

Supreme Court of India

The Commissioner Of Wealth Tax ... vs The Moone Mills Ltd. on 7 September, 1971

Equivalent citations: 1973 88 ITR 427 SC, (1972) 4 SCC 425, 1972 (4) UJ 67 SC

Author: K Hegde

Bench: A Grover, K Hegde

JUDGMENT K.S. Hegde, J.

1. In this appeal by special leave, the only question that we have to consider is whether on the facts and the circumstances of the case the tribunal was right in holding that the Income-tax liabilities amounting to Rs. 1,94,270/-was not allowable as a deduction in the computation of the net wealth of the assessee company in view of the proviso to Section 2(m)(iii) of the Wealth Tax Act, 1957. The assessee is ex parte.

2. Herein, we are concerned with the assessee's Wealth-tax assessment for the year 1959-60, the corresponding valuation date being the Calendar year ending December 31, 1958.

3. In the computation of the net wealth of the assessee as on the material valuation date, the Wealth-tax Officer refused to allow deduction in respect of a sum of Rs. 10,81,971/-being the income-tax liability of the assessee. The major part of the amount represented the income-tax assessed and demanded from the assessee company in respect of the assessment year 1951-52, which had been disputed in appeal and was not paid on the valuation date. Before the App. Asstt. Commissioner and the Tribunal the claim for deduction was scaled down to Rs. 10,31,971/-. The Tribunal allowed deduction only in respect of the sum of Rs. 37,701/-being the last installment of advance tax demanded under Section 18A, which remained outstanding on the valuation date. Regarding the balance of Rs. 9,94,270/-being the amount of income tax liability which had been disputed by the assessee in appeal, the Tribunal held that it could not be allowed as a deduction in the computation of the net wealth in view of Section 2(m)(iii).

4. The High Court answered the question in favour of the assessee on the assumption that the same is covered by the decision of this Court in *Kesoram Industries and Cotton Mills Ltd. v. Commissioner of Wealth-tax (Central), Calcutta* 59 I.T.R. 767. The material facts of that case were: In its balance sheet for the year ending March 31, 1957 the assessee had made provision for the payment of income-tax and super-tax in respect of that year of account. The question was whether that amount was debt owed within the meaning of Section 2(m) of the Wealth Tax Act. The Court answered that question in the affirmative. Therein the Court did not go into the scope of Sub-clause (iii)(m) of Section 2 of the Wealth Tax Act as the facts of that case did not come within the scope of that provision. Clause (m) Section 2 reads as follows:

(m) "net wealth" value computed amount by which the aggregated with the provisions of this Act belonging to the assessee on the means the in accordance all the assets, wherever located, valuation date, including assets required to be included in his 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

(iii) the amount of tax, penalty or interest payable in consequence any order passed under or in pursuance of this Act or any law relation to taxation of income or profits, or the Estate Duty "Act, 1958 the Expenditure tax Act, 1957, or the Gift tax Act, 1958

(a) which is outstanding on the valuation date and is claimed by the assessee in appeal, revision or other proceeding as not being payable him, OR

(b) which although not claimed by the assessee as not being payable him, is nevertheless outstanding for a period or more than twelve months, the valuation date.

In view of this Sub-clause (iii) of Clause M of Section 2 the assessee was not entitle to claim the deduction in question. The High Court clearly erred in over looking this clause though the same had been promptly referred to in the statement of the case.

5. In the result, this appeal is allowed. We revoke the answer give by the High Court and answer that question in favour of the Department. The(sic) will be no order as to costs in this appeal.