A

COMMISSIONER OF WEALTH-TAX, MADRAS

v.

SMT. MUTHUKRISHNA AMMAL

September 6, 1968

B [J. C. SHAH, V. RAMASWAMI AND A. N. GROVER, JJ.]

Wealth-tax Act s. 2(e)(v)—"Asset"—Definition of—Unexpired period of lease in excess of six years—Terminable in any year by notice from either party—If an "asset" to be included in computation of wealth.

By two agreements of January 1, 1943 and January 1, 1945, the respondent obtained on lease from the Government certain salt pans. C Each lease was to endure for 25 years but was liable to be determined by notice on either side at the close of any salt manufacturing season. The respondent sublet the rights under one lease for Rs. 15,000 per year and under the other lease for Rs. 18,000 per year. In the course of the respondent's assessment to wealth-tax for the assessment year 1959-60, the Wealth-tax Officer calculated the value of the respondent's interest in the salt pans for the unexpired period of the two leases and included it in the computation of her net wealth. His order was confirmed by the D Appellate Assistant Commissioner but the Tribunal, in appeal, held that the interest of the respondent in the salt pans was not an "asset", within the meaning of s. 2(e)(v), and could not be included in the respondent's net wealth. The High Court, upon a reference, confirmed the view taken by the Tribunal.

On appeal to this Court,

E HELD : Dismissing the appeal,

Interest in property which is available to the tax-payer for a period not exceeding six years from the valuation date is not an asset within the meaning of s. 2(e) and the value thereof cannot be included in the net wealth of the assessee for the financial year relevant to the valuation date. The interest of the lessee under each lease was precarious : it was liable to be determined by notice by the Government at the expiry of any F manufacturing season. The leasehold interest in the salt pans was therefore not *available* to the assessee for a period exceeding six years from the valuation date. [4 C; 6 A]

There was no force in the contention that the expression "is available to an assessee for a period not exceeding the six years" in clause s. 2(e)(v) means is and has been available to an assessee for the period of six years before the date of valuation and that if interest in property G though revocable has remained unrevoked for more than six years before the valuation date, the interest would be an asset within the meaning of s. 2(e). [4 E-F]

The terms of the clause "from the date the interest vests in the assessee" added after the expression "six years" in clause 2(e)(v) by the Wealth-tax (Amendment) Act, 1964 do not show that the amendment was intended to be a parliamentary exposition of the meaning of the H original clause. [5 G]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1922 of 1967.

Appeal from the judgment and order dated September 4, 1964 of the Madras High Court in T. C. No. 237 of 1962 (Reference No. 132 of 1962).

B. Sen, R. N. Sachthey and *B. D. Sharma,* for the appellant.

T. A. Ramachandran, for the respondent.

The Judgment of the Court was delivered by

Shah, J. By two agreements dated respectively January 1, 1943 and January 1, 1945, the respondent Muthukrishna Ammal obtained from the Government of India on lease certain salt pans. Each lease was to endure for twenty-five years unless otherwise determined under the covenants of the indenture. The right under the first lease was sublet by the respondent to one K. Nadar in consideration of an annual payment of Rs. 15,000 and the right under the second lease was sublet to Mettur Chemicals Ltd. in consideration of an annual payment of Rs. 18,000.

The respondent made a return for the assessment year 1959-60 under the Wealth-tax Act of net wealth of Rs. 3,000 in India and Rs. 2,64,500 in foreign countries. The Wealth-tax Officer held that the value of the interest of the respondent in the salt pans for the unexpired periods of the two leases was liable to be included in the computation of her net wealth. Valuing the leasehold interest in the salt pans at the average rate of income received from the last three years, for the unexpired terms, the Wealth-tax Officer brought to tax in addition to the net wealth returned by the respondent an aggregate amount of Rs. 1,89,330. The order was confirmed by the Appellate Assistant Commissioner. But the Income-tax Appellate Tribunal held that the interest of the respondent in the salt pans was not an "asset" within the meaning of s. 2(e)(v), for the interest of the respondent in the land was not available to her for a period exceeding six years. The Tribunal accordingly directed that the value of the leasehold interest in the salt pans be deleted in the computation of the net wealth of the respondent.

The Tribunal referred the following question to the High Court of Madras for determination :

> "Whether the leasehold interest of the assessee in the salt pans is an "asset" within the meaning of s. 2(e)(v) of the Wealth Tax Act, 1957, and its value is includible in the net wealth of the assessee ?"

The High Court of Madras held that the leasehold interest of the respondent in the salt pans was not an "asset" within the meaning of s. 2(e)(v) of the Act and its value was accordingly not liable to be included in the net wealth of the respondent. The Commis-

A sioner of Wealth-tax has appealed to this Court with certificate granted by the High Court.

The provisions of the Wealth-tax Act, 1957, in force at the relevant time may first be noticed. Section 3 provides :

> "Subject to the other provisions contained in this
> B Act, there shall be charged for every financial year commencing on and from the first day of April, 1957, a tax (hereinafter referred to 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."

C "Net wealth" is defined in s. 2(m) as meaning "the amount by which the aggregate value 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 this net wealth as on that date under this Act, is in excess of the aggregate value of all the debts, owed by the
D assessee on the valuation date, other than, ..." The expression "assets" occurring in the definition of "net wealth" is defined in cl. (e) of s. 2. It "includes property of every description, movable or immovable, but does not include— . . . . (v) any interest in property where the interest is available to an assessee for a period not exceeding six years".

E The covenants of the two leases are in terms identical. The following clauses in the leases are relevant in considering whether the interest of the respondent is an "asset" within the meaning of the Wealth Tax Act :

> "1. The lease shall be for a period of twenty-five
> F years commencing from the 1st of January one thousand nine hundred and forty-three provided that the lessor or lessee shall be at liberty to determine the lease on giving to the other of them notice in writing at the close of the salt manufacturing season . . . . . .
>
> 2. On the expiry of the lease or its sooner determi-
> G nation as provided in clause 1 *supra* or clause 23 *infra* the lessee shall leave the demised premises such in order as it is consistent with the due performance of this lease . . . . .
>
> 23. The lessee shall abide by the decision of the Collector in case of any dispute arising between the
> H lessor and the lessee or of any difference of opinion as to the interpretation of the terms of this lease of the obligations thereunder and such decision shall be final and binding on the lessee.

24. Subject to the foregoing conditions the lessee shall continue to enjoy the leased land undisturbed for a said term of twenty-five years. In case, however, there is any breach of any of the above conditions or the lessee delays payment of any sum due to the lessor for over two months from the date of its falling due or in case the licence granted under clause 9 above is cancelled or forfeited for breach of any condition of such licence the lessor may determine the lease forthwith."

Each lease was liable to be determined by notice on either side at the close of any manufacturing season. The interest of the lessee under each lease was precarious : it was liable to be determined by notice by the Government at the expiry of any manufacturing season. The leasehold interest in the salt pans was therefore not *available* to the assessee for a period exceeding six years from the valuation date. A lessee's interest in land is undoubtedly an interest in immovable property and would normally be an asset, unless within the meaning of s. 2(e)(v) of the Act, the interest in the property is available to the assessee for a period not exceeding six years.

It was urged by counsel for the Revenue that since the respondent had enjoyed the rights under one lease for 16 years and in the other lease for 14 years and on the valuation date both the leases were outstanding, the rights were "assets" within the meaning of the Wealth-tax Act. Counsel submitted that the expression "is available to an assessee for a period not exceeding six years" in cl. (v) of s. 2(e) means is and has been available to an assessee for the period of six years before the date of valuation. Counsel says that if interest in property though revocable has remained unrevoked for more than six years before the valuation date, the interest would be an asset within the meaning of s. 2(e). We are unable to agree with that contention. The expression used by the Parliament is "is available to an assessee for a period not exceeding six years", and it must mean that the assessee though he has interest in property at the valuation date the interest will remain available for a period not exceeding six years. If it is to remain available for six years or for a shorter period the interest will fall within the exception : if it is to remain available for a period exceeding six years it will fall within the definition of "assets" and its value will be liable to be included in the net wealth of the assessee.

The terms of s. 4 of the Wealth-tax Act also throw some light on the problem. That section prescribes certain classes of assets which are liable to be included in the net wealth of an assessee. The section, before it was amended by the Wealth Tax (Amendment) Act, 1964, provided :

A "(1) In computing the net wealth of an individual, there shall be included, as belonging to him—

. . . . . .

(5) The value of any assets transferred under an irrevocable transfer shall be liable to be included in
B computing the net wealth of the transferor as and when the power to revoke arises to him.

Explanation.—For the purposes of this section the expression "transfer" includes any disposition, trust, covenant, agreement or arrangement, and "an irrevocable transfer" includes a transfer of assets which, by
C the terms of the instrument effecting it, is not revocable for a period exceeding six years or during the life-time of the transferee."

If any assets are held under an irrevocable transfer, *i.e.*, under a transfer which is not revocable for a period exceeding six years or during the life-time of the transferee, the assets are liable to
D be included in the net wealth of the transferor. It is implicit in sub-s. (5) of s. 4 that if an asset is held under a transfer which is revocable before the expiry of six years, the interest of the holder in the asset shall be included in the wealth of the transferor. If the transaction of lease in the present case was between a private individual and the respondent, evidently by
E virtue of s. 4(5) the interest under the lease would have been liable to be included in the net wealth of the transferor. We see no reason to hold that because the transferor is the Government, any different rule will apply in the case of inclusion of lands held under a revocable transfer by the respondent from the Government.

F Counsel for the Revenue invited our attention to the amendment made in the Act by the Wealth Tax (Amendment) Act, 1964, in the definition of the word "assets" in s. 2(e) of the Act. Relying upon the clause added by the Amending Act "from the date the interest vests in the assessee" after the expression "six years" in cl. 2(e)(v), counsel contended that this was intended to be a parliamentary exposition of the meaning of the original
G clause. We do not think that any such intention appears from the terms of that clause. Assuming that the exception in respect of interest in property which is available to an assessee for a period not exceeding six years from the date the interest vests in the assessee is only to apply after the date of the amendment by the Wealth Tax (Amendment) Act, 1964, that clause has no applica-
H tion and the terms of the section must be interpreted as they stood at the appropriate valuation date which crystallized the charge of wealth-tax for the appropriate assessment year. It is unnecessary to refer to the amendment made by the same Amending Act in

the Explanation to s. 4 of the Act. We are of the view that interest in property which is available to the tax-payer for a period not exceeding six years from the valuation date is not an asset within the meaning of s. 2(e) and the value thereof cannot be included in the net wealth of the assessee for the financial year relevant to the valuation date. A

The appeal therefore fails and is dismissed with costs. B

R.K.P.S. *Appeal dismissed.*