

Supreme Court of India

Commissioner Of Wealth-Tax, West ... vs Sardar Ajaib Singh on 6 September, 1971

Equivalent citations: 1971 82 ITR 842 SC, (1972) 4 SCC 456

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Bench: A Grover, K Hegde

JUDGMENT K.S. Hegde, J.

1. In these appeals by certificates, filed by the same assessee, only one question arises for decision, viz., whether, on the facts and in the circumstances of the case, in determining the break-up value of the shares held by the assessee in M/s. Indra Singh and Sons Private Ltd. (to be hereinafter referred to as the "company") the estimated tax liability not provided for in the balance-sheet of the company should have been deducted? The Tribunal held against the assessee on that question but at the instance of the assessee it submitted that question along with several other questions to the High Court for its opinion. The High Court answered all the questions referred to it in favour of the department by its judgment dated August 2, 1967. But, thereafter, on an application by the assessee, it amended the answer given by it to question No. 2(i), the question referred to earlier, purporting to follow the decision of this Court in Kesoram Industries and Cotton Mills Ltd. v. Commissioner of Wealth-tax (Central), Calcutta . Aggrieved by the amendment so made, the Commissioner of Wealth-tax, West Bengal, has come up in appeal to this Court.

2. In these appeals we are concerned with the wealth-tax assessment of the assessee for the years 1957-58 and 1958-59 for which the relevant valuation dates are March 31, 1957, and March 31, 1958. The material facts bearing on the point in issue as set out in the statement of case are:

The assessee is an individual. On the relevant valuation dates, he was holding 650 ordinary shares of the face value of Rs. 1,000 each in M/s. Indra Singh and Sons Pvt. Ltd. The Wealth-tax Officer valued those shares at Rs. 4,281 per share as on March 31, 1957, and Rs. 3,884 per share as on March 31, 1958. These shares were not being sold in the market. Hence the Wealth-tax Officer valued them on the basis of the assets and liabilities of the company as disclosed in its balance sheets. During the assessment of the wealth-tax for the assessment year 1957-58, the assessee claimed that for determining the value of the shares on the basis of assets and liabilities of the company, the Wealth-tax Officer should take into consideration the tax liability of the company amounting to rupees eight lakhs which had not been shown in the balance-sheet. During the assessment of the wealth-tax for the assessment year 1958-59, the assessee claimed that, in computing the value of the shares on the basis of the assets and liabilities of the company, the Wealth-tax Officer should take into consideration the tax liability of Rs. 9,50,000 not shown in the balance-sheet. The Wealth-tax Officer rejected those contentions. He proceeded to assess the assessee in respect of both those years on the basis of the balance-sheets. The Appellate Assistant Commissioner confirmed the order of the Wealth-tax Officer. On a further appeal to the Tribunal, the Tribunal came to the conclusion that the estimated tax liability of the assessee as on the valuation dates should be deducted from the gross value of the assets. But it took the view that if there were any encroachments on the assets of the company for the tax liability, the company certainly would have provided for it in its accounts before presenting the balance-sheet and the profit and loss account to the shareholders and the company did not make any provision for the

estimated tax liability because it was satisfied that the existing reserve plus the advance payment made under Section 18A coupled with the refund, the company would get under Section 18(5) of the Income-tax Act on the dividend credited to the profit and loss account would be more than enough to cover the tax liability during the years in question. In other words the finding of the Tribunal was that, though the estimated tax liability of the company was liable to be deducted before arriving at the value of the assets of the company, on the facts of this case, no provision need be made for the same, as several other assets of the company were also not taken into consideration in arriving at the value of the assets. The Tribunal was of the opinion that the existing reserve of the company, the advance tax paid by the company which was to be adjusted towards the tax liability of the company and the refund to which the company was entitled under Section 18(5) of the Income-tax Act were sufficient to cover the tax liability of the company. This was essentially a finding of fact. The assessee did not ask the Tribunal to submit any question to the High Court challenging the correctness of that finding. No arguments were advanced before the High Court to show that that finding of the Tribunal was vitiated in any manner.

3. The question as framed by the Tribunal did not correctly bring out the controversy between the parties. The question relating to the assessment for the year 1957-58 reads :

Whether, on the facts and in the circumstances of the case, in determining the break up value of the shares held by the assessee in Messrs. Indra Singh and Sons Pvt. Ltd., the following amounts should have been deducted from the assets shown in the balance-sheet of the said company as on March 31, 1957:

(i) Estimated tax liability amounting to Rs. 8,00,000 which was not provided for in the balance-sheet

4. Similar was the question relating to the year 1958-59 excepting the fact that the tax liability was shown as Rs. 9,50,000.

5. A superficial reading of this question may give a wrong impression as to its scope. But that question should be understood on the basis of the facts found by the Tribunal.

6. In our opinion, the High Court erroneously came to the conclusion that the afore-mentioned question has to be answered in favour of the assessee in view of the decision of this Court in Kesoram Industries' case . That case merely laid down that "debt owed" within the meaning of Section 2(m) of the Wealth-tax Act, 1957, could be denned as the liability to pay in praesenti or in future an ascertainable sum of money. Herein, the Tribunal has held that the "debt owed" is fully covered by the other assets which had not been taken into consideration in computing the net value of the assets of the company.

7. In this view it is not necessary for us to consider whether it was within the competence of the High Court to amend the answer given by it to the question referred to it.

8. For the reasons mentioned above we allow these appeals, discharge the answer given by the High Court to the question mentioned earlier and answer that question in favour of the department. The assessee to pay costs of the department in those appeals-hearing fee one set.