(1994) 11 KL CK 0024

In the High Court Of Kerala

Case No : O.P. No. 1052 of 1994-S and connected petition

Commissioner of Wealth-tax APPELLANT

Vs

Anwar Hasim RESPONDENT

Date of Decision : 03-11-1994

Acts Referred:
Wealth Tax Act, 1957 — Section 2

Citation : (1995) 214 ITR 60

Hon'ble Judges : T.L. Viswanatha Iyer, J;K.K. Usha, J

Bench : Division Bench

Advocate : P.K. Ravindranatha Menon and N.R.K. Nair, for the Appellant; Party in person, for the Respondent

Judgement

T.L. Viswanatha Iyer, J.—These petitions are u/s 27(3) of the Wealth-tax Act, 1957, to compel reference of two questions, arising out of the orders of the Income Tax Appellate Tribunal, for the opinion of this court. The respondents-assessees are partners of a firm, Abad Fisheries, which is engaged in the export of marine products. The prawns purchased locally were subjected to certain processes before they were exported to foreign countries. The firm claimed exemption from the liability to purchase tax u/s 5A of the Kerala General Sales Tax Act, 1963, in respect of its purchases of prawns, u/s 5(3) of the Central Sales Tax Act, 1956. But in the apprehension that liability may be cast on it for the purchase tax, the firm made provision in its accounts for the liability for various accounting periods up to 1988-89. The question arose under the Income Tax Act, whether the provision so made by the firm was business expenditure deductible u/s 37(1) of the Act. By our judgment rendered today in Income Tax References Nos. 67 and 68 of 1992 (ABAD FISHERIES Vs. COMMISSIONER OF Income Tax. (AND VICE VERSA).,), we have held that the firm had every reason to apprehend that they will be made liable for the tax and that the provision was made reasonably. It was, therefore, held that the amount covered by the provision was deductible in the computation of the profits and gains of the business of the firm.

2. The partners of the firm, who were wealth-tax assessees, had claimed that their shares of the liability so provided were deductible in the computation of their net wealth for purposes of assessment under the Wealth-tax Act. The Tribunal upheld this contention and came to the conclusion that the provision for purchase tax liability was liable to be deducted in computing the net wealth to the extent of the shares of the respective assessees. Arising out of this order of the Tribunal, the Revenue has sought reference of the following questions for the determination of this court :

"1. Whether, on the facts and in the circumstances of the case and liability to purchase tax being disputed by the firm whether in computing the share interest of the partner in the firm, the purchase tax (proportionately) is eligible to be deducted ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal is right in law and fact in holding that the firm engaged in food exports have reasonable apprehension of its liability to purchase tax and the same is ''real'' and are not the above findings of ''apprehension'' and ''real'' based, on the fact that the commercial tax department is pursuing the matter ''in some cases'' unreasonable and unreal in the absence of a finding of any proceedings being pursued in the case of the firm in which the assessee is a partner ?"

3. Standing counsel for the Revenue very seriously contests the deductibility of the amount with the plea that the amount of the provision cannot be termed "a debt owed" by the assessee on the relevant valuation date.

4. He relies on the decisions of the Supreme Court in Commissioner of Wealth-tax (Central), Calcutta Vs. Standard Vacuum Oil Co. Ltd., and Kesoram Industries and Cotton Mills Ltd. Vs. Commissioner of Wealth Tax, (Central) Calcutta, .

5. We have held in our decision in Income Tax References Nos. 67 and 68 of 1992 (ABAD FISHERIES Vs. COMMISSIONER OF Income Tax. (AND VICE VERSA).,) that the liability for payment of purchase tax accrues eo instanti the purchases are effected and, therefore, the provision for payment of such tax, if ultimately it became payable, is an accrued liability liable to be deducted in the computation of the profits and gains of business u/s 37(1) of the Income Tax Act. The ratio of this decision will squarely apply to the wealth-tax assessments of the partners as well. Section 2(m) of the Wealth-tax Act defines "net wealth" as the amount by which the aggregate value of all the assets exceeds the aggregate value of all the debts owed by the assessee on the valuation date. What is "debt owed" was the subject-matter of consideration in Kesoram Industries and Cotton Mills Ltd. Vs. Commissioner of Wealth Tax, (Central) Calcutta, . In that case, the assessee had made provision in its accounts for the estimated Income Tax and super-tax liability, in respect of the year of account ending March 31, 1957. The question was whether this was a "debt owed" by the assessee u/s 2(m), deductible in computing the net wealth of the assessee. The majority of the Supreme Court, speaking through Subba Rao J., held that the liability to pay

Income Tax is a present liability though the tax becomes payable after it is quantified in accordance with ascertainable data. There is a perfected debt on the last day of the accounting year and not a contingent liability. The amount of provision for payment of Income Tax and super-tax in respect of the year of account was thus a debt owed within the meaning of Section 2(m) and as such deductible in computing the net wealth of the assesses.

6. Standing counsel for the Revenue, however, sought to make a distinction that Income Tax was an accrued liability, but the provision for sales tax could not be so treated. According to him, sales tax could not be recovered from the assessee unless and until the assessment was completed and demand made for the amount due. He sought to draw support for this proposition from the earlier decision of the Supreme Court in Commissioner of Wealth-tax (Central), Calcutta Vs. Standard Vacuum Oil Co. Ltd., . We have gone through the decision very carefully, but we are unable to find anything therein which supports the proposition put forward by standing counsel. In that case, an order for payment of advance tax was made u/s 18A of the Indian Income Tax Act, 1922. The assessee claimed that in computing its net wealth, for purposes of assessment to wealth-tax, the amount covered by the order ought to be deducted as a "debt owed" by it, within the meaning of Section 2(m) of the Wealth-tax Act, 1957. The Supreme Court upheld this contention and held that the amount mentioned in the order was a debt, and continued to be so till a new figure was substituted by the action of the assessee. In holding so, the Supreme Court observed that there is no substantial difference between the advance tax paid under the provisions of Section 18A and the tax due and paid under a demand notice passed after an assessment, the only difference being that, if the facts so warranted, the assessee was enabled to pay less than the amount demanded by the Income Tax Officer. But so long as a new estimate was not made by the assessee, the amount was ascertained, and the statutory liability to pay the amount mentioned in the order u/s 18A stood, it was a present liability and not a contingent one.

7. As stated earlier, we do not find anything in the decision which supports the stand taken by standing counsel. On the other hand, the Supreme Court itself has made it clear that the amount of advance tax claimed is a "debt owed". In fact, we have held in our decision in Income Tax References NOS. 67 and 68 of 1992 ABAD FISHERIES Vs. COMMISSIONER OF Income Tax. (AND VICE VERSA).,), after a discussion of the cases on the point, that the liability for sales or purchase tax is a present liability which accrues the moment the sales or purchases are effected. In our view, the amount for which provision is made for purchase tax is a liability in praesenti, and not a liability in future, and, therefore, a "debt owed" within the meaning of Section 2(m). This view of ours finds support from the decision of the Supreme Court in Commissioner of Wealth Tax, Gujarat, Ahmedabad Vs. Vadilal Lallubhai and Others, . It was observed by the court at page 9 that it is settled law that an Income Tax liability becomes crystallised on the last day of the previous year corresponding to the particular assessment year and a wealth-tax liability becomes crystallised on the valuation

date corresponding to the particular assessment year. In each case the liabilities are perfected debts on the last day of the previous year or the valuation date, as the case may be. We are unable to find any distinction between the liabilities for Income Tax and wealth-tax and the liability for sales tax. The cases on hand stand on firmer footing for the reason that the liability accrued as and when the purchases were effected, and the amount due from the assessee, in the absence of any exemption, became crystallised by the end of the year. The liability being thus an existing one, which had become due by the end of the year, it cannot for a moment be contended that it was a contingent one, dependent on an assessment being made, and demand being raised.

8. This contention raised by counsel for the Revenue is contrary to the decision rendered by us in Income Tax References Nos. 67 and 68 of 1992 (ABAD FISHERIES Vs. COMMISSIONER OF Income Tax. (AND VICE VERSA).,). Therein, we have discussed the nature of the liability to purchase tax and we have held that the liability accrues in the year in which the purchases are effected. If this be the position in law, the liability for which provision has been made, is an existing liability which has got to be deducted as a debt owed in the year in which the provision is made.

9. Reliance was also placed on two decisions, one of the Madras High Court and one of the Bombay High Court. In the decision of the Madras High Court in T.V. Sundaram Iyengar and Sons (P.) Ltd. Vs. Commissioner of Wealth-tax, , the court said that the structure of Section 23A of the Indian Income Tax Act, 1922, and the manner in which the liability to additional super tax arises thereunder leave no room for doubt that the liability is not charged automatically by statutory force, but arises only from an order of the Income Tax Officer which he will make only after consideration of, and decision on, various factual factors. The case before the Bombay High Court in Commissioner of Wealth Tax, Bombay City-II Vs. A.E. Maskati, was also a case of additional super tax where again the court held that the liability arises only as and when the Income Tax Officer makes the assessment and issues the demand. These decisions are referable to the provisions relating to super tax and additional super tax contained in the Income Tax Act where the courts stated that the liability accrues only as and when the Income Tax Officer makes assessment after a consideration of all the relevant factors. That is not the case so far as the liability for purchase tax is concerned.

10. Having regard to our decision in Income Tax References Nos. 67 and 68 of 1992 (ABAD FISHERIES Vs. COMMISSIONER OF Income Tax. (AND VICE VERSA).,) and the fact that we have held that the liability for purchase tax is an accrued liability, for which provision was rightly made by the firm, we have no hesitation in holding that the proportionate amount of the provision is liable to be treated as a debt owed by the respective assessees, the partners of the firm. We are of the opinion that no, purpose will be served by directing reference of any question of law as arising out of the Tribunal''s order. We, therefore, decline Jo direct the Tribunal to, refer the questions raised in these applications.

11. These petitions are accordingly dismissed.

