(1983) 03 PAT CK 0034

In the Patna High Court

Case No : Tax Case No. 48 of 1974

Commissioner of Wealth Tax APPELLANT

Vs

Shivram Singh RESPONDENT

Date of Decision : 04-03-1983

Acts Referred:
Finance Act, 1965 — Section 68
Wealth Tax Act, 1957 — Section 17, 2

Citation : (1983) 36 CTR 255 : (1983) 143 ITR 91

Hon'ble Judges : S.K. Jha, J;Ashwini Kumar Sinha, J

Bench : Division Bench

Advocate : B.P. Rajgarhia and S.K. Sharan, for the Appellant; K.N. Jain, for the Respondent

Judgement

1. As directed by this court, a statement of case has been submitted by the Income Tax Appellate Tribunal, ''B'' Bench, Patna, u/s 27(3) of the W.T. Act, 1957, and the following question of law has been referred for the opinion of this court:

" Whether, on the facts and in the circumstances of the case, and in view of the alleged circular dated February 14, 1974, issued by the Central Board of Direct Taxes, referred to in the order of the Tribunal, the Tribunal was justified in law in holding that the Income Tax liability of Rs. 5,88,000 u/s 68 of the Finance Act, 1965, was a debt ''owed'' on the relevant valuation date that is, 15-11-64, (63 ?) and on that basis in allowing the same as deduction in the computation of the assessee''s net wealth ?"

2. The assessee is an individual. The case relates to the assessment year 1964-65. The WTO passed an order on August 31, 1970, u/s 17 of the W.T. Act, .1957, bringing to tax the value of premium prize bonds worth Rs. 9,80,000. The assessee claimed before the WTO that in the recomputation of his net wealth, a sum of Rs. 5,88,000 being the Income Tax liability attributable to the additional sum of Rs. 9,80,000 brought into tax u/s 17 should be deducted as a

debt owed by him on the relevant valuation date which was November 15, 1963. The assessee had disclosed on May 31, 1965, that he had been owning premium prize bonds worth Rs. 9,80,000. The WTO did not allow the claim, as according to him, it was not an admissible deduction. On further appeal, the AAC by his order dated November 16, 1971, held that the Income Tax liability claimed by the assessee was an admissible deduction and so he allowed the claim by his order in Appeal Nos. 88 and 87 C.C.D. of 1970-71.

3. The Department appealed to the Tribunal against the aforesaid findings of the AAC. The Tribunal considered the contentions of the Department and found that the decision in the case of Commissioner of Income Tax (Central) Vs. Vijay Kumar Behal, , was based on the principle laid down by the Supreme Court in the case of Kesoram Industries and Cotton Mills Ltd. Vs. Commissioner of Wealth Tax, (Central) Calcutta, , which was not noticed in the case of C.K. Babu Naidu and C.K. Sundara Raja Naidu Vs. Wealth-tax Officer and Another, . The Tribunal accordingly held that the AAC rightly allowed the Income Tax payable on the disclosed wealth as deduction in the computation of the assessee''s net wealth. The appeal filed by the Department was accordingly dismissed.

4. In the appellate order, the Tribunal observed as follows :

"The valuation date in this case is 15-11-63. The assessee disclosed on 31-5-65, that he had been owning premium prize bonds worth Rs. 9,80,000. The Wealth-tax Officer reopened the assessment for the year 1964-65 and reassessed the net wealth on August 31, 1970, including the sum of Rs. 9,80,000. The assessee claimed the tax of Rs. 5,88,000 payable on the said Rs. 9,80,000 as deduction from the computation of net wealth. The question before us is whether this claim was rightly allowed by the Appellate Assistant Commissioner. We find conflicting views of the High Courts on this question. "

5. Thereafter, a reference was made to the cases of C.K. Babu Naidu and C.K. Sundara Raja Naidu Vs. Wealth-tax Officer and Another, , Commissioner of Income Tax (Central) Vs. Vijay Kumar Behal, and numerous other decisions. The Tribunal, after carefully considering the issue involved, followed the decision in the case of Vijay Kumar Behal. The Tribunal accordingly held that the AAC rightly allowed the Income Tax payable on the disclosed wealth as a deduction in the computation of the assessee''s net wealth.

6. It is worthwhile to mention that with regard to this very assessee for the assessment year 1965-66, a similar question was referred to this court and this court in the case of Commissioner of Wealth Tax Vs. Shivram Singh, , upheld the view of the Tribunal and held as follows (p. 71):

" If the assessee had put forth a claim for 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...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, 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. "

7. It was accordingly held that the assessee was entitled to the deduction of the Income Tax payable on the assets voluntarily disclosed by him u/s 68 of the Finance Act, 1965.

8. The view is further fortified by a decision of the Supreme Court in the case of Ahmed Ibrahim Sahigra Dhoraji Vs. Commissioner of Wealth Tax, Gujarat, , wherein it was held that the declaration made u/s 68 of the Finance Act, 1965, 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 made 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 additional liability to payment of interest and levy of penalty and perhaps with the right to claim deductions, if any, admissible in the circumstances of the case and the benefit of other procedural rights. The voluntary character of the declaration cannot, therefore, alter the character of the tax. It was further held that 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. Therefore, 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.

9. The Department had relied upon a decision of the Gujarat High Court in the case of Commissioner of Wealth Tax, Gujarat-I Vs. Ahmed Ibrahim Sahigara, . That decision of the Gujarat High Court was reversed by the Supreme Court in

Ahmed Ibrahim Sahigra Dhoraji Vs. Commissioner of Wealth Tax, Gujarat, .

10. We accordingly find that the Tribunal was perfectly justified in law in holding that the Income Tax liability of Rs. 5,88,000 u/s 68 of the Finance Act was a debt owed on the relevant valuation date, that is, November 15, 1963, and on that basis me allowance of the same as a deduction in the computation of the assessee''s net wealth was fully justified. We accordingly answer the. question referred to us in the affirmative, in favour of the a''ssessee and against the Department. The assessee shall be entitled to his costs. Hearing fee is assessed at Rs. 250 only.

