(1994) 12 KL CK 0018

In the High Court Of Kerala

Case No : Income-tax Reference No''s. 577 to 583 of 1985

Commissioner of Wealth-tax — APPELLANT

Vs

Smt. Sarala Devi — RESPONDENT

Date of Decision : 12-12-1994

Acts Referred:
Wealth Tax Act, 1957 — Section 7

Citation : (1994) 12 KL CK 0018

Hon'ble Judges : V.V. Kamat, J;K. Sreedharan, J

Bench : Division Bench

Advocate : P.K.R. Menon, for the Appellant;

Judgement

V.V. Kamat, J.—The question referred for our answer is as follows :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that in determining the values of the cashew factory for wealth-tax purposes, the tax liability of the deceased Shri Kesavan should be deducted ?"

2. The facts relate to wealth-tax assessment for the assessment years 1970-71 up to 1976-77, referring specifically valuation dates such as March 31, 1970, 1971, 1972, 1973, 1974, 1975 and 1976.

3. The assessee, Smt. Sarala Devi of Quilon, is one amongst three, that is, herself, her sister, Smt. Kamala Bai, and her brother, K. Rajan, who all three inherited the property in question from their father, Sri M.P. Kesavan. Therefore, the question that is involved in these references relates to the one-third share of the present assessee, Smt. Sarala Devi. The property consists of a cashew factory and some shops along with the appurtenant land. It was vacant. In 1976, the factory was let out to the Kerala State Warehousing Corporation for a rent of Rs. 2,500 per month. Thereafter, it was sold in March, 1977, to the Warehousing Corporation. The total consideration although was Rs. 6,20,000, there were many dues to be paid by the father, Sri M.P. Kesavan. A sum of Rs. 1,99,687 with the amount of interest of Rs. 2,44,093 were Income Tax dues outstanding from

Sri Kesavan at the time of his death.

4. The Department collected the amount of Income Tax dues stated above from and out of the total sale consideration of Rs. 6,20,000 and thereafter after showing the value of this property, illustratively Rs. 1,50,000 for the assessment years 1970-71, 1971-72 and 1972-73 ; Rs. 2,25,000 for the assessment years 1973-74 and 1974-75 and lastly Rs. 3,00,000 for the assessment years 1975-76 and 1976-77, proceeded accordingly to include one-third of such valuation towards the wealth for the respective assessment years.

5. Similar was the approach of the authorities in the matter of wealth-tax returns of the brother, Sri Rajan. The Wealth-tax Officer adopted the figures as the value of the property for the assessment of the assessee, including one-third of these values treating it as the net wealth of the assessee.

6. The assessee claimed this tax liability outstanding on the valuation dates in the hands of the assessee''s father as deduction which was not allowed by the Wealth-tax-Officer. The Wealth-tax Officer held that these deductions remained outstanding for more than 12 months, together with the other ground that there was a challenge before the appellate authority.

7. The appellate authority (the Assistant Commissioner (Appellate)) confirmed this view which took up the proceedings before the Tribunal.

8. The Tribunal initially considered in paragraph 8 of its order, placing reliance on Section 2(m) of the Wealth-tax Act, 1957, which defines and enacts the meaning of the term "net wealth" to mean 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. In other words, the main definition of the term "net wealth" is more than clear and it would mean as provided in the said definition the wealth belonging to the assessee on the valuation date. In spite of these, placing reliance on Clause (iii)(a) of the said definition, the Tribunal observed that the tax liability would be the liability of another person and cannot be a ground for excluding them from the purview of the meaning of the term "net wealth". The learned Tribunal, reaching this conclusion, observed that the deduction with regard to this liability towards tax and interest cannot be permitted.

9. While the learned tax counsel placed heavy reliance on this reason, learned counsel for the assessee pointed out the real confusion of the situation. It is contended by him that for the purpose of determining the net wealth, it is the wealth of the assessee under the said Act which has relevance for consideration. Learned counsel urged that the price of the property that is to be considered as net wealth for taxation is the price that is available to the seller in the context. Referring to certain figures that are shown outstanding. Learned counsel urged that although on paper the price of the property is Rs. 6,20,000, the net wealth

out of this amount of Rs. 6,20,000 that would be liable for taxation would be the amount remaining out of the deductions that are the liability towards the Income Tax dues of the father. Learned counsel submitted that these provisions which are taken up for consideration with reference to the discussion in paragraph 8 would have to be considered really with reference to the net wealth of the present assessee who is to be taxed and not as reflecting the dues of the deceased father towards the Income Tax. The submission of learned counsel has its force in his favour and which becomes more clear and apparent when we proceed to the real aspect of the reasoning of the Tribunal in paragraph 10 of the order.

10. The Tribunal refers to the provisions of Section 159(6) of the Income Tax Act, 1961, with reference to the provisions of Sub-sections (4) and (5) together therewith. The proposition that emerges rightly and justifiably from the above provisions would show that a personal liability is laid up on the doors of the legal representatives, in a situation in the event of the liability remaining undischarged and thereunder the said liability when comes in the hands of the heir and legal representative, the provisions make out a charge on the property at the hands of the successor with regard to the liabilities of the deceased.

11. The learned Tribunal has also referred to Rule 16(2) (of Schedule II to the Income Tax Act, 1961) to specify the situation that either the defaulter or his representative in interest had not got competent power to deal with the property in any manner by way of a private transfer or otherwise, rendering such attempts to deal with the property as void against all enforceable claims with regard to the property in question.

12. In other words, the question is whether the liability which is outstanding with reference to an Income Tax assessee after his death attaches to the property in question at the hands of the heirs and legal representatives. It is in this situation, the Tribunal, placing reliance on the decision of the Gujarat High Court in Commissioner of Wealth Tax, Gujarat Vs. Shirinbanoo, referring to the situation of dealing with the property by a mortgage deed, observed with approval that even though the purpose of determining the net wealth, the amount by which the aggregate value of an asset of a person exceeds the aggregate value of the debts is to be looked into, none the less, while estimating the valuation of an encumbered asset, the price which such asset would fetch if sold in the open market, is first to be asserted.

13. In fact, this approach is nothing but a logical and legitimate explanation of the commonsense situation. Ultimately, what acquires the character of valuation is what remains ultimately at the hands of the seller which could be legitimately regarded as the price which would alone be termed as net wealth in accordance with the provisions of Section 2(m) of the Act.

14. The learned Tribunal also relied on the decision of the Supreme Court in Commissioner of Wealth Tax, New Delhi Vs. P.N. Sikand, , where the authority

was required to consider the leasehold interest, laying down the same proposition that in the process of valuation the burden of various disadvantages, minimising the ultimate price, having the effect of depreciation or other similar disadvantages would have to be duly discounted in estimating the ultimate price which the leasehold interest would fetch.

15. The Tribunal considered the question with regard to the liability of the assessee under the Wealth-tax Act relating to its basis "net wealth" by the process of finding out as to what would be the ultimate net wealth. In fact as rightly submitted by learned counsel for the assessee, for the purpose of levy of wealth-tax when net wealth is to be ascertained, the real prime clause for consideration would be the first aspect and actually the second aspect, for example, as referred to in Section 2(m)(iii), would not go to answer the real question that is required to be answered by reference to Clause (iii) of Section 2(m)(iii). In fact the said clause deals with the situation where the aggregate value of all the assets is in excess of the aggregate value of all the debts owed by the assessee on the valuation date. The real situation which is required to be answered would not be the aggregate value of the debt but really what is remaining after all the deductions which would alone be the amount which could be treated as net wealth liable to tax under the Wealth-tax Act, 1957.

16. Considering the question from any angle whatsoever, the conclusion reached by the learned Tribunal, directing the Wealth-tax Officer to modify the assessment by determining the value of the one-third share of the assessee on the different valuation dates, on the basis of the above discussion would not require any kind of interference at our hands.

17. One more aspect is required to be independently considered and answered and that is with reference to the provisions of Section 7 of the said Act. It is clearly laid down that for the purposes of this Act (Wealth-tax Act, 1957), the value of any asset shall be estimated to be the price which, in the opinion of the Assessing Officer, it would fetch if sold in the open market on the valuation date. This provision reduces the common-sense approach into the above statutory provision to mean that ultimately the price would be the one that would fetch from the property sold at the hands of, obviously, the seller.

18. Thus, for the above reasons, we affirmatively answer the question referred to us with regard to the deduction of the tax liability in favour of the assessee and against the Revenue.

19. A copy of this judgment under the seal of the court and the signature of the Registrar shall be forwarded to the Income Tax Appellate Tribunal, Cochin Bench, forthwith.