
(2003) 07 GUJ CK 0032
In the Gujarat High Court
Case No : WT Ref. No. 80 of 1991

Commissioner of Wealth Tax

APPELLANT

Vs

Vijaykunverba

RESPONDENT

Date of Decision : 14-07-2003

Acts Referred:

Wealth Tax Act, 1957 — Section 2, 25(2)

Citation : (2003) 184 CTR 397 : (2004) 265 ITR 111 : (2004) 138 TAXMAN 209

Hon'ble Judges : Anil R. Dave, J;A.M. Kapadia, J

Bench : Division Bench

Advocate : Mauna M. Bhatt, for the Appellant; None, for the Respondent

Judgement

A.R. Dave, J.—At the instance of the Revenue, the following question of law arising out of an order passed by the Tribunal, Ahmedabad Bench "B" has been referred to this Court under the provisions of Section 27(1) of the WT Act, 1957 (hereinafter referred to as "the Act") :

"Whether, on the facts and in the circumstances of the case the Tribunal was right in law in setting aside the order of the CWT so far as it related to the refund amount of Rs. 29,511 and lease rent Rs. 4,000 ?"

2. Learned standing counsel Ms. Mauna Bhatt has appeared for the applicant-Revenue whereas nobody has appeared for the respondent though the respondent has been duly served with the notice of this Court.

3. The facts giving rise to this reference, in a nut-shell, are as under :

3.1. Though the assessee had to recover a sum of Rs. 4,000 by way of lease rent and a sum of Rs. 29,511 from IT Department towards her refund, the said amount had not been included in her wealth shown in the return of wealth filed by the assessee for the asst. yr. 1974-75. After the assessee was assessed, the CWT had exercised his powers u/s 25(2) of the Act and had directed the WTO to include the aforesaid two assets in the net wealth of the assessee on the

ground that the said amount had become due and payable to the assessee on the date of valuation.

3.2. Being aggrieved by the said order passed by the CWT, the assessee filed an appeal before the Tribunal. Before the Tribunal, it was contended on behalf of the assessee that the assessee was maintaining her books of accounts on cash basis and, therefore, the total amount referred to hereinabove could not have been included in the wealth of the assessee. The Tribunal allowed the appeal. In the circumstances, the aforestated question has been referred to this Court.

4. Learned standing counsel for the Revenue has submitted that the amount of Income Tax refund and the amount of lease rent which the assessee had to receive from the IT Department and her lessee respectively, was an asset of the assessee and, therefore, the CWT had rightly directed the WTO under the provisions for Section 25(2) of the Act to include the said amount as assets in the net wealth of the assessee.

5. She has drawn our attention to the order passed by the Tribunal, Before the Tribunal it was argued on behalf of the assessee that as the assessee was maintaining her books of accounts on cash basis, the amount which had not been received by the assessee could not have been included in the net wealth of the assessee. So as to substantiate the said argument on behalf of the assessee, judgment delivered in the case of Commissioner of Wealth Tax Vs. Vysyaraju Badreenarayanamoorthy Raju, was relied upon. On the other hand, it was submitted on behalf of the Revenue that the amount which was to be paid by the IT Department as well as by the lessee to the assessee would be assets of the assessee and, therefore, the said amount should have been included in the net wealth of the assessee. It has been therefore submitted on behalf of the Revenue before the Tribunal that the CWT had rightly given direction under the provisions for Section 25(2) of the Act to include the said amount in the net wealth of the assessee, On behalf of the Revenue, judgment delivered in the case of Dipti Kumar Basu Vs. Commissioner of Wealth Tax, had been relied upon.

6. The learned standing counsel has submitted that during the pendency of this reference, the question which has been referred to this Court has already been decided by the Honourable Supreme Court. It has been submitted by her that the judgment delivered by the Orissa High Court in the case of CWT v. Vysyaraju Badreenarayanamoorthy Raju (supra), which was relied upon by the Tribunal while allowing the appeal filed by the assessee, has been now overruled, It has been further submitted by her that the Honourable Supreme Court has expressly observed in the judgment delivered in the case of Commissioner of Wealth-tax, Orissa Vs. Vysyaraju Badreenarayana Moorthy Raju, that "all the assets of the assessee, barring those expressly excepted by the statute, are to be taken into account, and it is immaterial whether the assessee employs one system of account or another. There is clear indication that the assets to be considered are not circumscribed by any consideration of the particular system of accounting adopted by the assessee. The assets are not confined to cash. Where the asset is

an asset other than cash, its value if determined pursuant to Sub-section (1) of Section 7 as the estimated price, which, in the opinion of the WTO, the asset would fetch if sold in the open market on the valuation date."

7. It has been thereafter submitted by her that the Tribunal had not followed the judgment delivered in the case of Dipti Kumar Basu v. CWT (supra) which was cited before it by the Revenue but subsequently, the Honourable Supreme Court, in the case of Henry Joshua Silverston and Dipti Kumar Basu Vs. Commissioner of Wealth-tax, has approved the view expressed by the Calcutta High Court in Dipti Kumar Basu v. CWT (supra).

8. Relying upon the aforestated two judgments delivered by the Honourable Supreme Court, it has been submitted by the learned standing counsel appearing for the Revenue that the system of accounting adopted by the assessee is absolutely irrelevant and looking to the said fact, the Tribunal ought not to have allowed the appeal by setting aside the order passed by the CWT under the provisions of Section 25(2) of the Act.

9. Even if we look at the definition of the term "assets" in Section 2(e) of the Act, the said term would include property of every description, movable or immovable, except those which have been specifically excluded. Upon perusal of the definition, it is very clear that any debt, which is owed by anybody to the assessee, would be a property of the assessee and therefore it would be included in the assets of the assessee irrespective of the system of accounting followed by the assessee.

10. Looking to the aforestated judgments delivered by the Honourable Supreme Court and the legal position in our opinion, the CWT was right when he directed the WTO u/s 25(2) of the Act to include the aforestated two assets in the net wealth of the assessee.

11. For the above refereed reasons, we answer the question in the negative, that is, against the assessee and in favour of the Revenue.

12. The reference stands disposed of with no order as to costs.