

(1991) 01 CAL CK 0028
In the Calcutta High Court
Case No : Matter No. 1345 of 1982

Commissioner of Wealth Tax

APPELLANT

Vs

Rama Shankar Bajoria

RESPONDENT

Date of Decision : 31-01-1991

Acts Referred:

Finance Act, 1965 — Section 68

Voluntary Disclosure of Income and Wealth Ordinance, 1975 — Section 14, 14(1)

Citation : (1992) 194 ITR 132 : (1992) 64 TAXMAN 399

Hon'ble Judges : Shyamal Kumar Sen, J;Ajit K. Sengupta, J

Bench : Division Bench

Advocate : Murarka, for the Appellant;

Judgement

Ajit K. Sengupta, J.—In this reference u/s 27(3) of the Wealth-tax Act, 1957, the following question of law has been referred to this court for the assessment years 1967-68 to 1970-71 :

"Whether, on the facts and in the circumstances of the case, the Income Tax and wealth-tax liability on income and wealth voluntarily disclosed by the assessee u/s 14(1) of the Voluntary Disclosure of Income and Wealth Ordinance, 1975, subsequent to the valuation date is an admissible deduction in computing the net wealth of the assessee for the assessment years 1968-69 to 1970-71 ?"

2. Shortly stated, the facts are that the Wealth-tax Officer reopened the assessments for the said years finalised earlier as a sequel to the disclosure of income and wealth made by the assessee under the concerned Ordinance, 1975, as a result of a search conducted by the Department. The concealed wealth disclosed by the assessee was added back by the Wealth-tax Officer but he did not allow the Income Tax and wealth-tax liabilities arising out of such disclosure for these years as the liability was not admitted by the assessee earlier and it arose only in 1975,

3. On appeal to the Appellate Assistant Commissioner, he allowed the claim of

the assessee. On appeal by the Revenue, the Appellate Tribunal decided the matter in favour of the assessee holding that such Income Tax and wealth-tax liabilities constituted a debt u/s 2(m) of the Wealth-tax Act, 1957.

4. A similar question has been considered by a Division Bench of this court under the Voluntary Disclosure Scheme introduced by Section 68 of the Finance Act, 1965, in the case of Commissioner of Wealth Tax Vs. Bansidhar Poddar, . In that case, the assessee had made a voluntary disclosure u/s 68 of the Finance Act, 1965, on May 25, 1965. The amount disclosed was Rs. 2 lakhs with interest accrued thereon. The tax due thereon computed under the said section was paid on May 26, 1965. In the assessment of the assessee under the Wealth-tax Act, 1957, the Appellate Tribunal held that the Income Tax liability on the income declared was a debt and was deductible in computing the net wealth of the assessee. There, the Division Bench of this court held that Section 68 of the Finance Act, 1965, does not impose a new charge. The section permits a declaration of an amount by the assessee. This amount the assessee has to disclose on the basis that it represents his income ; and further that the assessee had failed to disclose this income earlier under the relevant Income Tax Act ; or that the income has escaped assessment in an earlier assessment year ; or that no proceedings have been taken for the assessment of this income before March 1, 1965. Therefore, it is clear that the disclosure envisaged u/s 68 is in respect of an amount which is already liable to be assessed as income under the relevant Income Tax Act. The condition precedent to disclosure under the said section is that the said amount has not been so assessed in the regular course for some reason or other.

5. This decision was approved by the Supreme Court in the case of Ahmed Ibrahim Sahigra Dhoraji Vs. Commissioner of Wealth Tax, Gujarat, . There, the Supreme Court, after considering the decisions of different High Courts and after considering the provision of the Finance Act regarding the Voluntary Disclosure Scheme, came to the conclusion that the true position is that the amount declared u/s 68 of the Finance Act, 1965, has the liability to pay Income Tax, imbedded in it on the valuation date but only the ascertainment of that liability is postponed to a future date. Determination is allowed to be done in accordance with the provisions of Section 68. There the Supreme Court held as follows (headnote) :

"Where an amount based on the concealed income disclosed by the assessee under the voluntary disclosure scheme pursuant to Section 68 of the Finance Act, 1965, is included in the net wealth of the assessee, liability in respect of Income Tax payable on the income so disclosed is deductible as a "debt owed" on the valuation date u/s 2(m) of the Wealth-tax Act, 1957, in computing the net wealth of the assessee.

The declaration contemplated u/s 68 of the Finance Act, 1965, is a declaration in respect of income of earlier years which had been concealed and on which tax was payable during the relevant assessment years in the ordinary course. If the

assessee had brought to the notice of the Department in the usual course the existence of the incomes which were later on declared u/s 68, they would have been taxed during the relevant assessment years. Hence, merely because they are disclosed in a declaration filed u/s 68, they cannot cease to be incomes not already charged to Income Tax. It is true that the Finance Act in question merely levied a fixed rate of Income Tax in respect of all the incomes disclosed without allowing deductions, exemptions and set-offs under the relevant Income Tax law. Yet its function was no more than that of a Finance Act passed annually even though it made certain alterations with regard to filing of declarations and computation of taxable income. That the declaration was dependent upon the volition of the declarant and that the liability to tax on the amount mentioned therein was contingent upon the willingness of the declarant to disclose the amount make no difference. Any such voluntary disclosure by an assessee, even in the absence of Section 68, would have exposed him to an assessment or reassessment, as the case may be, being made in respect of the sum disclosed as part of the income of the relevant assessment year and with the additional liability to payment of interest and levy of penalty and perhaps the right to claim deductions, if any, admissible in the circumstances of the case and the benefits of other procedural rights. The voluntary character of the declaration cannot, therefore, alter the character of the tax.

Nor is it correct to say that in the absence of the allocation of the amount disclosed amongst different assessment years the tax payable u/s 68 cannot be termed as a tax on income, because such allocation would not achieve any additional purpose in the scheme of Section 68. Irrespective of the other income which may have been determined in an ordinary proceeding under the relevant law of Income Tax, a fixed rate of tax is payable u/s 68(3) and hence the amount disclosed being treated as the income of any particular year would not make any difference regarding the quantum of tax. Nor is there any other purpose to be served by such allocation. Section 68 is in the nature of a package deal but the net result achieved is that the declarant is treated as having discharged all his liability in respect of the said income under the Income Tax law.

The amount declared u/s 68 of the Finance Act, 1965, has the liability to pay Income Tax imbedded in it on the valuation date but only the ascertainment of that liability is postponed to a future date. In the case of concealed income disclosed u/s 68, its determination is allowed to be done in accordance with the provisions of Section 68. Even though it may appear to be by itself a complete code, it is only a scheme which provides a method for the liquidation of an already existing Income Tax liability which was present on the relevant valuation date".

6. Our attention has also been drawn to the decision of the Kerala High Court in the case of Commissioner of Wealth-tax Vs. K. Ravindranathan Nair, , where this question under the Voluntary Disclosure of Income and Wealth Act, 1976, came up for consideration. There, the Kerala High Court, considering the decision of

the Supreme Court in Ahmed Ibrahim Sahigra Dhoraji Vs. Commissioner of Wealth Tax, Gujarat, , held that the liability to pay Income Tax on concealed income disclosed under the Voluntary Disclosure Scheme is deductible as a "debt owed" on the valuation date.

7. Although the two schemes may have some dissimilarities concerning the procedure, assessment and penalty, the objects of both the schemes are to encourage disclosure of concealed income and wealth. Disclosure, if any, under the aforesaid schemes, could only be made after the scheme came into operation to bring into the net of taxation the income that had already escaped assessment for the previous years.

8. We are, therefore, of the view that there cannot be any distinction in principle regarding the deductibility of the tax paid on the income disclosed voluntarily which relates back to the respective valuation dates for which such disclosure was made. If the assessee had discharged his liability in respect of the concealed income under the Income Tax Act, he is entitled to the benefit of deduction of tax and such tax must, necessarily, be held to be a "debt owed" on the respective valuation date in respect of which such disclosure was made. In our view, therefore, the assessee is entitled to claim deduction of the tax liability in respect of the disclosure made u/s 3(1) of the Voluntary Disclosure of Income and Wealth Act, 1976.

9. For the reasons aforesaid, we answer the question in this reference in the affirmative and in favour of the assessee.

10. There will be no order as to costs.

Shyamal Kumar Sen, J.

11. I agree.