

(1982) 04 AHC CK 0047

In the Allahabad High Court

Case No : Wealth-tax Reference No. 280 of 1978

Commissioner of Wealth-tax

APPELLANT

Vs

Dina Nath

RESPONDENT

Date of Decision : 20-04-1982

Acts Referred:

Wealth Tax Act, 1957 — Section 2

Citation : (1982) 136 ITR 499

Hon'ble Judges : R.R. Rastogi, J;K.N. Seth, J

Bench : Division Bench

Advocate : M. Katju, for the Appellant; V.B. Upadhya, for the Respondent

Judgement

Rastogi, J.—Sri Dina Nath, as individual, was a partner in a firm M/s. Banaras Chemical Factory. For the assessment years 1965-66 and 1966-67, the relevant valuation date being Dewali, 1964 and Dewali 1965, respectively, the wealth-tax assessments of the assessee were completed on March 16, 1967, and November 30, 1968, respectively, and the net wealth determined was at Rs. 3,08,420 and Rs. 4,02,940, respectively. Subsequently, the assessment for 1965-66 was reopened u/s 17 of the W.T. Act, 1957, hereafter "the Act" and the reassessment was completed on December 13, 1971, on the total wealth of Rs. 3,66,550. In the meantime a search was made of the business premises of M/s. Banaras Chemical Factory and a settlement was arrived at between the assessee and the department which was in respect of the assessment years 1956-57 to 1966-67. The Income Tax assessments were completed on the basis of that settlement and the demands were created on October 18, 1966. As a result of that settlement the wealth-tax assessments for 1965-66 and 1966-67 were reopened u/s 17 of the Act. In these proceedings the assessee claimed that the aforesaid liabilities in respect of Income Tax for the assessment years 1956-57 to 1966-67 were liable to be taken into consideration while computing his net wealth. The WTO did not accept that contention. He completed the reassessment. Aggrieved, the assessee filed appeals before the Assistant Commissioner.

2. The AAC agreed with the assessee that Income Tax was deductible even though it was quantified much later, but in his opinion the entire claim of the assessee could not be upheld. He directed the WTO to allow a deduction of the Income Tax liability relating to the assessment years 1964-65, 1965-66 and 1966-67.

3. The assessee then took up the matter in further appeal before the Appellate Tribunal. The Appellate Tribunal observed that the assessee had claimed deduction in respect of Income Tax liability in the earlier reassessment proceedings also and his claim had been accepted by the Tribunal. Further, it observed that the assessee had been assessed on a higher income for the assessment years 1956-57 to 1966-67, and the demands were raised on October 18, 1966. Anyhow, the mere fact that the quantification was made much later would not mean that the assessee was not entitled to a deduction of the Income Tax liability. Further, in its opinion, Clause (iii) of Section 2(m) of the Act was not applicable to the facts of the present case because on the relevant valuation date the order in pursuance of which this tax liability was created had not been passed. In the result, the Tribunal accepted the assessee's claim and allowed the deduction of the Income Tax liability for the remaining years as well, i. e., for the assessment years 1956-57 to 1963-64. Now, at the instance of the department, the following question has been referred by the Tribunal for the opinion of this court :

"Whether, on the facts and circumstances of the case, the Tribunal was legally justified in holding that the provisions of Section 2(m)(iii) of the W.T. Act were not applicable to this case and that the liability to Income Tax for earlier years was allowable as a deduction from the total wealth of the assessee computed for the assessment years 1965-66 and 1966-67 ?"

4. Section 3 of the Act creates a charge in respect of the net wealth of every individual, HUF and company (only for the assessment years 1957-58, 1958-59 and 1959-60). The expression "net wealth" has been defined in Section 2(m) of the Act. It reads ;

"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), or 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."

5. Under this provision net wealth represents the amount by which the aggregate value of all the assets belonging to the assessee on the relevant valuation date is in excess of the aggregate value of all the debts owed by the assessee on such valuation date. The aggregate value of the assets is to be computed in accordance with the provisions of the Act. The value of a debt means the money with the assessee which he owes to his creditors. The word "debt" is not defined in the Act. The scope and ambit of the expression "all debts owed" came up for consideration before the Supreme Court in *Kesoram Industries and Cotton Mills Ltd. Vs. Commissioner of Wealth Tax, (Central) Calcutta*, . It was laid down that a debt is a sum of money which is now payable or will become payable in future by reason of a present obligation. In other words within the meaning of this provision a debt owed can be defined as a liability to pay in present or in future an ascertainable sum of money. The word "debt" is synonymous with liability. It may be payable now or it may become payable in future but the obligation must be a present one and should be in respect of an ascertainable sum of money. Another legal aspect which we would like to refer is that the liability to pay Income Tax is embedded in the accrual of earning of the income itself. It is ascertainable also because the rates are provided in the Finance Act relating to the concerned year. Its actual quantification may be delayed. That will, however, not change the nature of the liability. Thus all kinds and categories of debts are deductible irrespective of the purpose or use thereof.

6. We may in this connection refer to a decision of the Supreme Court in *Ahmed Ibrahim Sahigra Dhoraji Vs. Commissioner of Wealth Tax, Gujarat*, . It was laid down in that case (headnote) :

" Where an amount based on the concealed income disclosed by the assessee under the voluntary disclosure scheme pursuant to Section 68 of the Finance Act, 1965, is included in the net wealth of the assessee, liability in respect of Income Tax payable on the income so disclosed is deductible as a "debt owed" on the valuation date u/s 2(m) of the W.T. Act, 1957, in computing the net wealth of the assessee."

7. This decision is directly applicable to the facts of the present case. A reference may also be made to a decision of this court in *Commissioner of Wealth Tax and Others Vs. Padampat Singhania*, .

8. There are, however, certain exceptions to this rule and they are contained in

Clauses (i) to (iii) of this section. The first clause is linked with Section 6 under which a debt payable by an individual who is not a citizen of India or of an individual or an HUF not resident in India or resident but not ordinarily resident in India, should be excluded in the computation of net wealth of such non-citizen or person not resident or not ordinarily resident in India. The second clause refers to such 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 the third clause, tax, penalty or interest, payable in consequence of any order passed under or in pursuance of the State Acts is liable to be excluded unless the sum in question is under dispute on the valuation date in appeal, revision or other proceeding at the instance of the assessee and, secondly, if the sum in question is in arrears for more than twelve months on the valuation date.

9. On this legal view, the Tribunal was right in holding that the Income Tax liability in respect of the assessment years 1956-57 to 1966-67 which though quantified as a result of the settlement which took place between the assessee and the department on October 18, 1966, was very much in existence and it was a debt owed within the meaning of Section 2(m). It was certainly not a liability which would fall within Clause (iii) of Section 2(m). On the relevant valuation dates the liability had not been quantified by way of an assessment, nor was the assessee claiming in appeal, revision or other proceeding that the sum in question was not payable by him nor was it outstanding for a period of more than twelve months on the relevant valuation date.

10. We thus agree with the view taken by the Appellate Tribunal and 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. 250.