Supreme Court of India
T. S. Krishna vs C. I. T. Madras on 3 October, 1972
Equivalent citations: 1972 AIR 2674, 1973 SCR (2) 533
Author: P J Reddy
Bench: Reddy, P. Jaganmohan

PETITIONER:
T. S. KRISHNA

Vs.

RESPONDENT:
C. I. T. MADRAS

DATE OF JUDGMENT03/10/1972

BENCH:
REDDY, P. JAGANMOHAN
BENCH:
REDDY, P. JAGANMOHAN
DUA, I.D.
KHANNA, HANS RAJ

CITATION:
1972 AIR 2674 1973 SCR (2) 533

ACT:
Weather Tax Act read with S. 57(iii) of the Income Tax Act--whether Wealth Tax paid can be deducted as an expenditure allowable under S. 57(iii) of the Income Tax Act, 1961.

HEADNOTE:
During the accounting period 1962-63, the assessee paid Wealth Tax of Rs. 21,963/- in respect of the shares held by him and deducted this amount from his dividend income and interest as an expenditure allowable under S. 57(iii) of the Income Tax Act, 1961. The I.T.O. rejected the claim on the ground that there was no connection between the payment of Wealth Tax and the earning of dividend income and both the Appellate Assistant Commissioner as well as the Tribunal confirmed the order of the I.T.O. The High Court, on a reference, also rejected the contention of the assesses. The appellant contended that the preservation of assets is incidental for earning income and that the assets themselves produce income. Therefore, payment of Wealth Tax was virtually a condition for earning income and default in payment of such tax will endanger the ownership of the asset and will gradually destroy the very Source of income.
Dismissing the appeal,
HELD :(i) The Income Tax (Amendment) Ordinance of July 15,

1972 and the Income-Tax (Amendment) Act of 1972 have provided for disallowing the Wealth Tax paid as an expenditure in respect of incomes derived from other sources.
(ii) Even apart from the amendment disallowing the deduction, the very nature of the income from dividends in respect of which deduction Wealth Tax is claimed does not, bear any relationship direct or incidental to the earning of that income and cannot be laid out or expended exclusively for the purpose of making or earning such income within the meaning of Sub-clause (iii) of S. 57 of the Act, or under the corresponding provisions of S. 10(2)(xv) of the Indian Income Tax Act 1922. [540F]
Travancore Titanium Products Ltd. v. C.I.T. Kerala; 60 I.T.R. 277 and India Aluminum Co Ltd., v. C.I.T.; 84 I.T.R. 735 referred to.
The assessee therefore cannot treat the Wealth Tax Paid as an expenditure allowable under S. 57(iii) of the Income Tax Act 1961.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1671 of 1969.

Appeal by certificate from the judgment and order dated September 27, 1967 of the Madras High Court in T. C. No. 219 of 1965.

S. Swaminathan, D. P. Mohanthy and S. Gopalkrishna for the appellant.

B. D. Sharma and R. N. Sachthey for the respondent.

The Judgment of the Court was delivered by Jaganmohan Reddy, J. This appeal is by certificate against the judgment of the Madras High Court on a reference under s. 256(1) of the Income-tax Act, 1961 (hereinafter called the "Act') answering the question referred to it by the Tribunal against the assessee.

During the relevant accounting period 1962-63 the assessee paid wealth-tax of Rs. 21,963/- in respect of the shares held by him and claimed to have this amount deducted from the dividend income and interest as an expenditure allowable under S. 57(iii) ,of the Act. The Income-tax Officer rejected the claim on the ground that there was no direct or immediate connection between the payment of the wealth-tax and the earning of the dividend income. In the subsequent appeals against this order, both the Appellate Assistant Commissioner as well as the Tribunal con-firmed the order of the Income-tax Officer. The High Court on a reference in that case as well as in others raising a similar ,question, while rejecting the contention of the assessee, observed that the wealth-tax was paid by him as the owner and on the ,value of the totality of his assets which has nothing to do with his making or earning income from such assets and that the production of the

income from the assets appeared to it to be wholly ,unconnected with the payment of wealth-tax. The Court drew support from the Kumbakonam Electric Supply Corporation Ltd. ,v. Commissioner of Income-tax, Madras(1) and Travancore Titanium Products Ltd. v. C.I.T. Kerala(2). The learned advocate 'who appeared for the assessee and who has also addressed his argument before us had contended before the High Court that the preservation of assets is incidental to the purpose of making or earning income, that these are cases in which the assets them selves automatically produced income and that therefore payment of wealth-tax was virtually a condition for making or earning income because default in payment of such tax will endanger the ownership of the asset which in its turn will destroy ,the very source of income. Several cases were cited in support of that proposition but the High Court after distinguishing them ,observed :

> "We find it difficult to hold that the wealth- tax was paid by each of the assessees in these cases as incidental to making or earning income. In a sense it may be that in order to preserve the total net assets, the assessee has to pay wealth tax and that without such assets there can be no question of making or earning the income. But these facts do not establish the nexus (1) 50 1. T. R 809. (2) 60 1.
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> T. R. 277.
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> required for the expenditure by way of wealth tax to be a permissible deduction. The connection, if any, of the expenditure by way of wealth tax with the assessee's making or earning the income appears to be too remote. The expenditure in order to be a permissible 'deduction, should be directly connected with the purpose of making or earning of income for, otherwise it cannot be said that the expenditure is for the purpose of making or earning income."
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> The case of Travancore Titanium Products decided by this Court was dealing with the deduction of excess profits tax on the asset which a trader owned and which was employed in the business. The assessee had in that case sought to claim under s. 10(2) (xv) of the Income-tax Act, 1922, deduction of the excess profits tax It paid on the asset so utilised in earning the business income. was observed by this Court:
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> " In determining whether an amount expended by the assessee is deductible under s. 10(2)(xv) of the Indian Income-tax Act, the nature of the expenditure or outgoing must be adjudged in the light of accepted commercial practice and trading, principles. The. expenditure must be incidental to the business 'and must. be necessitated or justified by commercial expediency. It must be directly and intimately connected with the business and must be laid out by the tax payer in his character as a trader. To be a permissible deduction, there must be a direct and intimate connection between the expenditure and the business i.e. between the expenditure and the character of the assessee as a trader, and not as owner of assets, even if they are assets of the business."

> The dichotomy between the trader owning an asset and his utilisation of it in earning a business income therefrom, according to this Court, lacked the nexus for holding that the asset was directly and intimately connected with the business and was laid out by the assessee in his character as a trader. A larger Bench of this Court recently in Indian Aluminium Co. Ltd. v. C.I.T.(1) has not accepted the test adopted in Travancore Titanium case that:
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> " to he a permissible deduction, there must be a direct and intimate connection between the expenditure and the business i.e. between the expenditure and the character of the assessee as a trader, and not as owner of assets, even if they are assets of the business."

(1) 84 1. T. R. 735.

That view was qualified by stating that if the expenditure is laid ,out by the assessee as owner-cum-trader, and the expenditure is really incidental to the carrying on of his business, it. must be treated to have been laid out by him as a trader and as incidental to his business. It further held that in the case of individuals who have both business assets and debts and non-business assets and debts, it should not be difficult to evolve a principle or frame statutory rules to find out the proportion of the wealth-tax which is really incidental to the carrying on of the trade. Immediately after the judgment was rendered the President issued the Income-tax (Amendment) Ordinance on July 15, 1972 by the addition of sub-cl. (iia) to cl. (a) of S. 40 and sub-s. (1A) to s.58. This was followed by the Income-tax (Amendment) Act 41 of 1972, the preamble of which enacted that it was "further to ,amend the, Income-tax Act, 1961 and to provide for barring in the computation of total income in respect of certain assessment years prior to the assessment year 1962-63, deduction of amounts paid on account of wealth-tax". It may be observed that both the Travancore Titanium Products case as well as the Indian Alliminium case dealt with deductions of Excess Profits tax as an Expenditure in respect of business income. They were not dealing 'with deduction of wealth-tax paid by individuals on the assets owned by them from income derived from other sources under the Income-tax Act, but even so the ordinance and the Act have made provision for disallowing the wealth tax paid as an expenditure in respect of both the above categories of income.

It is contended be-fore us by the learned advocate that

-notwithstanding these amendments, wealth-tax paid on particular assets of the business or profession have been excluded from the disallowance under the amended sub-s.(1A) of s. 58 which by reference incorporates sub-cl. (iia) of cl. (a) to S. 40 added by the Amending Act., S. 40 of the Act inhibits the deduction of any expenditure specified therein notwithstanding anything to the contrary in ss. 30 to 39 which permit deductions of certain items of expenditure incurred by the assessee in respect of his business or profession. Similarly, under s. 58 of the Act the ,expenses categorised therein are not to be deducted in computing the income chargeable under the head "'income from other sources" notwithstanding that under s. 57 certain deductions are permissible in respect of that category of income. It may be specified that in so far as dividend income or interest derived by the assessee is concerned sub-s. (i) and sub-s. (iii) of s. 57 :permit deductions in computing

assessable income as follows

(i) in the case of dividends, any reasonable sum paid by way of commission or remuneration to a banker or any other person for the purpose of realising such dividend on behalf of the assessee;

(ii)

(iii) any other expenditure (not being in the nature of capital expenditure) laid out or expended wholly and exclusively for the purpose of making or earning such income." The amendments to ss. 40 and 58 as stated earlier do not allow deduction of wealth-tax or tax of similar character etc. where it is levied and paid under the law of any country outside India. The following are the relevant provisions of the Amendment Act :-

" (2) In section 40 of the Income-,tax Act, 1961 (hereinafter referred to as the principal Act), after subclause (ii) of clause (a), the following sub-clause shall be, and shall be deemed always to have been, inserted, namely :-

'(iia) any sum paid on account of wealth-tax. Explanation.-For the purposes of this sub- clause,, " wealth-tax" means wealth-tax chargeable under the Wealth-tax Act, 1957 or any tax of a similar character chargeable under any law in force in any country outside India or any tax chargeable under such law with reference to the value of the assets of, or the capital employed in, a business or profession carried on by the assessee, whether or not the debts of the business or profession are allowed as a deduction in computing the amount with reference to which such tax is charged, but does not include any tax chargeable with reference to the value of any particular asset of the business or profession;

3. Section 58, as originally enacted, of the principal Act shall 'be deemed always to have been renumbered as sub-section (1) thereof, and after sub-section, the following sub-section shall be, and shall be deemed always to have been, inserted, namely -

(1A) The provisions of sub-clause (iia) of clause (a) of section 40 shall, so far as may be, apply in computing the income chargeable under the head "income from other sources" as they apply in computing the income chargeable under the head "Profits and gains of business or profession. "

4. Nothing contained in the Indian Income- tax Act. 1922 shall be deemed to authorise. or shall be deemed ever to have authorised, any deduction in the computation of the income of any assessee chargeable under the, head "Profits and gains of business, profession or vocation" or "Income from other sources" :or the assessment year commencing on the 1st day of April, 1957 or any subsequent assessment year, of any sum paid on account of wealth-tax.

Explanation-For the purpose of this section, "wealth-tax" shall have the same meaning as is assigned to it in the Explanation to sub- clause. (iia) of clause (,a) of section 40 of the principal Act.

5. Where, before the 15th day of July, 1972 (being the date on which the Income-tax (Amendment) Ordinance, 1972 came into force, the Supreme Court has, on an appeal in respect of the assessment of an assessee for any particular assessment year. held that wealth- tax paid by the assessee is deductible in computing the total income of that year, then, nothing contained in sub-clause (iia) of clause (a) of section 40, or subsection 1(A) of section 58, of the principal Act, as amended by this Act, or, as the case maybe, section 4 of this Act, shall apply to the assessment of such assessee for that particular year."

It will be observed from s. 5 of the Amendment Act that the judgment of this Court in the Indian Aluminium Co. case in so far as the deduction of the wealth-tax was held to be allowable in computing the assessee's income in that case, was left untouched but any sum paid on account of wealth-tax in respect of assessment years prior to 1962-63 and those under the Income-tax Act, 1922 in respect of assessments commencing on the 1st day of April 1957 or on any subsequent year, the amendment was given retrospective operation. The changes introduced in sections 40 and 58, we, should have thought, were clear in disallowing any deduction of the wealth-tax from the computation of an assessee's income. The learned advocate for the assessee however has made a valiant attempt which attempt we think is totally abortive even if we were inclined to stretch and strain interpretation in favour of the assessee because neither the language nor the diction of the amended provisions permit the construction sought to be placed on the amendments. What the learned advocate seeks to contend is that the Ex- planation to sub-clause (iia) of cl. (a) of S. 40 which Explanation mutates mutandis is by reference to be read into sub-s. (1A) of S. 58 so far as may be applicable in computing the income chargeable under the income from 'other sources' as they apply in computing the income chargeable under the head "profits and gains of business and profession" saves the excess profits tax chargeable with reference to the value of any particular asset of the business or profession. In other words, this contention amounts to saying that the legislature left untouched the decision of this Court in Indian Aluminum Company. Reliance for this submission is based on the words "but does not include any tax chargeable with reference to the value of any particular asset of the business or profession" in the last part of the Explanation to the said sub-clause because according to him the prohibition to deduction under s. 2 of the Amending Act is the amount paid on account of wealth-tax which expression has been given an extended meaning to cover the wealth-tax payable under the Wealth-tax Act in this country as well as taxes of similar character and other taxes on assets of or the capital employed in the business or profession carried on by the assessee payable under the law of any country outside India. The learned advocate further proceeds to submit that the Explanation however excludes from the prohibition to deduct sum wealth-tax under the sub-clause or sub-section the tax chargeable with reference to a particular asset whether such charge is either under the laws of this country i.e. the Wealth-tax Act or under the laws in force outside India. There is no warrant for this construction because the words upon which reliance has been placed are related to the tax chargeable under a law in force in any country outside India with reference to the value of the assets of/or employed in a business or profession carried on by the assessee. The exclusion contemplated by the exception on which emphasis is placed is wholly unrelated to the scheme of the Wealth-tax Act because wealth-tax under that Act is not chargeable with reference to. the value of any particular asset of the business or profession but under S. 3 the charge is 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. "Net

wealth' under s. 2(m) means the amount which the aggregate value computed in accordance with the provisions of the Wealth-tax Act of all the assets, wherever located, belonging to the assessee on the valuation date, including assets required to be included in his net wealth as on that date under hat Act is in excess of the aggregate value of all the debts owed by the assessee on the valuation date other than those specified in items (i), (ii) And (iii) of that section. S. 4 includes certain assets in the net wealth while s. 5 provides for exemption in respect of specified assets on which wealth-tax is not payable and such assets are not to be taken into account in computing the net wealth of the assessee. S. 6 concerns with the exclusion of assets and debts outside India and s. 7 deals with the determination of the value of the assets which are to be included in the net wealth. It is thus clear that tinder the scheme of the Wealth-tax Act, tax is leviable not on 17-L498SuPCI/73 any separate or particular asset but on the net wealth as defined under that Act. The learned advocate wanted us to read "and, particular asset" in Explanation to sub-cl. (iia) of cl. (a) of S. 40 " as the aggregate of the assets as defined in 'net wealth'," under s. 2 (m). To accept such an argument would be to give a go by to the scheme of the Wealth-tax Act where though each asset comprised in the net wealth can be separately valued under S. 7, nevertheless net wealth would be the amount by which the aggregate value of all those assets, exceed the aggregate value of debts owed by the assessee on the valuation date. Even otherwise to read the exception "but does no include any tax chargeable with reference to the value of any particular asset of the business or profession" with the first part of the Explanation "wealth-tax" means wealth-tax chargeable under the Wealth-tax Act, 1957 " would not grammatically make any sense. These two read together would make the following sentence" `wealth-tax means wealth-tax chargeable under the Wealth-tax Act, 1957. but does not include any tax chargeable with reference to the value of any particular asset of the business or profession." As already pointed out, on the scheme of the Act there is no logical connection between the import of each of the two parts of that sentence, the first definitely indicates the wealth-tax chargeable under the wealth-tax Act while the latter seeks to except a tax chargeable with reference to the value of any particular business or profession which is not a tax leviable as such under the wealth-tax Act and hence does not relate to that part of the Explanation where wealth-tax in sub-cl. (iia) means that it is the wealth-tax chargeable under the Wealth-tax Act. In our view, sub-section (IA) of section 58 clearly excludes any deduction as claimed. Even apart from the amendment disallowing the deduction the very nature of the income from dividend in respect of which deduction of wealth-tax is claimed does not, as pointed out by the High Court, bear any relationship direct or incidental to the earning of that income and cannot therefore be said to be laid out or expended exclusively for the purpose of making or earning such income within the meaning of sub-cl. (iii) of s.57 of the Act or under the corresponding provisions of s.10 (2) (xv) of the Indian Income-tax Act, 1922. In any view of the matter, the answer to the question rendered by the High Court is unex- ceptionable and the appeal is consequently dismissed with costs.

S.C. Appeal dismissed.