
(1977) 04 CAL CK 0026
In the Calcutta High Court
Case No : Matter No. 605 of 1970

Commissioner of Wealth Tax

APPELLANT

Vs

Bansidhar Poddar

RESPONDENT

Date of Decision : 20-04-1977

Acts Referred:

Finance Act, 1965 — Section 68

Citation : (1978) 112 ITR 957

Hon'ble Judges : S.C. Deb, J;Dipak Kumar Sen, J

Bench : Division Bench

Advocate : Bagchi, for the Appellant;A.K. Roy Chowdhury, for the Respondent

Judgement

Dipak Kumar Sen, J.—The question involved in this reference u/s 27(1) of the Wealth-tax Act, 1957, at the instance of the Commissioner of Wealth-tax, West Bengal III, Calcutta, is whether tax paid by an assessee on the basis of his voluntary disclosure u/s 68 of the Finance Act, 1965, is an allowable deduction in the computation of his net wealth u/s 2(m) of the Wealth-tax Act, 1957. The reference arises out of the assessment of wealth-tax of Bansidhar Poddar, the assessee, for the assessment year 1965-66, the relevant valuation date being the 9th April, 1965.

2. The facts found or admitted are, inter alia, that the assessee had made a voluntary disclosure u/s 68 of the Finance "Act, 1965, on the 25th May, 1965. The amount disclosed was Rs. 2 lakhs with interest accrued thereon being Rs. 3,716. The tax due thereon computed under the said section was paid on the 26th May, 1965.

3. In the return of wealth-tax filed by the assessee this amount was included. In the assessment, the Wealth-tax Officer included the entire sum of Rs. 2,03,176, on the ground that both the disclosure and the payment of tax thereon were after the relevant valuation date.

4. Being aggrieved, the assessee appealed to the Appellate Assistant

Commissioner of Wealth-tax contending that the Income Tax liability on this disclosed sum ought to have been allowed as deduction in computing the net wealth. The assessee relied on the decision of the Supreme Court in the case of Kesoram Industries and Cotton Mills Ltd. Vs. Commissioner of Wealth Tax, (Central) Calcutta, . The Appellate Assistant Commissioner accepted the contention of the assessee and allowed the appeal.

5. The revenue preferred a further appeal to the Tribunal. It was contended before the Tribunal that the decision of the Supreme Court did not apply in the facts and circumstances of the case inasmuch as the tax liability was consequent to the declaration made under a specific provision of the relevant Finance Act, something unforeseen and, therefore, such liability could not be stated to have arisen on the relevant valuation date. The assessee contended otherwise. The Tribunal held that in view of the decision of the Supreme Court the Income Tax liability on the income declared was a debt and was deductible in computing the net wealth of the assessee.

6. From this decision of the Tribunal the following question has been referred for our decision :

" Whether, on the facts and circumstances of the case, the tax paid by the assessee on the basis of the voluntary disclosure of income u/s 68 of the Finance Act, 1965, after the relevant valuation date, was deductible in computing the net wealth of the assessee, u/s 2(m) of the Wealth-tax Act, 1957 ?"

7. To appreciate the point in controversy it is necessary first to consider the provisions of Section 4 of the Income Tax Act, 1961, section 68 of the Finance Act, 1965, Section 2(m) of the Wealth-tax Act, 1957, and the decision of the Supreme Court in the case of Kesoram Industries and Cotton Mills Ltd. Vs. Commissioner of Wealth Tax, (Central) Calcutta, .

8. Section 4 of the Income Tax Act, 1961 provides, inter alia, as follows :

"4. Charge of Income Tax.--Where any Central Act enacts that Income Tax shall be charged for any assessment year at any rate or rates, Income Tax at that rate or those rates shall be charged for that year in accordance with, and subject to the provisions of, this Act in respect of the total income of the previous year or previous years, as the case may be, of every person :

Provided that where by virtue of any provision of "this Act Income Tax is to be charged in respect of the income of a period other than the previous year, Income Tax shall be charged accordingly." Section 68 of the Finance Act, 1965 reads, inter alia, as follows :

"68. Voluntary disclosure of income.--(1) Where any person makes a declaration in accordance with Sub-section (2) in respect of the amount representing income-

(a) which he has failed to disclose in a return of income for any assessment year filed by him before the 1st day of March, 1965, under the Indian Income Tax Act,

1922 (11 of 1922), or the Income Tax Act, 1961 (43 of 1961), or

(b) which has escaped assessment for any assessment year for which an assessment has been made before the 1st day of March, 1965, under either of the said Acts, or

(c) for the assessment of which no proceeding under either of the said Acts has been taken before the 1st day of March, 1965, he shall, notwithstanding anything contained in the said Acts, be charged Income Tax at the rate specified in Sub-section (3) in respect of the amount so declared if he,--

(i) pays the amount of Income Tax as computed at the said rate, or

(ii) furnishes adequate security for the payment thereof in accordance with Sub-section (4) and undertakes to pay such Income Tax within a period, not exceeding six months, from the date of the declaration as may be specified by him therein, or

(iii) on or before the 31st day of May, 1965, pays such amount as is not less than one-half of the amount of Income Tax as computed at the said rate or furnishes adequate security for the payment thereof in accordance with Sub-section (4), and in either case assigns any shares in, or debentures of, a joint stock company or mortgages any immovable property, in favour of the President of India by way of security for the payment of the balance, and undertakes to pay such balance within the period referred to in Clause (ii).

(2) The declaration shall be made to the Commissioner, and shall specify the period required to be specified under Clause (ii) of Sub-section (1), contain the name, address and signature of the person making the declaration and also full information in respect of the following matters, namely:--

(a) Whether he was assessed to Income Tax or not and, if assessed, the name of the Income Tax circle, in which he was assessed.

(b) The amount of income declared, giving where available, details of the financial year or years in which the income was earned and the amount pertaining to each such year.

(c) Whether the amount declared is represented by cash (including bank deposits), bullion, investments in shares debts due from other persons, commodities, or any other assets, and the name in which it is held and location thereof :

Provided that the declaration shall be of no effect unless it is made after the 28th day of February, 1965, and before the first day of June, 1965.

(3) The rate of Income Tax chargeable in respect of the amount referred to in Sub-section (1) shall be sixty per cent. of such amount

Provided that if before the 1st day of April, 1965, the tax on the amount declared is paid by the declarant at the rate of fifty-seven per cent. of such amount, he

shall not be liable to pay any further tax on such amount.....

(5) Any amount of Income Tax paid in pursuance of a declaration made under this section shall not be refundable in any circumstances, and no person who has made the declaration shall be entitled, in respect of any amount so declared or any amount of tax so paid, to reopen any assessment or reassessment made under the Indian Income Tax Act, 1922 (11 of 1922), or the Income Tax Act, 1961 (43 of 1961), or the Excess Profits Tax Act, 1940 (15 of 1940), or the Business Profits Tax Act, 1947 (21 of 1947), or the Super Profits Tax Act, 1963 (14 of 1963), or the Companies (Profits) Surtax Act, 1964 (7 of 1964), or claim any set-off or relief in any appeal, reference, revision or other proceeding in relation to any such assessment or reassessment.

(6) (a) Any amount declared by any person under this section in respect of which the tax referred to in Sub-section (3) is paid shall not be included in his total income for any assessment under any of the Acts mentioned in Sub-section (5) if he credits in the books of account, if any, maintained by him for any source of income or in any other record, the amount declared as reduced by the tax paid thereon under this section.

(b) A credit made under Clause (a) shall be intimated to the Income Tax Officer."

9. Section 2(m) of the Wealth-tax Act, 1957, is as follows :

"2. (m) " net wealth" means the amount by which the aggregate value computed in accordance with the provisions of this Act of all the assets, wherever located, 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 other than-

(i) debts which u/s 6 are not to be taken into account;

(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 ; and

(iii) the amount of the tax, penalty or interest payable in consequence of any order passed under or in pursuance of this Act or any law relating to taxation of income or profits, or the Estate Duty Act, 1953 (34 of 1953), the Expenditure-tax Act, 1957(29 of 1957), or the Gift-tax Act, 1958 (18 of 1958),--

(a) which is outstanding on the valuation date and is claimed by the assessee in appeal, revision or other proceeding as not being payable by him ; or

(b) which, although not claimed by the assessee as not being payable by him, is nevertheless outstanding for a period of more than twelve months on the valuation date."

10. Next we have to consider the decision of the Supreme Court in the case of Kesoram Industries and Cotton Mills Ltd. Vs. Commissioner of Wealth Tax,

(Central) Calcutta, . The facts in this case were that the net wealth of the assessee-company was being computed for the purpose of the Wealth-tax Act, 1957. In its balance-sheet as on the 31st March, 1957, the assessee had made a provision for taxation which included estimated Income Tax and super-tax which had been rejected by the Tribunal. One of the questions which came up before the High Court u/s 27 of the Wealth-tax Act, 1957 was whether, on the facts and in the circumstances of the case, in computing the net wealth of the assessee, the amount of the provision for payment of Income Tax and super-tax in respect of the year of account was a debt owed within the meaning of Section 2(m) of the Wealth-tax Act, 1957, and as such deductible in computing the net wealth of the assessee. The High Court had answered this question against the assessee and the matter came up before the Supreme Court on appeal. In its majority judgment, the Supreme Court considered in detail the concept of a " debt" as also the scope and effect of the Income Tax Act in relation to the Finance Acts. The Supreme Court held that u/s 3 of the Indian Income Tax Act, 1922, Income Tax was to be charged for the year concerned in accordance with, and subject to the provisions of, the Income Tax Act but the said charge would be in accordance with the rates prescribed under the relevant Finance Act and that the primary object of the Finance Act was only prescribe such rates. The Income Tax Act was a permanent Act whereas the Finance Acts were passed every year with the main object of fixing the rates to be charged under the Income Tax Act. The charging section, according to the Supreme Court, was Section. 3 of the Income Tax Act whereas the Finance Act gave the rate for quantifying the tax. In adopting this construction the Supreme Court, inter alia, considered Section 67B of the Indian Income Tax Act, 1922, which laid down that if on the 1st day of April in any year provision had not been made by a Central Act for charge of Income Tax, the Income Tax Act shall nevertheless have effect on the basis of the provisions proposed in the Bill before Parliament or the provision in force in the preceding year which had been actually in force, whichever was more favourable to the assessee. The Supreme Court concluded that the tax liability at the latest would arise on the last day of the accounting year.

11. On the concept of " debt " the Supremo Court held as follows (page 784) :

" A debt is a present obligation to pay an ascertainable sum of money, whether the amount is payable in praesenti or in futuro : debitum in praesenti, solvendum in futuro. But a sum payable upon a contingency does not become a debt until the said contingency has happened. A liability to pay Income Tax is a present liability though it becomes payable after it is quantified in accordance with ascertainable data. There is a perfected debt at any rate on the last day of the accounting year and not a contingent liability. The rate is always easily ascertainable. If the Finance Act is passed, it is the rate fixed by that Act; if the Finance Act has not yet been passed, it is the rate proposed in the Finance Bill pending before Parliament or the rate in force in the preceding year, whichever is more favourable to the assessee. All the ingredients of a " debt" are present. It is a present liability of an ascertainable amount."

12. At the hearing before us, the learned counsel for the revenue contended that Section 68 of the Finance Act, 1965, imposed a new tax which was something different from the Income Tax charged under the Income Tax Act. The learned counsel contended further that the tax imposed u/s 68 became chargeable only when a declaration was made by the assessee as contemplated under the said section and not on the last day of the accounting year as in the case of the Income Tax Act. In support of the above contentions some decisions were cited. I shall deal with the said decisions in their chronological order I

13. T.V. Sundaram Iyengar and Sons (P.) Ltd. Vs. Commissioner of Wealth-tax, . Here, the question before the Madras High Court was whether the provision made for tax payable u/s 23A of the Indian Income Tax Act, 1922, where no order u/s 23A had been passed before the valuation date was an allowable deduction in the computation of the net wealth of the company. In construing Section 23A the High Court followed the decision of the Supreme Court in the case of M.M. Parikh, Income Tax Officer, Special Investigation Circle-B, Ahmedabad Vs. Navanagar Transport and Industries Ltd. and Another, , where the Supreme Court distinguished the liability as arising under Sections 3 and 4 of the Indian Income Tax Act, 1922, and that arising u/s 23A of the said Act. The Supreme Court distinguished the two liabilities in the following language (page 671) :

" There is however a vital difference between the assessment of tax u/s 23 and imposition of liability u/s 23A. Tax liability quantified by an order u/s 23 is a charge statutorily imposed by Sections 3 and 4 of the Act. It is true that the statutory liability is, till the last day of the year of account, ambulatory, but the charge is still a statutory charge on income. The function of the Income Tax Officer is to compute the taxable income and to crystallize the charge on the taxable income. u/s 23A there is no statutory charge in respect of additional super-tax and the liability is imposed by the order of the Income Tax Officer. Source of the liability to pay additional super-tax is not in Sections 3 and 4 of the Act : it lies in and arises out of the order of the Income Tax Officer. Before imposing liability for additional super-tax, the Income Tax Officer has to determine whether the company is one to which the provisions of Section 23A apply ; he has also to determine whether the company has distributed within twelve months immediately following the expiry of the previous year the statutory percentage of the total income of the company as reduced by the taxes and levies prescribed therein ; he has also to determine whether, having regard to the loss incurred by the company in the earlier years or to the smallness of the profits made in the previous year, the payment of a dividend or a larger dividend than that declared would be unreasonable. It is after making these enquiries that the Income Tax Officer may make the order directing payment of additional super-tax at the rates prescribed. The process to be followed is not the process of assessment, but of determining whether the liability should be charged and imposed...

But the provisions of Section 23A have to be construed as they stood before the Act of 1961 was enacted, and the mere fact that the legislature has chosen to specify a period of limitation for making an order imposing liability u/s 104 of the Act of 1961 upon a company which has failed to distribute the statutory percentage of its distributable income will not justify an inference that such a period of limitation was implicit in the previous Act."

14. Applying the distinction as laid down by the Supreme Court, the Madras High Court held that liability u/s 23A arose only out of the order of Income Tax Officer made under that section and could not be equated with that arising from an order of assessment made under Sections 3 and 4 of the Indian Income Tax Act, and, therefore, tax payable u/s 23A was not a debt owed within the meaning of Section 2(m) of the Wealth-tax Act as laid down in the case of *Kesoram Industries and Cotton Mills Ltd. Vs. Commissioner of Wealth Tax, (Central) Calcutta*, by the Supreme Court.

15. The next decision cited was *C.K. Babu Naidu and C.K. Sundara Raja Naidu Vs. Wealth-tax Officer and Another*, . The petitioners before the Kerala High Court had availed themselves of the scheme of voluntary disclosure as provided by Section 68 of the Finance Act, 1965, and disclosed substantial sums of money which they spread over various assessment years. Tax was paid on the amounts disclosed under the said section. On the basis of such disclosures the Wealth-tax Officer, Calicut, initiated proceedings u/s 17 of the Wealth-tax Act. The petitioners claimed before the Wealth-tax Officer that the whole amount of disclosed income attributed to any particular assessment year was not their net wealth for the said year. The net wealth according to the petitioners had to be calculated by deducting the amount of Income Tax payable thereon. The contentions of the petitioners were rejected by the Wealth-tax Officer, Appellate Assistant Commissioner and finally by the Commissioner of Income Tax in revision whereafter they moved the Kerala High Court in two writ petitions. The High Court considered and construed Section 68 of the Finance Act, 1965, and held that the said section was a special provision designed to compound an Income Tax liability. By disclosure under the section the assessee did not incur any liability to pay the tax but could only avail himself of the concession and thereby discharge his liability to pay Income Tax in respect of the income so disclosed. If the assessee took advantage of this scheme and paid tax accordingly, his assets would be reduced to the extent of the tax. Having held this, the High Court further went on to hold that the amount of tax paid under the said section was not a debt owed by him on the valuation date. But it was also held that the assessee even after disclosure was liable to be assessed under the relevant Income Tax Act if he did not comply with the other conditions laid down in this section, and if the assessee did not make any disclosure at all the said income could still be discovered and brought to tax. Liability for such tax, however, would be debt owed by him and could be deducted from his gross wealth, but the amount payable by the assessee under the scheme provided by Section 68 compounding the Income Tax liability could not be a debt owed by the

assessee on the relevant valuation date.

16. The next decision cited was Commissioner of Wealth Tax, Gujarat-I Vs. Ahmed Ibrahim Sahigara, . This is a decision of the Gujarat High-Court in a reference under the Wealth-tax Act, 1957. The point involved in the reference before the High Court was the same as in the instant case, i.e., whether in the computation of net wealth, the assessee was entitled to deduction of the amount of tax paid under the said Section 68 as " a debt owed by him " on the relevant valuation date. From the words " charged to Income Tax " in the said section, the High Court construing the said section held that the said section imposed a "charge". This was not a charge imposed by the Income Tax Act. The two charges were distinguished on the following grounds. The charge under the Income Tax Act was on the assessee's total income of the previous year whereas the charge under the said section was only on a particular item of income. Further, a payment of tax u/s 68 unlike Income Tax had no reference to any assessment year. The amount disclosed even if earmarked for a particular financial year or years would not be brought to assessment for any particular assessment year but it would be chargeable to tax irrespective of the financial year or years in which the income was earned. Lastly, the tax u/s 68 was charged without taking into account any deduction or allowance which would be permissible under the Income Tax Act.

17. On the above reasoning the Gujarat High Court came to the conclusion that Section 68 did not intend to lay down any concessional rate for charge of Income Tax under the Income Tax Act nor did it provide any method of quantification of the liability to Income Tax under the Income Tax Act and held that the section enacted a new charge to tax on an ad hoc basis leviable on certain conditions being fulfilled. The section not only created a charge but also provided for payment thereof. It was held that Section 68 laid down a distinct and different process of taxation and unlike the Income Tax Act there was no question of refund, no question of reopening and the amount on which tax was levied ceased to be a part of its total income. On these grounds, the Gujarat High Court held that the tax paid u/s 68 was not deductible from the gross wealth of the assessee for the purpose of computation of wealth-tax.

18. The next decision cited was a decision of the Delhi High Court in the case of Commissioner of Wealth Tax Vs. Girdhari Lal, . In a reference u/s 27(1) of the Wealth-tax Act, 1957, the question referred to the Delhi High Court was as follows :

" Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the Income Tax liabilities in respect of the half share of the assessee of the Income Tax paid by the firm on the amounts disclosed voluntarily u/s 68 of the finance Act, 1965, is a debt u/s 2(m) of the Wealth-tax Act, 1957, on the dates of valuation for the assessment years 1959-60 to 1964-65 ? "

19. The High Court considered and construed Section 68 of the Finance Act, 1965, in the context of the Indian Income Tax Act, 1922, and the Income Tax Act, 1961. A decision of the Supreme Court in the case of The Commissioner of Income Tax, Bombay City Vs. The Khatau Makanji Spinning and Weaving Co. Ltd., Bombay, as also the decision of the Gujarat High Court in the case of Commissioner of Wealth Tax, Gujarat-I Vs. Ahmed Ibrahim Sahigara, and the decision of the Kerala High Court in the case of C.K. Babu Naidu and C.K. Sundara Raja Naidu Vs. Wealth-tax Officer and Another, were cited and considered.

20. The Delhi High Court agreed with the Kerala High Court to the extent that u/s 68 of the Finance Act the assessee could compound his Income Tax liability in respect of his undisclosed income which he may choose to disclose under the scheme and that by such disclosure the assessee did not incur a liability to pay any tax under the said section. But the Delhi High Court disagreed with the conclusion arrived at by the Kerala High Court and held that the amount declared by the assessee u/s 68 of the Finance Act, 1965, assumed the character of total income assessable under the relevant Income Tax Act, i.e., it became liable to assessment only under the charging section of the Income Tax Act and, therefore, the tax liability on the amount disclosed would be a debt owed within the meaning of Section 2(m) of the Wealth-tax Act. The Delhi High Court expressly disagreed with the reasons given by the Gujarat High Court in the case of Commissioner of Wealth Tax, Gujarat-I Vs. Ahmed Ibrahim Sahigara, and held that the principles laid down by the Supreme Court in the case of Kesoram Industries and Cotton Mills Ltd. Vs. Commissioner of Wealth Tax, (Central) Calcutta, also applied in a case where tax was paid u/s 68 of the Finance Act, 1965.

21. The last decision cited was Madurai District Central Co-operative Bank Ltd. Vs. Third Income Tax Officer, Madurai, . Here the facts before the Supreme Court were that in the assessment year 1963-64 the assessee, a co-operative bank, was assessed on a total income of Rs. 10,00,098. Out of such income Rs. 9,48,335 was determined to be its business income while Rs. 51,763 was found to be its income from other sources. A co-operative society engaged in the business of banking not being liable to pay Income Tax on its business income, only a tax of Rs. 23,845.47 was charged on Rs. 51,763. The Finance Act, 1963, however, provided for an additional surcharge on the amount of residual income and applying the said provision an additional surcharge of Rs. 52,828.60 was imposed. The assessee's grievance was that though its taxable income was only Rs. 51,763 a total tax of Rs. 76,674.07 was imposed. It contended that such additional surcharge could not be levied beyond the Income Tax payable.

22. It was conceded at the hearing before the Supreme Court that Parliament had power to impose a new charge by a Finance Act.

23. The Supreme Court held that the additional surcharge was a distinct charge and did not depend on the assessee's liability to pay Income Tax or super-tax.

The Supreme Court concluded that the Finance Act brought to tax by way of an additional surcharge the residual income of the assessee.

24. Learned counsel for the assessee invited us to follow the decision of the Delhi High Court and contended further that Section 4 of the Income Tax Act, 1961, the charging section, lays down that income tax is payable not " on the total income " but in respect of the total income. The concept of total income is necessary only for the purpose of quantifying the tax which will ultimately be due. Therefore, one of the distinctions sought to be drawn by the Gujarat High Court was not correct.

25. We have carefully considered the respective submissions of the parties as also the different decisions cited before us. Reading Section 68 of the Finance Act, 1965, it appears to us that the said section does not impose a new charge. The section permits a declaration of an amount by the assessee. This amount the assessee has to disclose on the express basis that it represents his income ; and further that the assessee had failed to disclose this income earlier under the relevant Income Tax Act; or that this income has escaped assessment in any earlier assessment year; or that no proceedings have been taken for the assessment of this income before the 1st March, 1965. Therefore, it is clear that the disclosure envisaged u/s 68 is in respect of an amount which is already liable to be assessed as income under the relevant Income Tax Act. The condition precedent to disclosure under the said section is that the said amount of income has not been so assessed in the regular course for some reason or other.

26. The next part of the section deals with assessment of such disclosed amount. Tax at a consolidated rate of 60% is levied on such disclosed amount. This is a straight cut method. The other ingredients of an ordinary assessment under the Income Tax Act like deduction, refund, etc., do not enter into the calculation of this Income Tax at all as the object is to compound the existing liability to be assessed under the income tax Act.

27. The reasonings of the Gujarat High Court do not appeal to us also on other grounds. If it be held that Section 68 has imposed an entirely new tax then no machinery is provided by which the said tax can be assessed, levied and payment of the same is enforced. The section describes the tax as Income Tax and as such it is assessed and collected as Income Tax under the Income Tax Act.

28. In our opinion, the principles laid down by the Supreme Court in the case of Kesoram Industries and Cotton Mills Ltd. Vs. Commissioner of Wealth Tax, (Central) Calcutta, apply in all force to the facts and circumstances of this case. The Supreme Court has clearly laid down that a liability to pay Income Tax is a present liability though it becomes payable after it is quantified in accordance with its ascertainable data. The liability to pay tax on undisclosed income is also a present liability. It may become payable when, it is discovered and brought to tax or it may become payable when it is disclosed u/s 68 of the Finance Act, 1965, or otherwise disclosed. The liability is always there and is quantified either

in the regular course under the income tax Act or under the said scheme as laid down by Section 68 of the Finance Act. All the ingredients of a debt are present in such a case.

29. For the reasons as stated above we respectfully follow the Delhi High Court and hold that the tax paid by the assessee pursuant to a voluntary disclosure u/s 68 of the Finance Act, 1965, after the valuation date is deductible in computing the net wealth of the assessee u/s 2(m) of the Wealth-tax Act, 1957.

30. The question is answered in the affirmative and in favour of the assessee. There will be no order as to costs.

Deb, J.

31. I agree.