
(1994) 12 MAD CK 0083
In the Madras High Court
Case No : Tax Case No. 1327 of 1981

Commissioner of Wealth Tax

APPELLANT

Vs

P.R. Chockalingam

RESPONDENT

Date of Decision : 06-12-1994

Acts Referred:

Income Tax Act, 1961 — Section 27

Wealth Tax Act, 1957 — Section 2, 4, 5, 5(1), 5(1A)

Citation : (1996) 217 ITR 159

Hon'ble Judges : S.M. Ali Mohamed, J; Mishra, J

Bench : Division Bench

Advocate : N.V. Balasubramaniam, for the Appellant; N.V. Balasubramaniam, for the Respondent

Judgement

Mishra, J.—We do not think, after going through the statement of the case and the order of the Tribunal, that any reference was required to this Court at all, particularly when sufficient guidance is available to the WTO in the majority judgment of a Full Bench of this Court in Premier Electro Mechanical Fabricators Vs. The State of Tamil Nadu, .

2. The WT Act has created a charge upon the "net wealth" which is defined under s. 2(m) of the Act to mean 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 - (i) debts, which, under S. 6, are not to be taken into account, (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, (iii) the amount of the tax, penalty or interest payable in consequence of any order passed under or in pursuance of this Act of any law relating to taxation of income or profits, or the ED Act, 1953 (34 of 1953), the Expenditure-tax Act, 1957 (29

of 1957), or the GT Act, 1958 (18 of 1958), (a) which is outstanding on the valuation date and is claimed by the assessee in appeal, revision or other proceedings as not being payable by him; or (b) which, although not claimed by the assessee as not being payable by him, is nevertheless outstanding for a period of more than twelve months on the valuation date. There are two Explanations to the definition. Expln. 1 says that a building or part thereof referred to in cl. (iii) cl. (iiia) or cl. (iiib) of S. 27 of the IT Act shall be includible in the net wealth of the person who is deemed under the said clause to be the owner of that building or part thereof. Expln. 2 says that where a debt falling under sub-cl. (ii) is secured on, or has been incurred in relation to, any asset which is not to be included wholly or partly in the net wealth by virtue of the provisions of sub-s. (1A) of S. (5), the amount of such debt shall, for the purposes of the said sub-clause, be limited to the value of the said asset which is not includible in the net wealth under sub-s. (1A) of S. 5. The second Explanation has been inserted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1st, April, 1989. Even before the said Explanation, when the matter had come for interpretation, as to how to determine the aggregate value of all the assets and how to arrive at the debts which are secured on, or which have been incurred in relation to any property in respect of which wealth-tax is not chargeable for exclusion from the aggregate otherwise computed under the Act, this Court in the above Full Bench judgment in CIT vs. K.S. Vaidyanathan held as follows :

"Sec. 2(m) prescribes the manner in which the net wealth of an assessee can be arrived at. It states that the net wealth is said to mean the amount by which the aggregate value of all the assets required to be included in the assessee's net wealth exceeds the aggregate value of all the debts owed by the assessee. The words "including assets required to be included in his net wealth" found in S. 2(m) are not without significance. This is so because S. 4 specifies certain assets which shall be included in computing the net wealth of an individual. Similarly, S. 5(1) states that the assets specified therein shall not be included in the net wealth of the assessee. Therefore, the first step to be taken in arriving at the net wealth of an assessee is to take the aggregate value of all his assets including those which are required to be included in his net wealth as per the provisions of the Act. Since the net wealth has to be computed in accordance with the provisions of the Act, the assets which are specified in S. 5(1) have necessarily to be excluded in arriving at the aggregate value of all his assets for the purpose of S. 2(m). The second step will be to deduct from the aggregate value of all the assets so arrived at, the aggregate value of all his debts. In computing the aggregate value of all the debts owed by the assessee, we have to exclude debts covered by S. 2(m)(i), (ii) and (iii). Sec. 2(m)(ii) speaks of 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 the Act. Taking the entire scheme of the chargeability of assets to wealth-tax, the true meaning that can be given to S. 2(m)(ii) can only be that the debts referred to therein shall only be debts which are secured on, or which have been incurred in relation to, any property

which have not been taken into the reckoning for the purpose of arriving at the net wealth. From this, it must necessarily follow that the debts which are secured on, or which have been incurred in relation to, any property which has not been taken into the reckoning for the purpose of arriving at the net wealth have to be excluded and debts which are secured on, or which have been incurred in relation to, any property which has been taken into account have to be deducted from the aggregate value of the assets. No doubt, S. 5(1) contemplates cases of assets which are entirely excluded from being included in the net wealth of an assessee. There is no difficulty at all in excluding debts which are solely secured on or which have been solely incurred in relation to any such assets which have been excluded in entirety under S. 5(1)..... In fact, a literal interpretation of S. 2(m)(ii), as it stands, would permit two plausible situations. One would be, as the Revenue contended before this Court on an earlier occasion, that when a debt is secured on a property, a portion of which is not included in the net wealth, while the other portion is included in the net wealth then the entirety of the debt should not be deducted in arriving at the net wealth of the assessee. This theory was rejected by this Court and rightly so in T.C. No. 538 of 1976 [Commissioner of Income Tax Vs. M.N. Rajam,]. In this case, an argument was advanced on behalf of the Revenue that the debt contemplated under S. 2(m)(ii) is indivisible, cannot be bifurcated and, therefore, it must be disallowed in whole even if it is secured on a partially exempted asset. This was not accepted by the Bench. The Bench observed as follows :

"We would avoid the pitfall of this theory about the non-divisibility of a debt. The quality of non-divisibility of a debt cannot be derived as a matter of construction from the terms of S. 2(m)(ii). We would prefer to base our decision rather on the circumstance that a debt secured on property, which is neither wholly taxable nor wholly exempted, is not contemplated by the statute. In any case of such a debt, it cannot be asserted, in terms of S. 2(m)(ii), that it is secured on property on which wealth-tax is not chargeable at all."

For the same reason, the other extreme contention advanced on behalf of the assessee that when a debt is secured on an asset or assets, some of which are excluded and some included or an asset which is partially excluded in the computation of the net wealth, the entirety of the debt should be deducted from the aggregate value of the assets in arriving at the net wealth for the purpose of S. 2(m)(ii), cannot be accepted. On the other hand, the reasonable and the purposive approach would warrant that in such a situation, S. 2(m)(ii) has to be given a harmonious interpretation which would be consistent with the other section of the Act. Viewed in this light, no violence would be done to the language of S. 2(m)(ii) by holding that the debts referred to in that section can only refer to that portion of the debt which is secured on or which has been incurred in relation to that portion of the property in respect of which wealth-tax is not chargeable or payable under the Act. The conclusion will be in accord and in harmony with the scheme of the Act. The general rule as to deduction of debts in S. 2(m) is that all debts must come into the reckoning. Clause (ii) excludes

from the computation only debts which are secured on property in respect of which wealth-tax is not chargeable..... If in respect of an asset in entirety wealth-tax is not chargeable, then the debt secured on such asset, as we have already seen, has to be excluded from the reckoning. In case where an asset is only partially exempted from chargeability to wealth-tax, then it must necessarily follow that the portion of the debt secured on such portion of the asset or incurred in acquiring such portion of the asset has to be excluded from the reckoning. This construction will be in harmony with the scheme and purpose of the WT Act as contended for by both Mr. Rangaswami as well as Mr. Jayaraman.... We, therefore, hold that when a debt is secured on several items of properties, one of which alone is exempted from wealth-tax, that portion of the debt which is attributable to the value of property exempted from wealth-tax cannot be deducted in the computation of the net wealth of the assessee. Similarly, when a debt is secured or acquired in relation to a property which is only partially exempt from the wealth-tax, that portion of the debts which is attributable to the portion of the property exempted from the wealth-tax cannot be deducted in the computation of the net wealth of the assessee."

3. So far as the instant case is concerned, the assessee has immovable properties valued at Rs. 3,92,511 and movable properties worth Rs. 4,52,675. Out of the movable properties, Rs. 2,31,844 represent shares in companies. Out of the immovable properties, Rs. 2,70,073 represent agricultural wealth. In working out the net wealth, the WTO granted exemption under S. 5(1A) of the Act of Rs. 1,50,000. Since the exempted agricultural lands were included in the net wealth, he reduced the liability claimed out of the assets by Rs. 1,28,008 on a proportionate basis and the AAC upheld the order of the WTO. The Tribunal has held as follows :

"The provisions of S. 5 as quoted above indicate that the exemption in respect of certain assets is specified in S. 5(1). Sec. 5(1A) restricted the total of exemption to Rs. 1,50,000. If under any item the assessee has to got assets worth Rs. 1 lakh that would be completely exempt. If under two or three items, the assessee has got assets, a total of Rs. 1,50,000 comprising several items would be exempt. In the present case, the assessee has shares coming under cl. (xxiii) of more than Rs. 1,50,000 and also agricultural land worth more than Rs. 1,50,000 such relief should be granted only in respect of shares or in respect of agricultural land, or on a proportion between the two. While it is well-settled that an assessee who claims an exemption must bring himself within the provisions, no provision of law or practice has been referred to us wherein an assessee who, even though entitled to an exemption in respect of an item does not want it should be compelled to have the exemption in respect of that item. We have an interesting case of this type here. It is open to the assessee since he has both shares coming under cl. (xxiii) and agricultural land coming under cl. (iva), to claim the exemption under one or the other or proportionately under either. In fact if the assessee claims exemption from shares to the extent of Rs. 1,50,000 and return only the balance as shares liable to tax and returns the entire value of

agricultural land as liable to wealth-tax, he cannot be said to be wrong at all. Likewise, it would be open to him to indicate that he claims agricultural land to the extent of Rs. 1,50,000 held by him as exempt and return for wealth-tax the entire value of the shares. It may be open to him also to claim exemption in respect of some shares and exemption in respect of a part of the agricultural land, of course, the total not exceeding Rs. 1,50,000. In fact in the return filed under the head "Movable properties" whereunder the shares value is indicated the assessee has shown in annexure-C the value of shares at Rs. 2,31,000 approximately and deducing therefrom the exemption of Rs. 1,50,000 available under S. 5(1A) taken the balance of Rs. 81,000 to the return under the head "Movable properties". Under the head "Immovable properties" in annexure-1, the assessee returned the entire value of agricultural land totalling up to Rs. 3,25,000. The assessee thus has claimed exemption under S. 5(1A) to the extent of Rs. 1,50,000 against the shares by conscious assertion. We see no reason why he should be denied that exemption and be forced to accept a part of the whole of this concession in respect of another item on which he wants to get taxed. Prima facie, therefore, there is no question of exemption under sub-s. (1A) of S. 5 being fastened to the agricultural land at all. Learned counsel for the Department has pointed out that in so far as S. 5(1A) refers to all items the exemption under which totalling up to Rs. 1,50,000 is only available to the assessee, he cannot get assessed on any particular item without claiming the proportionate exemption thereof. We have mentioned above that whether to return an amount for tax purpose even if he is entitled to exemption on the same or not is certainly the privilege of the assessee which he cannot be deprived of. The benefit of exemption cannot be thrown or forced on an unwilling taxpayer. Viewed in this light the question of claiming any exemption in respect of agricultural land to which only the liability claim relates does not arise. It may also be mentioned that where the assessee has two options open to him, one of which gives him a lesser tax liability, it is open to him to choose this option in preference to the one which imposes a higher tax on him. The assessee's claim is accepted and the appeal is allowed."

4. The reference at the instance of the Revenue is whether, on the facts and in the circumstances of the case, the Tribunal was correct in law in holding that it is open to the assessee to claim exemption in respect of a particular asset and have the maximum limit of exemption, viz., Rs. 1,50,000 under S. 5(1A) of the WT Act, 1957, adjusted according to his choice.

5. The Revenue, it is obvious, has been under a serious misapprehension that when, for the purpose of the aggregate value, while taking notice of the debts to the extent the property of the assessee is not chargeable to the wealth-tax, a proportionate value of debts relating to the assets which were chargeable to tax would be allowed to the assessee this can be extended to putting a burden upon the assessee to claim exemption under S. 5(1) of the Act proportionately if such exemption is available for more than one asset or more than one kind of property. The procedure is well indicated in the judgment of the Full Bench. The

first step to be taken in arriving at the net wealth of the assessee is to take the aggregate value of all his assets including those which are required to be included in his net wealth as per the provisions of the Act. Since the net wealth has to be computed in accordance with the provisions of the Act, the assets which are specified in S. 5(1) have necessarily to be excluded in arriving at the aggregate value of all his assets for the purpose of S. 2(m) of the Act. The aggregate value of all the debts thereafter will be deducted from the aggregate value of all the assets so arrived at. In computing the aggregate value of all the debts owed by the assessee, the debts covered by Ss. 2(m)(i), (ii) and (iii) of the Act are necessarily to be excluded. Sec. 2(m)(ii) of the Act speaks of 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 the Act. This, it appears, has given the Revenue the misapprehension as to the extent of a proportionate deduction in the value of the immovable property of the assessee. In the instant case, it has decided to exclude from the deductible debts proportionately. The Tribunal is right in not approving this method for determining the net wealth in respect of which the assessee is required to pay the wealth-tax. No one can suggest that the assessee could not have either claimed benefit under cl. (xxiii) as respects the shares or under cl. (iva) as respects the agricultural land or have claimed the exemption by proportionately dividing the extent of the value of exemption under cl. (xxiii) or (iva). At the relevant time, exemption was available under S. 5(1)(xxiii) of the Act as well as under S. 5(1)(iva) of the Act. Sec. 5(1A) of the Act put a limit of Rs. 1,50,000 to cover both the clauses under which the assessee could claim the exemption. If exemption is otherwise available and certain assets were available which secured the debts, the assessee could claim a total exemption of Rs. 1,50,000 and also deduction of the secured debts. He has not, for the said reason, asked for any exemption by traversing twice under the same provision of law with respect to the same property. We are satisfied that the Tribunal has committed no mistake in taking the above view. The reference is answered accordingly.