
(1964) 03 KL CK 0039

In the High Court Of Kerala

Case No : Income Tax R. No. 1 of 1963

Commissioner of Wealth Tax

APPELLANT

Vs

Travancore Rayons, Ltd.

RESPONDENT

Date of Decision : 04-03-1964

Acts Referred:

Wealth Tax Act, 1957 — Section 16(3), 2, 2(m), 27, 27(1)

Citation : (1964) KLJ 768

Hon'ble Judges : M.S. Menon, C.J;M. Madhavan Nair, J

Bench : Division Bench

Advocate : C.T. Peter, for the Appellant; P.K. Kurien, V. Desikan, K.A. Nayar and K. Sukumaran, for the Respondent

Judgement

M.S. Menon C. J.

1. This is a reference by the Income Tax Appellate Tribunal, Madras Bench, u/s 27 (1) of the Wealth-tax Act, 1957. The reference has been made at the instance of the Commissioner of income tax, Ernakulam. The assessee is the Travancore Rayons Limited, Rayonpuram. The year of assessment is 1959-60 and the valuation date for the assessment which has been made u/s 16 (3) of the Act is the 31st December 1958.

2. The assessment provided by the Act is on the net wealth of the assessee as on the valuation date. The expression "net wealth" is defined in clause (m) of section 2 of the Act. The definition is:

"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,--

(i) debts which u/s 6 are not to be taken into account;

(ii) debts which are secured on, or which have been incurred in relation to, any asset in respect of which wealth-tax is not payable under this Act; and

(iii) the amount of the tax, penalty or interest payable in consequence of any order passed under or in pursuance of this Act or any law relating to taxation of income or profits, or the Estate Duty Act, 1953, the Expenditure-tax Act, 1957, or the Gift Tax Act, 1958,--

(a) which is outstanding on the valuation date and is claimed by the assessee in appeal, revision or other proceeding as not being payable by him, or

(b) which, although not claimed by the assessee as not being payable by him, is nevertheless outstanding for a period of more than twelve months on the valuation date.

3. Sub-clause (iii) of clause (m) of section 2 was inserted with retrospective effect to the commencement of the Wealth-tax Act, 1957, by section 20 of the Finance Act, 1959. Section 20 of the Finance Act, 1959, was clause 20 of Bill No. 17 of 1959. The Notes on Clauses appended to that Bill says :--

Clause 20 amends section 2 of the Wealth-tax Act, 1957, with retrospective effect to make it clear that taxes which are disputed and taxes which are in arrears for more than a year are not to be deducted as debts in the computation of the net wealth of an assessee.

4. The sole question for determination in this reference is whether the income tax liability of the assessee for the accounting year 1958--assessment year 1959-60--should be deducted in computing the net wealth of the assessee as on the 31st December, 1958. The question referred is worded as follows;

Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was correct in allowing u/s 2(m) of the Wealth-tax Act, 1957, the deduction of the provisions for income tax from the taxable net wealth of the assessee?

5. The answer to the question depends on whether the income tax liability for the accounting year 1958--assessment year 1959-60--constitutes a debt owed by the assessee on the valuation date or not. All debts are liabilities; but all liabilities are not debts. One of the essentials of a debt, as pointed out by the Madras High Court in *Commissioner of Wealth-tax v Pierce Leslie and Co. Ltd.* (1963-48 ITR 1005)--a case in which a question similar to the one before us was decided in favour of the Department--is "an ascertained or readily calculable amount".

6. It is true that the liability under the Indian income tax Act, 1922, arises not later than the close of the year of account and that in this case it arose not later than the 31st December 1958. As stated by the Supreme Court in *Kalwa Devadattam v Union of India* (1963-49 ITR 165 S. C):

Under the Indian income tax Act, liability to pay income tax arises on the accrual

of the income, and not from the computation made by the taxing authorities in the course of assessment proceedings; it arises at a point of time not later than the close of the year of account.

7. The material point, however, is not when the liability arose but when that liability matured into a debt owed by the assessee within the meaning of that expression as used in section 2 (m) of the Wealth-tax Act, 1957. In other words, when did the liability become a sum ascertained or readily ascertainable.

8. On the 31st December, 1958 the rate at which the tax should be calculated was unavailable and in view of sections 3 and 67 B of the Indian income tax Act, 1922, we find it impossible to say that the said rate became available at any time earlier than the 1st April, 1959. Section 3 of the Indian income tax Act, 1922, says:

Where any Central Act enacts that income tax shall be charged for any year at any rate or rates, tax at that rate or those rates shall be charged for that year in accordance with, and subject to the provisions of, this Act in respect of the total income of the previous year of every individual, Hindu undivided family, company and local authority, and of every firm and other association of persons or the partners of the firm or the members of the association individually.;

and section 67 B

If on the 1st day of April in any year provision has not yet been made by a Central Act for the charging of income tax for that year, this Act shall nevertheless have effect until such provision is so made as if the provision in force in the preceding year or the provision proposed in the Bill then before Parliament, whichever is more favourable to the assessee, were actually in force,

9. In *The Neptune Assurance Co. Ltd. Vs. The Life Insurance Corporation of India and Another*, the Supreme Court had to consider when the right to a refund under the Indian income tax Act, 1922, arose in respect of the accounting years 1954 and 1955, assessment years 1955-56 and 1956-57. The Supreme Court held that it arose not during the accounting years 1954 and 1955 but on the 1st April, 1955 and the 1st April, 1956 respectively. The Court said

It is well established that under the income tax law the liability to be charged to tax, if any, exists all along. The amount of the liability depends on the Finance Act of the year concerned. That is the effect of sections 3 of the income tax Act which says that the tax at the rates mentioned in the Finance Act shall be charged for the year specified in the Act.";

and:

Now the Finance Acts for the years 1955 and 1956, like all other such Acts, provided the rates at which income tax was payable for the assessment years commencing from 1st April of the year in which the Acts were respectively passed. It would follow that on the 1st of April in 1955 and in 1956 the amounts

of the tax payable by the appellant became determinable for the income was then capable of computation and the rate was also known. So on these dates the appellant became entitled to a refund of the amount of tax deducted at the source or treated as paid on its behalf under the provisions of the income tax Act earlier mentioned which was in excess of the tax payable by it for each of these years. The assessment only particularised the amounts; it did not create the right for the right came into existence as soon as according to the relative Finance Act it became ascertainable that the tax deducted at source or treated as paid on its behalf had exceeded the tax payable.

10. In AIR 1945 62 (Privy Council) the Privy Council said:

In their Lordships' opinion, although income tax may be popularly described as due for a certain year, it is not in law so due. It is calculated and assessed by reference to the income of the assessee for a given year, but it is due when demand is made under S. 29 and S. 45. It then becomes a debt due to the Crown, but not for any particular period.

11. Three decisions which have come to the same conclusion as that of the High Court of Madras in the case mentioned in paragraph 6 above are *Kesoram Cotton Mills Ltd. v Commissioner of Wealth-tax* (1963 49 ITR 31 (Calcutta)), *Assam Oil Co. Ltd. Vs. Commissioner of Wealth Tax (Central), Calcutta*, and *Commissioner of Wealth-tax v Standard Mills Co., Ltd.*, (1963-50 ITR 267 (Bombay)). Two decisions to the contrary are *Commissioner Of Wealth-Tax, Assam Vs. Ahmed Tea Co. (Pvt.) Ltd.*, and *Commissioner of Wealth Tax, Gujarat Vs. Raipur Manufacturing Company Limited*, .

12. We entertain no doubt that we must hold that the income tax liability with which we are concerned did not mature into a debt owed by the assessee earlier than the 1st April, 1959, that it is hence not deductible as held by the Appellate Tribunal u/s 2 (m) of the Wealth-tax Act, 1957, and that the question referred has to be answered in the negative and against the assessee. We do so; but without any order as to costs.

13. Sub-section (1) of section 7 of the Wealth-tax Act, 1957, says:

The value of any asset, other than cash, for the purposes 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.

It was submitted on behalf of the assessee that the income tax liability even though it had not matured into a debt should enter into the calculation of the market value of the assets of the assessee and effect a reduction thereof. income tax under the Indian income tax Act, 1922, is a tax imposed upon a person in relation to his income; it is not made a charge on the assets of the assessee, not even on the income upon which it is levied. The impact of this and other matters on the submission made, however, does not arise for consideration in this judgment as no such contention was raised at any stage before the Department

or the appellate Tribunal . A copy of this judgment under the seal of the High Court and the signature of the Registrar will be forwarded to the Appellate Tribunal as required by sub-section (6) of section 27 of the Wealth-tax Act, 1957.