

Commissioner Of Wealth Tax ... vs M/S. Standard Vacuum Oil Co. Ltd on 25 October, 1965

Equivalent citations: 1966 AIR 995, 1966 SCR (2) 317, AIR 1966 SUPREME COURT 995

Author: S.M. Sikri

Bench: S.M. Sikri, J.C. Shah

PETITIONER:
COMMISSIONER OF WEALTH TAX (CENTRAL) CALCUTTA

Vs.

RESPONDENT:
M/S. STANDARD VACUUM OIL CO. LTD.

DATE OF JUDGMENT:
25/10/1965

BENCH:
SIKRI, S.M.
BENCH:
SIKRI, S.M.
SUBBARAO, K.
SHAH, J.C.

CITATION:
1966 AIR 995 1966 SCR (2) 317
CITATOR INFO :
MV 1966 SC1370 (54)
R 1969 SC 612 (12)

ACT:
Wealth Tax Act (27 of 1957), ss. 2(m) and 3-Debt owed on valuation date-If includes advance tax due under s. 18A of Income-tax Act, 1922.

HEADNOTE:
Demands in respect of the payment of tax under s. 18A of the Income Tax Act were made against the respondent for two years, and the final installment for each of the two years, was outstanding on the respective valuation dates as defined under s. (q) of the Wealth Tax Act, 1957 The respondent claimed that the arrears of tax as determined as per notice

under s. 18A constituted a debt, owned by it within the meaning of s. 2(m) of the Wealth Tax Act, as on the valuation date, and that the amounts should be allowed as deduction in determining its net wealth under the Wealth Tax Act. The Appellate Tribunal referred the question to the High Court and the High Court answered it in favour of the respondent.

In appeal to this Court by the Commissioner of Wealth Tax, HELD : The High Court was right in answering the question in favour of the respondent.

A debt is owed when an order is passed under s. 18A(1) and a notice of demand is sent. The amount mentioned in the notice begins to be owed till a new figure is substituted by the assessee under S. 18A(2). Till a new estimate is made by the assessee the amount is ascertained and there is a statutory liability on the assessee to pay the amount mentioned in the order under s. 18A(1) of the Income Tax Act. Since, on the valuation dates in the present appeals, the respondent had not taken any action under s. 18A(2), the amounts mentioned in the notices of demand were debts owed within s. 2(m) of the Wealth Tax Act on the valuation dates. [321 B-C]

JUDGMENT :

CIVIL APPELLATE JURISDICTION - Civil Appeals Nos. 627 to 628 of 1964.

Appeals from the judgment and order dated May 14, 1962 of the Calcutta High Court in Wealth Tax Matter No. 154 of 1960.

A. V. Viswanatha Sastri, N. D. Karkhanis, R. H. Dhebar and R. N. Sachthey, for the appellant.

T. A. Ramachandran, J. B. Dadachanji, O. C. Mathur and Ravinder Narain, for the respondent.

The Judgment of the Court was delivered by Sikri, J. Two questions were referred to the High Court by the Appellate Tribunal under s. 27 of the Wealth Tax Act (XXVII of 1957). We are only concerned with the second question which reads as follows :

"Whether on the facts and in the circumstances of the case, in computing the net wealth of the assessee, the arrears of tax as determined as per notice under Section 18A of the Indian Income Tax Act for the two assessment years under consideration constitute a debt owed by the assessee within the meaning of section 2(m) of the Wealth Tax Act as on the valuation date The facts and circumstances of the case are as follows. Demands in respect of the payment of tax under s. 18A of the Indian Income Tax Act were made against the respondent company, M/s. Standard Vacuum Oil Co. Ltd., for the two years ending December 31, 1956 and December 31, 1957, by notices of demand dated May 28, 1956 and May 31, 1957, respectively. The

final instalment of the amount of Rs. 47,69,653 for each of the two years was outstanding on the respective valuation dates. The assessee claimed that the demand for such, tax should be allowed as deduction in determining the net wealth of the assessee under the Wealth Tax Act. The Appellate Tribunal held that this sum should be deducted from the total computation of wealth if the said amount was outstanding for less than a year. It further held that the demand created under s. 18A of the Income Tax Act was a debt owed by the assessee, and it directed, the Wealth Tax Officer to ascertain "whether the demand referred to in this case was outstanding for less than one year on the valuation date and if so, he will allow the same as a deduction." The High Court, following its decision in *Assam Oil Co. Ltd. v. Commissioner of Wealth Tax (Central), Calcutta*(1), answered the question in favour of the assessee. The Revenue having obtained certificates of fitness from the High Court filed these appeals in this Court.

Mr. Viswanatha Sastri, learned counsel for the Revenue, contends that on a true interpretation of s. 18A the amount which is payable under it is not an ascertained amount as the assessee can estimate the amount which he should pay as advance tax. He says that the section contemplates more or less the opening of a running account between the State and the assessee and the exact amount is not finalised till the 15th of March each year, which is the last date by which the assessee has to exercise his option to pay the amount demanded or a lesser sum. He says that the debt really becomes a debt on the 15th of March when (1) 48 I.T. 49 no option is exercised to pay a lesser sum. In order to appreciate the contentions of the learned counsel it is necessary to consider the relevant statutory provisions first of the Wealth Tax Act and then of the Income Tax Act.

Section 2(m) of the Wealth Tax Act defines "net wealth" as follows :

15 " net wealth' means 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 assessee on the valuation date other than,-

(i) debts which under section 6 are not to be taken into account; and

(ii) debts which are secured on, or which have been incurred in relation to, any asset in respect of which wealth-tax is not payable under this Act.

Section 2(q) defines 'valuation date' as "in relation to any year for which an assessment is to be made under this-Act, means the last day of the previous year as defined in clause (1 1) of section 2 of the Income-tax Act if an assessment were to be made under that Act for that year". It is not necessary to set out the proviso to this definition. Section 3 is the charging section which reads as follows Subject to the other provisions contained in this 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."

The question with which we are concerned is whether the amounts directed to be paid by notices of demand dated May 28, 1956 and May 31, 1957, are "debts owed" by the assessee within s. 2(m) on the respective valuation dates. Now the notices of demand were issued under s. 18A(1) of the Income Tax Act. The exact notices of demand which were issued are not on record, but the learned counsel drew our attention to the form of notice prescribed under the Act. Section 18A(1), inter alia, provides that the Income Tax Officer may "by order in writing, require an assessee to pay quarterly to the credit of the Central Govern-

L2Sup. CI/66 -- 7 32 0 ment on the 15th day of June, 15th day of September, 15th day of December and 15th day of March in that year, respectively, an amount equal to one-quarter of the income- tax and super-tax payable on so much of such income as is included in his total income of the latest previous year in respect of which he has been assessed." It is not necessary to refer to the rate at which he has to calculate the tax. Sub-section (2) of S. 18A enables an assessee to formulate his own estimate of the tax payable by him if he considers that the income is less than on which he has been required to pay tax, but he has to send this revised estimate ,of the tax payable by him before any one of the dates specified in sub-s. (1)(a) and adjust excess or deficiency in respect of any instalment already paid in a subsequent instalment or in subsequent installments. It is this provision which Mr. Sastri relies on strongly to show that the demand under S. 18A(1) is not a debt owed, within s. 2(m) of the Wealth Tax Act. He further refers to sub-s. (5) which provides for payment of simple interest by the Central Government for any amount paid by the assessee in accordance with the provisions of S. 18A. He says that this shows that it is really the Government which ultimately becomes the debtor and there is no question of any debt being owed by the assessee. He further urges that the word "debt" connotes a ,definite fixed amount and does not include merely a liability to pay a sum which is not ascertained. In our opinion, the High Court was right in answering the question in favour, of the assessee. Section 18A(10) provides that if the assessee does not submit a revised estimate under sub-s. (2) of s. 18A, and he does not pay on the specified date any instalment of tax that he is required to pay under sub-s. (1), he shall be deemed to be an assessee in default in respect of such instalment or instalments, and if he does submit a revised estimate but does not pay an instalment in accordance therewith on the date or dates specified in sub-s. (1), he shall be deemed to be an assessee in default in respect of such instalment or instalments. Under sub-s. (11) any sum paid or recovered from the assessee in pursuance of the provisions of S. 18A is given credit towards the tax due in respect of the appropriate year. We cannot find any substantial difference between advance tax paid under the provisions of s. 18A and tax due and paid under a demand notice passed after an assessment. The only difference is that if the facts so warrant, the assessee is enabled to pay less than the amount demanded by the Income Tax Officer. But till a new estimate is made by the assessee, the amount is ascertained :and there is a statutory liability on the assessee to pay the amount 3 21 mentioned in the order under s. 18A. We agree with the observations of the Gujarat High Court in Commissioner of Wealth-Tax v. Raipur Manufacturing Company(1) that "a condition subsequent, the fulfilment of which may result in the reduction or even extinction of liability, would not have the effect of converting the liability which attaches under such notice under s. 18A into a

contingent liability." In our opinion, a debt is owed when an order under s. 18A(1) is passed and a notice of demand sent. The amount mentioned in the notice begins to be owed till a new figure is substituted by the action of the assessee. On the valuation dates in these appeals, the assessee had not taken any action under s. 18A(2) and consequently the amounts mentioned in the notices of demand were debts owed within s. 2(m) of the Wealth Tax Act on the valuation dates. In the result we agree with the Calcutta High Court that the answer to the question referred to it should be in favour of the assessee. The appeals, therefore, fail and are dismissed with costs, one set of hearing fee. Appeals dismissed.

(1) 52 I.T.R. 482 at p. 522