

PETITIONER:
SUDHIR CHANDRA NAWN

Vs.

RESPONDENT:
WEALTH-TAX OFFICER, CALCUTTA & ORS.

DATE OF JUDGMENT:
23/04/1968

BENCH:
SHAH, J.C.
BENCH:
SHAH, J.C.
RAMASWAMI, V.
BHARGAVA, VISHISHTHA
MITTER, G.K.
VAIDYIALINGAM, C.A.

CITATION:
1969 AIR 59 1969 SCR (1) 108
CITATOR INFO :
RF 1970 SC 169 (6)
R 1970 SC 192 (5)
APL 1970 SC 999 (9)
RF 1972 SC1061 (61,89,100,139,174)
RF 1977 SC1657 (4)
F 1980 SC 271 (10,11)
R 1990 SC 85 (22)

ACT:
Wealth Tax Act, 1957, s. 3-Validity and scope of-
Constitution of India, Art. 246 Cls. (1) & (3); 7th Schedule
Entry 86 List I and Entry 49 List II-scope of-If Parliament
competent to legislate to levy wealth-tax on assets
including land and buildings.

HEADNOTE:
The petitioner moved under Art. 32 for a writ to quash an
order of assessment and penalty and notices of demand for
recovery of tax for the years 1959-60, 1960-61 and 1961-62
under the Wealth Tax Act, 1957. It was contended, inter
alia, on his behalf that (i) wealth tax is chargeable only
on the accretion of wealth during the financial year; (ii)
Parliament could not have intended that the same assets
should continue to be charged to tax year after year; (iii)
since the expression "net wealth" in s. 3 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 7th Schedule to the,
Constitution, Parliament was incompetent to legislate for
the levy of wealth tax on the capital value of assets which
include non-agricultural lands and buildings; and
(iv) s. 7(1) of the Act was ultra vires.

HELD:That (i) The charge imposed by s. 3 is clearly on the
"not 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.

[110 C-D]

(ii) There is no constitutional prohibition against
Parliament levying tax in respect of the same subject-matter

or taxing event in successive assessment periods. [110 D]
(iii) The tax which is imposed by entry 86 List I 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. Wealth-tax is not imposed on the components of the assets of the assessee but on the total assets which he owns after taking his liabilities into account. On the other hand, 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. [110 G-H; 111 C-D]

Tax on lands and buildings is directly imposed on lands and buildings, and bears a definite relation to it, while 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. [111 D]

Ratta Ram v. The Province of East Punjab, [1948] F.C.R. 207; referred to.

Even assuming that there is some overlapping between the two entries, the Parliament had 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 an assessee. [112 D-E]

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In re : The Central Provinces and Berar Act No. XIV of 1938. [1939] F.C.R. 18, 49; referred to.

Exclusive power of the State Legislature under clause (3) of Art. 246 has to be exercised subject to cl. (1) i.e., the exclusive power which the Parliament has in respect of the matters enumerated in List I. Assuming that there is a conflict between entry 96 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. [113 D-E]

Khan Bahadur Chowakkaran Kaloth Mammad Kevi v. Wealth-tax Officer, Calicut, 44 I.T.R. 277; Vysyaraju Badri Narayanamurthy v. Commissioner of Wealth-tax, Bihar & Orissa, 56 I.T.R. 298; and Sri Krishna Rao L.Balckai v. Third Wealth-tax Officer, A.I.R. 1963 Mys. 111; referred to. Observations of Jagdish Sabai, J. in Oudh Sugar Mills Ltd., Hargaoon v. State of U.P. and another, A.I.R. 1960 All. 136; disapproved.

(iv) Section 7(1) of the Wealth-tax Act is not ultra vires. 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 s. 7. [114 F--G]

JUDGMENT:

ORIGINAL JURISDICTION : Writ Petitions Nos. 153 to 155 of 1967.

Petition under Art. 32 of the Constitution of India for the enforcement of fundamental rights.

Nirmal Mukherjee and P. K. Mukherjee, for the petitioner.

C. K. Daphtary, Attorney-General, T. A. Ramachandran and R.

N. Sachthey, for respondents Nos. 1 to 3.

Naunit Lal, for intervener No. 1.

M. R. K. Pillai, for intervener No. 2.

C. B. Agarwala and O. P. Rana, for intervener No. 3.

The Judgment of the Court was delivered by

Shah, J. 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 11 (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 judgment, 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

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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 in 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.

It was urged that the 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 the Parliament levying tax in respect of the same subject-matter or taxing event in successive assessment periods.

The 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 *Banarsi Dass, v. Wealth-tax Officer, Special Circle, Meerut*(1), 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 Legislature 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 the encumbrances specifically charged against

(1) 56 I.T.R. 224.

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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.

In *Ralla Ram v. The Province of East Punjab*(1) the Federal Court held that the tax levied by s. 3 of the Punjab Urban Immoveable Property Tax Act, 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 the 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 standards for measuring income and, in many cases, is indistinguishable from it, the tax levied by the impugned Act was in substance a tax on income. The Court pointed out that the annual value is not neces-

(1) [1948] F.C.R. 207.

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sarily 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.

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.

Assuming that there is some overlapping between the two entries, it cannot, on that account be said that the 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: The Central Provinces and Berar Act No. XIV of 1938*(1) :

" that 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."

Apparently an entry "taxes on lands and buildings" is a more general entry than the entry in respect of a tax on the annual 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.

The scheme of Art. 246 of the Constitution which distributes legislative powers upon the 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.

(1) [1939] F.C.R. 18,49.

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(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. "

Exclusive power to legislate conferred upon Parliament is exercisable, notwithstanding anything contained in cls. (2) & (3), that is made more emphatic by providing in cl. (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 cls. (1) and (2). Exclusive power of the State Legislature has therefore to be exercised subject to cl. (1) i.e. the exclusive power which the 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 reviewed from any angle is incapable of a decision in favour of the assessee.

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 the Parliament by entry 86 List I, and therefore the enactment of the Wealth-tax Act by the Parliament is not ultra vires. In *Khan Bahadur Chowakkaran Kaloth Mammad Kevi v. Wealth-tax Officer, Calicut*(1), the High Court of Kerala held that wealth-tax is 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 the Parliament under entry 86 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 *Vysyaraju Badri Narayanamurthy v. Commissioner of Wealth-tax, Bihar & Orissa* (2) ; and also in *Sri Krishna Rao L. Balckai v. Third Wealth-tax Officer* (3) .

Reliance was, however, placed by counsel for the petitioner upon certain observations made by Jagdish Sahai, J. in *Oudh*

(1) 44 I.T.R. 277.

(3) A.I.R. 1963 Mys. 111.

(2) 56 I.T.R. 298.

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Sugar Mills Ltd. Hargaon v. State of U.P. and another(1). In that case the validity of the U.P. Large Land Holdings Act 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 R. 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.

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

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

It was urged that no rules were framed in respect of the valuation of, 'lands and buildings. But s. 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 s. 7. It was also said that s. 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.

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

R.K.P.S.

Petitions dismissed.

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