

(1990) 06 BOM CK 0031

In the Bombay High Court

Case No : Wealth-tax Reference No. 92 of 1975

Commissioner of Wealth-tax

APPELLANT

Vs

K.T. Divecha and others

RESPONDENT

Date of Decision : 11-06-1990

Acts Referred:

Wealth Tax Act, 1957 — Section 7(2)
Wealth Tax Rules, 1957 — Rule 2C

Citation : (1990) 186 ITR 310

Hon'ble Judges : T.D. Sugla, J; Sujata V. Manohar, J

Bench : Division Bench

Advocate : G.S. Jetley, S.E. Dastur and N.R. Mody, for the Appellant;

Judgement

T.D. Sugla J.

1. This is a reference at the instance of the Department. The assessee is an architect. He carried on a profession as architect for some time as an individual and then as a partner of a firm which was also carrying on the profession of architects in the two years under reference. Both the assessee and the partnership firm were maintaining their books of account of the cash method of accountancy. The outstanding fees were, therefore, not shown in their balance-sheet.

2. The Wealth-tax Officer held that outstanding professional fees represented an "asset" and were includible in the net wealth of the assessee. There was no dispute that the outstanding professional fees amounted to Rs. 1,27,430 for the assessment year 1969-70 and Rs. 81,120 for the assessment year 1970-71. The alternative claim of the assessee was that Income Tax liability in respect of outstanding fees should be treated as debt owed by the assessee and 50% of the outstanding fees should be allowed as bad debts. The Wealth-tax Officer did not accept the alternative submission without any discussion in the order.

3. The Appellate Assistant Commissioner, following the Orissa High Court decision

in the case of Commissioner of Wealth Tax Vs. Vysyaraju Badreenarayanamoorthy Raju, , held that outstanding professional fees were not includible as an asset in the net wealth of the assessee. The Tribunal upheld the orders of the Appellate Assistant Commissioner.

4. At the instance of the Department, the Tribunal has referred the following question of law to this court u/s 27(1) of the Wealth-tax Act, 1957 :

"Whether, on the facts and in the circumstances of the case, the outstanding professional fees remaining unrecovered as on the valuation dates, December 31, 1968, and December 31, 1969, could be included in the computation of the net wealth of the assessee for the assessment years 1969-70 and 1970-71, respectively ?"

5. There is no dispute that this question has been considered by us today in the case of Commissioner of Wealth Tax Vs. Vasantlal D. Mehta, (Wealth-tax Reference No. 168 of 1976). For the reasons given therein, we hold that irrespective of the method of accountancy, the outstanding professional fees are includible as an "asset" in the net wealth of the assessee. Learned counsel, however, pointed out that the assessee had made an alternative claim before the Wealth-tax Officer which he had rejected without giving any reasons. The appellate Assistant Commissioner also did not refer to this ground as he had deleted the inclusion of outstanding fees itself. The Department's appeals were dismissed by the Tribunal and thus the Tribunal had also no occasion to refer to and/or discuss the assessee's alternative claim. Now, that the outstanding fees are held to be includible as an asset in the net wealth of the assessee, counsel submitted that it was only fair that the assessee should have an opportunity to press his alternative claim which he had made before the Wealth-tax Officer. The submission, in our view, is reasonable. It may be mentioned that the alternative claim before the wealth-tax Officer was as regards Income Tax liability in respect of outstanding professional fees and the likelihood of 50% of the outstanding fees being bad debts. So far as Income Tax liability as concerned, we have already held in our order that there was no Income Tax liability attached to the outstanding fees on the valuation date as in the case of an assessee maintaining books on cash basis outstanding fees become taxable only on receipt and not on accrual. However, the claim that outstanding professional fees are not received in full and a part thereof has to be written off as a bad debt will have to be looked into on the basis of material already on record or such material as may be allowed to be placed before the Tribunal.

6. The question of law is answered in the affirmative and against the assessee with the direction as above.

7. No order as to costs.