
(1987) 09 RAJ CK 0048

In the Rajasthan High Court

Case No : Wealth-tax Reference No. 15 of 1981

Commissioner of Wealth-tax

APPELLANT

Vs

Sanwarmal Shivkumar

RESPONDENT

Date of Decision : 04-09-1987

Acts Referred:

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

Citation : (1987) 66 CTR 5 : (1988) 171 ITR 377

Hon'ble Judges : J.S. Verma, C.J; Milap Chandra, J

Bench : Division Bench

Advocate : B.R. Arora, for the Appellant; Rajendra Mehta, for the Respondent

Judgement

Milap Chandra, J.—This is a reference u/s 27(1) of the Wealth-tax Act, 1957 (hereinafter to be called as "the Act"), made by the Income Tax Appellate Tribunal, Jaipur Bench, Jaipur, at the instance of the Commissioner of Wealth-tax, Jodhpur, for answering the following question of law, namely ;

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the entire amount of loan liability of the assessee, towards purchase of 1,150 shares of the Bank of Rajasthan Ltd., should be allowed as a deduction while computing the net value of the shares of the said company held by the assessee ignoring any deduction of the said loan liability which is attributable to any part of the value of the said shares that is otherwise exempt from tax u/s 5(1)(xxiii) of the Wealth-tax Act, 1957 ?"

2. The facts of the case giving rise to this reference may be summarised thus. The case relates to the assessment year 1974-75. The assessee is a Hindu undivided family. It was originally having 500 shares of the Bank of Rajasthan Ltd., the value of which was fully covered by the exemption u/s 5(1)(xxiii) of the Act. Subsequently, the assessee purchased 1,150 shares out of borrowed money. The Wealth-tax Officer held that the borrowed money invested for the purchase of 1,150 shares cannot be allowed as a deduction in view of the provisions of

Section 2(m)(ii) of the Act. On appeal, the Appellate Assistant Commissioner of Wealth-tax held that the amount of loan liability should be adjusted pro rata towards both the taxable value and the exempted value of the shares. The Department preferred a second appeal before the Tribunal. The appeal was dismissed and the cross-objections were allowed by the learned Tribunal by its order dated February 29, 1980, holding that the loan liability should be allowed in toto from the value of the taxed shares and not on proportionate basis as has been held by the Appellate Assistant Commissioner of Wealth-tax. Hence this reference.

3. It has been contended by learned standing counsel for the Department that it is clear from the provisions of Section 2(m)(ii) of the Act that the entire amount of debt could not be deducted while computing the net wealth and only the proportionate amount of the debt could be deducted. He relied upon the decision in Premier Electro Mechanical Fabricators Vs. The State of Tamil Nadu, and T.V. Srinivasan Vs. Commissioner of Wealth-tax, in support of his contention.

4. In reply, it has been contended by learned counsel for the assessee that the Department has issued a circular on this matter in the year 1977, it has not been referred to in the rulings relied upon by the Department, it is printed at Serial No. 725 page 1426 in "Direct Taxes Circulars (1985 edition)" published by Taxmann and, according to it, the entire amount of debt was to be deducted from the aggregate amount of wealth of the assessee and the Department is bound by it. He also relied upon Commissioner of Income Tax Vs. M.N. Rajam, and Commissioner of Wealth-tax, Tamil Nadu-I Vs. Satish, .

5. It is not disputed that the question referred to is a pure question of law. The relevant portion of Section 2(m) of the Act runs as under :

"(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--...

(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; and..."

6. The said Circular No. 1070 dated June 28, 1977, runs as follows :

" The Board have also examined the question as to how the deduction in respect of debts which are secured on, or have been incurred in relation to, any property which is partly exempt u/s 5(1) is to be allowed. The Board are of the view that in the absence of any clear indication in the Act, the deduction for such debts will have to be allowed in the manner which is most beneficial to the assessee. Accordingly, if, for instance, a debt of Rs. 1 lakh has been secured on a house property, the value of which is Rs. 1,50,000 and exemption of Rs. 1 lakh is

allowed u/s 8(1)(iv), the debt will have to be allowed to the extent of Rs. 50,000 being the value of the house property which is otherwise includible in the net wealth."

4. It has been observed in *Ellerman Lines Ltd. Vs. Commissioner of Income Tax, West Bengal, Calcutta*, as follows:

"Now, coming to the question as to the effect of instructions issued u/s 5(8) of the Act, this court observed in *Navnitlal C. Javeri Vs. K.K. Sen*, Appellate Assistant Commissioner of Income Tax, "D" Range, Bombay,

"It is clear that a circular of the kind which was issued by the Board would be binding on all officers and persons employed in the execution of the Act u/s 5(8) of the Act. This circular pointed out to all the officers that it was likely that some of the companies might have advanced loans to their shareholders as a result of genuine transactions of loans, and the idea was not to affect such transactions and not to bring them within the mischief of the new provision."

The directions given in that circular clearly deviated from the provisions of the Act, yet this court held that the circular was binding on the Income Tax Officer."

5. In view of these authoritative observations, the Department was bound to follow the said circular.

6. The Full Bench of the Gujarat High Court has observed in *Pankaj Oil Mills Vs. Commissioner of Income Tax, Gujarat*, as follows :

"It is rather unfortunate that in spite of the directions contained in this Circular of the CBR clarifying the position in respect of hedging transactions, the revenue authorities have not been able to persuade themselves to extend the benefit of this clarification to the assesseees of the State as they found themselves bound by the decision of this court in *Chimanlal Chhotalal Vs. Commissioner of Income Tax, Gujarat*,

7. The order of the learned Tribunal dated February 29, 1980, is in conformity with the aforesaid circular. The learned Tribunal has rightly held that the entire loan liability should be allowed as a deduction from the value of the taxed shares and not on pro rata basis. It has also been held so in *Commissioner of Income Tax Vs. M.N. Rajam*, and *Commissioner of Wealth-tax, Tamil Nadu-I Vs. Satish*, even without reference to this circular. There is no reference to the aforesaid circular in *Premier Electro Mechanical Fabricators Vs. The State of Tamil Nadu*, and *T.V. Srinivasan Vs. Commissioner of Wealth-tax*, cited by learned standing counsel for the Department.

8. In the result, the aforesaid question is answered in the affirmative against the Department and in favour of the assessee.