

Delhi High Court

The Commissioner Of Wealth-Tax ... vs Soma Wanti Sethi N.D. on 3 August, 2000

Equivalent citations: 2000 (53) DRJ 6

Author: P . Arijit

Bench: P . Arijit, D Jain

ORDER Arijit Pasayat, CJ.

1. All these references involve a common question which has been referred by the Income-tax Appellate Tribunal, Delhi Bench 'E' (in short the 'Tribunal') under Section 27(1) of the Wealth-tax Act, 1957(in short the 'Act') for opinion of this Court:

"Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that no addition could be made to the net wealth of the assessee on account of disclosure of Income-tax made by the firm in which she was a partner even though the provisions of Voluntary Disclosure Act, 1976 with particular reference to Section 13(2) read with Section 8(1) of the said Act were not complied with and as such, disclosure could not be accepted?"

2. The relevant assessment years are 1965-66 to 1969-70. The valuation date in each case was 31st March of the relevant year. Assessee is an individual. She was a partner in a partnership firm styled M/s Gulab Singh Sethi & Sons. Said firm made a declaration under the provisions of the Voluntary Disclosure of Income and Wealth Act, 1976 (in short the 'Voluntary Disclosure Act') disclosing an income of Rs. 31 lakhs stated to have been earned during the accounting years relevant to the assessment years 1961-62 to 1974-75. Block assessment in respect of the said voluntary disclosure was made by the I.T.O. and tax was charged accordingly from the firm. On the basis of disclosure made by the firm, Inspecting Assistant Commissioner (in short the 'IAC') made addition of Rs.3,44,000/- while computing assessee's net wealth for each of the years. It was, however, observed that this wealth will later be excluded if the assessee fulfills the condition laid down in the Voluntary Disclosure Scheme, 1975. It is to be noted that there was no question of assessee fulfilling any condition, because it had not made any declaration. The conclusion was challenged in appeals before the Commissioner of Income-tax(Appeals)(in short the 'CIT(A)'). The said authority was of the view that action of IAC was not correct and directed exclusion of the amount in question in each year. Matter was carried in appeal before the Tribunal by the revenue. Tribunal, with reference to Section 13 of the Voluntary Disclosure Act held that the Explanation appended thereto clearly applies and, therefore, Commissioner's conclusions were in order. On being moved for reference, the question as set out above has been referred for opinion of this Court.

3. Learned counsel for the revenue submitted that the true effect of Section 13(2) read with Section 8(1) of the Voluntary Disclosure Act was not kept in view and the effect of non-compliance with the requirements and its consequential bearing on the declarations made were lost sight of.

There was no appearance on behalf of the assessee in spite of service.

4. The question referred in our opinion does not arise out of the order of the Tribunal. In fact Tribunal has concluded as follows:

"Revenue is aggrieved. Hence these appeals. Learned D.R. urged that in view of Jamana Prasad Kanhaiya Lal Vs. CIT, , it is only the declarant who can be given the benefit of exemption and not any other party. In the present case, it was pointed out that it was not the assessee who made the declaration or voluntary disclosure, but a firm in which the assessee was a partner and that firm was a separate entity. We see no force in revenue's contention. Section 13 of the said 1976 Act contains the relevant provision as regards exemption from Wealth-tax in respect of assets specified in declaration. Explanation below Section 13(1) reads as under:

"Explanation Where a declaration under sub-section (1) of Section 3 is made by a firm, the assets referred to in clause (i) or, as the case may be, the amount referred to in clause, (ii) shall not be taken into account in computing the net wealth of any partner of the firm or, as the case may be, in determining the value of the interest of any partner in the firm."

The said explanation leaves no doubt that if the firm as per columns 4, 5 and 6 of Entry No. 6 of Form-B of Voluntary Disclosure as prescribed under Rule 4 of the Voluntary Disclosure of Income and Wealth tax Rules 1975 show that if the income disclosed by the declarant firm included any assets, whether represented by cash, bank deposits, bullion, investment in shares, debts due from other persons, commodities or any other assets, the same had to be detailed by the declarant firm and consequence of aforesaid explanation would be that even in the hands of the partner of the firm such assets would be exempt from wealth-tax. If, on the other hand, the income disclosed by the declarant firm was not represented by any assets as aforesaid, then there would be no room for including the impugned sum in the computation of assessee individual partner's net wealth even by virtue of section 4(1)(b) read with Rule 2, Wealth-tax Rules. In conclusion, we see no merit in revenue's appeals and no justification to disturb the Appellate Commissioner's finding. Revenue fails."

5. The question now raised does not appear to have been raised before the Tribunal, and consequently Tribunal has not recorded any finding thereon. What was in issue before Tribunal related to effect of Explanation to Section 13(1). It was observed that said provision made it clear that if the firm as per columns 4, 5 and 6 of Entry No. 6 of Form-B of Voluntary disclosure as prescribed under Rule 4 of the Voluntary Disclosure of Income and Wealth Rules, 1975(in short 'V.D. Rules') shows that the income disclosed by the declarant firm included any assets, whether represented by cash, bank deposits and other specified assets, the same had to be detailed by the declarant firm. It was Tribunal's view that consequence of such explanation would be that even in the hands of the partner of the firm such assets would be exempt from wealth-tax, if on the other hand the income declared by the declarant firm was not represented by any assets as afore said, then there would be no room for including the impugned sum in the computation of net wealth of a partner assessee, an individual even by virtue of Section 4(1)(b) of the Act read with Rule 2 of Wealth-tax Rules, 1957(in short the Rules). The question as to what would be the effect if the declarant firm did not comply with requirements of Section 13(2) read with Section 8(1) of the Voluntary Disclosure Act was not in issue before the Tribunal. No finding has also been recorded by the Tribunal in that regard. As the question does not arise out of the order of the Tribunal, we decline to answer the question.

The references are returned unanswered.