
(1988) 08 CAL CK 0014
In the Calcutta High Court
Case No : Matter No. 1308 of 1980

Commissioner of Income Tax

APPELLANT

Vs

Ranjit Kumar Mullick

RESPONDENT

Date of Decision : 16-08-1988

Acts Referred:

Wealth Tax Act, 1957 — Section 2

Citation : (1992) 198 ITR 348

Hon'ble Judges : K.M. Yusuf, J;Ajit K. Sengupta, J

Bench : Division Bench

Judgement

Ajit K. Sengupta, J.—At the instance of the Commissioner of Income Tax, West Bengal-XI, the following question of law has been referred to this court u/s 27(1) of the Wealth-tax Act, 1957, for the assessment years 1971-72, 1972-73 and 1973-74 :

" Whether, on the facts and in the circumstances of the case, the amounts representing the arrears of wealth-tax and Income Tax of the assessee's predecessor in title can be taken into account in computing the net wealth of the assessee ? "

2. The facts are in a narrow compass.

3. Under a trust known as " Beharilal Mullick Trust ", there are three beneficiaries, viz., Uma Charan, Sheo Prakash and Naba Kumar. Each of the beneficiaries has one third interest. Uma Charan died on August 5, 1969, leaving his one third beneficial interest, apart from his other personal properties. He left behind his widow and son, Ranjit Kumar. This reference pertains to the wealth-tax assessments of Ranjit Kumar Mullick. It appears that tax liabilities of Uma Charan were outstanding. These liabilities of Uma Charan have to be discharged by Ranjit Kumar to the extent of his share of property which he inherited from his father. The liability so far as Ranjit Kumar was concerned was Rs. 26,855. While filing the returns for the assessment years in question, the assessee, Ranjit

Kumar, claimed his share of tax liabilities as a deduction from out of the properties inherited by him. Similar was the case with his mother, Smt. Durgamani Mullick. The Wealth-tax Officer rejected the claim of the son and the mother on the ground that these were not tax liabilities in their hands and as such could not be allowed by virtue of Section 2(m)(iii)(b) of the Act. The Appellate Assistant Commissioner upheld the orders of the Wealth-tax Officer in both the cases.

4. The appeals filed by Smt. Durgamani Mullick came before the Tribunal. The contention of Smt. Durgamani Mullick was accepted by the Tribunal in its consolidated order dated September 15, 1978. The Tribunal set aside the assessment orders and directed that the arrears of wealth-tax and income tax should be allowed as claimed.

5. The appeals of Ranjit Kumar Mullick, who is the respondent before us, came up for hearing before another Bench of the Tribunal. It was pointed out on behalf of the assessee that, in the case of his mother, deduction of arrear liabilities of wealth-tax and Income Tax were allowed. However, the Bench which took up the appeals of Ranjit Kumar felt that the view taken by the Bench in the case of Smt. Duragamani Mullick was not acceptable, with the result that the matter was referred to the President who, in turn, placed the appeals before the Special Bench.

6. The Special Bench, inter alia, held that what the assessee in this case inherits is only the net property and that should be treated as an asset for the purpose of wealth-tax. In so far as the assessee is concerned, the asset that comes to his hands is the net amount which he obtained from his father by way of inheritance after deducting all the liabilities. Accordingly, one need not go to the provisions of Sections 2(m) at all. In other words, the Tribunal took the assets as equivalent to the net estate or net inheritance obtained by Ranjit Kumar from his father.

7. We are of the view that, if the asset inherited by the assessee is assessed to wealth-tax, the liability inherited by way of arrears of Income Tax and wealth-tax has to be taken into account in computing the net wealth. The provisions of Section 2(m) of the Act will not be applicable in such a case. The assessee inherits the asset as and by way of inheritance subject to the encumbrance or charge. The net asset so inherited has to be assessed in his hands. The Revenue cannot contend that the liabilities attached to the assets inherited should not be taken into account in computing the net wealth for the purpose of wealth-tax. Even assuming that no charge was created in respect of the arrear taxes, the assessee had the obligation to meet the said liability in respect of the assets inherited by him. As a matter of fact, the Revenue could claim a slice of the assets to cover the arrear taxes of the deceased. The Revenue had an overriding claim against the assets of the deceased in respect of outstanding taxes. That part of the assets required to meet the said liabilities, in our view, could not form part of the assets inherited by the assessee and they are required to be excluded before the chargeable wealth of the assesses could be computed for the relevant

assessment year.

8. On the facts of this case, the Tribunal came to a correct conclusion. For the reasons aforesaid, the question in this reference is answered in the affirmative and in favour of the assessee.

9. There will be no order as to costs.

K.M. Yusuf, J.

10. I agree.