

(1982) 01 OHC CK 0004
In the Orissa High Court
Case No : S.J.C. No's. 108 and 109 of 1976

Commissioner of Wealth-tax

APPELLANT

Vs

R.K. Deo

RESPONDENT

Date of Decision : 19-01-1982

Acts Referred:

Wealth Tax Act, 1957 — Section 2(m)

Citation : (1983) 140 ITR 614

Hon'ble Judges : R.N. Misra, C.J.;N.K. Das, J

Bench : Division Bench

Advocate : R. Mohanty and K. Patnaik, for the Respondent

Judgement

R.N. Misra, C.J.—The Cuttack Bench of the Wealth-tax Appellate Tribunal, has stated these cases pursuant to the direction of this court at the instance of the Revenue, u/s 27 of the W.T. Act of 1957 and the following common question has been referred for our opinion :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in upholding the order of the Appellate Assistant Commissioner directing the Wealth-tax Officer to allow deduction of tax liabilities in accordance with the principles laid down by the courts ?"

2. The relevant assessment years are 1970-71 and 1971-72. The asses-see declared a net wealth of Rs. 41,21,486 for the first assessment year and Rs. 41,04,502 for the second assessment year but did not claim any deduction on account of liabilities in respect of Income Tax, wealth-tax and other taxes on the relevant valuation dates. The WTO did not allow any such liability to be deducted in the matter of computation of net wealth.

3. On appeal, the AAC directed the WTO to examine the claim of the assessee in respect of the aforesaid deduction keeping in view the observations of the Supreme Court in the case of The Commissioner of Wealth Tax (Central), Calcutta Vs. The Moone Mills Ltd., and of the Gujarat High Court in the case of

Commissioner of Wealth Tax, Gujarat-II Vs. Kantilal Manilal, . After summarising the ratio of these two decisions, the AAC required the WTO to re-determine the claim for deduction on the basis of the propositions referred to:

4. The Revenue challenged the aforesaid decision of the AAC by preferring second appeals to the Tribunal. It was contended in the second appeal that there was no justification for the AAC to give the direction as indicated above. No demand was outstanding on the particular valuation date and no demand notice had yet been served on the assessee. The Tribunal did not agree with the contention advanced on behalf of the Revenue as in its opinion the direction of the AAC was in accord with the ratio in the Gujarat case. The Tribunal also found that there was no infirmity in the order of the first appellate authority as it had only directed the WTO to keep the principles laid down in the decisions in view while disposing of the appeals. The Tribunal did not, therefore, interfere with the appellate order.

5. The AAC had found :

"The liability to pay Income Tax, gift-tax or wealth-tax is a debt owed by the assessee on the relevant valuation date. The liability for the Income Tax is a present liability on the last day of the accounting year, though it may not have been quantified by assessment and may have been payable at a future date. The Supreme Court also held in H.H. Setu Parvati Bayi Vs. Commissioner of Wealth Tax, Kerala, that the liability for wealth-tax becomes crystallised on the valuation date and not on the first day of the assessment year though the tax may be quantified by assessment and may become payable after the commencement of the assessment year,"

6. The first appellate authority referred to the ratio in the case of Commissioner of Wealth Tax, Gujarat-II Vs. Kantilal Manilal, , and held that in the facts of the case, a further investigation was necessary by the WTO. Accordingly, he directed :

"The Wealth-tax Officer shall take care not to deduct two types of taxes claimed to be debts owed by the assessee: one, outstanding taxes for more than twelve months as on the valuation date and outstanding taxes due as on the valuation date but disputed in appeal. The Wealth-tax Officer shall carefully apply the above principles and compute the deduction from the net wealth on this ground."

7. "Net wealth" has been defined in Section 2(m) of the W.T. Act. The definition given in the statute has, therefore, to be referred to :

""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.....

(iii) the amount of the tax, penalty or interest payable in consequence of any order passed under or in pursuance of this Act or any law relating to taxation of income or profits, or the Estate Duty Act, 1953.....,--

(a) which is outstanding on the valuation date and is claimed by the assessee in appeal, revision or other proceeding 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."

8. It is conceded that the effect of Clause (b) extracted above is that even if there be no claim laid for deduction, if the amount be outstanding for a period of more than 12 months on the valuation date, the same would also entitle a claim for deduction.

9. It is conceded that the assessee had not laid the claim for deduction. But the provisions referred to above do not require as a rule, a claim for the same as a condition precedent to the deduction. The Tribunal has recorded a finding of fact in clear terms about the entitlement of the assessee. We must assume that the provisions of law were known to the Tribunal and on the basis of the provisions indicated above, the Tribunal came to hold that the requisite conditions had been satisfied and the demand was open to be made. We do not think, there is any scope for a different view on the facts placed before us. On the analysis indicated, though some authorities had been cited at the bar, we see no justification at all to take a view different from the one that has been adopted by the Tribunal. In our opinion, no question of law does arise (or being answered by the court.

10. There would be no order for costs.