
(1995) 12 AHC CK 0035

In the Allahabad High Court

Case No : Wealth-tax Reference No. 247 of 1980

Commissioner of Income Tax

APPELLANT

Vs

Vidya Charan

RESPONDENT

Date of Decision : 15-12-1995

Acts Referred:

Wealth Tax Act, 1957 — Section 2, 5(1)

Citation : (1996) 133 CTR 375 : (1996) 220 ITR 78 : (1996) 86 TAXMAN 133

Hon'ble Judges : Om Prakash, J;M. Katju, J

Bench : Division Bench

Judgement

Om Prakash, J.—The Income Tax Appellate Tribunal (Delhi Bench) referred the following question u/s 27(1) of the Wealth-tax Act, 1957 (briefly "the Act"), for the opinion of this court :

" Whether, on the facts and in the circumstance of the case, the assessee is entitled to the deduction from his net wealth of Rs. 79,896 representing his debit balance in his capital account in the firm, Messrs. Sonpal Vidya Charan ?"

2. The assessee in the status of an individual filed his wealth-tax return for the assessment year 1976-77 claiming deduction in respect of his debit balance of Rs. 79,896 in the capital account of the firm ; Sonpal Vidya Charan, in which he was a partner in view of the provisions of Section 2(m) of the Act. The Wealth-tax Officer rejected the claim of the assessee observing :

"The assessee's capital in Sohpal Vidya Charan shows debit balance of Rs. 79,896. The firm attracts provision of Section 5(1)(xxxii). Capital balance whether debit or credit in the books Of the firm cannot be considered for any Other purposes."

3. Rejecting the claim of deduction of the debit balance, the Wealth-tax Officer included the debit balance of Rs. 79,896 in the wealth of the assessee.

4. The assessee carried the dispute in appeal to the Appellate Assistant

Commissioner. He held that the value of the assessee's interest in the assets of a firm which is an industrial undertaking within the meaning of the Explanation to Clause (xxxi) of Section 5(1) of the Act "is not to be included in his net wealth."

5. He further held ;

" The Act does not, however, provide that the debits arising on account of investment in exempted assets should be allowed as deduction. In my opinion, the assessee is not entitled to deduction for the debit balance of Rs. 79,896 in a firm covered under the provisions of Section 5(1)(xxxii) but the Wealth-tax Officer has certainly erred in including the debit balance in the Wealth of the assessee. The debit balance of Rs. 79,896 will have to be ignored."

6. The assessee then appealed to the Appellate Tribunal. Divergent views were taken by the Accountant Member and the Judicial Member of the Appellate Tribunal and then the matter was referred to a Third Member, who agreed with the view taken by the Accountant Member.

7. The Accountant Member of the Appellate tribunal was of the view that the debit balance Was in the nature of "debts owed" within the meaning of Section 2(m) and hence that was deductible from the wealth of the assessee. He further held :

" The debit balance has, however, to be adjusted as per Rule 2 of the Wealth-tax Rules, and it has also to exclude such of withdrawals out of it as have gone to create assets as exempt u/s 5 of the Wealth-tax Act. If the amount so adjusted becomes a positive figure, it Would be exempt u/s 5(1)(xxxii), but if it becomes a minus figure, it shall be allowed as a debit u/s 2(m) of the Wealth-tax Act."

8. The Judicial Member of the Appellate Tribunal differed from the view taken by the Accountant Member. He was of the view that u/s 2(m)(ii) of the Act only debts owed by the assessee on the valuation date other than the debts which are secured on or which has been incurred in relation to, any property in respect of which the wealth-tax is not chargeable under this Act are deductible.

9. To elaborate his point of view, the Judicial Member held :

" In the present case, no wealth-tax is chargeable under this Act in respect of an industrial undertaking within the meaning of Section 5(1)(xxxi), (xxxii). The firm in which the assessee is a partner is admittedly such an undertaking. Therefore, even if it is assumed that the debit balance in the capital account of the firm, in which the assessee is a partner, is a debt owed by him to the firm, even then it cannot be deducted as it is incurred in relation to an asset in respect of which wealth-tax is not payable."

10. He, therefore, held that the "assessee's claim for deduction of the debit balance of Rs. 79,896 in his capital account in the firm must fail".

11. We do not know what was the reasoning given by the learned Third Member, who agreed with the Accountant Member, because his order is not annexed to

the reference.

12. Section 2(m) defines "net wealth" as meaning the amount by which the aggregate value computed in accordance with the provisions of this Act of all the assets belonging to the assessee on the valuation date including assets required to be included in his net 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 which have been incurred in relation to the said assets). The portion within the parenthetical clause was inserted in Section 2(m) by the Finance Act, 1992, with effect from April 1, 1993. Prior to that amendment, this portion at the relevant time was as under :

" on the valuation date other than--....

(ii) debts which are secured on, or which have been incurred in relation to, any property in respect of which wealth-tax is not chargeable under this Act. "

13. From the exclusionary Sub-clause (ii) to Section 2(m), it is clear that the debts which are secured on, or which have been incurred in relation to, any property in respect of which wealth-tax is not chargeable under this Act are not deductible u/s 2(m) while computing the net wealth of the assessee. Both the Accountant Member and the Judicial Member have fallen into error, inasmuch as they did not bear in their mind the true meaning of the exclusionary Sub-clause (ii) to Section 2(m). Whereas the Accountant Member held that the debit balance in the assessee's capital account in the firm was deductible u/s 2(m) without taking into account the exclusionary Sub-clause (ii) to Section 2(m), the Judicial Member though took a note of the exclusionary Sub-clause (ii), proceeded on the wrong premise that the debit balance in the capital account of the firm "cannot be deducted as it is incurred in relation to an asset in respect of which wealth-tax is not payable". The Judicial Member remained under the impression that the debit balance in the capital account of the firm tantamounted to a debt which the assessee incurred in relation to the assets forming part of an industrial undertaking, belonging to the firm, in which the assessee was a partner, Within the meaning of Clause (xxxii) to Section 5(1). The Judicial Member erroneously assumed the debit balance in the capital account of the firm as an asset of the industrial undertaking, belonging to the firm in which the assessee was a partner. Debit balance, in our view, cannot be taken to be an asset of the industrial undertaking belonging to the assessee's firm.

14. Section 2(e) of the Act defines the word "assets". From the inclusive definition given u/s 2(e) it is clear that the word "assets" includes property of every description, movable or immovable; excluding the assets enumerated in the clause or sub-clauses of that section. Section 2(e) takes in "property of every description" and that expression is qualified by the words "movable or immovable". Properties which do not ordinarily answer the test of movability or immovability such as intangible rights or incorporeal rights, could not be regarded to be the "assets" within the meaning of Section 2(e). Debit balance in

the capital account of the firm cannot be said to be a tangible right and, therefore, that cannot be regarded an asset forming part of an industrial undertaking belonging to the firm of the assessee within the meaning of Section 5(1)(xxxii). If the Judicial Member wanted to take the view that the debit balance in the capital account of the firm tantamounted to a debt covered by the exclusionary Sub-clause (ii) to Section 2(m), then the relevant enquiry to be made was whether the said debt was incurred in relation to any property in respect of which the wealth-tax is not chargeable under this Act. Section 2(m) does not permit deduction of debts which are secured on or which have been incurred in relation to any property in respect of which the wealth-tax is not chargeable under this Act. Only those debts will qualify for deduction which have been incurred in relation to any property which can be subjected to wealth-tax. Neither the Accountant Member nor the Judicial Member made any enquiry into the fact whether the debit balance in the capital account of the firm resulted from the fact that the amount withdrawn by the assessee from the firm, was utilised in relation to a property in respect of which the wealth-tax was chargeable. Unless this enquiry is made, no conclusion, much less the correct conclusion about the exclusion of such debt within the meaning of Sub-clause (ii) to Section 2(m), can be reached. The Accountant Member committed an error in proceeding with the assumption that the debit balance in the capital account of the firm was a debt not covered by the exclusionary Sub-clause (ii). On the other hand, the Judicial Member also wrongly held that the debt was incurred by the assessee in relation to the assets forming part of the industrial undertaking belonging to the assessee's firm, which was exempt u/s 5(1)(xxxii).

15. Both the Accountant Member and the Judicial Member unanimously held that the debit balance in the capital account of the firm was the debt owed by the assessee to the firm. No exception can be taken to this finding. The only question for consideration is whether the debit balance is a debt not covered by the exclusionary Sub-clause (ii). Before deciding this question, the Appellate Tribunal was required to make due enquiry into the fact whether the debt was incurred in relation to any property which is or is not chargeable to wealth-tax. If not, the exclusionary Sub-clause (ii) will come into play, inasmuch as u/s 2(m) only that debt which is incurred in relation to any property which is chargeable to tax, can be allowed to be deducted. If a property, in respect of which the debt is incurred, is not chargeable to wealth-tax, then that will not be deducted from the wealth-tax u/s 2(m).

16. For the reasons, the case is sent back to the Appellate Tribunal with the direction that it will record a clear finding as to whether the amount withdrawn from the firm giving rise to the debit balance was utilised in relation to any property, which is chargeable to wealth-tax. If it is so, then the debit balance being a debt owed within the meaning of Section 2(m) will be allowed to be deducted, but if the finding is that the debt was incurred in relation to any property not chargeable to wealth-tax, then the deduction will not be allowed in view of Section 2(m)(ii).

17. The record of this reference be sent down to the Tribunal within fifteen days to pass a fresh order in the light of our above observations.