JUGGI LAL KAMLAPAT BANKERS & ANR.

v.

WEALTH TAX OFFICER. SPECIAL CIRCLE C-WARD, KANPUR & ORS.

December 15, 1983

[V.D. TULZAPURKAR, V. BALAKRISHNA ERADI & D.P. MADON, JJ.]

Wealth Tax Act 1957. Sections 2 (e), 2(m), 3, 4(1), 7(2) (a), 16A and 38A(1) (b).

Wealth Tax Rules 1957—Rule 2A & Rule 2B

Wealth Tax—Assessment of—Interest of Karta of H.U.F. in a partnership firm—Whether to be included in the net wealth of H.U.F.

Wealth Tax Officer—Reference to Valuation Officers—When justified.

Words & Phrases—Meaning of

'Having regard to the balance-sheet of such business'—s. 7(2) (a) Wealth Tax Act 1957.

The assessee (Appellant No. 2) who was Karta of a Hindu Undivided Family was a partner of the family firm (Appellant No. 1) and was being assessed to wealth tax as a HUF. For the purpose of evaluating the interest of the family's interest in the firm, the assessee adopted the book value of buildings owned by the firm.

On the view that the market value of the buildings was much more than their book value, the Wealth Tax Officer (Respondent No. 1) referred, under section 16A on the Wealth Tax Act, 1957, to the Valuation Officers (Respondent Nos. 2 & 3) the question of valuation of those buildings. The Valuation Officers issued notices under section 38A(1) (b) for inspection of buildings and records relating to them, and the assessees objections to such procedure were overruled.

The High Court dismissed the assessee's writ petition holding :

(1) having regard to section 29 of the Partnership Act which enables a partner to transfer his interest in the partnership firm and Section 2(e) and Section 4(1) (b) of the Act the interest of a partner in the par nership firm will have to be regarded as a part of his net wealth under the Act. (2) Section 3 the charging provision expressly levied wealth tax on the net wealth of every Hindu undivided family, and consequently the interest of a H.U.F. in a partnership firm, which is property, could be regarded as a part of its assets liable to be charged under this Section. (3) Rule 2, section 7 and section 16A (1) (i) (ii) had

A to be read harmoniously and Rule 2 did not exclude the application of sections 7 and 16A for valuing an asset of a partner in a partnership firm. (4) Section 7(2) was an enabling provision giving a discretion to the Wealth-tax Officer either to value the assets of a business as a whole or valuing each asset thereof separately and in that behalf he had the power to refer such valuation to the Valuation Officer under Section 16A. (5) Appellant No. 2 as a partner could be regarded as an agent of appellant no. 1 firm and the Valuation Officers could B issue notices requiring affording of facilities for inspection of buildings and production of books, documents and records.

In the Appeal to this Court it was contended that : (1) there was no provision for inclusion of a 'Karta's interest in a partnership firm in the H.U.F.'s net-wealth for wealth tax purposes under the Act, and (2) even assuming that appellant No.2's interest (as a Karta of his H.U.F.) in the appellant No.1's C firm is eligible to tax under the Act, the valuation of such interest would be governed by section 7(2) (a) of the Act read with rule 2A of the Wealth Tax Rules 1957 and it was not open to the Wealth Tax Officer to refer the valuation to the valuation Officer under section 16A.

Dismissing the Appeal,

D HELD : 1(i) Section 3 of the Act read with the definitions of "net-wealth" as given in Section 2(m) and "assets" given in section 2(e) clearly brings out the exigibility of a partner's interest in a firm either in his individual capacity or his capacity as Karta of a H.U.F. to wealth tax under the Act. [44 B-C]

(ii) There is no lacuna in the Act as regards the making of a Karta's interest (representing his H.U.F.) in the partnership firm exigible to wealth-E tax. [45 C]

(iii) Section 4 (1) deals with the computation of the net-wealth of an individual. It enacts a deeming provision. Certain assets which do not in fact or in reality belong to the individual (the assessee) but some one else are to be treated as belonging to that individual and are to be included in his net wealth. Analysis of Clauses (a) and (b) of section 4(1) make it clear that there is a great difference between the cases covered by clause (b). Clause (a) refers F to five situations in all of which the asset is held by some one other than the individual concerned (the assessee). It is provided that such asset held by that some one else shall be treated as belonging to the assessee. Clause (b) provides that where the individual assessee is a partner in a firm it is the value of his interest in the firm determined in the prescribed manner that is to be treated as belonging to him and is includible in his net-wealth. [43 C-F]

G (iv) It cannot be said that the interest of the partner in a firm does not belong to him. The proper way to interpret clause (b) would be that the deeming part of it relates to the quantum of his interest in the firm determined in the prescribed manner which is to be treated as belonging to him and includible in his net-wealth. [43 F-G]

H (v) A partner's interest in a firm, either in his individual capacity or in his capacity as a Karta of a HUF, is property and is otherwise exigible to wealth tax under the other provisions of the Act. [43 H]

2(i) Even where the Wealth-tax Officer has resorted to section 7(2) for determining the value of assets of a business as a whole the written down values or book values of specific assets as appearing in the balance-sheet are not sacrosanct and when the market value exceeds the written down value or book value by more than 20 per cent, the Wealth-tax Officer has to adopt the market value of such assets for the purposes of the Act. [49 C-D] A

(ii) In order to determine the valuation of a partner's interest in the firm, first the net wealth of the firm has to be determined under section 7 of the Act and Rule 2 provides that the net wealth of the firm so determined shall be allocated among the partners of the firm, which allocated amount will be the value of the interest of each partner in the firm. [46 F-G] B

(iii) The primary method of determining the value of the assets for the purposes of the Act is the one indicated in section 7(1), which provides that value of any assets, other than cash, *shall be* estimated to be its market price on the valuation date. Sub-section (2) provides that in the case of a business for which accounts are maintained by the assessee regularly the Wealth-tax Officer *may* instead of determining separately the valuation of each asset held by the assessee in such business, determine the net value of the business as a whole having regard to the balance-sheet of such business as on the valuation date and making such adjustment to therein as may be prescribed. [48 D-F] C

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(iv) It is optional for the Wealth-tax Officer to resort to either of the methods even in the case where the net value of a business carried on by the assessee is to be determined. Even when he proceeds under sub-section (2) he has to determine the net value of the business as a whole having regard to the balance-sheet of such business as on the valuation date. [48 G-H]

(v) The phrase "having regard to the balance-sheet of such business" as judicially interpreted means that the Wealth-tax Officer has to take into consideration or account the balance-sheet of such business for such valuation and not that such balance-sheet is conclusive or binding or decisive of the values of assets appearing therein. [48 H; 49 A] E

(vi) Sub-rule (2) of Rule 2B clearly provides that where the market value of an asset exceeds its written down value or book value by more than 20 per cent, the value of that asset for the purposes of Rule 2A shall be taken to be its market value. [49 B] F

In the instant case, the Wealth-tax Officer was of the view that the book values of specific house properties as indicated in the returns filed by the appellant No. 2 were far far below their market values. He was therefore justified in making a reference to the Valuation Officers under section 16A and the notices issued by the Valuation Officers were valid. [49 E] G

'CIVIL APPELLATE JURISDICTION : Civil Appeal No. 816 of 1978.

From the Judgment and Order dated the 4th October, 1977 of the High Court of Judicature at Allahabad in Writ Petition No. 88 (Tax) of 1975. H

A *V.S. Desai, Ravindra Narain, Harish Salve, Miss Rainu Walia* and *P.K. Ram*, for the Appellants.

B.B. Ahuja for the Respondents.

The Judgment of the Court was delivered by

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TULZAPURKAR, J. This appeal by certificate is directed against the judgment and order dated 4th October, 1977 of the Allahabad High Court whereby the High Court upheld the reference made by the Wealth Tax Officer (Respondent No. 1) to the Valuation Officers (Respondents Nos. 2 and 3) for valuing certain buildings belonging C to the appellant No. 1 firm as well as the notices issued by the Valuation Officers to appellant No.2 in furtherance of the Reference. The appellants had by means of a writ petition challenged the reference as well as the notices on certain grounds and had prayed for a mandamus restraining respondents Nos. 2 and 3 from valuing the buildings. The writ petition having been dismissed, the appellants have come up D in appeal to this Court.

Most of the material facts giving rise to this appeal are not in dispute and may briefly be stated as follows : Appellant No. 1 (M/s. Juggi Lal Kamlapat, Bankers) is a partnership firm. Appellant No. 2 (Padampat Singhania) was one of the partners in the firm in E his capacity as a 'Karta' of a Hindu Undivided Family upto 15-3-1972. He was being assessed to wealth tax in the status of H.U.F. and the assets so assessed for wealth tax included the interest of the family in appellant No. 1 firm. For the assessment years 1967-68 to 1972-73 wealth-tax returns were submitted by appellant No. 2 in the status of H.U.F. and therein the family's interest in appellant No. 1 F firm was included. Since appellant No. 1 firm owned a number of buildings in Kanpur in the returns so submitted the book-value of those buildings had been adopted by appellant No.2 for valuing the interest of the family in appellant No. 1 firm. Respondent No. 1 felt that the market value of those buildings was much more than such book-value. He, therefore, referred the question of valuation G of those buildings to respondents Nos. 2 and 3 (the concerned Valuation Officers) under s.16A of the Wealth Tax Act 1957 (hereinafter referred to as 'the Act'). Respondents Nos. 2 and 3 issued notices under s. 38A(1) (b) of the Act to appellant No. 2 intimating that they would inspect the buildings for determining the fair market value H thereof and requested him to afford necessary facilities for such inspection and to produce certain records connected with those build-

ings. On receiving the notices appellant No. 2 realised that respondent No.1 had referred the question of valuation of the concerned buildings to respondents Nos. 2 and 3 under s. 16A of the Act and that the notices issued by respondents Nos. 2 and 3 were in furtherance of such reference. On 9th of September, 1974 appellant No.2 addressed a letter to respondent No. 1 contending that none of the properties referred to the Valuation Officers belonged to him and that the reference to them was unauthorised and the same should be withdrawn. He also addressed letters to respondents Nos. 2 and 3 in which he contended that reference made to them by respondent No.1 was invalid and requested each one of them to return the reference back to the Wealth Tax Officer. Since these contentions were not accepted by the respondents, the appellants filed a writ petition in the High Court challenging the reference made by respondent No.1 as well as the notices issued by respondents Nos. 2 and 3.

A B C

On behalf of the appellants the following contentions were urged in support of the writ petition : (1) For the assessment of appellant No. 2, respondent No. 1 could not refer to respondents nos. 2 and 3 the valuation of building which did not belong to him but belonged to appellant no. 1 firm : (2) the interest of a H.U.F. in a partnership firm was not exigible to wealth tax; (3) the interest of appellant no. 2 in appellant no. 1 firm had to be valued in accordance with Rule 2 of Wealth Tax Rules 1957 and hence s. 16A of the Act had no application ; (4) the valuation of the concerned buildings forming part of the assets of the business of appellant no. 1 firm had to be determined in accordance with the commercial principles under s.7 (2) (a) and not under s.7 (1) of the Act and (5) the respondents nos. 2 and 3 could not issue the notices to appellant No.2 as he was neither the owner of the buildings nor was in occupation thereof.

D E F

In regard to the first contention the High Court took the view that though it was true that a partner of a firm could not claim ownership in specific properties belonging to the partnership firm either during the continuance of the partnership or even on its dissolution but was entitled to get a share in the profits during its continuance and was further entitled, upon its dissolution or his retirement therefrom, to the value of his share in the surplus of the partnership assets left after a deduction of liabilities and prior charges on the date of dissolution or retirement, it was clear that having regard to s. 29 of the Partnership Act (which enables a partner to transfer his interest in the partnership firm) and s.2 (e) and 4 (1) (b) of the Act the interest of a partner in the partnership firm will have to be regarded as a part

G H

A of his net wealth under the Act. As regards the second contention which was elaborated to the effect that even if the interest of an individual in a partnership firm could be regarded as an asset within the meaning of s.2(e) of the Act, the interest of a H.U.F. in the partnership firm could not be regarded as such asset and was not, therefore, exigible to wealth tax (for which reliance was placed on the B circumstances that under s.4 (1) (b) of the Act provision has been made for determining the value of an individual's interest in a partnership firm but no corresponding provision obtains in the Act for inclusion of the interest of H.U.F. in a partnership firm for purposes of assessment), the High Court took the view that from the said circumstances relied upon it did not follow that the interest C of a H.U.F. in a partnership firm could not be regarded as a part of net wealth of such family or was not liable to wealth tax, especially when the charging provision namely, s.3 of the Act expressly levied wealth tax on the net wealth of every Hindu undivided family and there was no reason why its interest in a partnership firm, which was property, could not be regarded as a part of its assets liable to the D charge under the section. With regard to the third and fourth contentions the High Court held that Rule 2, sec. 7 and sec. 16A (1) (4) (ii) had to be read harmoniously and Rule 2 did not exclude the application of secs. 7 and 16A for valuing an asset of a partner in a partnership firm and that notwithstanding the non-obstante clause contained in sec. 7 (2) it was an enabling provision giving a discretion to the Wealth Tax Officer either to value the assets of a business as a whole or valuing each asset thereof separately and in that behalf the Wealth Tax Officer had the power to refer such valuation to the Valuation Officer under sec. 16A. As regards the last contention the High Court negatived the same by observing that appellant No. 2 as a partner could be regarded as an agent of appellant No. 1 firm F and the Valuation Officers could issue Notices to him requiring him to afford facilities for inspection of the concerned buildings and to produce books, documents and records relevant for the valuation of those buildings. In this view of the matter the High Court dismissed the writ petition but its decision is challenged in this appeal.

G Counsel for the appellants raised substantially two contentions in support of the appeal. In the first place counsel has contended that there is no provision for the inclusion of a Karta's interest in a partnership firm in the H.U.F.'s net-wealth for wealth tax purposes under the Act and this would be clear from sec. 4 of the Act. Ela- H borating this contention counsel has pointed out that sec. 4 (1) is applicable to the computation of the net-wealth of an individual and

hat the said provision is a deeming provision whereunder certain tassets though held in reality by some others are to be treated as be- o nging to that individual and included in his net wealth for purposes of his wealth tax assessment and one such deeming provision is to be fou nd in cl. (b) thereof which provides that where the assessee is a partner in a firm the value of his interest in a firm determined in the prescribed manner shall be included in computing the net-wealth of such individual and what is urged is that there is no provision to be found in the Act which provides for the inclusion of Karta's interest in a firm in the H.U.F.'s. net wealth. Counsel strenuously urged that but for the deeming provision which is to be found in cl. (b) even the interest of partner (in his individual capacity) would not have become includible in his net wealth. In other words, according to counsel, there is a lacuna in the Act as regards the inclusion of a Karta's interest in the partnership firm in his H.U.F.'s net wealth and, therefore, the Department's attempt to include the interest of appellant No.2 (as a Karta) in appellant No.1's firm in the net-wealth of his H.U.F. is not warranted by any of the provisions of the Act. Secondly, counsel has urged that assuming that appellant No.2's interest (as a Karta of his H.U.F.) in appellant No. 1's firm is exigible to the wealth-tax under the Act, the valuation of such interest being governed by sec. 7 (2) (a) of the Act read with Rule 2A of the Wealth Tax Rules, 1957 it is not open to the Wealth Tax Officer to refer the valuation of specific house properties belonging to the firm to the Valuation Officers under s. 16A of the Act; in fact, according to him, the valuation of the assets of the partnership business of appellant No.1 as a whole having regard to its balance-sheets for the concerned years ought to have been undertaken by the Wealth Tax Officer and as such the book values of the house properties as appearing in the Balance Sheets ought to have been accepted by him and, therefore, the reference made by the Wealth Tax Officer to Valuation Officers as well as the notices issued by the latter being incompetent and unjustified in law, are liable to be quashed. For the reasons which we shall presently indicate neither of the contentions has any substance and both are liable to be rejected.

A B C D E F G H

In order to deal with the first contention mentioned above it will be necessary to set out the material provisions of s.4 of the Act Clauses (a) (b) of sub-s. (1) of sec. 4 run as follows :—

"*Net wealth to include certain assets* :—

4. (1) In computing the net wealth of an individual, there shall be included, as belonging to that individual-

A (a) the value of assets which on the valuation date are held--

(*i*) by the spouse of such individual to whom such assets have been transferred by the individual, directly or indirectly, otherwise than for adequate consideration or in connection with an agreement to live apart, or

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(*ii*) by a minor child, not being a married daughter, of such individual, to whom such assets have been transferred by the individual, directly or indirectly, otherwise than for adequate consideration, or

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(*iii*) by a person or association of persons to whom such assets have been transferred by the individual directly or indirectly otherwise than for adequate consideration for the immediate or deferred benefit of the individual, his or her spouse or minor child (not being a married daughter) or both, or

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(*iv*) by a person or association of persons to whom such assets have been transferred by the individual otherwise than under an irrevocable transfer, or

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(*v*) by the son's wife, or the son's minor child, of such individual, to whom such assets have been transferred by the individual, directly or indirectly, on or after the Ist day of June, 1973, otherwise than for adequate consideration,

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whether the assets referred to in any of the sub-clauses aforesaid are held in the form in which they were transferred or otherwise :

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Provided that where the transfer of such assets or any part thereof is either chargeable to gift tax under the Gift-tax Act, 1958 (18 of 1958), or is not chargeable under section 5 of that Act, for any assessment

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year commencing after the 31st day of March, 1964 but before the Ist day of April, 1972, the value of such assets or part thereof, as the case may be, shall not be included in computing the net wealth of the individual;

(*b*) where the assessee is a partner in a firm or a member of an association of persons not being a co-operative housing society, the value of his interest in the firm or association determined in the prescribed manner".

It is true that sec. 4 (1) deals with the computation of the net-wealth of an individual and it is also true that same enacts a deeming provision in the sense that certain assets which do not in fact or in reality belong to that individual (the assessee) but to some one else are to be treated as belonging to that individual and are to be included in his net wealth. But, in our view, a careful reading and analysis of cls. (a) and (b) thereof will make it clear that there is a great difference between the cases covered by sub-cls. (i) to (v) of cl. (a) and the case covered by cl. (b). Cl. (a) refers to five situations in all of which the asset is held by some one other than the individual concerned (the assessee) (e.g. held by the spouse or minor child of such individual to whom such asset has been transferred by such individual directly or indirectly otherwise than for adequate consideration, etc.) and it is provided that such asset held by that some one else shall be treated as belonging to the assessee-a deeming provision in the real sense of creating a legal fiction, while under cl. (b) it is provided that where the individual assessee is a partner in a firm it is the value of his interest in the firm determined in the prescribed manner that is to be treated as belonging to him and is includible in his net-wealth. In other words cl. (b) is not a deeming provision in the sense in which a deeming provision is made in cl. (a). It cannot be said that the interest of a partner in a firm does not belong to him; it in fact belongs to him and no legal fiction is required for treating it as belonging to him; and the proper way to interpret cl. (b) would be that the deeming part of it relates to the quantum of his interest in the firm determined in the prescribed manner which is to be treated as belonging to him and includible in his net wealth. It is impossible to accept the contention that but for cl. (b) of s.4 (1) the interest of a partner (where he happens to be an individual assessee) in a firm would not have been exigible to wealth tax under the Act. As we shall presently point out a partner's interest in a firm either in his individual capacity or in his capacity as a Karta of H.U.F is otherwise exigible

A to wealth tax under the other provisions of the Act and the deeming provision contained in s.4 (1) (b) properly understood must be held to be referable to the quantification of his interest in the firm determined in the prescribed manner that is made includible in his net-wealth.

Section 3 of the Act read with the definitions of "net-wealth" B as given in sec. 2 (m) and "assets" given in sec. 2 (e) clearly brings out the exigibility of a partner's interest in a firm either in his individual capacity or his capacity as a Karta of a H.U.F. to wealth tax under the Act. Section 3 which is a charging provision runs thus :

"*Charge of wealth-tax.*

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3. Subject to the other provisions contained in this Act, there shall be charged for every assessment 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 D Schedule I."

Section 2 (m) defines "net-wealth" thus :

"net wealth" means the amount by which the aggregate value E 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 his net wealth as on that date under this Act, is in excess of the aggregate value of all the debts owed by the assessee on the valuation date other than—

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(here follow three types of debts which are not to be reckoned with which we are not concerned)."

Section 2 (e) defines "assets" thus :

"assets" includes property of every description, movable G or immovable, but does not include—

(here follow certain specified properties with which we are not concerned.)".

H On reading the aforesaid provisions together it will appear clear that wealth-tax has been levied on the net-wealth of an individual

or a H.U.F. meaning thereby the aggregate value of all the assets belonging to such assessee minus all the debts owed by him. Under the definition of 'assets" property of every description, movable or immovable is included, and since it cannot be disputed and was not disputed before us that a partner's inerest in a firm either in his individual capacity or in his capacity as a Karta of a H.U.F. is property. the same would be includible in the expression "assets" which will have to be taken into accout while computing the net-wealth of such individual or H.U.F. and on such net wealth the charge of wealth tax has been imposed under sec. 3. It is thus clear that there is no lacuna in the Act as regards the making of a Karta's interest (representing his H.U.F.) in the partnership firm exigible to wealth-tax. The first contention, therefore, must fail.

The second contention of counsel for the appellant has been that even if it be held that appellant No. 2's interest (as a Karta of his H.U.F.) in the appellant No. 1's firm is exigible to the tax under the Act the valuation of such interest would be governed by sec. 7 (2) (a) of the Act read with Rule 2A of the Wealth Tax Rules 1957 and since it is a case of valuing such interest in the partnership business of appellant No. 1 firm the Wealth Tax Officer while first valuing the assets of the business should have, having regard to the balance-sheets of the said business as on the valuation dates, accepted the book values of the specific house properties as appearing in the balance-sheets and could not refer the valuation thereof to the Valuation Officers under sec. 16A of the Act which being inapplicable could not be resorted to; in this connection reference was also made by counsel to sub-s (2) of sec. 4 whereunder it is provided that in making any rules with reference to the valuation of the interest referred to in cl. (b) of sub-s. (1) (being a partner's interest in a firm) the Board shall have regard to the law for the time being in force relating to the manner in which accounts are to be settled between partners of a firm on the dissolution of a firm. The substance of the argument, in brief, has been that sec. 7 (1) which enables the Wealth-tax Officer to determine the value of any asset, other than cash, at the market price thereof on the valuation date for the purposes of the Act is imapplicable to the instant case and, therefore, sec. 16A is not attracted and hence the valuation reference made by the Wealth-tax Officer to the Valuation Officers regarding specific house properties is liable to be set aside. As we shall demonstrate presently, the contention proceeds on an entire misconception of the relevant provisions of the Act and the Rules.

We have already indicated above that a partner's interest in a

A firm, either in his individual capacity or as a Karta of a H.U.F., is property or asset liable to be included in the net wealth of the concerned assessee and is exigible to wealth-tax under the Act. Once that position is accepted it is clear that such asset will have to be valued for the purposes of the Act and in this behalf Rule 2 (1) of the Wealth-tax Rules, 1957 prescribes the manner of valuing such interest. It B runs thus :

> *"Valuation of interest in partnership or association of persons.*
>
> 2. (1) The value of the interest of a person in a firm C of which he is a partner or in an association of persons of which he is a member, shall be determined in the manner provided herein. The net wealth of the firm or the association on the valuation date shall first be determined. That portion of the net wealth of the firm or association as is equal to the amount of its capital shall be allocated among D the partners or members in the proportion in which capital has been contributed by them. The residue of the net wealth of the firm or association shall be allocated among the partners or members in accordance with the agreement of partnership or association for the distribution of the assets in the event of dissolution of the firm or association, E or, in the absence of such agreement, in the proportion in which the partners or members are entitled to share profits. The sum total of the amounts so allocated to a partner or member shall be treated as the value of the interest of that partner or member in the firm or association."

F The aforesaid rule clearly says that in order to determine valuation of a partner's interest in the firm, first the net wealth of the firm has to be determined, which determination, of course, is governed by sec. 7 of the Act and the rule goes on to provide as to how the net wealth of the firm so determined shall be allocated among the partners of the firm, which allocated amount will be regarded G as the value of the interest of each partner in the firm. Coming to the precise contention raised by counsel, the material provisions of the Act and the Rules having a bearing thereon would be sec. 7 (1), 7 (2) (a), 7 (3) and Rules 2A and 2B and these are as under :

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> *"Value of assests, how to be determined.*
>
> 7. (1) 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 the price which in the opinion of the Wealth tax Officer it would fetch if sold in the open market on the valuation date. A

(*Explanation*.....) B

(2) Notwithstanding any thing contained in sub-section (1),--

(*a*) where the assessee is carrying on a business for which accounts are maintained by him regularly, the Wealth tax Officer may, instead of determining separately the value of each asset held by the assessee in such business, determine the net value of the assets of the business as a whole having regard to the balance sheet of such business as on the valuation date and making such adjustments therein as may be prescribed. C D

(3) Notwithstanding any thing contained in sub section (1), where the valuation of any asset is referred by the Wealth tax Officer to the Valuation Officer under section 16A, the value of such asset shall be estimated to be the price which, in the opinion of the Valuation Officer, it would fetch if sold in the open market on the valuation date, or, in the case of an asset being a house refefred to in sub section (4), the valuation date referred to in that sub section." E

Rules 2A and 2B run thus :

"*Determination of the net value of assets of business as a whole.* F

2A. Where the Wealth tax Officer determines under clause (a) of sub section (2) of section 7 the net value of the assets of the business as a whole having regard to the balance sheet of such business, he shall make the adjustments specified in rules 2B, 2C, 2D, 2E, 2F and 2G." G

"*Adjustments in the value of an asset disclosed in the balance sheet.*

2B. (1) The value of an asset disclosed in the Balance sheet shall be taken to be-- H

A (*a*) in the case of an asset on which depreciation is admissible, its written down value;

(*b*) in the case of an asset on which no depreciation is admissible, its book value ;

B (*c*) in the case of closing stock, its value adopted for the purposes of assessment under the Income tax Act, Act, 1961, for the previous year relevant to the corresponding assessment year.

(2) Notwithstanding any thing contained in sub-rule C (1) where the market value of an asset exceeds its written down value or its book value or the value adopted for purposes of assessment under the Income tax Act, 1961, as the case may be, by more than 20 per cent, the value of that asset shall, for the purposes of rule 2A, be taken to be its market value."

D On a fair reading of the aforesaid provisions it will appear clear that the primary method of determining the value of assets for the purposes of the Act is the one indicated in sec. 7 (1), inasmuch as it provides that the value of any assets, other than cash, for the purposes of this Act *shall be* estimated to be its market price on the valuation date. Then comes sub-sec. (2) which provides that in E the case of a business for which accounts are maintained by the assessee regularly the Wealth tax Officer *may* instead of determining separately the valuation of each asset held by the assessee in such business, determine the net value of the business as a whole having regard to the balance sheet of such business as on the valuation date and making such adjustments therein as may be prescribed. It is true that sub-F sec. (2) commences with a non obstante clause, but even so, the provison itself is an enabling one conferring discretion on the Wealth tax Officer to determine the net value of the assets of the business as a whole having regard to its balance sheets as on the valuation date, instead of proceeding under sub sec. (1). In other words, it is optional for the Wealth tax Officer to resort to either G of the methods even in the case where the net value of a business carried on by the assessee is to be determined. Thirdly, even when he proceeds under sub sec. (2) he has to determine the net value of the business as a whole having regard to the balance-sheet of such business as on the valuation date; the pharase "having regard to the balance-H sheet of such business" as judicially interpreted means that the Wealth-tax Officer has to take into consideration or account the balance-

sheet of such business for such valuation and not that such balance-sheet is conclusive or binding or decisive of the values of assets appearing therein. Fourthly, the said sub-section also says that the Wealth-tax Officer has to "make such adjustments therein as may be prescribed" and in this behalf Rule 2A and 2B already quoted above indicate what adjustments the Wealth-tax Officer has to make while determining the net value of the business as a whole. Particularly sub-rule (2) of Rule 2B clearly provides that where the market value of an asset exceeds its written down value or book value by more than 20 per cent, the value of that asset for the purposes of Rule 2A shall be taken to be its market value. In other words, it is clear that even where the Wealth-tax Officer has resorted to sec. 7 (2) for determining the value of assets of a business as a whole the written down values or book values of specific assets as appearing in the balance-sheet are not sacrosanct and when the market value exceeds the written down value or book value by more than 20 per cent, the Wealth-tax Officer has to adopt the market value of such assets for the purposes of this Act. This is apart from the position that the resort to sec. 7 (2) itself is discretionary and optional, the provision being an enabling one.

Since in the instant case the Wealth tax Officer was of the view that the book values of specific house properties as indicated in the returns filed by appellant No. 2 were far far below their market values, he was justified in making a referrence to the Valuation Officers under sec. 16A of the Act and the notices issued by the Valuation Officers in pursuance of such reference were also valid.

In the result the appeal fails and is dismissed with costs.

N. V. K. *Appeal dismissed.*