
(1991) 02 CAL CK 0032
In the Calcutta High Court
Case No : Matter No. 2536 of 1986

Khimji Hunsraj (HUF)

APPELLANT

Vs

Commissioner of Wealth Tax

RESPONDENT

Date of Decision : 21-02-1991

Acts Referred:

Wealth Tax Act, 1957 — Section 4, 7, 7(2)
Wealth Tax Rules, 1957 — Rule 2, 2A, 2B, 2C, 2D

Citation : (1992) 101 CTR 241 : (1995) 212 ITR 252 : (1992) 63 TAXMAN 95

Hon'ble Judges : Shyamal Kumar Sen, J;Ajit K. Sengupta, J

Bench : Division Bench

Judgement

Ajit Kumar Sengupta, J.—In this reference u/s 27(1) of the Wealth-tax Act, 1957, for the assessment year 1978-79, the following two questions have been referred to this court ;

"(1) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was correct in directing the Wealth-tax Officer not to allow liability for provision for taxation other than that for the assessment year in computing" the net wealth of the firm in terms of Rules 2 to 2E of the Wealth-tax Rules, 1957, in determining the value of interest of the assessee in the firm relating to the assessment year 1978-79 ?

(2) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was correct in holding that, if the amount of provision for taxation was not reduced by the amount of advance tax paid, then the entire amount of Rs. 4,15,000 representing provision for taxation would have to be added to the value of the assets of the firm in determining the value of interest of the assessee in the firm ?"

2. The facts are that the Wealth-tax Officer, in his assessment, valued the interest of the assessee in the partnership, Messrs. East Coast Agency, as per computation in annexure "A" assessment order. In that annexure, the Wealth-tax Officer (adjusted) the tax provision by the amount of advance tax appearing (in)

the balance-sheet. He proceeded to compute the value of the interest of the assessee accordingly.

3. The assessee took up the matter before the Appellate Assistant Commissioner and contended that, according to the rules, adjustment was not necessary and that the provision for taxation was not a contingent liability nor for meeting any future liability. Reference was made to the decision of the Supreme Court of India in the case of Kesoram Industries and Cotton Mills Ltd. Vs. Commissioner of Wealth Tax, (Central) Calcutta, . He directed the Wealth-tax Officer not to make the adjustment and to compute the value of the interest of the assessee accordingly.

4. Thereafter, the Revenue took up the appeal before the Appellate Tribunal and contended that the Appellate Assistant Commissioner was not justified in giving the above direction,

5. Thereafter, the Tribunal held as follows :

"The next objection of the Department is as to the direction of the Appellate Assistant Commissioner to recompute the value of the assessee's interest in the partnership firm. The Departmental representative drew our attention to Clause (c) of Rule 2E of the Wealth-tax Rules and argued that any provision made for meeting any future or contingent liability could not be taken into account as liability for the purpose of determining the net value of the assets of the business as a whole. Opposing this, the authorised representative for the assessee contended that the tax liability was not future or contingent liability and as such the tax provision made in the balance-sheet could not be ignored. He also drew our attention to the Explanation to Rule 2E. He further contended that under Clause (a) of Rule 2D any amount paid as advance tax could not be adjusted against the tax provision made. We do not understand why the assessee takes objection to the adjustment of the advance tax paid against the amount of tax provision because this has been done to its advantage. If the amount of tax provision was not reduced by the amount of advance tax paid, then the entire amount of Rs. 4,15,000 as tax provision would have been added to the value of the assets. In our opinion, the materials on record do not show whether tax provision was made in respect of the assessee's tax liability for the assessment year 1978-79 or for past or future tax liability. If the tax provision was made in respect of past or future tax liability, it is certainly disallowable under Clause (c) of Rule 2E of the Wealth-tax Rules. But if this tax provision was made for meeting tax liability for the assessment year under nomination, then it cannot be disallowed under Clause (c) of Rule 2E. As the case has been remitted to the Wealth-tax Officer for recomputing the value of the shares, we are of the opinion that the assessee should get an opportunity of producing further material to show whether the tax provision of Rs. 4,15,000 relates to the assessee's liability for the assessment year under examination or not. Thereafter, the Wealth-tax Officer shall compute the value of the assessee's 1/5th share in the partnership firm in accordance with the direction given above and the provisions of Rule 2E

of the Wealth-tax Rules."

6. In our view, the Tribunal, in this case, proceeded on a misconception of law. Of course, the Tribunal proceeded on the basis of the submissions made by the assessee as well as the Departmental representative before the Tribunal that the Rules 2A to 2G of the Rules are applicable in determining the value of the interest of the assessee in a firm. This court in Commissioner of Wealth Tax Vs. Surendra Paul, has held that Section 4(1)(b) of the Wealth-tax Act, 1957, specifically lays down that the value of a share in the interest of a firm is to be determined in the prescribed manner and Rule 2 of the Wealth-tax Rules, 1957, prescribes such manner. Section 7(2) of the Act and Rules 2A to 2G of the Rules cannot be extended to cover cases specifically governed by Section 4(1)(b) of the Wealth-tax Act and Rule 2, Hence, in determining the value of the interest of an assessee in a firm, the provisions of Sections 4(1)(b) and 7(1) read with Rule 2 are applicable.

7. In our view, the matter has to be remanded to the Tribunal for disposal afresh in accordance with the principle laid down by this court in that decision. We, therefore, decline to answer this question and remand the matter back to the Tribunal for disposal afresh in the light of the principles laid down in the said judgment and in accordance with the law.

8. There will be no order as to costs.

Syyamal Kumar Sen, J.

9. I agree.