
(1992) 11 AHC CK 0072

In the Allahabad High Court

Case No : Wealth-tax Reference No. 206 of 1979

Commissioner of Wealth Tax

APPELLANT

Vs

Sri Kishan Gopal Gupta

RESPONDENT

Date of Decision : 16-11-1992

Acts Referred:

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

Citation : (1993) 111 CTR 399 : (1993) 202 ITR 952 : (1993) 68 TAXMAN 231

Hon'ble Judges : R.K. Gulati, J;Om Prakash, J

Bench : Division Bench

Judgement

R.K. Gulati, J.—In pursuance of the directions given under Subsection (3) of Section 27 of the Wealth-tax Act, 1957 (hereinafter referred to as "the Act"), the Income Tax Appellate Tribunal has referred the following question for the opinion of this court :

"Whether, on the facts and circumstances of the case, the Income Tax Appellate Tribunal was correct in law in not disallowing the claim for deduction of debt amounting to Rs. 43,022 u/s 2(m)(ii) of the Wealth-tax Act, 1957, in Sri Krishna Gopal Gupta's wealth-tax assessment for the year 1969-70 ?"

2. Briefly stated, the facts are that the assessee is an individual and the reference relates to the assessment year 1969-70. The assessee withdrew a sum of Rs. 43,022 from a firm, Messrs. Krishna Gopal Jagat Narain, where he had already a debit balance and, on the corresponding valuation date, the debit balance stood at Rs. 68,295. In the determination of "net wealth", the assessee claimed deduction of the said debit balance as debt owed by the assessee. However, the Wealth-tax Officer allowed deduction of Rs. 25,273 only and the balance amounting to Rs. 43,022 was not allowed with the narration "investment in Hindu undivided family property". In appeal, the Appellate Assistant Commissioner upheld the disallowance saying :

". . . . The debit balance of Rs. 43,022 indicates the investments made in the

Hindu undivided family property after withdrawing the same...."

3. The assessee appealed to the Income Tax Appellate Tribunal which accepted the claim and held that the assessee was entitled to the deduction of Rs. 43,022 being the liability outstanding against the assessee on the valuation date. It is in this background that the question stated earlier has been referred to this court.

4. Section 3 of the Act imposes tax on the "net wealth" of every individual, Hindu undivided family or a company. "Net wealth", is defined in Section 2(m). In so far as that provision is relevant for this case, it runs as under :

" "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"

5. Learned standing counsel for the Revenue contended that the liability of Rs. 43,022 was incurred in relation to a house property in respect of which wealth-tax was not chargeable under the Act for its value was exempt as provided u/s 5(1)(iv) of the Act, and as such the assessee was not entitled to deduction of that liability in computation of his "net wealth".

6. We have considered the submission carefully but are unable to accept the same. Strictly speaking, the question in the form it is referred does not arise out of the order of the Tribunal. The contention put forward on behalf of the Revenue on the lines on which the question is referred, namely, that the liability in question was not an admissible deduction because of Clause (ii) of Section 2(m) of the Act was never canvassed before the Income Tax Appellate Tribunal and no such case was taken up by the Revenue before the Tribunal. That apart, we are of the opinion that the order of the Income Tax Appellate Tribunal does not suffer from any legal infirmity and the submissions made on behalf of the Revenue are without any substance.

7. It is apparent from the order of the Income Tax Appellate Tribunal that the assessee Hindu undivided family filed its return of income for the first time in the assessment year 1967-68. The family had some ancestral property. The assessee purchased a house property and also constructed another house. Explaining the status of the Hindu undivided family, the assessee took up the stand that he had thrown some self-acquired property into the common hotchpotch by investing funds in the building out of the withdrawal made from the firm, Messrs. Krishna Gopal Jagat Narain, and not only the rental income of that property was being assessed in the hands of the Hindu undivided family but, the property itself was

held as belonging to the Hindu undivided family in the wealth-tax assessment of the family for the assessment year 1969-70. After narrating these facts, the Income Tax Appellate Tribunal proceeded to observe :

"It would appear, therefore, that the assessee had made some withdrawals from the partnership firm and thus the debit balance was created and out of that Rs. 40,552 was utilised in the construction of the property, the income of which, has been assessed in the assessment of the Hindu undivided family, and which has been accepted to be the Hindu undivided family property."

8. On a consideration of the orders attached with the statement of the case including that of the Income Tax Appellate Tribunal, there is nothing to indicate that the house property as such was thrown by the assessee into the common hotchpotch. On the contrary, from a perusal of the various orders, it can readily be inferred that what was thrown into the common hotchpotch, was the liquid sum of money which came to be invested by the family in the reconstruction of its own house property. This is evident from the assessment order itself when the Wealth-tax Officer made the disallowance saying that "Deduct: Investment in Hindu undivided family property". Apart from these remarks, there is no other discussion worth the name in the assessment order. Likewise, the appellate orders also give the impression that it was the liquid sum of money that was given to the family and, in this respect, we have already extracted above the relevant portions from the appellate orders. It is well-settled that when an asset or property belonging to an individual assessee is thrown into the common hotchpotch of the joint family, the property ceases to be his individual property and becomes the property of the Hindu undivided family.

9. Now, charge of wealth-tax, as observed earlier, is on the net wealth of an assessee. Section 2(m) prescribes the manner in which the "net wealth" of an assessee can be arrived at. In terms of that provision "net wealth" means the excess of the sum total of the values of the charged assets over the sum total of the liabilities determined in the manner prescribed under the Act. A plain reading of Section 2(m) would show that barring those debts which fall within the exclusionary part of Section 2(m), all other debts owed by an assessee are to be deducted from the aggregate value of the assets belonging to the assessee on the valuation date. Under Clause (ii) of Section 2(m), debts which are incurred or secured on properties in respect of which wealth-tax is not exigible are not deductible in computing the net wealth of an assessee. It is to be noticed that, during the relevant year under Clause (iv) of Section 5(1) of the Act, up to a certain value, a house or a part of the house which is exclusively used by the assessee for residential purposes was exempt from tax. The asset in relation to which the debt is secured or has been incurred, which is not to be included, wholly or partly in the net wealth, in our opinion, must have a nexus to the gross wealth of the assessee and exemption in respect of that asset should have been claimed in the determination of the net wealth. The asset must belong to the assessee. The reason for excluding the debts mentioned in Section 2(m)(ii) of

the Act from consideration for computation of net wealth is not too far to seek. The legislative intent is to deny double benefit to the assessee--once, by exempting the value of an asset in computation of net assets and again, permitting deduction of a debt secured on that asset. However, where a debt is not in relation to an asset specifically exempted, the deduction is permissible, for, it does not amount to double deduction which Section 2(m)(ii) seeks to avoid.

10. In the instant case, the liability was not incurred or secured in relation to any exempted asset which was a part of the gross wealth of the assessee on the valuation date. The house property belonged to the Hindu undivided family which, in its own right, is a separate taxable entity under the Act. For a situation of the kind we have in the present case, Section 2(m)(ii) of the Act cannot be applied. The amount for which deduction was being sought was neither secured nor incurred in relation to a property which belonged to the assessee and/or in respect of which the exemption was allowed to the assessee u/s 5(1)(iv) of the Act. The mere fact that the amount thrown into the common hotchpotch came to be invested in the property held by the Hindu undivided family on which the family may have sought exemption in computation of its net wealth (though it is not evident from the record), that the assessee cannot be denied the deduction of the liability in question nor is the deduction hit by the mischief contemplated u/s 2(m)(ii) of the Act.

11. Section 2(m)(ii) in terms has no application to the case of the assessee. The assessee owed a debt of Rs. 43,022 to the firm on the valuation date and that liability is clearly deductible in computing the net wealth of the assessee within the meaning of Section 2(m) of the Act.

12. For what has been stated above, we answer the question in the affirmative, in favour of the assessee and against the Revenue. The assessee is entitled to costs which is assessed at Rs. 250.