H.H. Setu Parvati Bayi vs Commissioner Of Wealth-Tax, Kerala on 1 December, 1967

Equivalent citations: [1968]69ITR864(SC), AIRONLINE 1967 SC 77

Bench: J.C. Shah, V. Bhargava

JUDGMENT

Ramaswamy, J.

1. These appeals are brought, by special leave, from the judgment of the High Court of Kerala dated June 28, 1966, in Income- tax Referred Case No. 6 of 1965.

2. For the assessment years 1958-59 to 1960-61 the Income-tax Officer, A- Ward, Trivandrum, completed the assessment of the appellant to wealth- tax as follows :

Assessment year	Net wealth assessed Rs.
1958-59	73,36,303
1959-60	72,47,522
1960-61	74,31,760

3. The appellant took the matter in appeal to the Appellate Assistant Commissioner of Wealth-tax, Trivandrum, and contended that the liability to income-tax and wealth-tax as mentioned below should be deducted in computing the net wealth of the appellant as on the relevant valuation dates corresponding the the respective assessments :

Assessment year	Amount of income-tax liability claimed	Amount of wealth-tax liability claimed	Total tax liability claimed
1958-59	Nil	1,33,127	1,33,127
1959-60	Nil	1,37,995	1,37,995

1960-61	1,07,102	1,56,691	2,63,793

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4. The Appellate Assistant Commissioner rejected the claim of the appellant. Against the order of the Appellate Assistant Commissioner the appellant preferred an appeal to the Income-tax Appellate Tribunal, Madras. The Tribunal by its order dated March 15, 1963, allowed the claim of the appellant holding that the liability to wealth-tax should be deducted in computing the net wealth of the appellant for the respective years. At the instance of the Commissioner of Wealth-tax, Kerala, the Appellate Tribunal stated a case to the High Court under section 27(1) of the Wealth-tax Act, (27 of 1957), hereinafter referred to as the "Act", on the following questions of law :

> "(1) Whether, on the facts and in the circumstances of this case, the liability towards wealth-tax calculated on the basis of wealth-tax returns filed by the assessee is an admissible deduction under section 2(m) of the Wealth-tax Act for the purpose of computation of the net wealth of the assessee for the assessment years 1958-59, 1959-60 and 1960-61 ?
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> (2) Whether, on the facts and in the circumstances and the provisions of section 7(2), the deletion of Rs. 5,13,390, Rs. 3,17,448 and Rs. 9,19,809 representing the difference between the market value and the book value of the quoted shares held by Narayanan Investment Trust (P.) Ltd. in computing the value of the shares of that company as on August 16, 1957, August 16, 1958 and August 16, 1959, was justified ?
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> (3) Whether, on the facts and in the circumstances of the case, the Tribunal is justified in law to hold that an amount of Rs. 7,00,000 being the provision made for tax and shown in the balance-sheet as on August 16, 1957, should be allowed as a deduction in computing break- up value of the shares in Messrs. Narayanan Investment Trust (P.) Ltd. ?"

5. After hearing the reference the High Court answered the second and the third questions in favour of the appellant and against the department. With regard to the first question, the High Court took the view that the wealth-tax liability of a particular year could not be deducted as a liability for that year but could be deducted in subsequent years subject to the provisions of section 2(m) of the Act. In the course of its judgment, the High Court observed that the liability for wealth- tax for the year 1958-59 commenced only on April 1, 1958, and not earlier than that and there was hence no liability towards wealth-tax for the year 1958-59 as on March 31, 1958. But any liability towards wealth-tax for 1957-58 which was in existence as on March 31, 1958, must be taken into account in determining the assets as on that date which could be charged under section 3 of the Act for the year 1958- 59.

6. The Act was brought into force on April 1, 1957. Section 3 of the Act imposes a charge for every financial year commencing on and from April 1, 1957, for 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 expression "valuation date" by section 2(q) means in relation

to any year for which an assessment is to be made the last day of the previous year as defined in clause (11) of section 2 of the Income-tax Act if an assessment were to be made under that Act for that year. "Net Wealth" as defined in section 2(m) of the Act at the relevant time meant the amount by which the aggregate value computed in accordance with the provisions of the Act of all the assets, wherever located, belonging to the assessee on the valuation date, including assets required to be included in the net wealth as on that date under the Act, is in excess of the aggregate value of all the debts owed by the assessee on the valuation date. It is manifest that charge of the wealth-tax act is, according to the terms of section 3, imposed on the net wealth of the assessee computed on the valuation date after adjusting the debts owed by the assessee on that date and permitted to be taken into account. Unlike the Income-tax Act, the Wealth-tax Act prescribes the rate of tax in the Schedule, and it is evident that by virtue of section 3 of the Act the liability to pay wealth-tax gets crystallized on the valuation date, and not on the first day of the year of assessment.

7. On behalf of the appellant, counsel put forward the argument that the High Court erred in deciding that the wealth-tax payable by the appellant became a liability only on April 1 of the financial year for which it was payable and therefore it could not be treated as a liability on March 31, which was the valuation date in the case of the appellant. In other words, the contention was that the High Court should have held that the wealth-tax on the valuation date, viz., March 31, for the assessment year commencing April 1 following, was a debt within the meaning of section 2(m) of the Act even though the wealth-tax was quantified by the wealth-tax was quantified by the wealth-tax assessment made after the valuation date. In our opinion, the argument put forward on behalf of the appellant is well founded and must be accepted as correct. The reason is that the present case is governed by the principle laid down by this court in Kesoram Industries and Cotton Mills Ltd. v. Commissioner of Wealth-tax. In that case, the appellant-company had, in its balance-sheet for the period ending March 31, 1957, shown a certain amount as provision for payment of income-tax and super-tax in respect of that year of account. The question at issue was whether that amount was a "debt owed" within the meaning of section 2(m) of the Act as on March 31, 1957, which was the valuation date, and as such deductible in computing the net wealth of the appellant-company. It was held by the majority judgment of this court that the debt was a present obligation to pay an ascertainable sum of money, whether the amount was payable in praesenti or in future : debitum in praesenti, solvendum in future. A liability to pay income-tax was therefore a present liability though it became payable after it was quantified in accordance with ascertainable data. There is a perfected debt at any rate on the last day of the accounting year and not a contingent liability. The rate is always easily ascertainable. If the Finance Act is passed, it is the rate fixed by that Act; if the Finance Act is not passed, it is the rate proposed in the Finance Bill pending before Parliament or the rate in force in the preceding year, whichever is more favourable to the assessee. All the ingredients of a "debt" are present and therefore it is a present liability of an ascertainable amount. It was further held that the amount of provision for payment of income-tax and super-tax in respect of the year of accounting ending March 31, 1957, was a "debt owed" within the meaning of section 2(m) of the Act on the valuation date, viz., March 31, 1957, and was as such deductible in computing the net wealth of the company as on the valuation date. It is manifest that the language of the charging section 3 of the Act is in pari materia with the language of the charging section 3 of the Income-tax Act, 1922. In the case of wealth-tax, the rates are prescribed in the schedule to the Act itself and the liability to pay wealth-tax becomes crystallized on the valuation date, though the tax islevied and becomes

payable in the relevant assessment year. We accordingly hold that the wealth-tax liability of the appellant on the valuation date, viz., on March 31 for the assessment year April 1 following was a "debt owed" within the meaning of section 2(m) of the act and should be deducted from the estimated value of the assets as on the valuation date. To put it differently, so far as assessment year 1958-59 is concerned, there was a liability imposed on the appellant to pay the wealth-tax on March 31, 1958, which was the valuation date, and so amount of wealth-tax should be deducted from the estimated value of the assets as on that date in determining the assets taxable for the assessment year 1958-59. We accordingly hold that the first question referred to the High Court must be answered in favour of the appellant and that in the facts and circumstances of the case, the liability towards wealth-tax calculated on the basis of wealth-tax return filed by the appellant is an admissible deduction under section 2(m) of the Act of the purpose of computation of the net wealth of the appellant for the assessment years 1958-59, 1959-60 and 1960-61.

8. On behalf of the respondent Mr. B. Sen referred to the decision of the Mysore High Court in Commissioner of Income-tax/ Wealth-tax v. Amco batteries (P.) Ltd. and of the Punjab High Court in Raja Sir Harinder Singh Brar Bans Bahadur v. Wealth-tax Officer, A-Ward, Bhatinda, in which it was held that liability of the assessee to wealth-tax on the valuation date was not a debt owed within the meaning of section 2(m) of the Act and, hence, the liability to wealth-tax could not be deducted in computing the net wealth of the assessee as on the relevant valuation date. For the reasons already expressed we hold that the view taken by the Mysore and the Punjab High Court as to the interpretation and legal effect of sections 2(m) and 3 of the act is not correct.

9. These appeals are accordingly allowed with costs - there will be one hearing fee.

10. Appeals allowed.