
(2009) 03 RAJ CK 0079
In the Rajasthan High Court

CWT

APPELLANT

Vs

Manna Lal Surana

RESPONDENT

Date of Decision : 03-03-2009

Acts Referred:

Wealth Tax Act, 1957 — Section 2(m)(iii)

Citation : (2010) 321 ITR 335 : (2009) 184 TAXMAN 448

Hon'ble Judges : R.C. Gandhi, Acting C.J.; M.N. Bhandari, J

Bench : Division Bench

Judgement

1. Following questions have been referred by the Tribunal for our answer in RA No. 1606/Del/1984 for the assessment year 1976-77:

1. Whether on the facts and circumstances of the case, the Tribunal was justified in holding that the tax liability of Rs. 10,76,380 resulting on account of settlement pertaining to the assessment years 1958-59 to 1971-72 arrived at with the Commissioner on 24-3-1975 was allowable as a deduction u/s 2(m)(iii) of Wealth Tax Act, 1957 ?

2. Whether on the facts and circumstances of the case the Tribunal was justified in holding that M/s Hazarimal Milapchand Soorana was an industrial undertaking within the meaning of Explanation to Section 5(1)(xxxi) and as such the assessee was entitled to deduction u/s 5(1)(xxxi) of WT Act, 1957?.

2. Brief facts relevant to the first question are that in the assessment year 1976-77, assessee claimed deduction of Income Tax liability of Rs. 10,76,380 and wealth-tax liability of Rs. 1,143 pertaining to the assessment years 1958-59 to 1971-72. It was contended by the assessee that as a result of settlement arrived at between the assessee and Commissioner on 24-3-1975. This date fall relevant for the valuation of the assessment year 1976-77 and thereby amount of tax liability was deductible from the total value of assets. The Wealth Tax Officer allowed (sic-disallowed) assessee's claim on the ground that liabilities were pertaining to the earlier assessment years and thereby those liabilities were

outstanding for a period of more than 12 months on Deepawali of 1975 and as such were not liable to be deducted u/s 2(m)(iii) of the Wealth Tax Act, 1957.

3. Aggrieved by the order of the Wealth Tax Officer, an appeal was preferred by the assessee and claim of the assessee was accepted and the amount of tax liability was ordered to be deducted from the net wealth. Further, appeal was preferred by the revenue before the Tribunal which was decided in favour of the assessee. Hence, reference of question No. 1.

4. The counsel for the revenue submits that in view of the provisions of Section 2(m)(iii) of the Wealth Tax Act, 1957, the amount was outstanding for a period of more than 12 months on the valuation date and thus was not deductible from the net wealth. It is urged that the question may be answered in favour of the revenue.

5. learned Counsel appearing for the assessee, however, submits that the issue raised herein was an issue before this Court in the case of Commissioner of Wealth-tax Vs. Smt. Chaka Bai, It is submitted that the controversy in the aforesaid case was similar to that of the present matter and the Division Bench of this Court decided the matter in favour of the assessee. The Division Bench of this Court observed as under:

Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in allowing deduction of Income Tax liability pertaining to earlier years and quantified on settlement reached some time in 1975 out of the gross amount of the assessee's share amounting to Rs. 76,000 ?

The only difference in the same question pertaining to the remaining assessment years is at the end in respect of the particular year to which the reference relates.

The assessee was a partner in a firm styled as Cospolitan Trading Corporation, Jaipur, in which he had 1/4th share. This firm entered into a joint venture with one Manmal Surana and therein earned an income of Rs. 3,04,000 during the period pertaining to the assessment years 1958-59 to 1963-64. This income was not disclosed by the firm. Subsequently, the firm disclosed this income to the IT department and a settlement was reached between the parties in 1975. The share of the assessee in this earlier undisclosed amount of Rs. 3,04,000 was Rs. 76,000, being his 1/4th share in the income. The Wealth Tax Officer included the gross amount of Rs. 76,000 in the wealth of the assessee rejecting the assessee's contention that the Income Tax payable thereon had to be deducted according to Section 2(m) of the Wealth Tax Act, 1957. The Appellate Assistant Commissioner, however, upheld the assessee's contention and held that the gross amount of Rs. 76,000 minus tax liability thereon represented the net value of that asset for inclusion in the assessee's wealth. It was accordingly held that the Wealth Tax Officer was not justified in refusing to deduct the amount of tax liability on this amount of Rs. 76,000 from it for the purpose of computation of the net wealth of the assessee. The Tribunal has affirmed the view taken by the Appellate Assistant Commissioner. The Tribunal has also referred to Kesoram Industries and Cotton

Mills Ltd. Vs. Commissioner of Wealth Tax, (Central) Calcutta, and H.H. Setu Parvati Bayi Vs. Commissioner of Wealth Tax, Kerala, in support of its conclusion. It has been held that the tax liability incurred by the assessee on this amount had crystallized on the valuation date and, therefore, it was a debt owed within the meaning of Section 2(m) of the Wealth Tax Act, 1957, on account of which the amount of tax due on this amount of Rs. 76,000 had to be deducted from the estimated value of the asset on the valuation date. It was pointed out that the ultimate quantification of the tax liability as a result of the settlement reached in 1975 did not have the effect of postponing the time when the tax liability had accrued, as a result of the income being earned. Hence, this reference at the instance of the revenue.

There are several decisions of the Supreme Court which show that the view taken by the Tribunal is justified. In Commissioner of Wealth Tax, Madras Vs. K.S.N. Bhatt, , it was held that even where the tax liability had been incurred on the date of valuation but the same had been assessed or quantified subsequently, the same was deductible as a debt owed within the meaning of Section 2(m) of the Wealth Tax Act, 1957, while computing the net wealth of the assessee under that Act. The same view is taken in Commissioner of Wealth Tax, Gujarat, Ahmedabad Vs. Vadilal Lallubhai and Others, and Commissioner of Wealth-tax, Gujarat Vs. Smt. Vimlaben Vadilal Mehta, It is needless to refer to the other decisions of the Supreme Court taking the same view. Following these decisions, the references have to be answered against the revenue and in favour of the assessee.

6. Further reference is made of a judgment in case of Commissioner of Wealth Tax, Kanpur Vs. J.K. Cotton Manufacturers Ltd., In the aforesaid judgment, the Hon"ble Apex Court observed as under:

The alternative submissions that the tax liabilities in the instant case must be taken to have become payable in 1952 under the Investigation Commissions order and must be regarded as having remained outstanding since 1952 is equally of no avail for the payability of the dues must depend upon the terms of the Commissions order and admittedly a scheme for payment of the dues by installments was provided in the order and each installment would become payable on the date on which it is directed to be paid. In our view, the expression outstanding in Section 2(m)(iii)(a) and (b) will have to be construed in the background of the phrase amount of tax payable in consequence of an order and in that context it must mean remaining unpaid after the obligation to pay is incurred. We are informed that similar construction has been placed on the expression outstanding occurring in Section 2(m)(iii) of the Act by the Calcutta High Court in Commissioner of Wealth Tax Vs. Banarashi Prasad Kedia, and by the Allahabad High Court in Commissioner of Wealth Tax and Others Vs. Padampat Singhania, and we affirm the same. In the instant case, it was an admitted position before the Tribunal that under the scheme of installments sanctioned in the settlements the two sums, in respect whereof deductions were

claimed, had not become due for payment before the valuation dates. It is, therefore, clear that the deductions claimed, do not fall within the exclusionary part contained in Section 2(m)(iii) of the Act.

In the result the High Courts view is confirmed and the appeals are dismissed. There will be no order as to costs.

7. Perusal of the judgment referred above shows that if the tax liability is crystallized by the CIT pursuant to the settlement in a preceding year of the assessment year, then the assessee is entitled to seek deduction of the amount from his net wealth and in view of the proposition laid down by the Hon'ble Apex Court and decision given by the Division Bench of this Court, we are of the view that the question referred for our answer is to be decided in favour of the assessee and against the revenue and accordingly we held that the tax liability determined by the Commissioner on 24-3-1975 was deductible from the net wealth of the assessee.

8. So far as the second question is concerned, learned Counsel appearing for the revenue fairly conceded that the aforesaid issue has already been decided by this Court against the revenue and in that regard reference of the judgment of this Court in case title CWT v. Shyam Mohan RLW 2007 (3) 2101 has been made. We have gone through the judgment referred to above and find that the Division Bench of this Court has relied upon the case of Commissioner of Wealth-tax Vs. Vimal Chand Daga (HUF), and relevant para of the judgment is quoted hereunder:

The meaning of the expression industrial undertaking used in Section 5(1)(xxxi) has to be understood as defined in the Explanation to Section 5(1)(xxxi) of the Act and accordingly the term industrial undertaking means an undertaking engaged in the business of manufacture or processing of goods. From the above findings, it is evident that the whole activity is not done by the karigars alone. But some of it is also done by the assessee's firm themselves dominant of which is marking and removal of deposits from various edges of the stone. This results into change in physical characteristics of the commodity. The effect of each operation on the commodity is materials, which make it a marketable commodity as cut stone or gem. Thus the stage through which the rough stone undergoes so as to end up as a marketable commodity involves the activity of processing. We also find that in some of these cases Government of Rajasthan has issued registration certificates as industry. Also in some cases the assessing officer has himself treated the assessee's firm as engaged in manufacturing where we have been given to understand and is accepted position by the rival parties also that the activity being similar, same arguments can be adopted. The provisions of the Wealth Tax Act also do not require the entire activity to be carried out by the assessee himself nor there is any requirement that the activity of processing should be dominant where the assessee carries a trading as well as processing of goods for becoming eligible for exemption. The only requirement is that the assessee's firms should be engaged in the business of manufacture or processing

of goods. Keeping in view the nature of activity it even need not own any machinery himself. In view of these findings and as the respondent assessee is engaged in the processing of goods within the meaning of Explanation to Clause (xxxi) of Sub-section (1) of Section 5 of Wealth Tax Act, we hold that the assessee is an industrial undertaking entitled for exemption u/s 5(1)(xxxi) of the Act and accordingly uphold the conclusion arrived at by the learned Commissioner (Appeals) though for different reasons.

9. In view of the above, the question No. 2 is also answered in favour of the assessee and against the revenue.

Both the questions are answered accordingly. The reference is disposed of.