

(2009) 01 BOM CK 0131
In the Bombay High Court
Case No : WT Ref. No. 25 of 1997

Miss Deanna J. Jeejeebhoy	Vs	APPELLANT
Wealth Tax Officer		RESPONDENT

Date of Decision : 22-01-2009

Acts Referred:

Income Tax Act, 1961 — Section 27

Wealth Tax Act, 1957 — Section 2, 27(1), 5(A1), 6

Citation : (2009) 222 CTR 202 : (2011) 330 ITR 149 : (2009) 180 TAXMAN 586

Hon'ble Judges : R.S. Mohite, J;F.I. Rebello, J

Bench : Division Bench

Advocate : Neeraj Shah and Rajesh Shah, for the Appellant; P.S. Sahadevan and Anuradha More, for the Respondent

Judgement

R.S. Mohite, J.—The two questions of law which have been referred for our opinion u/s 27(1) of the WT Act, are as follows:

1. Whether on the facts and in the circumstances of the case the deduction on account of debt owed for the purpose of determining the net wealth as claimed by the assessee should be reduced by the investment made in Capital Investment Bonds ?

2. Whether on the facts and in the circumstances of the case the Tribunal was justified in law in holding that although the debt owed was incurred in relation to a property which was chargeable to wealth-tax, the full amount of the debt could not be allowed as a full deduction because of the investment made by the assessee in an asset exempt from wealth-tax?

2. The facts on the background of which the two questions of law arise are as follows:

(a) The three applicants are sisters. Along with their mother each of them owned 1/4th share in a building named as "Sett Minar, situated at Dr. Gopalrao Deshmukh Marg, Bombay. In 1982, the property was given on leave and licence

basis by the owners to the Indo Suez Bank. Under the licence agreement, in addition to the licence fees, the owners obtained a refundable deposit of Rs. 35 lakhs. After the licence agreement came to an end it was renewed in January 1987 and the refundable deposit amount was increased from Rs. 35 lakhs to Rs. 43,75,000. When the applicants filed their WT returns, they claimed their 1/4th share in the deposit as debt owed and sought to deduct it in the computation of their individual net wealth. Accordingly, each of them sought to deduct a sum of Rs. 8,75,000 in each of the two asst. yrs. 1986-87 and 1987-88 and a sum of Rs. 10,93,750 in the asst. yr. 1988-89. In all these WT returns, the immovable property in question was valued under Rule 1BB and under that provision the value arrived at was Rs. 90,540.

(b) Out of the deposit money the three applicants had invested a part of the amount in Capital Investment Bonds which were exempted from wealth-tax. The WTO allowed a deduction for the debt owed only to the extent of Rs. 90,540. He observed that the value of the property was exempted u/s 5(1A). He also referred to the investment made by the assessee in Capital Investment Bonds which were exempted from wealth-tax.

(c) In the appeal to the CWT(A), the WTO's action of allowing only a partial deduction for the debt owed was challenged. The CWT(A) accepted the contentions of the applicants and directed allowance of the full amount of the debt owed as claimed.

(d) The Revenue appealed to the Tribunal and the Tribunal partly allowed the appeal and directed that the debt owed as claimed should be allowed after reducing therefrom the amount invested in Capital Investment Bonds. The applicants thereafter made an application for reference and in such circumstances, the aforesaid two questions have been referred to this Court for consideration.

3. We find that all throughout, there has been no dispute that the immovable property in question has been treated as property in respect of which wealth-tax was chargeable. In fact, the applicants had valued this immovable property under Rule 1BB of the WT Rules and this valuation was accepted.

4. u/s 2(m) of the WT Act, the term "net wealth" is defined as under:

"net wealth" means the amount by which the aggregate value computed in accordance with the provisions of this Act of all the assets, wherever located, belonging to the assessee on the valuation date, including assets required to be included in his net wealth as on that date under this Act, is in excess of the aggregate value of all the debts owned by the assessee on the valuation date other than-

(i) debts which u/s 6 are not to be taken into account;

(ii) debts which are secured on, or which have been incurred in relation to any property in respect of which wealth-tax is not chargeable under this Act; and

(iii) the amount of the tax, penalty or interest payable in consequence of any order passed under or in pursuance of this Act or any law relating to taxation of income or profits or the Estate Duty Act, 1953 (34 of 1953), the Expenditure-tax Act, 1957 (29 of 1957), or the GT Act, 1958 (18 of 1958),

(a) which is outstanding on the valuation date and is claimed by the assessee in appeal, revision or other proceeding as not being payable by him; or

(b) which, although not claimed by the assessee as not being payable by him, is nevertheless outstanding for a period of more than twelve months on the valuation date;

Explanation-A building or part thereof referred to in Clause (iii), Clause (iiia) or Clause (iiib) of Section 27 of the IT Act shall be includible in the net wealth of the person who is deemed under the said clause to be the owner of that building or part thereof;

5. Counsel for the applicant relied upon a judgment of this Court in the case of *Bishweshwarilal Chirawala v. CWT* (1991) 187 ITR 118 (Bom). The facts of the said case were however different. In that case a loan was obtained by the assessee against the pledge of gold bonds which were not chargeable to wealth-tax. It was held that the loan was not deductible in computing net wealth. This finding was based on the footing that the debt was a specified non-deductible debt covered by Section 2(m)(ii). Advocate for the assessee also relied upon the judgment of the Madhya Pradesh High Court in the case of *Commissioner of Wealth-tax Vs. Narayandas J. Hemani*, . In that case also the loans were obtained against insurance policies which were exempted from Income Tax (sic-wealth-tax). On the same principle it was held that such a loan was not deductible in computing net wealth as the debt was a specified non-deductible debt. In our view, the aforesaid two judgments cited have no bearing or relevance for deciding the questions of issue.

6. It Is seen from the said definition that the net wealth is to be calculated by deducting all the debts from the assets, excepting the three kinds of debts which are specified in (i), (ii) and (iii). Once it is accepted that the security deposit taken by the applicants was a debt in respect of property which was chargeable to wealth-tax then the said security deposit could not amount to a debt covered by Section 2(m)(ii). Merely because a part of the amount obtained by the applicants was invested in Capital Investment Bonds which were not chargeable to wealth-tax, that by itself does not change the nature of the debt. We find no provision in the WT Act where a debt secured on or incurred in relation to property in respect of which wealth-tax is chargeable ceases to be a debt or changes its character into one of a non-deductible debt merely because it is invested in an instrument which is not chargeable to Income Tax (sic-wealth-tax). Holding otherwise will amount to creating one more category of debt in addition to the three categories contemplated by Section 2(m) (as it then stood) which are not to be deducted from the net assets while arriving at net wealth of

the assessee. This being the position, we answer both the questions in the affirmative and in favour of the assessee. Reference stands disposed of.