
(1991) 03 CAL CK 0056
In the Calcutta High Court
Case No : Matter (Wealth-tax) No. 387 of 1984

Commissioner of Wealth Tax	Vs	APPELLANT
Smt. Mridula Kanoria		RESPONDENT

Date of Decision : 12-03-1991

Acts Referred:

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

Citation : (1993) 203 ITR 214 : (1994) 74 TAXMAN 4

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

Bench : Division Bench

Advocate : R.N. Bajoria and J.P. Khaitan, for the Appellant;

Judgement

Ajit K. Sengupta, J.—The order dated January 29, 1991, is recalled. The matter is heard.

2. In this reference u/s 27(1) of the Wealth-tax Act, 1957, for the assessment year 1979-80, the following question of law has been referred to this court :

"Whether, on the facts and in the circumstances of the case, the Tribunal was correct in holding that the assessee was entitled to deduction of the debt in full u/s 2(m)(ii) of the Wealth-tax Act, 1957, without deduction of the amount of the allowance available u/s 5(1A) of the said Act ?"

The facts are that the assessee, Smt. Mridula Kanoria, in her wealth-tax return for the assessment year 1979-80, claimed deduction of Rs. 9,37,635. The Wealth-tax Officer allowed exemption for shares at Rs. 1,50,000 u/s 5(1A) and, consequently, to that extent, he reduced the claim of liability of the assessee u/s 2(m)(ii) of the Wealth-tax Act under the impression that the amount borrowed was utilised for acquiring the shares.

3. Being aggrieved, the assessee preferred an appeal before the Appellate Assistant Commissioner. The Appellate Assistant Commissioner upheld the decision of the Wealth-tax Officer.

4. The assessee filed a further appeal before the Tribunal. The Tribunal, following its earlier decision in the assessee's own case in W. T. A. Nos. 85 and 86 (Cal) of 1982, dated May 7, 1983, held that the Wealth-tax Officer was not justified in reducing the liability of the assessee by Rs. 1,50,000. The Tribunal also directed the Wealth-tax Officer to allow the debts to the full extent as claimed by the assessee.

5. We need not go into the legal contentions raised before the Tribunal in this case. From the facts found by the Tribunal, it will appear that the assessee acquired out of her own resources on January 5, 1972, relevant to the assessment year 1973-74, 6,416 shares, the cost of which was Rs. 2,73,027. Thereafter, the assessee acquired further shares on October 25, 1973, relevant to the assessment year 1974-75. These shares were acquired out of funds borrowed by the assessee.

6. The Tribunal found as follows :

"Moreover, the case of the assessee is equally strong on merits. The assessee submitted the balance-sheets for the assessment years 1971-72 to 1979-80. The balance-sheets have been perused with the utmost care and it has been found that the assessee acquired shares out of her capital and the shares were not acquired out of loan. Under the above circumstances, no part of the loan should be reduced for the exemption allowed u/s 5(1A) of the Act. Hence, the claim of the assessee is allowed."

The finding of the Tribunal is that the cost of shares of Rs. 2,73,027 for acquiring 6,416 shares was out of the assessee's own funds and that finding has not been disputed before this court and no question has been raised on this issue. The cost of the shares is Rs. 2,73,027 and the assessee has claimed exemption of Rs. 1,50,000 which the assessee is entitled to get. It is for the assessee to choose against which shares the assessee will claim the benefit of exemption.

7. Our attention has been drawn to a decision of this court in Commissioner of Income Tax, Central-I Vs. Jayashree Charity Trust, , where this court considered the relief available to the assessee u/s 80K. There, the assessee claimed certain expenditure which qualified for exemption. In that case, the facts were that the assessee had received gross dividend income of Rs. 57,834 and claimed relief u/s 80K on the gross dividend. The Income Tax Officer was of the view that, u/s 80K, the assessee was entitled to get relief on that portion of the dividend which was included in the gross total income and not on the gross dividend income. The gross total income of the assessee as assessed by the Income Tax Officer was Rs. 1,07,553. The Income Tax Officer found that the assessee got a relief of Rs. 6,65,191 u/s 11. The Income Tax Officer was of the opinion that a portion of the dividend income of Rs. 57,834 must be taken to have enjoyed relief u/s 11. The Income Tax Officer calculated that the exempted portion of the dividend u/s 11 came to Rs. 49,784 and held that only Rs. 8,050 out of Rs. 57,834 had been actually included in the gross total income of Rs. 1,07,553 and only that amount

qualified for exemption u/s 80K. The Appellate Assistant Commissioner was of the view that it could not be notionally assumed that a part of the dividend income had been applied for charitable purpose and was thus notionally not included in the total income because of the provisions of Section 11 of the Act. The Tribunal affirmed the order of the Appellate Assistant Commissioner.

8. There, this court held that the assessee had sufficient funds in its hands apart from the dividend income to meet the expenditure that qualified for exemption. It was open to the assessee to pay as it pleased and it was more advantageous to the assessee not to pay for charitable purposes out of the dividend income even if the dividend income and other heads of income were kept in one fund. There is no principle of law by which apportionment can be introduced. It cannot be said, as a matter of fact, that the assessee must be taken to have made payments for the purposes of charity, proportionately or at all out of the dividend income. The same principle will apply to the facts of this case.

9. It is for the assessee to choose which of the investments in shares would give him the full exemption. It is not in dispute that she had purchased the shares out of her funds which would exceed Rs. 1,50,000. Accordingly, she claimed exemption for such shares. It is not the law that she has to claim exemption against such shares which would deprive her of the exemption and would require her to pay tax. We may add that this option so long available to an assessee has been taken away by the Explanation which has been added to Section 5(1A) with effect from April 1, 1989. This Explanation provides that, where a debt is secured on, or has been incurred in relation to, any asset referred to in this Sub-section, the exemption under this Sub-section shall be allowed first against the value of the asset on which or in relation to which such debt is secured or incurred and, thereafter, against the value of any other asset so referred to. In other words, the option which was available to the assessee has now been taken away. But, in this case, the assessment year involved is 1979-80. In our view, therefore, the Tribunal came to the correct conclusion on the facts and was right in allowing deduction of the debt in full without deduction of the allowance available u/s 5(1A) of the Act. We, therefore, answer the question 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.