(1978) 09 PAT CK 0009

In the Patna High Court

Case No : Taxation Case No. 67 of 1973

Commissioner of Wealth Tax — APPELLANT

Vs

Shivram Singh — RESPONDENT

Date of Decision : 19-09-1978

Acts Referred:

Finance Act, 1965 — Section 68, 68(3)
Wealth Tax Act, 1957 — Section 17(1), 2

Citation : (1979) 8 CTR 345 : (1983) 139 ITR 68

Hon'ble Judges : Shiveshwar Prasad Sinha, J;S. Sarwar Ali, J

Bench : Division Bench

Advocate : Badri Pd. Rajgarhia and S.K. Sharan, for the Appellant; K.N. Jain and Rameshwar Pd., for the Respondent

Judgement

S.P. Sinha, J.—At the instance of the Commissioner of Wealth-tax, Bihar, the Income Tax Appellate Tribunal has, u/s 27 of the W.T. Act, 1957, referred the following question of law for the opinion of this court:

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in directing the Wealth-tax Officer to give deduction of the Income Tax payable on Rs. 15,20,000 in computing the assessee''s net wealth ?"

2. The assessee is an individual. The assessment year in question is 1965-66, for which the relevant valuation date is November 4, 1964.

3. The said sum of Rs. 15,20,000 is a portion of the total assets voluntarily disclosed by the assessee u/s 68 of the Finance Act, 1965. The disclosure was made on May 31, 1965, that is, later than the said valuation date. The break-up of the total assets disclosed was as under:

Rs.

(a) Cash ... 15,17,000

(b) Bonds ... 9,80,000

(c) Shares in Bank of Bihar Ltd. at face value ... 3,000

Total ... 25,00,000

4. The assessee paid Income Tax on the voluntarily disclosed income in terms of Section 68 of the said Finance Act. Consequent upon the said voluntary disclosure, proceedings u/s 17(1)(a) of the W.T. Act, 1957 (hereinafter referred to as "the Act") were initiated for the assessment year 1965-66. The assessee returned his net wealth at Rs. 5,27,132, that is to say, the net wealth as had been assessed in his original assessment. When the WTO wanted to assess the asset disclosed u/s 68 of the Finance Act, the assessee submitted that no part of the value of the said asset could be included in his net wealth for the assessment year in question, because the disclosure, having been made on May 31, 1965, fell beyond the valuation date. The WTO, however, rejected the contention and by some process of reasoning, which is not intelligible, added only a part of the total value of the disclosed asset, namely, the cash amount of Rs. 15,17,000 and the value of the shares in the Bank of Bihar Ltd., Rs. 3,000--total Rs. 15,20,000, to the net wealth of the assessee. Against this assessment there was an appeal before the AAC, which failed. On further appeal to the Income Tax Appellate Tribunal, the order passed by the AAC was set aside with a direction to pass a fresh order in accordance with law. Once again the AAC confirmed the assessment. The assessee then appealed to the Income Tax Appellate Tribunal, and the only contention now made was that in any event the Income Tax paid @ 60% in accordance with Sub-section (3) of Section 68 of the Finance Act, 1965, on the value of the asset included in his wealth, should be deducted as debt owed by him in terms of Section 2(m) of the Act. The Tribunal accepted that the assessee was entitled to the deduction of the tax payable on the value of the asset included in his net wealth, but the amount of such tax had to be determined in accordance with the rate of tax prescribed under the relevant Finance Act. The Tribunal, accordingly, directed the WTO to give the necessary deduction on the sum of Rs. 15,20,000.

5. As stated, at the instance of the Commissioner of Wealth-tax, the Tribunal has made a reference on the question of law mentioned above.

6. Mr. Rajgarhia, appearing for the department, advanced arguments on the lines as have been accepted by the Gujarat High Court in the case of Commissioner of Wealth Tax, Gujarat-I Vs. Ahmed Ibrahim Sahigara, . The point involved in the reference before the Gujarat High Court was, whether in the computation of net wealth, the assessee was entitled to a deduction of the amount of tax paid u/s 68 of the Finance Act, 1965, as a "debt owed" by him on the relevant valuation date.

7. It will immediately be noticed that the Gujarat High Court was seized with a question which was different in nature from the question which has been referred to us in the instant case. The deduction of the amount of tax which has been allowed as per the Tribunal''s order is not at the rate prescribed u/s 68 of the

said Finance Act, but is restricted to the amount that would be payable on the basis of the Finance Act for the relevant assessment year. Such deduction has been allowed on the ground that it is a debt owed in terms of Section 2(m) of the Act. Therefore, the only question which requires to be considered is, whether the Income Tax payable on the value of the said asset is deductible at the rate prescribed under the relevant Finance Act.

8. On this question learned standing counsel for the department has argued that the value of the assets disclosed under the Voluntary Disclosure Scheme cannot be earmarked for the particular financial year or years and, consequently, the tax liability on it being unascertainable, the deduction allowed was illegal.

9. The argument, to my mind, is untenable.

10. "Wealth-tax" is a tax on net wealth. "Net wealth" has been defined in Section 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 assets, wherever located, belonging to the assessee on the valuation date, including the 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...". There are certain exceptions to it which are not relevant to be quoted, because they do not affect this case. Evidently, by this definition only that part of the gross wealth is to be taxed to wealth-tax which is left in the assessee''s hands after deducting the debts owed on it.

11. The Supreme Court, in the case of Kesoram Industries and Cotton Mills Ltd. Vs. Commissioner of Wealth Tax, (Central) Calcutta, , has explained that the expression "debt owed" occurring in Section 2(m) of the Act includes Income Tax liability on the asset. It has been observed thus (p. 784):

"A debt is a present obligation to pay an ascertainable sum of money ...A liability to pay Income Tax is a present liability though it becomes payable after it is quantified in accordance with ascertainable data. There is a perfected debt at any rate on the last day of the accounting year and not a contingent liability. The rate is always easily ascertainable."

12. Now, the simple question which arises here, on the facts of the instant case is, could it be said that the assessee was under an obligation to pay Income Tax on the assets included in his wealth-tax assessment on the valuation date, namely, on November 4, 1964 ? To put it in other words, having regard to the fact that the assessee offered those assets for taxation purposes on May 31, 1965, that is, much later than the said valuation date, could it be said, to put it in the language of the Supreme Court in Kesoram Industries and Cotton Mills Ltd. Vs. Commissioner of Wealth Tax, (Central) Calcutta, , that--"There is a perfected debt at any rate on the last day of the accounting year, and not a contingent liability."

13. A liability, which would arise on the happening of an event is contingent. If

the assessee had put forth a claim for a debt owed in the shape of Income Tax on an asset which was yet to be disclosed and offered for taxation, such liability would have been a contingent liability. In the instant case, however, the assets have been brought to surface and have also suffered taxation. Though the disclosure was made on May 31, 1965, that is, after the relevant valuation date, the department thought, and rightly so, that the assets had been with the assessee even on the relevant valuation date. This part of the department''s thinking, though challenged by the assessee in the course of the wealth-tax assessment proceeding, has been accepted by all the fact-finding authorities. Such being the factual position, it follows that on the said valuation date, the assets were held under a liability to pay Income Tax on them. It then follows as a natural corollary that there is a perfected debt on the valuation date (which would be the last date of the accounting year for the assessment year 1965-66) in the shape of Income Tax payable on the said assets, against the assessee. The Department, having included the value of the said assets in the assessee''s total wealth as on the relevant valuation date, cannot turn back and say that it would not deduct the debt owed on it, because the actual date of its acquisition was unascertainable. The department cannot be permitted to take contradictory positions.

14. The question must, therefore, be answered in the affirmative and against the Department.

15. There will be no order as to costs.

Sarwar Ali, J.

16. I agree that the question referred for the opinion of the court be answered in the affirmative and against the department.

17. The main plank of the argument of Sri Rajgarhia is the decision of the Gujarat High Court in the case of Commissioner of Wealth Tax, Gujarat-I Vs. Ahmed Ibrahim Sahigara, . Shri K.N. Jain, appearing for the assessee, brought to our attention decisions of several High Courts which take a view contrary to the view taken by the Gujarat High Court. But, as pointed out by my learned brother, the question decided in Ibrahim Sahigara''s case does not arise for decision in this case. In the instant case, the finding of the Tribunal, which is a finding of fact, is that Rs. 15,20,000 was the secreted income of the assessee in the assessment year 1965-66 (See para. 14 of the order of the Appellate Tribunal dated December 23, 1971). This finding cannot be said to be perverse.

18. In view of this finding, the Income Tax payable on the said amount is a debt owed by the assessee on the valuation date, and is thus to be excluded in computing the net wealth of the assessee.

19. As already indicated the reference must be answered in favour of the assessee, but in the circumstances there will be no order as to costs.

