(1994) 09 GUJ CK 0015

In the Gujarat High Court

Case No : Wealth-tax Reference No. 9 of 1981

Commissioner of Wealth Tax APPELLANT

Vs

Maheshkumar R. Patel RESPONDENT

Date of Decision : 02-09-1994

Acts Referred:
Wealth Tax Act, 1957 — Section 2, 5, 5(1), 5(2)
Wealth Tax Rules, 1957 — Rule 2

Citation : (1995) 128 CTR 136 : (1995) 216 ITR 272

Hon'ble Judges : Susantha Chatterjee, J;Rajesh Balia, J

Bench : Division Bench

Judgement

Rajesh Balia, J.—The Income Tax Appellate Tribunal, Ahmedabad Bench "A", has, at the instance of the Commissioner of Wealth-tax made a statement of the case and has referred the following question of law arising out of its order dated May 20, 1980 :

"Whether, on the facts and in the circumstances of the case, the assessee was entitled to relief u/s 5(1) in respect of his share in the bank deposits held by the firm in which he was a partner and relief u/s 5(1) in respect of the house property owned by the firm ?"

2. The brief facts, in which the aforesaid question has arisen as found by the Tribunal, are that the assessee is a partner in the firm of H. C. Patel and Co. Two specific assets owned by the firm are deposits in banks and house properties. For the years 1973-74 to 1976-77, the assessee claimed exemption from payment of wealth-tax u/s 5(1) in respect of his share of the bank deposits held by the firm and in respect of the house property owned by the firm. The Wealth-tax Officer held that the above two assets did not belong to the assessee but belonged to the firm. Even though the assessee was a partner in that firm, what was includible in his net wealth was his share of the "net assets" of the firm and not the individual asset, and not his share in each asset separately. On this ground, the claim of the assessee was rejected by the Wealth-tax Officer. On appeal,

though the assessee gave up the claim to separate exemption in respect of the two assets, he claimed that while determining the value of his interest in the firm, the value of exempted assets u/s 5(1) of the Wealth-tax Act, 1957, ought to be excluded.

3. The Appellate Assistant Commissioner accepted this claim of the assessee. The Revenue appealed. The Tribunal upheld the order of the Appellate Assistant Commissioner. At the instance of the Commissioner of Wealth-tax, the aforesaid question of law arising out of its order dated May 20, 1980, has been referred to this court for its opinion by the Tribunal.

4. On behalf of the Revenue, it was contended that a firm is not an assessee under the Wealth-tax Act. However, for the purpose of determining the net wealth of the assessee, his share in the net assets of the firm in which he is a partner is to be included in the computation of the net wealth. The share in the partnership firm is not the same thing as a share in separate assets of the firm and, therefore, it must follow that the assessee is not the owner of any of the respective assets which are exempted u/s 5(1) of the Wealth-tax Act and, therefore, he is not entitled to claim any exemption in respect of the assets held by the firm which may otherwise be not includible in the net wealth of the assessee u/s 5(1) of the Act, if he were the owner.

5. We have carefully considered the contention raised before us in the light of the various provisions of the Act. It would be proper to refer to certain provisions of the Act which have a relevant bearing on the controversy.

6. Section 2(e) defines "assets" as assets including property of every description, movable or immovable...

Section 2(m), which defines net wealth, reads as under :

"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,-. . . ."

7. Sub-section 4(1)(b), as it existed at the relevant time, reads as under :

"4. (1) In computing the net wealth of....

(b) where the assessee is a partner in a firm or a member of an association of persons (not being a co-operative housing society), the value of his interest in the firm or association determined in the prescribed manner."

8. Rule 2 of the Wealth-tax Rules, 1957, which has been since deleted, prescribed the manner of valuation of the interest of an assessee in a firm or association of persons. The rule requires that for the purpose of determining such interest :

"2. (1) The value of the interest of a person in a firm of which he is a partner or in an association of persons of which he is a member, shall be determined in the manner provided herein. The net wealth of the firm of the association on the valuation date shall first be determined. That portion of the net wealth of the firm or association as is equal to the amount of its capital shall be allocated among the partners or members in the proportion in which capital has been contributed by them. The residue of the net wealth of the firm or association shall be allocate among the partners or members in accordance with the agreement of partnership or association for the distribution of assets in the event of dissolution of the firm or association, or, in the absence of such agreement, in the proportion in which the partners or members are entitled to share profits. The sum total of the amounts so allocated to a partner or member shall be treated as the value of the interest of that partner or member in the firm or association. . . .

(3) Where the net wealth of a firm or association computed in accordance with sub-rule (1) includes the value of any assets referred to in section 5(2) of the Act, the value of the interest of a partner or member shall be deemed to include the value of his proportionate share in the said assets, and the provisions of section 5(2) of the Act shall be applied to him accordingly."

9. From a reading of the aforesaid provisions, it appears that for the purpose of determining the interest of a person in a partnership the "net wealth" of the firm has to be assessed as distinct from the "net assets" of the firm. The definition of net wealth makes it abundantly clear that for arriving at any sum total of net wealth the aggregate value of all the assets have to be made "in accordance with the provisions of the Act". The provisions of the Act include section 5 as well which reads as under :

The assets described in various sub-clauses of sub-section (1) subject to the overall limit of valuation presented in sub-section (1A) are not to be included in computing the ''net wealth'' of a person, though such are assets of the person.

10. If the net wealth of the firm is to be assessed in terms of rule 2 in accordance with the provisions of the Act, obviously the assets which are not to be included for the purpose of computing the net wealth u/s 5 have to be excluded and the same cannot be made a part of the interest of a person in the partnership firm referable to net wealth.

11. It is further to be noticed that neither under general law, nor under the provisions of the Wealth-tax Act, is a firm a separate entity from its partners. A firm as such is not a juristic person capable of holding property. Property owned in the finn name is in fact owned by the partners of the firm jointly. The Wealth-tax Act does not provide that because an asset is jointly owned, it will be subjected to wealth-tax, notwithstanding the fact that no tax is otherwise payable on it or is to be excluded from the computation of net wealth u/s 5, merely because of the jointness of ownership. Merely because under the

provisions of the Income Tax Act, a firm is treated as a separate assessee, it does not become a separate entity for the purposes of the Wealth-tax Ac also, when there is no such provision. Therefore, there is no warrant for treating property under the ownership of an individual and under joint ownership as in a partnership firm for the purpose of computing the net wealth under the Wealth-tax Act, differently.

12. In this connection, it may also be noticed that section 5 speaks of assets not to be included in the net wealth of a "person" as distinct from assessee. If, for the purpose of ownership of assets, a firm is held to be a person distinct from its partners, it applies to computation of net wealth of the firm also. If a firm is not held to be a person then the necessary corollary is that the partners are the joint owners of the asset and they being the owners of the asset, are entitled to exclude its value from the computation of their net wealth for the purpose of wealth-tax.

13. It will also be pertinent to notice that the rules also provide for valuation of the global value of any business as a whole. Such rules also prescribe for exclusion of assets exempted from payment of wealth-tax under any provision of the Act or assets on which no wealth-tax is payable, by way of making adjustment in the global value of assets as disclosed in the balance-sheet for the purpose of assessing the net wealth of an assessee for the purpose of subjecting it to wealth-tax. In view of that, if the interest of a partner in the firm is to be computed on the global value basis, then also such exempted assets have to be excluded from computing the global value.

14. It is obvious that the Wealth-tax Officer had failed to draw a distinction between the computation of net assets and the computation of net wealth in accordance with the provisions of the Act while rejecting the claim of the assessee.

15. In view of the aforesaid, we have no hesitation in coming to the conclusion that the Tribunal was right in affirming the decision of the Appellate Assistant Commissioner allowing the claim of the assessee for exclusion of the two assets, namely, the bank deposit and the house under sections 5(1)(xxiv) and 5(1)(iv) of the Act, respectively, for computing the value of the assessee''s interest in the partnership-firm for the purpose of computing the net wealth of the assessee, taxable under the Wealth-tax Act.

16. It may further be noticed that this position is clear from the insertion of sub-section (4) in section 5 with effect from 1989, which is clarificatory in nature rather than amending the law.

17. Accordingly, we answer the question referred to us in the affirmative, in favour of the assessee and against the Revenue. No order as to costs.