
(1986) 11 CAL CK 0019
In the Calcutta High Court
Case No : Matter No. 1339 of 1979

Commissioner of Wealth Tax

APPELLANT

Vs

Surendra Paul

RESPONDENT

Date of Decision : 19-11-1986

Acts Referred:

Finance Act, 1965 — Section 24, 68
Wealth Tax Act, 1957 — Section 4(1), 7(1), 7(2)
Wealth Tax Rules, 1957 — Rule 2, 2A, 2B, 2C, 2D

Citation : (1987) 61 CTR 244 : (1987) 168 ITR 208 : (1987) 31 TAXMAN 140

Hon'ble Judges : Monjula Bose, J; Dipak Kumar Sen, J

Bench : Division Bench

Advocate : B.K. Bagchi and M.L. Bhattacharya, for the Appellant; Debi Pal and A.K. Roychowdhury, for the Respondent

Judgement

Dipak Kumar Sen, J.—This consolidated reference arises out of wealth-tax assessments of Surendra Paul, the assessee, for the assessment years 1960-61 to 1972-73, the relevant valuation dates being 31st March of the calendar years 1960 to 1972. On an application of the Revenue u/s 27(1) of the Wealth-tax Act, 1957, the Tribunal has referred the following questions as questions of law arising out of its order for the opinion of this court:

2. Assessment years 1960-61 to 1972-73 :

" Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that in determining the valuation of the interest of the assessee in the partnership firm of M/s. Aminchand Pyarelal, of which the assessee was a partner, the provisions of Section 4(1)(b) and Section 7(1) of the Wealth-tax Act, 1957, were applicable and the provisions of Section 7(2)(a) of the Wealth-tax Act, read with rules 2A to 2G are not applicable ? "

3. Assessment years 1960-61 to 1965-66:

" Whether, on the facts and in the circumstances of the case, the Tribunal was

right in law in holding that the Income Tax liabilities of Rs. 15,01,200 arising on the basis of the disclosure made by the firm of Aminchand Pyarelal, of which the assessee is a partner, u/s 68 of the Finance Act, 1965, and u/s 24 of the Finance (No. 2) Act, 1965, have to be deducted from the net wealth of the said firm in respect of the assessment years 1960-61 to 1965-66 for the purpose of determining the value of the partnership interest of the assessee ? "

4. Assessment years 1963-64 to 1966-67 :

" Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the personal Income Tax liabilities of Rs. 90,000 arising from the disclosure made by the assessee u/s 68 of the Finance Act, 1965, would be deductible in computing the net wealth of the assessee in respect of the assessment years 1963-64 to 1966-67?"

5. So far as the common question referred for the assessment years 1960-61 to 1965-66 is concerned, the controversy raised therein is covered by a decision of this court in Commissioner of Wealth Tax Vs. V.K. Manseta, . Following the said decision, we answer the question in the affirmative and in favour of the assessee.

6. So far as the common question in respect of the assessment years 1963-64 to 1966-67 is concerned, the controversy raised therein is similarly covered by a decision of the Supreme Court in Ahmed Ibrahim Sahigra Dhoraji Vs. Commissioner of Wealth Tax, Gujarat, . Following the said decision, we answer this question also in the affirmative and in favour of the assessee.

7. The facts material to and the proceedings had in respect of the common question arising in the assessment years 1960-61 to 1972-73 are, inter alia, that the assessee is an individual. The assessee is a partner in the firm, M/s. Aminchand Pyarelal, having 25% share therein. The assessee was assessed to wealth-tax for the relevant assessment years. In the said assessments, the assessee disclosed his interest in the said firm and furnished a return containing a computation of the net wealth of the said firm as also the valuation of the assessee's share therein computed under Rule 2 of the Wealth-tax Rules. The Wealth-tax Officer, however, held that the net wealth of the firm should be computed u/s 7(2)(a) of the Wealth-tax Act read with Rules 2A to 2G of the Wealth-tax Rules. The computation of the Wealth-tax Officer in each of the assessment years exceeded the computation of the assessee and the wealth-tax assessments were completed by the Wealth-tax Officer on the basis of the computation as made by him.

8. Being aggrieved, the assessee preferred appeals before the Appellate Assistant Commissioner of Wealth-tax. On a consideration of the contentions of the parties as also the relevant sections of the Wealth-tax Act, it was held by the Appellate Assistant Commissioner that the relevant rules for valuation of the interest of the assessee in the firm was Rule 2 of the Wealth-tax Rules. It was held further that Rules 2A to 2G were not applicable to the case of the assessee as they were applicable for computation of the value of the assets of a business

carried on by an assessee within the meaning of Section 7(2)(a) of the Act. He directed the Wealth-tax Officer to apply the provision of Rule 2 of the Wealth-tax Rules and to take the market value of the assets of the firm on the respective valuation dates instead of book values as appearing in the balance-sheet of the firm.

9. Being aggrieved, the Revenue preferred appeals from the order of the Appellate Assistant Commissioner before the Income Tax Appellate Tribunal. It was contended on behalf of the Revenue before the Tribunal that for the purpose of determining its net wealth, a firm should also be deemed to be an assessee and for computation of the net wealth of the firm, Section 7(2)(a) and Rules 2A to 2G should have been applied. The Tribunal followed its earlier decision in a connected case of Jit Paul, another partner of the firm, in Wealth-tax Appeals Nos. 152 to 164. It was held in that case by the Tribunal that on a proper and harmonious reading of the provisions of the Wealth-tax Act, it was clear that the provisions of Rules 2A to 2G would be attracted only if it was held that the provisions of Section 7(2)(a) of the Wealth-tax Act were applicable in determining the value of the interest of the assessee in a firm. The Tribunal noted the said Section 7(2)(a) of the Act and held that it applied where an assessee carried on business of which accounts were maintained by him regularly. The Tribunal also noted Section 2(c) which defines an assessee as a person by whom wealth-tax or any other sum of money was payable under the Wealth-tax Act. The Tribunal also considered the charging Section 3 of the Act under which wealth-tax was payable by every individual, Hindu undivided family and company but not by a firm.

10. The Tribunal held that as a firm was not an assessee within the meaning of the Wealth-tax Act, therefore, Section 7(2)(a) would not be applicable in determining the net wealth of the firm and, therefore, for determining the value of the interest of a partner in the firm, the said Section 7(2)(a) was not applicable and the provisions of Rules 2A to 2G would consequently also not be applicable in computing the net wealth of the firm. The Tribunal held further that Section 4 of the Wealth-tax Act specifically provided for determination of the value of the interest of a partner in a firm whereas Section 7 provided for determination of the value of any assets other than cash. It was, noted that under both the sections, valuation had to be made in accordance with the prescribed rules. The Tribunal noted that Rule 2 was a specific rule prescribing the procedure for valuation of the interest of a partner in a firm and, therefore, held that the provisions of Rule 2 were the only provisions which should be applied for computing the interest of an assessee in a firm. The Tribunal accordingly confirmed the order of the Appellate Assistant Commissioner and the appeals of the Revenue were rejected.

12. At the hearing before us, learned advocate for the Revenue reiterated the contentions of the Revenue before the authorities below and submitted that as the net wealth of a firm had to be computed for the purpose of determining the

interest of a partner of the firm for the purpose of Wealth-tax Act, all the provisions of the Wealth-tax Act and Rules were necessarily attracted and that the Wealth-tax Officer was justified in invoking the provisions of Section 7(2)(a) of the Act and Rules 2A to 2G of the Wealth-tax Rules.

13. In support of his contentions, learned advocate cited Commissioner of Wealth Tax Vs. Vasantha, . In this case, the question before the Madras High Court was whether an assessee's share in agricultural land owned by two firms was not includible in the net wealth of the assessee. It was held by the Madras High Court that as the words " net wealth " and " valuation date " had not been defined in the Wealth-tax Rules, they have to be understood in the same sense as in the Wealth-tax Act in view of Rule 1A(m) of the Rules as also under the well-established rules of interpretation. It was held that in ascertaining the net wealth of a firm u/s 2(m) of the Wealth-tax Act, there should be an aggregation of the value of all assets but excluding agricultural lands as they have been specifically excluded from the definition of assets in Section 2A. Therefore, in computing the value of the net wealth of an assessee who was a partner in a firm which owned agricultural land, the value of agricultural land would have to be excluded.

14. Learned advocate for the assessee contended to the contrary. He submitted that in view of Rule 2 of the Wealth-tax Rules which was a specific rule providing for valuation of the interest of a partner in a firm, it was not open to the Revenue to invoke the provisions of Section 7 of the Wealth-tax Act or Rules 2A to 2G of the Rules which applied in cases only where the valuation of the assets of an assessee was being made.

15. He submitted that in computing the net wealth of a firm under Rule 2, there being no specific provisions as in Rules 2A to 2G of the Wealth-tax Rules, the commercial principles of valuation should be adopted, namely, the market value of the assets would have to be taken. In support of his contentions, learned advocate for the assessee relied on the following decisions:

(a) Commissioner of Wealth Tax Vs. Padampat Singhania, . In this case, the contention of the Revenue was that in computing the net wealth of the firm, the arrears of Income Tax due by the firm should be disallowed as deduction in view of Section 2(m) of the Wealth-tax Act. It was held by the Allahabad High Court that in computing the net wealth of an assessee, the Income Tax liability outstanding may not be deducted under the said provision but the Income Tax liability of a firm of which the assessee was a partner would not be left out of consideration u/s 2(m) of the Wealth-tax Act. The High Court held that as the firm was not the assessee, in determining the net wealth of the firm, its outstanding Income Tax liability could not be left out of consideration. The court observed as follows (p. 421):

" The net wealth under Rule 2 is to be determined in accordance with the commercial principles and when so done, all the debts owed by a firm of whatever nature and of whatever duration have to be deducted so long as the

debts are legally enforceable against the firm.

Now, the Income Tax liability of the firm is a legally enforceable debt against it. The fact that it is payable in instalments makes no difference. Any amount outstanding on the valuation date would be a debt deductible while computing net wealth of the firm. Rule 2 provides a complete mode for the determination of the net wealth of a firm for the purpose of allocating it among its partners and the special provision relating to Income Tax liability contained in Sub-clauses (a) and (b) of Clause (iii) of Section 2(m) cannot be applied."

(b) Commissioner of Wealth Tax Vs. Laxmipat Singhania, . This is a subsequent decision of the Allahabad High Court where the earlier decision in Commissioner of Wealth Tax Vs. Padampat Singhania, was followed.

(c) Seth Satish Kumar Modi Vs. Wealth-tax Officer, . This is also a decision of the Allahabad High Court. In this case, the assessee was a partner in a firm. In calculating the value of his interest in the firm for assessment of wealth-tax, the share of the assessee in the firm was originally valued at cost price by the Wealth-tax Officer. Subsequently, the assessment was reopened on the ground that the valuation of the share should have been made in accordance with Rule 1D. The proceedings were challenged successfully by a writ petition before the High Court. It was held that the net wealth of a firm had to be calculated under Rule 2 of the Wealth-tax Rules, in accordance with the commercial principles, and the special provisions in the Act for the computation of net wealth of an assessee could not be applied for computing the net wealth of a firm under rule 2. Earlier decisions in Commissioner of Wealth Tax Vs. Padampat Singhania, and Commissioner of Wealth Tax Vs. Laxmipat Singhania, were followed.

16. At this stage, it is convenient to refer to the relevant sections of the Wealth-tax Act, 1957, and the relevant rules framed under the Wealth-tax Rules. The same are set out as follows :

" Section 2.--In this Act, unless the context otherwise requires,--...

(c) " assessee " means a person by whom wealth-tax or any other sum of money is payable under this Act, and includes-

(i) every person in respect of whom any proceeding under this Act has been taken for the determination of wealth-tax payable by him or by any other person or the amount of refund due to him or such other person;

(ii) every person who is deemed to be an assessee under this Act;

(iii) every person who is deemed to be an assessee in default under this Act;...

(m) " 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--....."

"Sections 3.--Subject to the other provisions contained in this Act, there shall be charged for every assessment year commencing on and from the first day of April, 1957, a tax (hereinafter referred to as wealth-tax) in respect of the net wealth on the corresponding valuation date of every individual, Hindu undivided family and company at the rate or rates specified in the Schedule. "

"Section 4.--(1) In computing the net wealth of an individual, there shall be included, as belonging to that individual--.....

(b) where the assessee is a partner in a firm or a member of an association of persons (not being a co-operative housing society), the value of his interest in the firm or association determined in the prescribed manner. "

"Section 7.--(1) Subject to any rules made in this behalf, the value of any asset, other than cash, for the purpose of this Act, shall be estimated to be the price which in the opinion of the Wealth-tax Officer it would fetch if sold in the open market on the valuation date.

(2) Notwithstanding anything contained in Sub-section (1),--

(a) where the assessee is carrying on a business for which accounts are maintained by him regularly, the Wealth-tax Officer may, instead of determining separately the value of each asset held by the assessee in such business, determine the net value of the assets of the business as a whole having regard to the balance-sheet of such business as on the valuation date and making such adjustments therein as may be prescribed, "

17. Wealth-tax Rules, 1957 :

"Rule 2.--(1) The value of the interest of a person in a firm of which he is a partner or in an association of persons of which he is a member, shall be determined in the manner provided herein. The net wealth of the firm or the association on the valuation date shall first be determined. That portion of the net wealth of the firm or association as is equal to the amount of its capital shall be allocated among the partners or members in the proportion in which capital has been contributed by them. The residue of the net wealth of the firm or association shall be allocated among the partners or members in accordance with the agreement of partnership or association for the distribution of assets in the event of dissolution of the firm or association, or, in the absence of such agreement, in the proportion in which the partners or members are entitled to share profits. The sum total of the amounts so allocated to a partner or member shall be treated as the value of the interest of that partner or member in the firm or association.

Rule 2A.--Where the Wealth-tax Officer determines under Clause (a) of Sub-section (2) of Section 7, the net value of the assets of the business as a whole having regard to the balance-sheet of such business, he shall make the

adjustments specified in Rules 2B, 2C, 2D, 2E, 2F and 2G.

Rule 2B.--Adjustments in the value of an asset disclosed in the balance-sheet.---

(1) The value of an asset disclosed in the balance-sheet shall be taken to be-

(a) in the case of an asset on which depreciation is admissible, its written down value;

(b) in the case of an asset on which no depreciation is admissible, its book value;

(c) in the case of closing stock, its value adopted for the purposes of assessment under the Income Tax Act, 1961, for the previous year relevant to the corresponding assessment year.

(2) Notwithstanding anything contained in Sub-rule (1), where the market value of an asset exceeds its written down value or its book value or the value adopted for purposes of assessment under the Income Tax Act, 1961, as the case may be, by more than 20 per cent., the value of that asset shall, for the purposes of Rule 2A, be taken to be its market value,

Rule 2C.--Adjustments in the value of an asset not disclosed in the balance-sheet.--The value of an asset not disclosed in the balance-sheet shall be taken to be-

(a) in the case of a debt due to the assessee, the amount due to the assessee under the debt, and where such amount or part thereof has been allowed as a deduction under Clause (vii) of Sub-section (1) of Section 36 of the Income Tax Act, 1961, in computing the total income of the assessee for the relevant year for the purposes of assessment under that Act, the amount of the debt as reduced by the deduction to be allowed;

(b) in the case of goodwill purchased by the assessee for a price, its market value or the price actually paid by him, whichever is less ;

(c) in the case of managing agency rights purchased by the assessee for a price, its market value or the price actually paid by him, whichever is less;

(d) in the case of any other asset, its market value on the valuation date.

Rule 2D.--Value of certain assets not to be taken into account.--The value of the following assets which are disclosed in the balance-sheet shall not be taken into account for the purposes of Rule 2A :--

(a) any amount paid as advance tax u/s 18A of the Indian Income Tax Act, 1922, or u/s 210 of the Income Tax Act, 1961;

(b) the debt due to the assessee according to the balance-sheet or part thereof which has been allowed as a deduction under Clause (vii) of sub-section (1) of Section 36 of the Income Tax Act, 1961, for the purposes of assessment for the previous year relevant to the corresponding assessment year under that Act;

(c) the value of any asset in respect of which wealth-tax is not payable under the Act;

(d) any amount shown in the balance-sheet including the debit balance in the profit and loss account or the profit and loss appropriation account which does not represent the value of any asset.

Rule 2E.--Value of certain liabilities not to be taken.--The following amounts shown as liabilities in the balance-sheet shall not be taken into account for the purposes of Rule 2A :--

(a) capital employed in the business other than that attributable to borrowed money;

(b) reserves by whatever name called ;

(e) any provision made for meeting any future or contingent liability;

(d) any debt owed by the assessee which has been specifically utilised for acquiring an asset in respect of which wealth-tax is not payable under the Act:

Provided that where it is not possible to calculate the amount of debt so utilised, it shall be taken as the amount which bears the same proportion: to the total of the debts owed by the assessee as the value of that asset bears to the total value of the assets of the business.

Explanation.--Provision for any purpose other than taxation shall be treated as a reserve.

Rule 2F.--Liabilities not disclosed in the balance-sheet,-Any debt relating to the business owed by the assessee, which is not disclosed in the balance-sheet, shall be allowed as a deduction for the purpose of Rule 2A :

Provided that a contingent liability shall not be treated as a debt owed:

Rule Rule 2G.--Special provision for exclusion of certain assets and liabilities shown in the balance-sheet.--(1) Notwithstanding anything contained in Rules 2B, 2D and 2E but subject to Sub-rule (2), where the Wealth-tax Officer is of the opinion that any asset, or liability which is a debt owed by the assessee, shown in a balance-sheet does not really pertain to the. business as such, he may exclude the value of the asset or the debt for the purposes of Rule 2A.

(2) The value of any such asset or debt shall be taken into account for the purpose of assessment of wealth-tax under any provision of the Act other than Sub-section (2) of Section 7, if it is so provided.

18. On a consideration of the sections and the rules set out as aforesaid, it appears to us that u/s 4 of the Wealth-tax Act, the value of the interest of an assessee in a firm has to be included in the net wealth of the assessee for the purpose of assessment of wealth-tax. It is also clear from Section 3 of the Act that a firm is not an assessee within the meaning of the wealth-tax Act and

cannot be assessed to wealth-tax.

19. Rule 2 specifically provides the procedure for valuation of the interest of an assessee in a firm. Under the said rule, it is the net wealth of the firm which has to be determined first and thereafter allocations have to be made to the partners on the basis of their participation in capital and share of profits.

20. Section 7 of the Act, however, lays down provisions for valuation of assets. Under Sub-section (1) of Section 7, the general rule is that the value of an asset has to be estimated on the basis of its market price. The exception is provided in Sub-section (2) which comes into operation in valuation of assets of a business which the assessee is carrying on and for which accounts are maintained by the assessee. Only in such a case, the general rule of valuation of assets on the basis of the market value can be departed from.

21. Where the exception applies, the Wealth-tax Officer can proceed to value the assets of the business whether disclosed in the balance-sheet or not by making necessary adjustments.

22. In our view, the general principles of valuation of assets have been clearly laid down in Section 7(1) of the Act and Rule 2 of the rules. The Legislature had advisedly laid down the exception in procedure in Section 7(2) in the specific case of valuation of assets of a business which the assessee is carrying on and accounts of which are being maintained by the assessee regularly.

23. Admittedly, in the instant case, the assessee is not carrying on the business of the firm by himself nor is it the case of the Revenue that the assessee is maintaining the accounts of such business regularly. In our view, the Revenue is not entitled to invoke the special provisions of Section 7(2) of the Act read with Rules 2A to 2G in the facts of this case where only the net wealth of the firm and the interest of the assessee therein are being determined.

24. Section 4(1)(b) specifically lays down that the value of share in a firm is to be determined in the prescribed manner and rule 2 of the Rules prescribes such manner. Section 7(2) of the Act and Rules 2A to 2G of the Rules, in our view, cannot be extended to cover cases specially governed by Section 4(1)(b) of the Act and Rule 2.

25. The Allahabad High Court has taken the view that in computation of the net wealth of a firm, commercial principles should be applied. u/s 7(1) of the Act and Rule 2, special provisions of the Wealth-tax Act and the rules which do not apply for valuation of the net wealth of a firm cannot be attracted in determination of the net wealth of a firm which is not an assessee. We do not see any reason to take a different view and we agree with the same with respect.

26. For the above reasons, we answer the common question referred to in the assessment years 1960-61 to 1972-73 in the affirmative and in favour of the assessee. In the facts and circumstances, there will be no order as to costs.

Monjula Bose, J.

27. I agree.