

(1975) 07 AHC CK 0018

In the Allahabad High Court

Case No : Wealth-tax Reference No. 652 of 1972

Commissioner of Wealth-tax

APPELLANT

Vs

B.K. Sharma

RESPONDENT

Date of Decision : 11-07-1975

Acts Referred:

Finance Act, 1965 — Section 68
Income Tax Act, 1961 — Section 4
Wealth Tax Act, 1957 — Section 2, 3

Citation : (1977) 110 ITR 902

Hon'ble Judges : R.L. Gulati, J;C.S.P. Singh, J

Bench : Division Bench

Advocate : Deokinandan, for the Appellant; R.R. Agarwal, for the Respondent

Judgement

R.L. Gulati, J.—This reference u/s 27(3) of the Wealth-tax Act, 1957, raises an interesting question of law. The question in short is whether the tax levied upon a person u/s 68 of the Finance Act, 1965, is a legitimate deduction in the computation of his net wealth upon which tax is to be levied.

2. The assessee was carrying on the business of manufacture and sale of Ayurvedic medicines at Datia and had other sources of income also. On 28th May, 1965, he made a voluntary disclosure of his concealed income of Rs. 5 lacs. This disclosure was made u/s 68 of the Finance Act, 1965. The disclosure was accepted and the assessee paid a sum of Rs. 3 lacs as Income Tax on the disclosed income of Rs. 5 lacs. It was the assessee's case that he had earned this income during a number of years in the past. In the wealth-tax returns for the years 1960-61 and 1961-62, he included in his net wealth a sum of Rs. 2,25,000 in the first year and a sum of Rs. 2,80,000 in the next year out of the concealed income. This was accepted by the Wealth-tax Officer.

3. The assessee, however, appears not to have claimed any deduction on account of Income Tax payable on the two amounts of Rs. 2,25,000 and Rs. 2,80,000. Before the Appellate Assistant Commissioner of income tax he put forward this

claim. The appellate authority allowed him to raise this additional ground but on merits held that the assessee was not entitled to deduct any portion of the sum of Rs. 3 lacs paid by him as tax in the year 1965, as, in his opinion, on the relevant valuation dates for the two assessment years in question there was no outstanding liability on account of Income Tax. In other words, he held that there was no debt owed by him within the meaning of Section 2(m) of the Act. On second appeal, however, the claim of the assessee was allowed by the Income Tax Appellate Tribunal. The Tribunal held that the assessee was entitled to deduct proportionate amount of Rs. 3 lacs in the two assessment years in question as they represented debts due on the valuation dates. The Commissioner is aggrieved and, at his instance, the following question of law has been referred for the opinion of this court:

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was legally correct in holding that the Income Tax liability u/s 68 of the Indian Finance Act, 1965, would be allowed in computing the assessee's wealth on the relevant valuation dates ?"

4. u/s 3 of the Wealth-tax Act, wealth-tax is payable by a person for every financial year on his net wealth on the corresponding valuation date. "Net wealth" has been defined in Section 2(m) to mean the amount by which the aggregate value computed in accordance with the provisions of the Act of all the assets belonging to the assessee on the valuation date is in excess of the aggregate value of the debts owed by him on the valuation date except those which are enumerated in Clauses (i) and (ii) of Section 2(m). In other words, wealth-tax is payable on the value of the total assets of a person minus the debts owed by him. The question which has to be decided is as to whether the assessee owed any debt by way of Income Tax liability on the corresponding valuation dates of the financial years 1960-61 and 1961-62, for the purposes of the Wealth-tax Act.

5. Now, admittedly, the assessee was in possession of the two sums of Rs. 2,25,000 and Rs. 2,80,000 on the respective valuation dates of the two assessment years in question on which the assessee was liable to pay the wealth-tax. Admittedly, again, these two amounts came out of the concealed income of Rs. 5 lacs which the assessee ultimately declared in the year 1965. Assuming that these two amounts were earned in the previous years relevant to the assessment years 1960-61 and 1961-62, which fact has been accepted by the Income Tax authorities, the assessee was clearly liable to Income Tax on these two amounts. If the assessee had not concealed the income and had offered it for assessment at the appropriate time and if the tax had remained unpaid on the valuation dates the arrears of tax would constitute a debt liable to be deducted in the computation of total income. This position again is unexceptionable. Now, the mere fact that the amounts had not been offered for assessment and no tax was levied thereon, will not, in our opinion, alter the position so far as the computation of wealth-tax is concerned. It must be

remembered that under the Income Tax Act tax becomes payable immediately on the expiry of the previous year in which the income is earned. The assessment may take place later but the assessment merely quantifies the tax. The liability to pay tax arises much earlier, namely, on the close of the previous year in which the income is earned. It follows that if the assessee has offered these two amounts for assessment in the relevant assessment years but the assessments had not been made on the valuation dates, even then the assessee would be entitled to deduct the Income Tax payable by him and such liability would amount to a debt owed by him. The fact that he did not disclose this income at the appropriate time and evaded the tax does not mean that he was not liable to pay the tax. As stated earlier, the liability to pay Income Tax arises when the income is earned and not when it is disclosed or discovered. The quantification and determination of tax may be delayed because of the attempt of the assessee to conceal it from the department but his liability remains.

6. A question then arises whether this position has changed as a result of the disclosure scheme contained in Section 68 of the Finance Act of 1965. The disclosure scheme, in our opinion, does not change the position except that there would be a difference in the amount of tax payable by the assessee. Income covered by the disclosure scheme is liable to be taxed at a flat rate of 60 per cent. whereas the income assessed in the normal course, under the provisions of the Income Tax Act, would be liable to tax at the rates specified in the relevant Finance Act. In either case, what is taxed is taxable income though rates are different. It is not disputed that if the assessee had been assessed to tax under the Income Tax Act in respect of the two amounts in question in the relevant assessment years and if the tax liability was outstanding he would be entitled to a deduction of the tax liability in the computation of his net wealth. There is no reason why the tax payable under the disclosure scheme should also not be allowed to him as a deduction in computing his net wealth. We wish to emphasise it once again that what is paid by an assessee under the disclosure scheme is nothing else but Income Tax. Section 68 of the Finance Act is not a charging section in the sense that it brings under charge something which is not income under the Income Tax Act. This is clear from the provisions of Section 68 of the Finance Act itself. The scheme contained in that provision is to bring to tax an income which was chargeable to Income Tax but which had, for some reason, escaped the charge because of the attempt of the assessee to conceal it. An assessee, therefore, can offer for assessment under the disclosure scheme a part of his income which was liable to Income Tax. If the income disclosed by him is not liable to tax under the Income Tax Act, it would not be liable to tax under the disclosure scheme either.

7. In *Kesoram Industries and Cotton Mills Ltd. Vs. Commissioner of Wealth Tax, (Central) Calcutta*, the assessee-company had, in its balance-sheet for the year ending on 31st March, 1957, shown certain amount as provision for payment of Income Tax and super-tax in respect of that year. The question was whether that amount was a "debt owed" within the meaning of Section 2(m) of the Wealth-tax

Act, 1957, as on March 31, 1957, which was the valuation date, and, as such, deductible in computing the net wealth of the assessee-company. It was held by the Supreme Court:

"(i) that the word "owe" meant to be "under an obligation to pay"; it did not really add to the meaning of the word "debt";

(ii) that "debt owed" within the meaning of Section 2(m) of the Wealth-tax Act, 1957, could be defined as the liability to pay in present or in future an ascertainable sum of money ;

(iii) that the charging section for the purposes of Income Tax was Section 3 of the Indian Income Tax Act, 1922, and the annual Finance Acts only gave the rate for quantification of the tax ;

(iv) that a liability to pay Income Tax was a present liability though the tax became payable after it was quantified in accordance with ascertainable data. There was a perfected debt at any rate on the last day of the accounting year and not a contingent liability. The rate was always easily ascertainable. If the Finance Act was passed, it was the rate fixed by that Act; if the Finance Act was not yet passed, it was the rate proposed in the Finance Bill pending before Parliament or the rate in force in the preceding year, whichever was more favourable to the assessee. All the ingredients of a "debt" were present: it was a present liability of an ascertainable amount."

8. Applying the ratio of this case to the facts of the present case, it can be stated that the liability to pay Income Tax was an obligation in present which arose on the close of the relevant previous years. It was an ascertainable liability. The fact that it was quantified not in the relevant assessment years but in 1965 did not make any difference. The fact that the tax was paid by the assessee at the rate specified in Sub-section (3) of Section 68 of the Finance Act, 1965, instead of the rates specified in the Finance Acts for 1960-61 and 1961-62 also did not change the legal position. Of course, in the case before the Supreme Court the assessee-company had made a provision in its balance-sheet for Income Tax and super-tax and no such provision had been made by the assessee in the instant case. That again is a circumstance which is not material. The liability of the assessee for payment of Income Tax does not depend upon his making a provision for it in the account books.

9. The contention of the department that any income declared u/s 68 becomes liable to tax only when the declaration is made is not correct. Section 68 of the Finance Act is not a charging section. It merely prescribes a procedure for the assessment of concealed income and the rate of tax. The income so declared was chargeable to Income Tax u/s 4 of the Income Tax Act, 1961, which is the charging section. In other words, the assessee was liable for the payment of Income Tax from the very inception u/s 4 of the Income Tax Act and the liability arose at the end of each previous year. The liability was merely assessed and quantified in 1965 in the manner provided u/s 68 of the Finance Act of 1965.

Beyond that the Finance Act made no difference.

10. The Gujarat High Court in *Commissioner of Wealth Tax, Gujarat-I Vs. Ahmed Ibrahim Sahigara*, has taken a contrary view. In the opinion of the learned judges payment of Income Tax u/s 68 of the Finance Act, 1965, is not in satisfaction of any liability u/s 3 of the Indian Income Tax Act, 1922, or u/s 4 of the Income Tax Act, 1961. Reliance has been placed upon Sub-section (1) of Section 68 which provides that where any person makes a declaration in respect of any concealed income 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 concealed income so declared. Now, the expression "notwithstanding anything contained in the Income Tax Act", in our opinion, qualifies the words "rate of tax". It only means that whatever might be the rate of tax prescribed in the Income Tax Act read with the relevant Finance Act, in respect of the concealed income declared u/s 68 the tax shall be charged at a flat rate of 60 per cent. as provided in Subsection (3) of section 68. The change in the rate of tax does not affect the liability of the assessee to the Income Tax under the Indian Income Tax Act. We are of the opinion that the Income Tax paid by the assessee in accordance with Section 68(3) of the Finance Act, 1965, is in lieu of his liability under the charging section of the Income Tax Act read with the relevant Finance Act. It is not a new liability arising for the first-time on the disclosure being made by the assessee. For the same reason, we are unable to agree with the decision of the Kerala High Court in *C.K. Babu Naidu and C.K. Sundara Raja Naidu Vs. Wealth-tax Officer and Another*, . The Kerala High Court has held that Section 68 of the Finance Act, 1965, is a special provision to compound the Income Tax liability in respect of an income which an assessee may choose to disclose under the scheme envisaged by the said provision. By such a disclosure an assessee does not incur a liability to pay any tax under this section, and, therefore, the amount of tax is not a debt owed by him on the valuation date for the purposes of determining net wealth under the Wealth-tax Act. With respect it is pointed out that Section 68 does not provide for the compounding of the Income Tax liability. It merely provides for a different rate of tax. The liability imposed upon an assessee u/s 68(3) of the Finance Act, 1965, is a liability on account of Income Tax and not a liability of any other kind. This is clear from Section 68(3) itself which says that 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. This provision, therefore, merely specifies the rate of Income Tax in place of the rate prescribed under the relevant Finance Act. What is charged is Income Tax and nothing else. Only the rate is different.

11. We accordingly answer the question in the affirmative, in favour of the assessee and against the department. The assessee is entitled to costs which we assess at Rs. 200.