
(1980) 10 KL CK 0002

In the High Court Of Kerala

Case No : WT Reference No's. 12 to 20 and 51 and 52 of 1979

Commissioner of Wealth Tax

APPELLANT

Vs

K.P. Subbarama Sastrigal

RESPONDENT

Date of Decision : 29-10-1980

Acts Referred:

Wealth Tax Act, 1957 — Section 27(3), 7(1)

Citation : (1981) 5 TAXMAN 228

Hon'ble Judges : V. Balakrishna Eradi, C.J.;V. Khalid, J

Bench : Division Bench

Advocate : P.K. Ravindranatha Menon, for the Appellant; K.S. Paripoornan and C.S. Balagangadharan, for the Respondent

Judgement

V. Balakrishna Eradi, C.J.—In these two sets of connected references made by the income tax Appellate Tribunal, Cochin Bench (hereinafter referred to as "the Tribunal"), u/s 27(3) of the Wealth-tax Act, 1957 (for short " the Act"), in respect of 10 assessment years--1963-64 to 1972-73--concerning the same assessee at the instance of the Commissioner of Wealth-tax, Kerala, the following question of law has been referred for the decision of this court:

Whether, on the facts and in the circumstances of the case, and also under the relevant provisions of law, the Tribunal is correct in law in holding that 60% of the face value of the suits filed account should be allowed as a deduction in computing the net wealth of the assessee?

The assessee--an HUF--has been carrying on the business of money-lending and also conducting chitties. For recovery of amounts due from the debtors, the assessee had to file a large number of suits in courts and the details concerning those suits are entered by the assessee in what is called "suits filed account". Admittedly, in the said suits filed account there were a large number of instances where the suits had already matured into decrees passed by the civil courts but execution proceedings had not been taken and there were also details of cases where suits had been instituted and were pending. The question arose before the

WTO as to how the assets consisting of the debts sought to be recovered by the various suits were to be valued as on the relevant valuation dates. The WTO took the view that the face value of the suit or decree, as the case may be, was to be taken as the value of the asset on the relevant valuation date. He did not accept the assessee's contention that in valuing the assets comprised in the suits filed account the full face value should not be taken because due regard had to be had to the uncertainties and difficulties involved in the litigative process and hence only 40 per cent, of the face value should be taken as the market value of the assets. The assessments for all the 10 years were completed by the WTO by taking the face value of all the items included in the suits filed account.

2. The assessee carried the matter in appeal before the concerned AAC. The AAC found that only in eight instances the assessee had been able to show that the debts had either been settled by giving up some portion of the claim or that the debtors had been declared insolvent or filed insolvency petitions. Hence, he gave some deduction to the assessee in respect of those eight cases for the assessment years 1963-64 to 1971-72 and confirmed the assessments made by the WTO in all other respects. The assessee appealed to the Tribunal reiterating its contention that only 40 per cent, of the face value of the debts shown in the suits filed account ought to have been taken as the value of the assets for the purpose of assessment. The Tribunal took note of the fact that all the suits were for recovery of unsecured debts and that in three instances the litigations have been shown to have been carried to the High Court thereby clearly implying that complicated questions were involved which, according to the Tribunal, justified the inference that the litigation was of " complicated, difficult and protracted nature " and there was stubborn and stiff resistance offered by the debtors. The Tribunal also took note of the fact that during the relevant periods the provisions of the Kerala Agriculturists Debt Relief Acts, 1958 and 1970, were in force in the State. Observing that in the case of an unsecured debt the money is with another, that the assessee has only the right to recover it and that the process of transferring the money from that other to the assessee is a difficult one, the Tribunal recorded the conclusion that 60 per cent, discount claimed by the assessee was reasonable and that the value of the assets comprised in the " suits filed account" as on the relevant valuation date should reasonably be fixed at 40 per cent, of the face value of the suits filed account for the particular year. On this reasoning all the nine appeals filed by the assessee pertaining to the assessment years 1963-64 to 1971-72 were allowed by the Tribunal by a consolidated order dated September 30, 1974.

3. By the time the appeal filed by the assessee in respect of the assessments made for the year 1972-73 came up for consideration before the AAC, the Tribunal's decision aforementioned in respect of the nine earlier assessment years had already been rendered. Hence, the AAC followed the principle laid down by the Tribunal and allowed the claim of the assessee for fixing the value of the assets in question at 40 per cent, of their face value as shown in the suits filed account as on the relevant valuation date. The revenue took up the matter

in second appeal before the Tribunal but the Tribunal dismissed the said appeal following the order passed by it on September 30, 1974, in the nine appeals relating to the years 1963-64 to 1971-72 in respect of the same assessee.

4. u/s 7(1) of the Act the value of any asset is to be fixed for the purpose of assessment under the Act by estimating the price which it would, in the opinion of the WTO, fetch if sold in the open market on the valuation date. Our attention has not been drawn to any rule framed under the Act which specifically deals with the question of valuation of book debts. Hence the aforesaid principle of determining the value of the assets with reference to the value that it would reasonably fetch in the open market has to be applied in respect of book debts also. Unfortunately, no attempt has been made by the WTO the AAC or even the Tribunal to estimate the value which these assets, namely, the debts included in the suits filed account, would reasonably fetch in the open market. That would essentially depend upon the creditworthiness of the debtors and the nature of the contentions, if any, that have been put forward either in defence to the suit or in defence to the execution proceedings where the suit has matured into a decree, Nothing turns on the mere fact that certain Debt Relief Acts were in force at the relevant time in the State unless it is shown that the debtors concerned were persons entitled to claim the benefit of those enactments. We do not see on what principle a flat deduction of 60 per cent, of the amount representing the face value of all the debts included in the suits filed account can possibly be regarded as reasonable or unwarranted. No doubt, there may be instances where even if decrees are obtained, difficulties may be encountered in the matter of realisation of the fruits of the decree. But this will have to be determined on an examination of each specific case and it cannot be stated as a general proposition that assets comprising of decree debts will not, if sold in the open market, fetch a value of more than 40 per cent, of their face value. Reference may in this connection be made with advantage to the observations of Tulzapurkar J. in the judgment of the Supreme Court in *Mrs. Khorshed Shapoor Chenai and Others Vs. Assistant Controller of Estate Duty, Andhra Pradesh and Others*, , where the learned judge has pointed out that for the purpose of the E.D. Act as well as the Wealth-tax Act, the duty of the assessing authority is to estimate the value of asset in question at the price which it would fetch if sold in the open market at the relevant valuation date. Unfortunately, in this case, the approach made by the Tribunal cannot be regarded as consistent with the aforesaid legal position. No endeavour has been made by the Tribunal either by itself or by remitting the matter to the assessing authority to have the market value of the asset as on the valuation date determined on any scientific or reasonable basis. We are unable to uphold as correct the procedure adopted by the Tribunal of applying a flat deduction of 60 per cent, of the face value of the debts included in the suits filed account and the reasons stated by the Tribunal in justification of adopting the said procedure do not appeal to us as correct or sound. From the statement of the case, it is seen that the assessee had given a detailed statement containing the particulars of the debtors from whom the

various amounts shown in the suits filed account are due. It is necessary that the relevant facts and circumstances concerning each item of debt should be examined and the market value of the asset represented by each item of debt determined with reference to the facts and circumstances obtaining on the relevant valuation date in respect of each of the assessment years concerned in these reference cases. It will be open to the Tribunal to remit the cases to the WTO for re-doing the assessments after effecting a proper valuation in the light of what we have stated above.

5. It follows from the foregoing discussion that the Tribunal was not justified in upholding the claim of the assessee for the grant of a flat discount of 60 per cent, of the face value of the items of debts included in the suits filed account. We, accordingly, answer, the question referred in all these references in the negative, that is, against the assessee and in favour of the department. The Tribunal will rehear the appeals and dispose them of in accordance with law and in the light of what we have stated above. The parties will bear their respective costs. A copy of this judgment under the seal of the court and the signature of the Registrar will be forwarded to the Tribunal as required by law.