
(1996) 08 KL CK 0036
In the High Court Of Kerala
Case No : IT Ref. No. 85 of 1992

Commissioner of Wealth Tax

APPELLANT

Vs

E.K. Joseph

RESPONDENT

Date of Decision : 19-08-1996

Acts Referred:

Citation : (1996) 136 CTR 494 : (1998) 99 TAXMAN 521

Hon'ble Judges : V.V. Kamat, J

Bench : Single Bench

Judgement

V.V. Kamat, J.—With regard to the wealth-tax proceedings of the assessee for the asst. yr. 1983-84 we have to consider the question of deduction of the entire liability towards repayment of loan to the Federal Bank. In fact, after hearing the learned senior standing counsel for taxes and counsel for the assessee, as the question relates to the liability towards repayment of loan to the Federal Bank, the amount of loan having been taken against the property of the partnership firm of which the assessee has a share as partner, the question refers to the situation of an obvious claim for deduction with reference to the liability in question. After considering the statutory provision it has become necessary to reframe the question and this reframed question is extracted hereinbelow making it clear that we have substituted the word exemption in the referred question by deduction. Thus the only question expecting our answer as reframed is as follows :

Whether, on the facts and in the circumstances of the case, the assessee is entitled to get the deduction of the entire liability to the Federal Bank ?

2. With regard to the assessment year in question, taking out unnecessary unessentials the assessee claimed that he has a liability of Rs. 10,79,183 to the Federal Bank, the liability is of the repayment of the loan of the above amount drawn on his property having been transferred to the partnership firm, having thereby become the property of the partnership firm as a result thereof.

3. The WTO accepted deduction to the extent of Rs. 9,63,032 only.

4. The Dy. CWT(A) did not interfere with the decision.

5. The Tribunal with regard to the question to be answered followed its earlier decision in WT Appeal Nos. 48 and 114/Coch/1981 relating to the same assessee for years 1976-77 and 1977-78. The Tribunal considered the statutory provisions, especially s. 2(m)(ii) of the WT Act, s. 4 of the said Act and certain other decisions. The Tribunal referred to the statutory provisions of s. 4 of the WT Act, 1957 to determine the net wealth of the assessee; mainly relying on its earlier decision (supra) the Tribunal ruled that the entire liability of the assessee to the Federal Bank would have to be taken out of consideration in the determination of net wealth.

6. In our judgment the above relevant statutory provisions do not leave any room to endorse the said decision of the Tribunal.

7. Sec. 2(m) of the WT Act, 1957 tells us what is meant by net wealth and it means that it is the amount by which the aggregate value of all the assets belonging to the assessee, on the valuation date to be computed in accordance with the provisions of the Act. This is in addition to assets to be included as are required to be done on the date of valuation under the Act. The said statutory provision up to this stage is innocuous for the purpose of consideration of the problem. However, the further statutory provision emphasises that the said aggregate value has also to take into consideration the aggregate value of all the debts owed by the assessee on the valuation date. The necessary statutory provision is reproduced hereinbelow :

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 which have been incurred in relation to the said assets).

It would obviously mean that the net wealth would be the excess left after dealing with the debts owed by the assessee, which are not to be included as the net wealth in regard to the determination.

8. Further in the process, statutory provisions of r. 2(m)(ii) also would have to be taken into consideration, because the said provisions specify the situation further in the process. It also requires reproduction and would be as follows :

on the valuation date other than :

(i) xxx xxx xxx

(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.

In the light of this statutory provision determining the net wealth of the assessee, the first position rules that the debts are not to be taken into consideration if the debts are incurred in relation to any property in respect of which wealth-tax is not chargeable under this Act.

9. To proceed further in the same direction we have to find out whether with regard to the property of the partnership firm, and there is no dispute that the property in this proceeding is the property of the partnership firm, whether wealth-tax is not chargeable at all. Statutory provisions of s. 4(1)(b) of the WT Act, 1957 need reference in this context. They are as follows :

4(1)(a) xxx xxx xxx

(b) of an assessee who is a partner in a firm or a member of an AOP (not being a co-operative housing society) there shall be included, as belonging to that assessee, the value of his (interest in the assets of the firm) or association determined in the manner laid down in Schedule III.

It would be seen that an assessee who is a partner of a firm would be liable to wealth-tax with regard to the value of his interest in the assets of the firm and only to that extent as far as the assessee is concerned there is no difficulty, therefore, as regards compliance of r. 2(m)(ii) of the Act that the property is not chargeable to wealth-tax in any manner that the amount of loan is incurred in relation to the property in question is also not a disputed situation. Additionally s. 4(1)(iii) which is one of the statutory provisions inclusive in character in the process of determination of net wealth and it would show that in computing the net wealth of an individual it would be included, as belonging to him the value of the assets on the valuation date which have been transferred by him as provided under the said statutory provisions. Therefore, there is no difficulty on the basis of consideration and examination of the above statutory provisions that, as far as the present assessee is concerned, the value of the assets of his share or interest in the assets of the partnership firm would have to be considered as net wealth in the context.

10. At the other end, the amount of loan incurred by him and secured in relation to the property, of the partnership firm, would not be chargeable under the provisions of the WT Act. This would logically mean that the entire amount of the loan secured in relation to the property of the partnership firm would be entitled to the deduction in regard thereto because the said amount could not legitimately fall under the category of net wealth. It is obvious that the amount in question if it does not fall in the category of net wealth in part or portion thereof could become the subject-matter of levy of wealth-tax under the provisions of the WT Act, 1957. In view of the above position, in our judgment the above statutory provisions are crystal clear to answer the above question making it unnecessary to travel in any other direction. For the above reasons we answer the above question in the affirmative-against the Revenue and in favour of the assessee.