(1971) 04 AHC CK 0014

In the Allahabad High Court

Case No : Wealth-tax Reference No. 284 of 1965

Raja Vishwanath Pratap Singh — APPELLANT

Vs

Commissioner of Wealth Tax — RESPONDENT

Date of Decision : 22-04-1971

Acts Referred:
Wealth Tax Act, 1957 — Section 17, 2

Citation : (1972) 84 ITR 135

Hon'ble Judges : S.N. Dwivedi, J;R.L. Gulati, J

Bench : Division Bench

Advocate : K.B. Mathur, for the Appellant; B.L. Gupta and R.R. Misra, for the Respondent

Judgement

Dwivedi, J.—This is a reference u/s 27 of the Wealth-tax Act. At the instance of the asses see, Raja Vishwanath Pratap Singh, the Appellate Tribunal has submitted a statement of the case and has referred for the court''s opinion these questions :

" 1. Whether, on the facts and in the circumstances of the case, the debts amounting to Rs. 30 lacs and odd, more or less for each of the assessment years under appeal, were rightly not allowed as a deduction in calculating the net wealth of the assessee ?

2. Whether, on the facts and under the circumstances of the case, the provisions of Section 17 of the Wealth-tax Act were applicable so far as the assessment years 1957-58, 1958-59 and 1959-60 are concerned ?"

2. The assessee is the son of the late Captain Raja Bahadur Ram Gopal Singh. The father was the owner of extensive zamindari and other properties. He was in huge debts. He applied u/s 4 of the U. P. Encumbered Estates Act for the liquidation of his debts. While the application was pending, his estate was taken over by the court of wards on September 16, 1941. The estate was released on February 16, 1953. During the pendency of the application before the special

judge, Raja Bahadur Ram Gopal Singh passed away. Thereafter, the proceedings went on in the name of the assessee.

3. Out of the savings of the estate the court of wards invested an amount of Rs. 6,11,324 in Government securities. The investment fetched Rs. 76,000 as interest. The total amount was realised by the assessee. The special judge passed simple money decrees for about Rs. 30,00,000 and odd against the assessee. When some of the decree-holders wanted to proceed against the amount of Rs. 6,87,000 and odd, the assessee opposed their efforts. The special judge held that the decree-holders could not proceed against that amount. His view was upheld by this court on March 25, 1961, By this time proceedings for assessment of the wealth-tax for the assessment years 1957-58, 1958-59 and 1959-60 were completed. The proceedings for the assessment years 1960-61 and 1961-62 were, however, pending. For the assessment years before 1960-61 the department had taken into account the decretal debts of Rs. 30,00,000 and odd and had held that the assessee was not taxable. But when the judgment of this court, dated March 25, 1961, came to the knowledge of the department, the department took proceedings u/s 17 of the Wealth-tax Act against the assessee for the assessment years 1957-58, 1958-59 and 1959-60.

4. After hearing the assessee, the department held that, as the decretal debts of Rs. 30,00,000 and odd could not be recovered from the sum of Rs. 6,87,000 and odd, the said amount constituted the net wealth of the assessee against which no debts were owed. Accordingly, the department levied wealth-tax on the said amount for the assessment years 1957-58, 1958-59 and 1959-60 u/s 17. For the assessment years 1960-61 and 1961-62 the assessee was assessed to wealth-tax on the said amount, Feeling aggrieved with the decision of the department, the assessee has got these questions referred to this court,

5. u/s 2(m) of the Wealth-tax Act the net wealth of the assessee is to be determined by taking into account the aggregate value of all his assets and deducting therefrom the aggregate value of all debts owed by him. It was urged before the Tribunal that the decretal debt of Rs. 30,00,000 and odd was owed by the assessee. Rejecting the argument, the Tribunal said:

"The section clearly says that the debts must be the debts owed by the assessee. A person can be said to owe debts only when he is personally liable to pay the same. The law recognises debts which are personal, i.e., debts which are recovered by proceedings against the debtor personally and debts which a person is liable to pay to the extent of the estate which he receives from another person, the father of the assessee in this case, is not a debt owed by the assessee. Under the latter case, there is no personal liability and the creditors cannot proceed against the personal assets of the person to recover debts."

6. This view of the Tribunal is clearly erroneous in law. The error is, we think, due to the Tribunal''s misconstruction of the expression " debts owed by the assessee " in Section 2(m). It is also due to the misunderstanding of the true nature of the

obligation of the heir of a deceased debtor to pay his debts.

7. Section 2(m) materially reads:

" Net wealth means the amount by which the aggregate value .... of all the assets,.... belonging to the assessee.... is in excess of the aggregate value of all the debts owed by the assessee . . . ."

8. According to the Tribunal " debts owed by the assessee " include only such debts as may be satisfied from the person of the assessee and from the property acquired by him. We can see no justification for restricting the scope of the expression in that way. According the Shorter Oxford English Dictionary, " owe " means " to have to pay, to be under obligation to pay or repay (money, etc.) to be indebted in, or to the amount of ". Wharton''s Law Lexicon defines " due " as meaning anything owing. Accordingly, " debts owed by the assessee " are debts which he is liable to pay.

9. The assessee is liable to pay a debt incurred by his deceased father. (Anant Govind Jog v. Tukaram Kushabha Sindhe AIR 1929 Bom. 233. ; Mulla Hindu Law, 12th edition, page 426). But his liability is restricted to the extent of the property inherited by him from his deceased father. So his father''s debts which may be satisfied from the property which he has inherited from, his father are " debts owed by the assessee. "

10. According to Section 2(m) net wealth is the difference between the value of " all the assets belonging to the assessee " and the " debts owed by the assessee ". There is no doubt that the property inherited by the assessee from his deceased father would constitute his " assets ", for it belongs to him. (See Anant). It will be taken into account in determining his net wealth. Accordingly, the debts which may be satisfied from that inherited property should fairly be held to be " debts owed by the assessee". Kesoram Cotton Mills Ltd., Calcutta Vs. Commissioner of Wealth Tax, Calcutta, does not deal with the question before us.

11. In the result, our answers to the two questions are these :

1. The debt amounting to Rs. 30,00,000 and odd should have been allowed as a deduction in calculating the net wealth of the assessee.

2. Having regard to our answer to question No. 1, Section 17 of the Wealth-tax Act could not be applied for the assessment years 1957-58, 1958-59 and 1959-60.

12. The assessee shall get costs which we assess at Rs. 200. Fee of counsel for the department is also assessed accordingly.