

(1982) 10 CAL CK 0011
In the Calcutta High Court

Case No : W.T. Matter No's. 211, 214 and 215 of 1971

Commissioner of Wealth Tax

APPELLANT

Vs

V.K. Manseta

RESPONDENT

Date of Decision : 04-10-1982

Acts Referred:

Wealth Tax Act, 1957 — Section 2

Citation : (1983) 33 CTR 196 : (1983) 143 ITR 205

Hon'ble Judges : Suhas Chandra Sen, J;Sabyasachi Mukharji, J

Bench : Division Bench

Advocate : B.K. Bagchi, for the Appellant;M.M. Saha, for the Respondent

Judgement

Sabyasachi Mukharji, J.—It is not necessary for us to set out in detail the facts of the case, For the assessment year 1957-58 the following two questions have been referred to this court:

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the liabilities levied on the firm of M/s. Manseta Bros, and the assessee individually subsequent to the relevant valuation date on the basis of the settlement of the disclosure petition of the firm on the fifteenth day of March, 1963, were debts owed by the assessee on the valuation date and, therefore, allowable as deduction in computing the net wealth of the assessee.

2, Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that no part of the said liability can be excluded u/s. 2(m)(iii) of the W.T. Act, 1957 ? "

2. For the assessment years 1960-61 and 1961-62, the following two questions have been referred to this court:

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the tax liabilities levied on the firm of M/s. Manseta Bros, and the assessee individually subsequent to the relevant valuation date, on the

basis of the settlement of the disclosure petition of the firm on March 13, 1963, were debts owed by the assessee on the valuation date and, therefore, allowable as deduction in computing the net wealth of the assessee ?

2. If the answer to question No. 1 is in the affirmative, then whether on the facts and in the circumstances of the case, the Tribunal was right in holding that no part of the said liability can be excluded u/s. 2(m)(iii) of the W.T. Act, 1957 ? "

3. The Tribunal in its order has set out the facts and it is not necessary for us to deal with them in detail. The Tribunal held, inter alia, as follows:

" In our opinion, the Department's appeals are liable to be dismissed. In the case of Kesoram Industries and Cotton Mills Ltd. Vs. Commissioner of Wealth Tax, (Central) Calcutta, , their Lordships of the Supreme Court held that a liability to pay Income Tax was a present liability though the tax became payable after it was quantified in accordance with the ascertainable data. It was a present liability of an ascertainable amount. There is no dispute that the firm did earn the sum of Rs. 33 lakhs over the period corresponding to the assessment years 1957-58 to 1961-62 and the allocation thereof in the several years is also not in dispute. If the net wealth of the assessee on the different valuation dates is to be included in his share in the income for the corresponding years it cannot be ignored that Income Tax payable in respect of such amounts and that it was not his share in the gross amount of income that required to be included but that there should be a deduction in respect of the corresponding tax. Section 2(m)(iii) cannot apply in this case since as on the valuation dates concerned no order levying the Income Tax had been passed. There is no question of the Income Tax being outstanding on the valuation dates for a period of more than 12 months since at that stage there was no order of assessment or demand to pay the tax.

As regards the firm's liability to pay Income Tax, the departmental representative's contention that the assessee had no concern with that is unacceptable. It is not a question of the firm having distributed its pro fits among its partners and the amount so distributed forming part of the assessee's wealth. Whether distributed or cannot each partner had his respective share in the net assets of the firm which included the shares of the income that had earlier been concealed. When this share is taken into account, one cannot ignore the tax liability of the firm in respect of the income that was concealed and had later been brought under consideration. We hold that the Appellate Assistant Commissioner was correct in allowing the assessee's claim for deduction of the liabilities for tax as was subsequently levied on the firm and the assessee individually. There was no dispute before the Tribunal regarding the quantum of tax allowed as deduction."

4. In view of the well-settled principles, in our view, the Tribunal was right so far as the first question is concerned. So far as the second question is concerned, for those assessment years it also appears that on a construction of Section 2(m)(iii), the Tribunal was also right in the view it took.

5. In that view, we answer both the questions for all these years in the affirmative and in favour of the assessed. In the facts and circumstances of the case, the parties will pay and bear their own costs.

Suhas Chandra Sen, J.

6. I agree.