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(1996) 09 RAJ CK 0006

In the Rajasthan High Court

Case No : IT Reference Application No. 55 of 1985

Kamal Chand Kasliwal APPELLANT

Vs

Commissioner of Wealth Tax RESPONDENT

Date of Decision : 24-09-1996

Acts Referred:
Wealth Tax Act, 1957 — Section 2(m), 2(m)(iii), 2(m)(iii)(a), 2(m)(iii)(b), 2(m)(iii)(d)

Citation : (1997) 92 TAXMAN 192

Hon'ble Judges : B.R. Arora, J

Bench : Single Bench

Advocate : Anant Kasliwal, for the Appellant; G.L. Bafna, for the Respondent

Judgement

B.R. Arora, J.—This reference has been made under rule 61 -A of the Rules of the High Court of Judicature for Rajasthan, 1952 as the Judges constituting the Division Bench were equally divided in their opinion as to the interpretation of the provisions of section 2(m) of the Wealth-tax Act, 1957 (''the Act''). The question referred for the opinion reads as under: Whether determination of the tax liability by the Settlement Commission on 17-3-1979 in respect of the assessment years 1968-69 to 1973-74 could be claimed u/s 2(m) of the Wealth-tax Act in the assessment year 1975-76 ?

The answer to this question referred for opinion, depends upon the interpretation of section 2 (m)(iii)(a) and (b). For adjudicating the controversy it is necessary to look into the facts of the case and to consider the relevant provisions of the Act.

2. Kamal & Co., Jaipur, of which the assessee was a partner, in its balance sheet, as on 31-3-1975 showed the liability of the sales-tax surplus as Rs. 5,54,716. This amount of the sales tax surplus was brought forward from the earlier years of 1968-69 to 1973-74. The share of the assessee in the sales tax surplus was Rs. 2,42,919. This sales tax surplus was not shown as the income either in the original income tax return or in the reassessment proceedings, for the earlier

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years. The assessee subsequently moved a settlement petition before the Settlement Commission. The Settlement Commission, by its order dated 17-3-1979, assessed the liability of the assessee for the assessment years 1968-69 to 1973-74 and worked out the total income tax liability of the assessee to the tune of Rs. 2,38,447. The total tax liability of the assessee worked out by the Settlement Commission, was Rs. 4,963 for the year 1968-69, nil for the years 1969-70 and 1970-71, Rs. 58,774 for the year 1971-72, Rs. 1,26,726 for the year 1972-73 and Rs. 46,448 for the assessment year 1973-74. The assessee paid Rs. 57,712 and the liability of Rs. 1,85,207 remained outstanding. The assessee, for the assessment year 1975-76 claimed deduction u/s 2 (m) on this amount on the ground that the income tax liability, as a result of the order of Settlement Commission, is a ''debt owed'' by the assessee and is an allowable deduction u/s 2(m) for computing the net wealth of the assessee. The Tribunal, Jaipur Bench, refused to allow this deduction on the ground that the assessee, in the appeal, had disputed the liability for the assessment year 1973-74 and the debt is outstanding for a period of more than twelve months on the valuation date and, therefore, the provisions of section 2 (m)(iii)(a) and (b) are attracted and the assessee is not entitled to any deduction.

3. Section 3 of the Act is a charging section. It imposes a charge for tax in respect of the net wealth on the corresponding valuation date at the rate specified in the Schedule. The ''valuation date'', according to section 2 (q) means the ''last day of the previous year'' as defined in section 3 if the assessment were to be made under that Act for that year. Section 4 of the Act provides for inclusion of certain assets in the net wealth of the individual though these assets were not held by him but are held by the spouse or the minor child, to whom they have been transferred by the individual. These assets u/s 4 are considered as the ''deemed assets'' of the individual concern. Section 5 of the Act exempts certain assets from being included in his ''net wealth''. According to section 2(m), ''net wealth'' means the amount by which the aggregate value computed in accordance with the provisions of the Act of all the assets belonging to the assessee on the valuation date including the assets required to be included in the net wealth as on that day under the Act, is in excess of the aggregate value of all the ''debts owed'' by the assessee other than the ''debt owed'' by the assessee mentioned in sub-clauses (i), (ii) and (iii) of section 2 (m).

4. The first question which requires consideration is: whether the amount claimed by the assessee for deduction from computation of the net wealth for the assessment year 1975-76 is a ''debt owed'' within the meaning of section 2(m) as on 31-3-1975, the valuation date for the assessment year 1975-76 and is an allowable deduction ?

5. A debt is an obligation to pay liquidated or ascertained sum of money. A debt relating to the present obligation payable in future after ascertaining and quantifying and is payable in all events is a ''debt owed''. The expression ''debt owed'' within the meaning of section 2(m), means the liability to pay an

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ascertained sum of money in present or future. The liability to pay income tax is a statutory liability under the income tax Act, 1961 which crystallised on the last day of the previous year relevant to the assessment year and, therefore, becomes payable on the expiry of the last day. It was a present liability though the tax becomes payable after it was quantified and ascertained in accordance with the ascertainable data. It is a perfect debt on the last day of the accounting year and it is not a contingent liability. The assessment order is only an order passed by the concerned authority to quantify and ascertain the tax payable under the Act. The assessment merely quantifies the true liability which has been crystallised and became due on the last day of the previous year in the case of income tax and on the valuation date in the case of wealth-tax. If the ultimate determination of the amount of ''debt owed'' by the assessee by the concerned authority on quantification indicates the existence of the positive tax liability, then there is a ''debt owed'' by the assessee on the valuation date and he is entitled to deduction u/s 2(m) for computation of the net wealth of the assessee even though such determination was at the subsequent point of time to the valuation date.

6. The income tax liability of the assessee, in the present case, was determined by the Settlement Commission vide order dated 17-3-1979 but it relates to the assessment years 1968-69 to 1973-74. The liability to pay income tax is a ''debt owed'' by the assessee on the valuation date. The Scheme of the Act clearly indicates that barring the debt mentioned in sub-clauses (i), (ii) and (iii) of section 2(m), all other ''debts owed'' by the assessee qualify for deduction while computing the net wealth of the assessee on the valuation date. The tax liability determined by the Settlement Commission as a result of the settlement is an allowable deduction being the ''debt owed'' for the purpose of computation of the ''net wealth'' of the assessee u/s 2(m) on the respective valuation dates. The income assessed by the Settlement Commission on 17-3-1979 constitutes the wealth of the assessee which was liable to be taxed on the respective date. It was a present liability though quantification and ascertainment of the tax is made after valuation date. The liability of the tax for the assessment years 1968-69 to 1973-74 cannot be treated as a ''debt owed'' which could qualify for deduction for computing the net wealth of the assessee for the assessment year 1975-76.

It is not necessary to embellish this judgment with the several authorities of the Supreme Court and of this Court cited by the learned counsel for the parties. They are all of the view that for computing the net wealth of the assessee on the valuation date barring those debts mentioned in sub-clauses (i), (ii) and (iii) of section 2(m), all other ''debts owed'' by the assessee have to be deducted from the wealth of the assessee. While computing the net wealth of the assessee, the liability towards the income tax, wealth-tax and gift-tax, which crystallised on the relevant valuation dates as determined in the respective assessment orders as the liability, are to be deducted even though those assessment orders are finalised after the valuation date. In order to get the ''debt owed'' disqualified for

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the purpose of determination of the wealth-tax, it must fall within the exclusionary provisions of the Act. Section 2 (m)(iii)(a) denies deduction of an amount of tax which is outstanding on the valuation date if the assessee contends in the appeal, revision or other proceedings that he is not liable to pay tax, while item (b) of section 2 (m)(iii) disentitles the assessee to claim deduction if the ''debt owed'' remains outstanding for a period of more than twelve months on the valuation date.

7. The next question which requires consideration is : whether the deduction claimed by the assessee falls within the exclusionary provisions of section 2 (m)(iii)(a). In order to invoke the bar prescribed by section 2 (m)(iii)(a) it is necessary for the revenue to establish that (i) the amount is outstanding on the valuation date; and (a) is claimed by the assessee in appeal, revision or other proceedings as not being payable by him. The exclusionary provisions of section 2 (m)(iii)(a) disqualify the debts for deduction while computing the net wealth of the assessee on the valuation date only if both the conditions mentioned in sub-clause (a) are satisfied. In the present case, the amount of tax was outstanding against the assessee on the valuation date. The assessee, in the appeal, challenged his liability to pay tax and claimed that the amount is not payable by him. Both the requirements of section 2 (m)(iii)(d) are, therefore, satisfied and the exclusionary provisions of section 2 (m)(iii)(a) are attracted.

8. The next question which requires consideration is : whether the deduction claimed by the assessee falls within the exclusionary provisions of section 2 (m)(iii)(b) ? Section 2 (m)(iii)(b) provides that the liability on account of income tax, wealth-tax and gift-tax will not be allowed as a ''debt owed'' if it is outstanding for a period of more than twelve months on the valuation date. To invoke the bar of item (b) of section 2 (m)(iii) the revenue has to establish that (i) there is an amount of tax, penalty or interest which is payable in consequence of an order; and (ii) although the amount has not been claimed by the assessee as not being payable by him but it remained outstanding for a period of more than twelve months on the valuation date. If the assessee failed to discharge his liability to pay tax within twelve months of the valuation date and the liability to pay tax remained outstanding for more than twelve months, then this default attracts item (b) of section 2 (m)(iii). The liability to pay tax is a statutory liability under the taxing statute and does not depend upon passing of the assessment order. The assessment order only qualifies and ascertains the sum of the tax while the liability to pay tax crystallised on the last day of the previous year relevant to the assessment year even though the quantification is made later on. Liability to pay income tax is a ''debt owed'' by the assessee on the relevant valuation date within the meaning of section 2(m). The Settlement Commission worked out the liability of the assessee for the assessment years 1968-69 to 1973-74 and the valuation dates for these years were 31st March of the years 1968, 1971 and 1973 while the valuation date for the assessment year 1975-76, which is under consideration, was 31-3-1975. The amount of income tax determined by the Settlement Commission for these years is the ''debt owed'' by the assessee

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within the meaning of section 2(m) on the respective valuation dates, Le., 31st March of the relevant assessment years and is not an allowable deduction in computing the net wealth of the assessee for the assessment year 1975-76. The claim of the assessee for the deduction of income tax liability for computation of the net wealth for the assessment year 1975-76 is, therefore, not maintainable. In the present case, the tax remained outstanding for more than twelve months on the valuation date and, therefore, the bar put in by section 2 (m)(iii)(b) is attracted. The assessee is, therefore, not entitled to any deduction of his liability to pay income tax on the ''debt owed'' by him for the year 1975-76 as the liability remained outstanding for a period of more than twelve months on the relevant valuation date.

9. For the aforesaid reasons I am of the opinion that the amount of tax payable by the assessee for the assessment years 1968-69 to 1973-74 amounting to Rs. 1,85,217 does not qualify for deduction for computing the net wealth of the assessee for the assessment year 1975-76 and the question referred is answered in the manner that the determination of the tax liability by the Settlement Commission on 17-3-1979 in respect of the assessment years 1968-69 to 1973-74 could not be claimed as deduction u/s 2(m) in the assessment year 1975-76 for computing the ''net wealth'' of the assessee.

10. In the result, I agree with the conclusions drawn by Hon''ble M.A.A. Khan, J. and regret my inability to adopt the opinion expressed by Hon''ble V.K. Singhal, J. The opinion of Hon''ble M.A.A. Khan, J., with which I agree, shall prevail in view of rule 61A of the Rajasthan High Court Rules. The reference made by the Tribunal, Jaipur Bench, is, therefore, answered in the affirmative, i.e., in favour of the revenue and against the assessee and it is held that in the facts and circumstances of the case the Tribunal was right in holding that the amount of tax payable for the assessment years 1968-69 to 1973-74 aggregating to Rs. 1,85,217 is not allowable as a liability in view of the provisions contained in section 2 (m)(iii)(a) and (b) for the assessment year 1975-76.

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