

(1985) 08 MP CK 0004

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 184 of 1984

Commissioner of Wealth Tax

APPELLANT

Vs

Meghaji Girdharilal

RESPONDENT

Date of Decision : 03-08-1985

Acts Referred:

Wealth Tax Act, 1957 — Section 2(m), 27(1), 3

Citation : (1987) 30 TAXMAN 506

Hon'ble Judges : R.K. Varma, J; P.D. Mulye, J

Bench : Division Bench

Advocate : R.C. Mukati, for the Appellant; S.C. Goyal, for the Respondent

Judgement

P.D. Mulye, J.—The Tribunal, Indore Bench, Indore at the instance of the revenue, namely, the Commissioner has made this reference u/s 27(1) of the Wealth-tax Act, 1957 ("the Act") for the opinion of this Court on the following question of law: Whether, on the facts and in the circumstances of the case, the Tribunal was justified in allowing deduction of wealth-tax liability as determined by the assessment order passed by the WTO in computing the taxable wealth of the assessee thereby including therein liability which is outstanding on the valuation date and is claimed by the assessee in appeal, etc., as not being payable by him?

The facts giving rise to this reference as per the statement of case received may be stated in brief, thus: The dispute relates to the deduction of wealth-tax liabilities in computing the taxable wealth of the assessee. The WTO did not allow any of these liabilities presumably on the ground that neither they had been quantified on the valuation dates nor had they been accepted as such by the assessee. Since the assessee was agitating the matter in appeals, the Commissioner (Appeals) allowed deduction for cumulative liability in respect of undisputed wealth-tax only, for determination of the taxable wealth of the assessee-respondent.

2. The assessee went up in second appeal before the Tribunal. According to the Tribunal the charge of wealth-tax as per terms of section 3 of the Act is imposed on the net wealth of the assessee computed on the valuation date after adjusting the debts owed by the assessee on that date and unlike the income tax Act, the Wealth-tax Act prescribed the ratio of tax in the Schedule and it was evident; that by virtue of section 3 the liability to wealth-tax got crystallised on the valuation date and not on the first date of the assessment year. The Tribunal further held that a debt owed within the meaning of section 2(m) of the Act could be defined as a liability to pay in future an ascertainable sum of money. The Tribunal consequently held that the Commissioner (Appeals) erred in allowing the cumulative liability of the undisputed wealth-tax only as deduction from the total wealth in place of one as determined by the order of the WTO.

3. The learned members of the Tribunal in paragraph Nos. 19 to 27 of the impugned order have given valid reasons supported by authority for deciding the said point in favour of the assessee. Hence, this reference at the instance of the revenue.

4. At the hearing of this reference the learned counsel for the revenue, Shri R.C. Mukati, frankly submitted that the question referred to for the opinion of this Court has to be answered in favour of the assessee in view of the Supreme Court decisions in *Commissioner of Wealth Tax, Madras Vs. K.S.N. Bhatt*, *Commissioner of Wealth Tax, Gujarat, Ahmedabad Vs. Vadilal Lallubhai and Others*, and *Commissioner of Wealth-tax, Gujarat Vs. Smt. Vimlaben Vadilal Mehta*,

5. In the case of *K.S.N. Bhatt (supra)* it has been held that in computing net wealth of the assessee for wealth-tax the liabilities towards income tax, wealth-tax and gift-tax, which crystallise on the relevant valuation date as determined in the respective assessment orders as liabilities are to be deducted even though those assessment orders are finalised after the valuation date. The quantification effected by assessment order may be varied as the income tax, wealth-tax and gift-tax case is carried in appeal to the AAC or thereafter to the Tribunal and indeed even in reference later to the High Court or subsequent appeal to the Supreme Court. It is the quantification of the tax liability by the ultimate judicial authority which will determine the amount of the debt owed by the assessee on the valuation date. So long as such ultimate determination indicates the existence of a positive tax liability, there is a debt owed by the assessee on the valuation date even though such determination may be subsequent in point of time, to the valuation date. If, however, it is found on such ultimate determination that there is no tax liability, it cannot be said that, merely because originally a tax liability had been determined and stood existing on the valuation date, there was a debt owed by the assessee. If the finding is that there was no tax liability, it must be held that there was no debt owed by the assessee on the valuation date.

6. In the case of *Vimalaben Vadilal Mehta (supra)* it has been held that

rectification of an assessment must be treated on the same basis as on original assessment for the purpose of a claim to deduction of liabilities towards income tax, wealth-tax and gift-tax in the computation of the assessee's net wealth. The rectification merely quantifies the true tax liability which had already been crystallised and become a debt on the last day of the previous year in the case of an income tax liability, on the valuation date in the case of wealth-tax liability and on the last day of the previous year in the case of a gift-tax liability.

7. It has been further held that it is well settled that when an appeal is filed against an assessment order before the AAC, the assessment is thrown open and the appellate proceeding constitutes a continuation of the assessment proceeding. Even if the tax liabilities of which a deduction was claimed, were created by rectification orders or by assessment orders made after the date of the wealth-tax assessment order under appeal, the law requires the claim to deduction being considered on the same basis as if it had been made in the original wealth-tax assessment proceedings.

8. Similar is the view taken in the case of *Vadilal Lallubhai* (supra).

9. In view of these decisions the question has to be answered in favour of the assessee and against the department. Accordingly, the question referred to us for our opinion is answered in favour of the assessee and against the department. The reference is answered accordingly with no order as to costs.