

(2001) 02 KL CK 0029

In the High Court Of Kerala

Case No : Income-tax Reference No. 165 of 1998

Commissioner of Wealth-tax

APPELLANT

Vs

A.M. Moosa

RESPONDENT

Date of Decision : 28-02-2001

Acts Referred:

Citation : (2001) 249 ITR 395

Hon'ble Judges : S. Sankarasubban, J;A. Lekshmikutty, J

Bench : Division Bench

Advocate : P.K.R. Menon and George K. George, for the Appellant; C. Kochunni Nair, for the Respondent

Judgement

S. Sankarasubban, J.—This reference is at the instance of the Revenue and is u/s 27(3) of the Wealth-tax Act, 1957. The question of law referred is as follows :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the assessee is entitled to claim deduction of the provision made for purchase tax in the year 1981-82 on the basis of the provisional assessment to sales tax for 1976-77 ?"

2. The facts of the case are as follows :

The assessee filed his return of wealth for the assessment year 1981-82 and claimed deduction of Rs. 6,43,499. This amount was described as the amount for purchase tax relating to the year 1976-77. The Wealth-tax Officer disallowed the claim on the ground that the Government of Kerala had exempted marine products from levy of purchase tax during the relevant accounting period and held that the provision was not against any real or ascertained liability. Aggrieved by the order of the Wealth-tax Officer, the assessee preferred an appeal before the Wealth-tax Commissioner (Appeals). The Wealth-tax Commissioner (Appeals) confirmed the order of the Wealth-tax Officer.

3. The assessee filed a second appeal before the Income Tax Appellate Tribunal.

The Income Tax Appellate Tribunal set aside the order of the Commissioner and restored the matter to the Wealth-tax Officer with a direction to decide the issue afresh in the light of the facts described in the order. The assessee was directed to produce the provisional sales tax assessment order for the assessment year 1976-77 before the Wealth-tax Officer and the Wealth-tax Officer was directed to allow as a deduction the provision made for purchase tax for the year under appeal on the basis of the provisional sales tax assessment order for 1976-77. Before the Tribunal, the Department contended that even according to the assessee liability ceased to exist only in the year 1982 when the final order of sales tax assessment was passed. According to the Revenue, the liability was not existing when the final sales tax assessment order was passed. The liability related back to the assessment year 1976-77. Hence, according to the Revenue, there was no liability at all during the intervening period.

4. We heard learned counsel for the Revenue, Sri P. K. Ravindranatha Menon, and learned counsel for the assessee, Sri C. Kochunni Nair.

5. Sri Ravindranatha Menon brought to our notice a decision of the Supreme Court in Commissioner of Wealth Tax, Madras Vs. K.S.N. Bhatt, . That case relates to the Wealth-tax Act. Learned counsel brought to our notice the following observations from the above judgment (page 4) :

". . . the fact that the assessee had filed appeals subsequent to the valuation dates and that relief had been granted by the appellate authority would have no relevance for determining whether a debt was owed on the "relevant valuation date. Reference was made to the decision of the Madras High Court in Late P. Appavoo Pillai Vs. Commissioner of Wealth-tax, . We are unable to agree with the view taken by the Appellate Tribunal. Whether a debt was owed by the assessee on the valuation date would depend, as was observed by this court in Kesoram Industries and Cotton Mills Ltd. Vs. Commissioner of Wealth Tax, (Central) Calcutta, and H.H. Setu Parvati Bayi Vs. Commissioner of Wealth Tax, Kerala, , on the fact that a liability had already crystallised under the relevant taxing statute on the valuation date. An Income Tax liability crystallises on the last day of the previous year relevant to the assessment year under the Income Tax Act, a wealth-tax liability crystallises on the valuation date for the relevant assessment year under the Wealth-tax Act and a gift-tax liability crystallises on the last day of the previous year for the relevant assessment year under the Gift-tax Act... Now, the quantification of the Income Tax, wealth-tax or gift-tax liability is determined by a corresponding assessment order, and even if the assessment order is made after the valuation date relevant to the wealth-tax assessment in which the claim to deduction is made, there is a debt owed by the assessee on the valuation date. The quantification effected by an assessment order may be varied as the Income Tax, wealth-tax and gift-tax case is carried in appeal to the Appellate Assistant Commissioner, or thereafter to the Appellate Tribunal, and indeed even in reference later to the High Court or subsequent appeal to this court. It is the quantification of the tax liability by the ultimate

judicial authority which will determine the amount of the debt owed by the assessee on the valuation date. So long as such ultimate determination indicates the existence of a positive tax liability, it must be held that there is a debt owed by the assessee on the valuation date even though such determination may be subsequent in point of time to the valuation date. If, however, it is found on such ultimate determination that there is no tax liability, it cannot be said that merely because originally a tax liability had been determined and stood existing on the valuation date there was a debt owed by the assessee. The fact cannot be ignored that when the case was "carried in appeal or reference it was found by the superior authority that in fact there was no tax liability at all. That final determination, even though rendered after the valuation date, directly relates to the question whether on the valuation date there was a debt owed by the assessee. If the finding is that there was no tax liability, it must be held that there was no debt owed by the assessee on the valuation date. In this regard, we do not agree with what has been said by the Madras High Court to the contrary in *Late P. Appavoo Pillai Vs. Commissioner of Wealth-tax*, ."

6. Learned counsel for the respondents brought to our notice two decisions in *Baby Marine Exports Vs. Commissioner of Income Tax*, and *Commissioner of Income Tax Vs. A.M. Moosa*, . According to us, the above decisions are not relevant for the present case and the decision of the Supreme Court is with respect to Section 2(m)(iii)(a) of the Wealth-tax Act.

7. In the above view of the matter, we answer the question in the negative and against the assessee. Income Tax reference is disposed of.