of accounting or another. [310 C-D]

3. The assets are not confined to cash. Where the asset is an asset other than cash, its value is determined pursuant to sub-section (I) of section 7 as the estimated price, which, in the opinion of the Wealth Tax Officer, the asset would fetch if sold in the open market on the valuation date. It would be the estimated open market value of the rights in the property which constitute the asset. [310E-F]

Vedrevu Venkappa Rao v. Commissioner of Wealth-tax A.P. (1968) 69 ITR 552, Commissioner of Wealth, Tax. A.P.I. v. Pachigolla Narasimha Rao, (1982) 134 ITR 646 and Dipta Kumar Basu v. Commissioner of Wealth Tax, West Bengal, (1976) 450 ITR 450, approved.

Commissioner of Wealth-tax Bihar and Orissa v. Vysyaraju Badreenarayana Moorthy Raju (Orissa) (1971) 79 ITR 330 and A.T. Mirji v. Commissioner of Wealth-Tax, Karnataka, (1980) 126 ITR 93. Over-ruled.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Tax Reference Cases Nos. 3 to 5 of 1975

Tax Reference under Section 257 of the Income-tax Act, 1961 made by the Income-tax Appellate Tribunal, Cuttack Bench, Cuttack

P.A. Francis, Champat Rai and Miss A. Subhashini for the Appellant.

C.S.S. Rao for the Respondent.

The Judgment of the Court was delivered by 308

PATHAK, J.: These references under s.27(1) of the Wealth-Tax Act, 1957 have been made by the Income Tax Appellate tribunal, Cuttack Bench at the instance of the Commissioner of Wealth Tax, Orissa for the opinion of this Court on the following question of law:

"Whether on the facts and in the circumstances of the case, the Wealth Tax Officer was in law justified in including in the net wealth of the assessee interest due on accrual basis (though not realised) on the outstandings of the money lending business, the accounts of the assessee being maintained on cash basis?"

The respondent assessee was assessed to wealth tax for the assessment years 1965-66, 1966-67 and 1967-68 (the respective valuation dates being March 31, 1965, March 31,

1966 and March 31, 1967), in the status of a 'Hindu Undivided Family. In each of the assessments, the Wealth Tax Officer included a sum of Rs. 1,50,000 estimated as the accrued interest on the assessee's money-lending investments. The assessee appealed to the Appellate Assistant Commissioner and urged that as it maintained its books of account in accordance with the cash system of accounting the accrued interest on the money-lending investments could not be included in the wealth-tax assessments. The contention found favour with the Appellate Assistant Commissioner, and accordingly he deleted the additions of Rs. 1,50,000 representing accrued interest. In doing so the Appellate Assistant Commissioner followed "Commissioner of Wealth-tax Bihar and Orissa v. Vysyaraju Badreenarayana Moorthy Raju (Orissa)(1),

The Wealth Tax Officer appealed to the Appellate Tribunal and contended that accrued interest was liable to be included in the wealth-tax assessments of the assessee. The Wealth Tax Officer sought support from a judgment of the Andhra Pradesh High Court in Vedreva Venkappa Rao v. Commissioner of Wealth-tax(2) A.P. The Appellate Tribunal observed that the judgment of the Orissa High Court was binding on it, and accordingly by a consolidated order dated April 3, 1972, it dismissed the appeals. The Commissioner of Wealth Tax applied under sub-s. (1) of s. 27 of the Wealth

(1) [1911] 79 I.T.R. 330.

(2) [1968] 69 I.T.R. 552.

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Tax Act for a reference of the cases to this Court in view of the conflict of opinion between the Orissa High Court and the Andhra Pradesh High Court, and so these references have been made.

The question can be disposed of shortly. Under s. 3 of the Wealth Tax Act, wealth tax is charged for every assessment year in respect of the net wealth of the assessee on the corresponding valuation date. The expression "net wealth" is defined by cl. (m) of s.2 of the Act as "the amount by which the aggregate value Of all the assets, wherever located, 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.. "

According to the scheme of the Wealth Tax Act, the net wealth of an assessee has to be determined as it obtains on a particular date. That is the "valuation date". Clause (q) of s 2 defines the expression "valuation date" as follows:-
;

"(q) Valuation date, in relation to any year for which an assessment is to be made under this Act, means the last day of the previous year as defined in (Section 3) of the Income Tax Act, if an assessment were to be made under that Act for that year;

Provided that-

- (i) Where in the case of an assessee there are different previous years under the Income Tax Act for different sources of income, the valuation date for the purposes of this Act shall be the last day of the last of the previous years aforesaid,
- (ii) in the case of a person who is not an assessee within the meaning of the Income Tax Act, the valuation date for the purposes of this Act shall be the 31st day of March immediately preceding the assessment (z year;
- (iii) where an assessment is made in pursuance of

section 19A, the valuation date shall be the same valuation date as would have been adopted in respect of the net wealth of the deceased if he were alive."

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The computation of the net wealth of an assessee calls for a determination of his assets and debts as on the valuation date. The definition embodied in the substantive part of cl. (q) of s.2 indicates that broadly Parliament has fixed upon the last day of the "previous year", as defined under the Income Tax Act, as the valuation date. The figure of net wealth of the assessee at the end of the "previous year" takes into account the financial activities of the assessee during that "previous year". His financial activities during that period determine how his net wealth on a particular valuation date differs from his net wealth on the immediately preceding valuation date. There is an obvious advantage in adopting as the valuation date the last day of a period which is also the relevant period under the Income Tax Act. The reasons for defining the valuation date in terms of the last day of the income tax "previous year" stop there. The system of accounting, mercantile or cash or hybrid, is of no relevance for the purpose of determining the assets of the assessee. That appears plainly from the definition of "net wealth" which speaks of "the aggregate value.. of all the assets" belonging to the assessee on the valuation date. All the assets of the assessee, bar those expressly excepted by the statute, are to be taken into account, and it is immaterial whether the assessee employs one system of accounting or another. There is clear indication that the assets to be considered are not circumscribed by any consideration of the particular system of accounting adopted by the assessee. The assets are not confined to cash. Where the asset is an asset other than cash, its value is determined pursuant to sub-s. (I) of s.7 as the estimated price, which, in the opinion of the Wealth Tax Officer, the asset would fetch if sold in the open market on the valuation date. In other words, it would be the estimated open market value of the rights in the property which constitute the asset. When we speak of the value of a property, on a legal plane we refer to the value of the rights in that property. It is apparent that what accrues as a right also falls to be included within the assets of an assessee under the Wealth Tax Act. That being so, the conclusion is inescapable that even though the accounts of the assessee are maintained on cash basis interest due on accrual basis, though not realised, on the outstandings of the money lending business are liable to be included in the net wealth of the assessee.

In this view of the matter, we approve of the opinion expressed by the Andhra Pradesh High Court in *Vedreva Venkappa Rao* (supra)

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and in *Commissioner of Wealth-Tax, A.P.-I v. Pachigolla Narasimha Rao*(1) and the Calcutta High Court in *Dipti Kumar Basu v. Commissioner of Wealth Tax, West Bengal*(2) and hold that the view taken by the Orissa High Court in *Commissioner of Wealth tax v. Vysyaraju Badreenarayana Moorthy Raju* (Orissa) (supra) and by the Karnataka High Court in *A. T. Mirji v. Commissioner of Wealth-Tax, Karnataka*(3) cannot be accepted.

In the result, the question is answered in the affirmative, in favour of the Revenue and against the assessee. There is no order as to costs.

N.V.K.

Appeal allowed

(1) (1982) 134 I.T.R. 640.
(2) (1976) 105 I.T.R. 450.
(3) (1980) 126 I.T.R. 93.
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JUDIS