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Jamnadas and anr. Vs. Commissioner of Wealth-tax, Bombay and anr.

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Court : Mumbai

Decided On : Nov-13-1964

Reported in : [1965]56ITR648(Bom); 1965MhLJ55

Judge : K.K. Desai and ;Paranjpe, JJ.

Acts : [Wealth Tax Act, 1957](#) - Sections 2, 3, 4, 5, 14, 14(2), 15, 16, 17, 18, 19, 21, 25(1) and 30

Appeal No. : Special Civil Application No. 555 of 1963

Appellant : Jamnadas and anr.

Respondent : Commissioner of Wealth-tax, Bombay and anr.

Advocate for Def. : D.B. Padhye, Adv.

Advocate for Pet/Ap. : J.M. Thakar, ;P.D. Thakar and ;C.J. Thakar, Adv.

Judgement :

K.K. Desai, J.

1. In this petition under article 226 of the Constitution, the petitioners who are the joint executors appointed by the last will and testament dated April 8, 1959, of one Sohadradevi N. Daga, have challenged the validity of the Wealth-tax assessment order dated March 25, 1963, the notice of demand also dated March 25, 1963, and

the revisional order passed by the Commissioner of Wealth-tax dated September 13, 1963.

2. The main contention of the petitioners is that there is no provision in the Wealth-tax Act, 1957 (27 of 1957), entitling the revenue to charge, assess and recover wealth-tax in respect of the wealth left by a deceased person from after the financial year next to the financial year in which such person dies. The relevant facts are as follows : Smt. Sohadradevi N. Daga died on October 5, 1959, prior thereto executing her last will dated April 8, 1959. The petitioners are the joint executors appointed under that will. The deceased left a large estate amounting to about Rs. 9 lakhs and odd. For the financial year expiring on 31st October, 1959, i.e., the assessment year 1960-61, the petitioners as executors were assessee pay wealth-tax in respect of the estate left by the deceased and there is no dispute between the parties as regards that assessment. For the next financial year expiring on 31st October, 1960, i.e., the assessment year 1961-62, the Wealth-tax Officer served on the executors a notice dated August 8, 1961, under the provisions of section 14(2) of the Act requiring that a should be filed within 35 days in connection with the wealth-tax payable by the estate of the deceased. The notice is addressed as follows :

'To

Late Smt. Sohadradevi N. Daga,

Through legal representatives and heirs

* * * *'

The petitioners filed a return in response to the notice, and by the (impugned) assessment order dated March 25, 1963, the net value of the wealth of the deceased was declared to be Rs. 9,46,609. In the assessment order, the name of the assessee is mentioned as : 'Estate of Smt. Sohadradevi Daga, deceased, through joint executors Nagpur.'

3. By the impugned notice of demand issued under section 30 of the Act addressed also to the 'late Smt. Sohadradevi Daga', through the joint executors a

sum of Rs. 7,466.09 was demanded to be paid as wealth-tax assessee in pursuance of the above assessment order. By a revision petition filed before the Commissioner of Wealth-tax, the petitioners contended that the assessee was not living after October 5, 1959, and there could be no assessment on a deceased individual. The tax was levied on wealth that did not belong to the deceased after her death and/or at the valuation date mentioned in the assessment order. Under section 3 of the Act, the executors were not liable to pay and wealth-tax in respect of the estate left by the deceased and the assessment was not warranted. The Commissioner of wealth-tax by the impugned order dated September 13, 1963, passed under section 25(1) of the Act found that the assessment made by the Wealth-tax Officer was in order and declined to interfere. The petitioners have filed this petition and once again raised the contentions as mentioned in their revision petition. The question that therefore arises is whether there is a provision in the Wealth-tax Act taxing a deceased person in respect of the net value of the wealth left by such person. In other words, the question is whether under the charging section 3 and other provisions of the Act, it was permissible for the revenue to issue the demand notice against the executors to file a return in respect of the wealth-tax to be charged on the estate of the deceased for the financial year expiring on 31st October, 1960, or the assessment year 1961-62.

4. In connection with this question, the parties have relied on several provisions of the Wealth-tax Act and particularly section 3, 19 and 21. The charging section 3 in substance provides that there shall be charged for every financial year.... a 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. Sections 4 and 5 relate to the computation of net wealth and the method and manner in which the net wealth of the assessee has to be ascertained. Section 19 relates to tax payable by the legal representative of deceased individual. Section 21 relates to assessment when assets are held by courts of words, administrators-general, trustees, etc. Before referring to the provisions in diverse sections it is relevant to point out the definitions of the words 'assessee', 'assets' and 'net wealth' as contained in section 2. 'Assessee' has been defined in the clause (c) of section 2 mean a person by whom wealth-tax or any other sum of money is payable under the Act, and includes every person in respect of whom any

proceedings under the Act have been taken for the assessment of the value of his assets. clause (e) defines 'assets' to mean property of every description, movable or immovable.... clause (m) defines 'net wealth' to mean 'the amount by which the aggregate value computed in accordance with the provisions of this Act of all the assets.... 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....' Under section 4, in computing the net wealth of an individual, it is directed to include the wealth of such parties as the assessee's wife, minor child, etc. We are not concerned with those provisions. section 5 provides for exemptions from wealth-tax in respect of certain assets belonging to the assessee. The first part of sub-section (1) of that section runs as follows :

'5. Exemption in respect of certain assets. - (1) Wealth-tax shall not be payable by an assessee in respect of the following assets, and such assets shall not be included in the net wealth of the assessee - (i) any property held by him under trust or other legal obligation for any public purpose of a charitable or religious nature nature in India.....'

5. It is not necessary to refer to the other sub-clauses which run from (ii) to (xxi), and the proviso and sub-sections following. It may only be noticed that the property held by an assessee as a trustee of a private trust is not directed to be excluded (and would have to be included) for the purposes of computing the net wealth of the individual assessee. Sections 14 to 18 relate to the procedure for assessment and matters like return to be made for assessment, as also in respect of wealth escaping assessment and penalty for concealment. We will presently refer to the relevant part of section 19. Sub-section (i) of section 21 provides for assessment in respect of the assets held by individual assesseees in the capacity of court of wards, administrator-general, official trustee, receiver or manager appointed under orders of a court to manage property on behalf of another and also properties held by individual assesseees as trustees appointed under a trust declared by a duly executed instrument in writing, whether testamentary or otherwise. The substance of the provisions in sub-section (1) of section 21 is that where property is held for the benefit of another person, the tax in respect of such property and wealth has to be levied in the manner mentioned in the section. The

relevant part of section 19 runs as follows :

'19. Tax of deceased person payable by legal representative. - (1) where a person dies, his executor, administrator or other legal representative shall be liable to pay out of the estate of the deceased person, to the extent to which the estate is capable of meeting the charge, the wealth-tax assessee as payable by such person, or any sum, which would have been payable by him under this Act if he had not died.

(2) Where a person dies without having furnished a return under the provisions of section 14 or after having furnished a return which the wealth-tax Officer has reason to believe to be incorrect or incomplete, the Wealth-tax Officer may make an assessment of the net wealth of such person and determine the Wealth-tax payable by the person on the basis of such assessment, and for this purpose, may, by the issue of the appropriate notice which would have had to be served upon the deceased person if he had survived, require from the executor, administrator or other legal representative of the deceased person any accounts, documents or other evidence which might under the provisions of section 16 have been required from the deceased person.'

6. It appears to us that on a true construction of the provisions of section 3 read with the definitions of the various phrases which we have referred to above and also read with the provisions in section 4 and 5 relating to ascertainment and computation of net wealth for the purposes of wealth-tax it is clear that the assessee who is an individual is taxed in respect of wealth of his ownership. There is no direct provision in these sections for taxing a deceased individual with wealth-tax. There is no direct provision in respect of assessing wealth-tax on the estate left by a deceased individual except to the extent as provided in section 19. There is no dispute between the parties that in this case the question relates to an assessee who is an individual. The impugned assessment order and the impugned notice of demand have been issued on the footing that wealth-tax can be charged and recovered in respect of the wealth of a deceased individual assessee. It is clear that the assessment, if it is not made and authorised by the provisions in section 19, would have to be found to be without any authority of law

and jurisdiction. The net wealth that is mentioned in sections 4 and 5 has reference to the net wealth of an individual. The assets referred to in these sections obviously and patently must be of the ownership of the individual assessee. There is nothing in sections 3, 4 and 5 being sections relating to charging provisions and provisions for computation of assets, to show that wealth which is not of the ownership of the individual assessee can be considered to be net wealth for the purpose of assessing wealth-tax. It is for this reason that, on behalf of the respondents, reliance has been placed on the provisions of section 19 in support of their contention that this section entitles the revenue to charge wealth-tax even against executors, administrators or legal representatives of a deceased individual assessee.

7. In connection with this contention, Mr. Padhye has emphasised the last part of sub-section (1) of section 19 which may again be referred to for the purpose of arriving at a true construction. The substance of the provisions in sub-section (1) is that the executor, administrator or other legal representative shall be liable to a pay sum which would have been payable by the deceased person under the Act if he had not died. Apparently, section 19 is not a charging section. The executor, administrator or legal representative is made liable to pay tax under the first part of sub-section (1) only in respect of the tax assessee as payable by a person who is dead. Under the second part of the sub-section (1), these parties are made liable to pay sums which would have been payable by the deceased person under the provisions of the Act. Obviously, the liability of the deceased person to pay tax has to be assessee and ascertained by the revenue in accordance with the provisions in sections 3, 4 and 5 and other relevant provisions of the Act. Section 19, to repeat, does not create any new liability. sub-section (1) of that section is meant only to provide for the liability of the executor, administrator or other legal representative of a deceased person to pay the tax and/or amounts assessee as payable by such person.

8. In connection with this question, it is necessary to remember that having regard to the provisions in the Indian Succession Act and otherwise also it is well-settled that upon the death of an individual he ceases to own properties of any kind. The ownership of the estate left by a deceased person in law becomes vested, when

such person dies intestate, in his heirs and legal representatives, and in other cases when he dies testate, in the executors. The result is that a deceased person does not from and after the moment he dies own properties of any kind. It is true that having regard to the provisions of the Indian Succession Act, the estate left by such person must be so administered that preferential and other creditors of such persons must be paid out of the estate the debts due to them in the first instance, and the estate would thereafter be divisible in accordance with law amongst the heirs and/or legatees. The question is whether there is anything in the charging section 3 or in section 4 and 5 which relate to computation of wealth of an individual to indicate that wealth-tax could be charged in respect of the estate and/or wealth left by the deceased person who in fact and in law, from and after the moment of his death, ceases to own any property whatsoever. Obviously there is nothing in these sections to indicate that wealth-tax is meant to be charged on an individual who does not own the wealth which is to be charged and in respect whereof tax is payable. On a reading of section 19 also, particularly sub-section (2) thereof, it is clear that in respect of the financial year in which a person dies, liability is created against executors, administrators and legal representatives to pay wealth-tax as assessee in respect of the wealth of the deceased person. Sub-section (2) provides for the machinery for assessing and recovering tax in respect of the financial year in which the person dies even against his executors, administrators and other legal representatives. Relying upon the last part of sub-section (1) of section 19, i.e., the phrase 'or any sum, which would have been payable by him under this Act if he had not died', Mr. Padhye contends that the executors, administrators or other legal representatives of a deceased person are liable to pay wealth-tax on the footing that the deceased person had in fact not died. In developing this argument, he however added that this liability continues so long as the estate is not distributed. He has not given any reasons why he himself had to submit that the liability continues to decrease and becomes extinct with the the distribution of the estate of the deceased amongst persons entitled thereto. It appears that he was forced to submit that the liability under the section proportionately decreased with the distribution of the estate, because the construction that he submitted was, prima facie, untenable and led to absurd situations. If the meaning of the last part of sub-section (1) was as contended for

by Mr. Padhye, the legislature must be deemed to have intended that continuously wealth-tax was chargeable on the value of the whole of the estate left by the deceased person. There was no limitation about the financial years during which such liability continue. That construction is, prima facie, not justified having regard to the language in the section. The provisions in sub-section (2) when read with sub-section (1) clearly indicate that the provisions in this section were to enable the revenue to recover wealth-tax in respect of the net wealth of the deceased person for the financial year in which the person died. Though such deceased person ceased to be the owner of all his properties at a moment which was not the end of the financial year, by legal fiction the tax was intended to be levied on the footing that he continued to own the estate left by him during the complete duration of the relevant financial year. The executors, administrators and other legal representatives were made liable to pay such wealth-tax for that relevant financial year form out of the estate left by the deceased person.

9. In this connection, it is relevant to paint out that the provisions in section 24B of the Income-tax Act, 1922, are similar to the provisions in section 19 of the wealth-tax Act. There is no substantial difference between the provisions in sub-section (1) of both these sections. There is also no substantial difference between sub-section (3) of section section 24B of the Income-tax Act and sub-section (2) of section (3) of section 24B of the Income-tax Act and sub-section (2) of section 19 of the Wealth-tax Act. In the case of Commissioner of Income-tax v. Amarchand N. Shroff, the question before the Supreme Court related to the share of income paid by the firm of solicitors in respect of one of their partners who had died in July, 1949. Continuously after 1949 the firm made payments to the heirs of the deceased partner of various amounts that were recovered after the death of the deceased partner. The income related to the work done by the deceased partners during his lifetime. The income however was recovered subsequent to the death continuously year after year. The share of that income that was payable to deceased partner was paid to the heirs. After certain interesting proceedings, the department assessee these amounts paid to the heirs as income of the deceased in the hands of and by his heirs and legal representatives in the status of an individual under section 34(1)(b) read with section 24 of the Income-tax Act. It was contended on behalf of the heirs in the proceedings that under the provisions of

section the heirs and legal representatives were not liable to be taxed for the income that was paid to them as payable to the deceased partner for the work done by him during his lifetime. The Supreme Court discussed the provisions of section 24B of the Income-tax Act and in that connection referred to the case of Ellis C. Reid v. Commissioner of Income-tax, which was decided prior to the enactment of section 24B. While discussing the true construction of section 24B, their Lordships observed as follows :

'Income-tax is exigible in reference to a person's total income of the previous year..... The assessee under the Act has ordinarily to be a living person and cannot be a dead person because his legal personality ceases on his death. By section 24B the legal personality of a deceased assessee is extended for the duration of the entire previous year in the course of which he died and therefore the income received by him before his death and that received by his heirs and legal representatives after his death but in that previous year becomes assessable to income-tax in the relevant assessment year..... Any income received in the year subsequent to the previous or the account year cannot be called income received by the person deceased. The provisions of section 24B do not extend to tax liability of the estate of a deceased person beyond the previous or the account year in which that persons dies.'

10. Reference is then made to certain decisions which need not be referred to here. Their Lordships further observed at page 66 :

'The correct position is that apart from section 24B no assessment can be made in respect of the income of the person after his death.'

11. After making the above observation, the court quoted a portion of the judgment in the case of Ellis C. Reid v. Commissioner of Income-tax and and further observations run as follows :

'The individual assessee has ordinarily to be a living person and there can be no assessment on a dead person and the assessment in charge in respect of the income of the previous year and not a charge in respect of the income of the year of assessment as measured by the income of the previous year..... By section

24B the legal representatives have, by fiction of law, become assessee as provided in that section but that fiction cannot be extended beyond the object for which it was enacted. As was observed by this court in *Bengal Immunity Co. Ltd. v. State of Bihar*, legal fictions are only for a definite purpose and they are limited to the purpose for which they are created and should not be extended beyond that legitimate field. In the present case the fiction is limited to the cases provided in the three sub-sections of the section 24B and cannot be extended further than the eligibility for the income received in the previous year.'

12. In the case of *Commissioner of Income-tax v. James Anderson*, the same question again arose before the Supreme Court. The court referred to the above decision in the case of *Commissioner of Income-tax v. Amarchand N. Shroff* and following that decision and the ratio thereof, the court again held :

'Section 24B in terms refers to the liability of the legal representative to pay assessee as payable by such deceased person, or any tax which would have been payable by him under the Act if he had not died, and if the expression 'tax which would have been payable under this Act, if he had not died' is intended to impose liability for tax on income received in the year of account in the course of which the taxpayer died, a different interpretation of the same expression in the context of notional income would be impermissible. The legislature not having made any provision generally for assessment of income receivable by the estate of the deceased person, the expression 'any tax which would have been payable by him under this Act if he had not died' cannot be deemed to have supplied the machinery for taxation of income received by a legal representative to the estate after the expiry of the year in the course of which such person died.'

13. It is difficult not to adopt the whole ratio of the decision of the Supreme Court in the above two cases in above two cases in connection with the construction of the provisions of section 19 of the Wealth-tax Act which are in all particulars similar to the provisions in section 24B of the Income-tax Act. Having regard to the observation of the Supreme Court in the above two cases, we have in this case also come to the conclusion that there is no provision in the wealth tax Act for charging and assessing wealth-tax in respect of the net wealth of a deceased

individual beyond the financial year in which such person dies. His executors, administrators and legal representatives are by legal fiction made liable to pay wealth-tax for that particular financial year in the next assessment year. There is no further liability to pay wealth-tax attached to the estate left by a deceased individual and continuing in the hands of the executors, administrators or other legal representatives.

14. It may be pointed out that section 21 the Act refers to trustees appointed under a trust declared by a duly executed instrument in writing, whether testamentary or otherwise. The section provides for the method and manner in which wealth-tax in respect of estates held by individual trustees may be assessee. Sub-section (2) of that section provides that the provisions in sub-section (1) of section 21 will not prevent direct assessment of the persons on whose behalf the assets are held by a trustee or other persons mentioned in sub-section (1) of section 21. We are however not concerned with the provisions of this section in this petition. It is abundantly clear that the above assessment order has not been made under the provisions of section 21. The assessment order in this case describes the assessee as 'Estate of Smt. Sohadradevi Daga, deceased, through joint executors, Nagpur.' The notice of demand is also addressed to 'Late Smt. Sohadradevi N. Daga, Thr. Joint Executors S/s. Jamnadas : Gowardhandas.' It appears to us that the executors of the will of the late Smt. Sohadradevi could not be made liable to pay wealth-tax in respect of the estate of the deceased in their hands except for the period which we have referred to above. The assessment was levied in respect of the next financial year. That was not justified and illegal having regard to the provisions of the Wealth-tax Act.

15. Mr. Padhye has contended that the final order challenged in this petition is that of the Commissioner of Wealth-tax dated September 13, 1963. He contends that the order was in the matter of the revision application filed by the petitioners and is an administrative order. He contends that the assessment order that is challenged in this petition merged in the above revisional order. The revisional order being administrative, it is not permissible for this court to go behind that order and strike it as illegal under the provisions of article 226 of the Constitution. In that connection, he has relied upon the case of Dhunjishaw Pestonji Ratanji Cassad v.

Commissioner of Income-tax. The petitioner (assessee) in that case challenged the assessment made whereby he was charged to income-tax in respect of the income which he had received for carrying on the business of a private limited company of the name of 'the Byramji Mining Combine Limited.' His case was that the income made by the company could be charged to tax in the assessment made against the company and could not be made part of his income for the purpose of charging income-tax. The matter of this assessment was taken by him ultimately to the Commissioner of Income-tax who came to the conclusion that the remuneration allowed to him could not be exempted from his income for certain reasons. It was against that to order of the Commissioner that the assessee filed the petition which was before the Court. On behalf of the assessee, reliance was placed on article 265 of the Constitution which provides that no tax shall be levied or collected except by authority of law. On behalf of the respondents it was contended that the order passed by the Commissioner was an administrative order and could not be corrected by the court in the writ petition that was before the Court. There are observations of the court in that case that the court had no jurisdiction to issue a writ of certiorari for quashing the order passed by the Commissioner. The court also observed that the tax that had been levied did not fall within the mischief of article 265 because the assessment order had been passed by the Income-tax Officer and the collection would proceed on the authority of that order. Unless the order passed by the Income-tax Officer and confirmed by the Commissioner in his order, which was impugned in the case, was quashed, there was no scope for the grant of a writ of mandamus against the authorities who would proceed to recover the amount of income-tax from the petitioner. The court also observed that the order of the Commissioner was an administrative order and could not be set aside.

16. In this very connection, we have been referred to the decision of the Supreme Court in Calcutta Discount Co. v. Income-tax Officer, as also the decision of a Division Bench of this court in S. C. Prashar v. Vasantsen Dwarkadas. Now, the relevant observations of the Supreme Court in the Calcutta Discount Company's case are as follows :

'Though the writ of prohibition or certiorari will not issue against an executive authority, the High Courts have power to issue in a fit case an order prohibiting an executive authority from acting without jurisdiction. Where such action of an executive authority acting without jurisdiction subjects or is likely to subject a person to lengthy proceedings and unnecessary harassment, the High Courts will issue appropriate orders or directions to prevent such consequences. Writs of certiorari and prohibition can issue against Income-tax Officer acting without jurisdiction under section 34, Income-tax Act.'

17. The Income-tax Officer having assumed jurisdiction on the footing that the conditions precedent as made in section 34 of the Income-tax Act existed the court observed :

'If the conditions precedent do not exist, the jurisdiction of the High Court to issue high prerogative writs under article 226 to prohibit action under the notice may be exercised. But if the existence of the conditions is asserted by the authority entrusted with the power and the materials on the record prima facie support the existence of such conditions, an enquiry whether the authority could not have reasonably held the belief which he says he had reason to hold and he did hold, is barred.'

18. In the case of S. C. Prashar v. Vasantsen, in connection with similar contentions made on behalf of the revenue, Chagla C.J. observed :

'No Tribunal and no officer can confer jurisdiction or authority or competence upon itself or himself by misconstruing a section of an enactment. It is inarguable that an authority could claim to exercise jurisdiction by constructing section erroneously and thereby contending that the section so wrongly construed gives him the necessary power. In such a case, if the section has been wrongly construed, it would be a clear case of absence of jurisdiction apparent on the face of the record.....'

19. The substance of the larger discussion in the case of the S. C. Prashar v. Vasantsen is that this court has under article 226 of the Constitution clear and complete jurisdiction to quash and set aside even an administrative and/or

executive action in cases where it is apparent on the face of the record that the action is completely without jurisdiction at all. This court has repeatedly asserted that in matters where there is apparently no jurisdiction, the court would under article 226 of the Constitution intervene, so as to protect a citizen. It appears to us that in the case of *Dhunjishaw Pestonji Ratanji Cassad v. Commissioner of Income-tax*, the question did not relate to absence of jurisdiction at all, but the substance of the contention of the petitioner was that he was entitled to exemption from inclusion of the income derived by the *Byramji Mining Combine Limited* in his own private income having regard to the provisions in the notifications quoted in that decision. It was not his contention that the Income-tax Officer had no jurisdiction at all to proceed to tax the assessee. The question that has arisen in this case related to total absence of jurisdiction to assess wealth-tax in respect of the estate left by the deceased, *Smt. Sodradevi*, in the hands of the petitioner being executors appointed by the her will and testament. The contention raised relates to total absence in the provisions of the Wealth-tax Act to attach any liability whatsoever against the petitioners in respect of the assessment mentioned in the petition. As we have come to the conclusion that there is no provision whatsoever in the Wealth-tax Act entitling the respondents to demand the tax mentioned in the petition from the petitioners, it is difficult to see how the ratio of the decision in *S. C. Prashar's* case is not applicable to this petition. The contention that this court is not entitled to quash and set aside the assessment order the demand notice as mentioned in the petition even under the provisions of article 226 of the Constitution must accordingly be negated.

20. Mr. Padhye contended that the petitioners had not raised the point that they have now made, before the Wealth-tax officer. This is a true fact, that obviously was the result of the petitioners' misconception regarding the true effect and construction of the provisions of the Wealth-tax Act. In their revision application before the Commissioner of Wealth-tax, they raised the point which has been raised in this petition. It is difficult to deny to the petitioners their lawful rights in this petition because in the first instance they did not appreciate that wealth-tax could not be assessee as against them as deductors under the provisions of the Act.

21. We have already dealt with the third contention that was made by Mr. Padhye. The contention was that having regard to the last part of the sub-section (1) of section 19, the executors were liable to be directly taxed in the respect of the estate left by the deceased, Smt. Sodradevi.

22. As we have found that there is no provision in the Wealth-tax Act entitling the revenue to charge wealth-tax against the petitioners in respect of the estate of the late Smt. Sohadradevi left in their hands, the petitioners are entitled to succeed. The rule will be made absolute with costs.

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