

Commissioner Of Wealth Tax, Meerut vs Sharvan Kumar Swarup & Sons on 22 September, 1994

Equivalent citations: 1995 ECR 425 (SC), [1994] 210 ITR 886 (SC), JT 1994 (6) SC 446, 1994 (4) SCALE 413, (1994) 6 SCC 623, [1994] SUPP 3 SCR 750, 1994 AIR SCW 5145, 1994 (6) SCC 623, 1995 TAX. L. R. 170, (1994) 210 ITR 886, 1994 KERLJ (TAX) 597, (1994) 123 TAXATION 148, (1994) 76 TAXMAN 620, (1994) 122 CURTAXREP 380, (1995) 56 ECR 425, (1994) 6 JT 446 (SC)

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Bench: M.N. Venkatachaliah, S.C. Agrawal

JUDGMENT

M.N. Venkatachaliah, CJ.

1. In these appeals and special leave petitions brought up by the Revenue the short but interesting question that arises is whether Rule 1BB of the Wealth Tax Rules, 1957 is a provision which affects and alters the substantive rights or is merely procedural. The further sequential and cognate question is whether the Rule is attracted to all proceedings pending at its enactment. The said Rule 1BB concerns the mode of valuation of house-property wholly or mainly used for residential purposes, for the purposes of ascertaining the net wealth under the Wealth Tax Act, 1957.

2. Section 3 of the Wealth Tax Act is the charging section. It seeks to bring to charge for every assessment year the net wealth on the corresponding valuation date of every individual, Hindu undivided family and company. The expression "net wealth" is defined in Section 2(m) of the Act. Section 2(q) defines the "valuation date". Section 4 enumerates the assets to be included in computing 'net-wealth'. Sections 5 and 6 exempts certain assets in India and outside from being included in computing the net wealth.

3. Section 7 - and this provision is of particular relevance here - speaks as to how the value of the assets has to be determined. Section 7(1), as it stood during the relevant period, i.e., prior to 1.4.1989 when it stood substituted by the Direct Tax Laws (Amendment) Act, 1989 with effect from 1.4.1989 provided:

7(1) : Subject to any Rules made in this behalf the value of any asset other than case, 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.

The Central Board of Revenue in pursuance of the rule making power conferred by Section 46 of the Act promulgated rules known as the Wealth Tax Rules 1957. These were amended from time to time and Rule 1-BB - with which we are now concerned - came to be inserted by the Wealth Tax (Amendment) Rules, 1979 with effect from 1.4.1979. The relevant part of the Rule reads as under:

1BB(1) for the purpose of Sub-section (1) of Section 7, the value of a house which is wholly or mainly used for residential purposes shall be the aggregate of the following amounts, namely:

(a) The amount arrived at by multiplying the net maintainable rent in respect of the part of the house used for residential purposes by the fraction $100/8$; and

(b) the amount arrived at by multiplying the net maintainable rent in respect of the remaining part of the house, if any, by the fraction $100/9$.

Provided that in relation to a house which is built on leasehold land, this sub rule shall have effect, as if for the fraction $100/8$ in Clause (a), or as the case may be, the fraction of $100/9$ in Clause (b), the fraction $100/9$ and $100/10$ respectively had been substituted.

Sub-rule (2)(a) defines the expression "Gross Maintainable Rent"; Sub-rule (2)(b) defines as "House" including an independent residential unit and Sub-rule (2)(c) the expression "Net Maintainable Rent".

Sub-rule(5), however envisages a departure from the regime of Sub-rule (1) and provides that where the Wealth Tax Officer, having regard to the facts and circumstances of the case, is of the opinion that it is not practicable to apply the provisions of Rule to such a case, he may apply the rule with the previous approval of the Inspecting Assistant Commissioner.

4. The principal question in these cases is whether this Rule is a provision of substantive law, not expressly rendered applicable to the valuation for the earlier years, and, therefore, only prospective or whether it is merely procedural attracted to all pending cases.

We have heard Sri J. Ramamurti, learned senior counsel for the Revenue and Sri Raja Ram, Agrawal and Sri G. Sarangan, Learned senior counsel for the assesseees.

In some of the cases in this batch, there are some delays in filing them. We condone the delays. We grant special leave in the special leave petitions.

5. We may here refer to the facts of Civil Appeals Nos. 3563-64 of 1993 which are representative of the batch. The Commissioner of Wealth Tax, Gujarat-IV, Ahmedabad assails the correctness of the judgment and order dated 21.12.1989 of the Gujarat High Court in Wealth Tax Reference No. 15 of

1987. The assessment years are 1977-78 and 1978-79 respectively. Assessments were made on 8.2.1983 by which time Rule 1BB had been introduced into the rules. The assessee, a Hindu Undivided Family, contends that its immovable properties be valued applying the said Rule 1BB even though the assessments in question pertain to the orders prior to 1.4.1979 on which date the said rule came into force. The Wealth Tax Officer rejected this claim and proceeded to value the immovable properties independently of this said Rules 1BB. The appeals preferred by the assessee before the Commissioner of Wealth Tax (Appeals) were allowed and the Appellate Authority held in favour of the applicability of Rule 1BB. The appeals of the Revenue before the Income Tax Appellate Tribunal, Ahmedabad were unsuccessful. The Tribunal upheld the Commissioner of Wealth Tax (Appeals). The Revenue sought a reference under Section 27(1) of the Wealth Tax Act in respect of both the assessment years. The Tribunal referred the following question of law for the opinion of the High Court:

Whether, in law and on facts the Appellate Tribunal is right in directing the Wealth Tax Officer to compute the value of Shahibagh Bungalow under Rule 1BB of the Wealth Tax Rules, 1957 specially when the said rules came into effect from 1.4.1979 only?

The High Court answered the question against the Revenue following its earlier decision in Commissioner of Wealth Tax v. Shri Kasturbhai Mayabhai 164 ITR 107. The High Court having declined to certify the case as one fit for appeal to the Supreme Court, the Revenue has come up by special leave to appeal.

In Kasturbhai Mayabhai's case (supra), the High Court had taken the following view:

There is, therefore, no doubt that while Section 3 is the charging section, the machinery for the purpose of computing the net wealth is provided in Section 7 of the Act.

x x x x x Pursuant thereto Rule 1BB came to be introduced in the Rules providing a formula for the determination of the fair market value of a house used wholly or mainly for the purpose of residence. It became necessary for the Board to provide a formula for determining the market value of a house in order to speed-up the disposal of cases involving questions of valuation of such an asset.

x x x x x Since Section 7(1) is a machinery Section and since the rule to be made under Section 46(2) must relate to the manner in which the market value of any asset may be determined, it can be safely inferred that the rule making authority can lay down the method or mode of determining the market value of each asset. When a rule sets out the method for formula for determining the market value of any particular asset, it can only be considered to be procedural and not substantive. Rule 1BB with which we are concerned also lays down the formula for determining the market value of a house used wholly or mainly for residence. Since the rule provides a formula or mechanical method of valuation, it is difficult to agree with learned

Counsel for the Revenue that it is substantive in character. It has not the effect of impairing any vested right or creating any new obligation....

Again in Commissioner of Wealth Tax v. Naranjan Narottam 173 ITR 693, the Gujarat High Court followed the Kasturbhai Mayabhai's case (supra). The decision of the High Court in Kasturbhai Mayabhai's case is also under appeal in the present batch of appeals.

Similar view has been taken by the Karnataka High Court in Commissioner of Wealth Tax, Karnataka, Bangalore v. Vidyawathi Kaput 150 ITR 319; Madhya Pradesh High Court in Commissioner of Wealth Tax v. Lacchmandas Bhatia (163) ITR 586; Delhi High Court in Commissioner of Wealth Tax v. O.P. Tandon and Ors. (195) ITR 688; the Calcutta High Court in Smt. Manjushri Biswas v. Commissioner of Wealth Tax (171) ITR 348 and Dilip Kumar Mitra v. Commissioner of Wealth Tax (200) ITR 336.

6. The basis of distinction between statutes affecting rights and those affecting merely procedure is well-recognised. Dixon, CJ. in Maxwell v. Murphy (1957) 96 CLR 261 at 267 drawing upon the following words of Lord Justice Mellish in Republic of Costa Rica v. Erlanger 1876 (3) Ch.D. 62 at 69 said:

No suitor has any vested interest in the course of procedure, nor any right to complain, if during the litigation the procedure is changed, provided, of course, that no injustice is done.

It is true that if one traces any substantive right back far enough it will be found secreted in the interstices of procedure.

In W.H. Cockerline & Company v. The Commissioner of Inland Revenue (16) TC 1 at 19, Lord Hanworth quoted with approval a following passage from the judgment of Sargent, L.J.:

The liability is imposed by the charging Section, namely, Section 38 the words of which are clear. The subsequent provisions as to assessment and so on are machinery only. They enable the liability to be quantified and when quantified to be enforced against the subject, but the liability is definitely and finally created by the charging section and all the materials for ascertaining it are available immediately.

In Halsbury's Law of England (Fourth Edn. Vol. 23, Para 29), referring to the machinery provisions it is stated:

It is important to distinguish between charging provisions, which impose the charge to tax, and machinery provisions, which provide the machinery for the quantification of the charge and the levying and collection of the tax in respect of the charge so imposed. Machinery provisions do not impose a charge or extend or restrict a charge

elsewhere clearly imposed.

The distinction between substantive law and procedural provisions has been indicated in Black's Law Dictionary, (Sixth Edn. P. 1203) as follows:

As a General Rule, laws which fix duties, established rights and responsibilities among and for persons, natural or otherwise, are 'Substantive Laws' in character, while those which merely prescribe the manner in which such rights and responsibilities may be exercised and enforce in a court are 'Procedural Laws In Salmond's Jurisprudence, (Twelfth Edn. P. 462), the distinction between substantive law and law of procedure is indicated in the following words:

What, then, is the true nature of the distinction? The law of procedure may be defined as that branch of the law which governs the process of litigation. It is the law of actions -- *jus quod ad actions pertinent* -- using the term action in a wide sense to include all legal proceedings, civil or criminal. All the residue is substantive law, and relates, not to the process of litigation, but to its purposes and subject-matters. Substantive law is concerned with the ends which the administration of justice seeks' procedural law deals with the means and instruments by which those ends are to be attained. The latter regulates the conduct and relations of courts and litigants in respect of the litigation itself; the former determines their conduct and relations in respect of the matters litigated.

...What facts constitute a wrong is determined by the substantive law; what facts constitute proof of a wrong is a question of procedure.

...So far as the administration of justice is concerned with the application of remedies to violated rights, we may say that the substantive law defines the remedy and the right, while the law of procedure defines the modes and conditions of the application of the one to the others.

In *Izhar Ahmad Khan v. Union of India* [1962] Suppl. 3 SCR 235 at 251 it is observed:

The division of law into two broad categories of substantive law and procedural law is well known. Broadly stated, whereas substantive law defines and provides for rights, duties, liabilities, it is the function of the procedural law to deal with the application of substantive law to particular cases and it goes without saying that the law of Evidence is a part of the law of procedure.

In *Kesoram Industries and Cotton Mills Ltd. v. Commissioner of Wealth Tax (Central)*, Calcutta (59) ITR 767 at 793 Justice Shah observed:

Section 7(2) merely provides machinery in certain special cases from valuation of assets, and it is from the aggregate Valuation of assets that the net wealth chargeable

to tax may be ascertained.... This is an artificial rule adopted with a view to avoid investigation of a mass of evidence which it would be difficult to secure or, if secured, may require prolonged investigation.

Though this was a part of the minority opinion, there is, however, nothing said to the contra in the majority view.

In *Murari Lal Mahabir Prasad and Ors. v. B.R. Vad and Ors.* (37) STC 77 at 111, this Court laid down as follows:

We are concerned in this case to determine not whether a particular turnover can be brought to sales tax but whether if the turnover was liable to be charged to sales tax, the firm can be assessed to tax after its dissolution. In other words, we are concerned with a provision which prescribes the machinery for the computation of tax and not with a charging provision of the Sale Tax Acts.

7. Procedural law, generally speaking, is applicable to pending cases. No suitor can be said to have a vested right in procedure. It must, however, be noted that a provision can be partly substantive and partly procedural.

In *Associated Cement Company Ltd. v. Commercial Tax Officer, Kota and Ors.* (48) STC 466 at 476 this Court laid down:

It is settled law that a distinction has to be made by Courts while interpreting the provisions of a taxing statute between charging provisions which impose the charge to tax and machinery provisions which provide the machinery for the quantification of the tax and the levying and collection of the tax so imposed. While charging provisions are construed strictly, machinery sections are not generally subject to a rigorous construction. The courts are expected to construe the machinery sections in such a manner that a charge to tax is not defeated.

Bennion's Statutory Interpretation, (First Edn. P. 446 para 191), lays down as follows:

Because a charge made by the Legislature in procedural provisions is excepted to be for the general benefit of litigants and others, it is presumed that it applies to pending as well as future proceedings.

At page 447 it is stated:

Procedure and practice is the mere machinery of law enforcement. As Ormrod L.J. said:

The object of all procedural Rules is to enable justice to be done between the parties consistently with the public interest'.

In *Jose Da Costa and Anr. v. Bascora Sadasiva Sinai Narpomim and Ors.*, this Court laid down as follows:

Before ascertaining the effect of the enactments aforesaid passed by the Central Legislature on pending suits, or appeals, it would be appropriate to bear in mind two well established principles. The first is that while provisions of a statute dealing merely with matters of procedure may properly, unless that construction be textually inadmissible, have retrospective effect attributed to them provisions which touch a right in existence at the passing of the statute are not to be applied retrospectively in the absence of express enactment or necessary intendment (See *Delhi Cloth and General Mills Co. Ltd. v. Income Tax Commissioner* (1927) P.C. 242).

The second is that a right of appeal being a substantive right the institution of a suit carries with it the implication that all successive appeals available under the law then in force would be preserved to the parties to the suit throughout the rest of the career of the suit. There are two exceptions to the application of this Rule, viz., (i) when the competent enactment such right of appeal is taken away expressly or impliedly with retrospective effect; and (ii) when the court to which appeal lay at the commencement of the suit stands abolished (See *Grikapati Verraya v. N. Subbiah Choudhary* [1957] SCR 488 and *Colonial Sugar Refinery Co. Ltd. v. Irving* 1905 AC 369).

Halsbury's Laws of England (Fourth Edn. Vol. 44 Para 925) states:

The presumption against retrospection does not apply to legislation concerned merely with matters of procedure or of evidence; on the contrary, provisions of that nature are to be construed as retrospective unless there is a clear indication that such was not the intention of Parliament.

8. We may now turn to the scope and content of Rule 1BB. The said Rule merely provides a choice amongst well-known and well-settled modes of valuation. Even in the absence of Rule 1BB it would not have been objectionable, nor would there be any legal impediment, to adopt the mode of valuation embodied in Rule 1BB namely, the method of capitalisation of income on a number of years' purchase value. The rule was intended to impart uniformity in valuations and to avoid vagaries and disparities resulting from application of different modes of valuation in different cases where the nature of the property is similar.

Rule 1BB thus partakes of the character of a rule of evidence. It deems the market value to be the one arrived at on the application of a particular method of valuation which is also one of the recognised and accepted methods. Even if a law raises a presumption and renders the presumption irrebuttable it is yet in the domain of the law of evidence. In *Izhar Ahmad Khan's case* (supra), it was pointed out by this Court: It would be noticed that as in the case of a rebuttable presumption, so in the case of an irrebuttable presumption, the rule purports to assist the judicial mind in appreciating the existence of fact. In one case the probative value is statutorily strengthened but yet left open to

rebuttal, in the other case, it is statutorily strengthened and placed beyond the pale of rebuttal. Considered from this point of view, it seems rather difficult to accept the theory that whereas a rebuttable presumption is within the domain of the law of evidence, irrebuttable presumption is outside the domain of that law and forms part of the Substantive Law.

9. On a consideration of the matter we are persuaded to the view that Rule 1BB is essentially a rule of evidence as to the choice of one of the well accepted methods of evaluation in respect of certain kinds of properties with a view to achieving uniformity in valuation and avoiding disparate valuations resulting from application of different methods of valuation respecting properties of a similar nature and character. The view taken by the High Courts, in our opinion, cannot be said to be erroneous.

The appeals are accordingly dismissed. There will, however, be no order as to costs.