

(1970) 07 AHC CK 0026

In the Allahabad High Court

Case No : Income-tax Reference No. 139 of 1964

Sahu Dharmata Saran

APPELLANT

Vs

Commissioner of Wealth Tax

RESPONDENT

Date of Decision : 10-07-1970

Acts Referred:

Wealth Tax Act, 1957 — Section 7, 7(1), 7(2)

Citation : (1971) 80 ITR 194

Hon'ble Judges : T.P. Mukerjee, J;H.N. Seth, J

Bench : Division Bench

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

Final Decision : Disposed Of

Judgement

T.P. Mukerjee, J.—This is a reference made by the Appellate Tribunal at the instance of the assessee u/s 27(1) of the Wealth-tax Act on the following question :

"Whether, in the fact and circumstances of the case, the movable assets have been correctly valued at Rs. 4,70,574 ?"

2. The material facts are these : The assessee is a Hindu undivided family carrying on money-lending and other businesses. For the relevant assessment year 1959-60, the assessee closed its accounts on Asharh Sudi 9, Samvat 2015, which is the valuation date. The Wealth-tax Officer made an assessment of the net wealth of the assessee as on the aforesaid valuation date estimating the value thereof at Rs. 5,33,067. The Wealth-tax Officer adopted the value of the total assets of the business as disclosed in the balance-sheet, as on the aforesaid valuation date, at Rs. 6,70,617. The Wealth-tax Officer allowed certain deductions and computed the value of the movable assets at Rs. 4,70,574. The amount included a sum of Rs. 2,94,556 which represented the amount invested by the assessee family in its money-lending business. The Wealth-tax Officer, it

appears, estimated the value of the investments at par and included the whole amount in the value of the movable assets computed by him at Rs. 4,70,574. The assessee preferred an appeal to the Appellate Assistant Commissioner of Wealth-tax in which several grounds were taken. One of the grounds was that the Wealth-tax Officer was not justified in determining the value of the investments in business at the figure mentioned in the balance-sheet. The Appellate Assistant Commissioner, however, rejected this ground and dismissed the appeal.

3. The assessee then came to the Tribunal in second appeal. The only contention which was urged before the Appellate Tribunal appears to have been that the Wealth-tax Officer was wrong in evaluating the total investments in the money-lending business at Rs. 2,94,556 which was the value shown in the balance-sheet of the business. On behalf of the assessee it was pleaded that the investments made in the business of money-lending could not be sold in the open market at their face value and it was argued that the Wealth-tax Officer should estimate the value of such assets at the price which, in his opinion, they would fetch if sold in the open market. The attention of the Tribunal was invited to the provisions of Section 7(1) of the Wealth-tax Act in this context. The Tribunal analysed the provisions of sections 7(1) and 7(2) of the Act and held that the two sections referred to different categories of assets. Section 7(2) applies, in the opinion of the Tribunal, to the class of assets mentioned therein, while for all other assets, the provisions of Section 7(1) would apply. The Tribunal observed that where an assessee carries on a business for which accounts are maintained regularly, the assets of the business shall be determined with reference to the balance-sheet figures. The relevant observation of the Tribunal may be reproduced below :

"Where the assessee carries on a business for which accounts are maintained regularly, Section 7(2) says that the Wealth-tax Officer may determine the net value of all the business having regard to the balance-sheet of the said business. Even though the word used here is "may", the class of assessee mentioned in Section 7(2) is a separate category of assessee and it must be held that the statute intends that for such types of assessee the value of assets shall be determined with reference to the balance-sheet figures. For all other cases the market value will be taken. This interpretation of the provisions of Section 7(1) and Section 7(2) are laid down in the section itself and the Wealth-tax Officer is not vested with any absolute or arbitrary discretion."

4. Observing as above, the Tribunal found that the assessee was carrying on a business for which it was maintaining its accounts regularly. The Tribunal also noticed that the value of the assets invested in the money-lending business was shown in the balance-sheet at Rs. 2,94,556. The Tribunal, therefore, held that the departmental authorities were justified in taking this amount for the purpose of valuation of the investments in the money-lending business.

5. At the instance of the assessee the Tribunal has referred the question quoted

above for the opinion of this court. In the first place, the question as drafted by the Tribunal is erroneous, because, as would appear from the appellate order of the Tribunal, the only dispute related to the valuation of the investment in the money-lending business. The Wealth-tax Officer had adopted the value of the investments at the figure shown in the balance-sheet of the assessee, namely, Rs. 2,94,556, while the contention of the assessee, was that necessary adjustment should be made to the value in view of the fact that investments in money-lending business were hardly sold in the open market at par. It was urged on behalf of the assessee that investments in money-lending business were generally sold at fifty per cent. of the book value and therefore, the Wealth-tax Officer was not correct in taking the value of the investments at the figure shown in the balance-sheet of the business. The question postulated by the Tribunal should, therefore, have been related to the value of the investments in the business, assessed at Rs. 2,94,556, and not to the value of all the movable assets of the business, assessed at Rs. 4,70,574. Moreover, the question as framed by the Tribunal appears on the face of it to be a question of fact, because any question as to what is the correct value of an asset can hardly be regarded as a question of law.

6. It appears from the statement of case, which was prepared by the Tribunal without any objection from either party, that two points were contended in the appeal before the Tribunal. The first was that the investments in the money-lending business were generally sold at fifty per cent. of their book value and, therefore, it was not correct on the part of the taxing authority to have taken the value at the figure shown in the books. Apparently, this contention as to the market value of the investments was based on the terms of Section 7(1) of the Act. The second contention was that it was wrong to suppose that u/s 7(2) of the Wealth-tax Act the value of an asset must necessarily be taken at the figure shown in the balance-sheet. On behalf of the assessee it was suggested that an adjustment of fifty per cent. should be made as regards the value of the investments mentioned in the balance-sheet of the business. This contention was evidently based on the provision of Section 7(2) of the Act. The Tribunal, therefore, should have raised not a question of fact, but a question of law bearing on the applicability of the terms of Sub-section (1) and/or Sub-section (2) (a) of Section 7 of the Act to the facts of the case before it.

7. Section 3 of the Act imposes the charge to wealth-tax. Section 3, as it then stood, imposed a liability to pay wealth-tax on the net wealth on the valuation date, on every individual, Hindu undivided family and company at the specified rates. The expression "net wealth", occurring in Section 3, has been defined in Section 2(m) of the Act to mean the aggregate value of all assets belonging to the assessee on the valuation date diminished by the aggregate value of all debts owed by the assessee on the same date. If there is no debt, the net wealth is assessable on the value of all the assets owned by the assessee. Section 7 lays down the mode in which the value of an asset may be determined for the purpose of computation of the net wealth. Sub-section (1) of Section 7 says that

the value of an asset, other than cash, shall be estimated to be the price which, in the opinion of the Wealth-tax Officer, it would fetch if sold in the open market on the valuation date. Sub-section (1) refers to the value of "any asset other than cash", and, ordinarily, therefore, the value of any asset, other than cash, may be determined at the market value of the asset on the valuation date.

8. Sub-section (2) of Section 7, however, makes a special provision for valuation of business assets. Sub-section (2)(a) refers to a permissible mode of valuation of assets of business carried on by an assessee for which accounts are maintained by him regularly. It provides that in computing the "net value of the assets of the business", the Wealth-tax Officer may, instead of determining separately the value of each individual asset held by the assessee in such business, adopt the value as mentioned in the balance-sheet of such business, as on the valuation date. Sub-section (2)(a) also authorises the Wealth-tax Officer to make such adjustments to the book value of any asset or assets as the circumstances of the case may require. It is not a provision in derogation to the provision's of Sub-section (1) of Section 7. It is an enabling provision. It authorises the Wealth-tax Officer to determine the net value of the assets of the business as a whole on the basis of the balance-sheet of the business instead of determining the market value of each particular asset separately under Sub-section (1). This provision was, evidently, introduced for facility of computation of the value of the assets pertaining to a business in which the assets are numerous and it would be difficult to determine the value of each individual asset separately by resort to the provisions of Sub-section (1) of Section 7. Sub-section (2) has been introduced as a non-obstinate clause and not as a proviso carving out an exception to the substantive provision laid down in Sub-section (1). We may point out incidentally that the expression "net value" used in Sub-section (2)(a) appears to be meaningless. What is to be determined u/s 7 is the total value of the assets of a business with a view to ultimately arrive at the value of the net wealth of the assessee. The expression "net value" of the assets would ordinarily mean the value of the assets as diminished by the liabilities thereon but Section 7, as its rhetoric will show, was enacted with a view to determine the value of the assets undiminished by any debts or liabilities owed thereon. The debts and liabilities of an assessee, whether in relation to an asset or unrelated to it, have to be computed separately and the difference between the value of the assets determined by Section 7 and the aggregate of the debts owned by an assessee on the valuation date will give the net wealth as defined in Section 2(m) of the Act.

9. Having regard to the clear and unequivocal terms of Section 7 it is obvious that the provisions of Sub-section (1) and Sub-section (2) are not mutually exclusive and that where the assessee carries on a business and maintains regular accounts, it is still open to the Wealth-tax Officer to resort to the method prescribed in Sub-section (1) of Section 7 for the valuation of the assets of the business. Then again, where the Wealth-tax Officer has actually proceeded under Sub-section (2)(a) and adopted the balance-sheet value of the assets, it is open

to him to make such adjustments in regard to the value of the different assets shown in the balance-sheet as he might consider necessary in the circumstances of the case. The Wealth-tax Officer was, therefore, competent to make an adjustment for estimating the value of the investments made by the assessee in the money-lending business if he considered it necessary to do so in the particular circumstances of the case. The word "adjustment" used in Sub-section (2)(a) of Section 7 may mean either reduction or enhancement of the book value of the asset. Whether the Wealth-tax Officer should increase or reduce the book value of any particular item of asset of the business will depend on the facts and circumstances of each case.

10. In view of the fact that the Wealth-tax Officer misconceived the true implications of the provisions of Section 7 of the Act while estimating the value of the investments in the money-lending business at the figure shown in the balance-sheet, we consider it necessary in the ends of justice to answer this reference by modifying the question framed by the Wealth-tax Officer. We reframe the question as follows :

"Whether, on the facts and in the circumstances of the case, the Tribunal arrived at the value of the investments made by the assessee in its money-lending business at Rs. 2,94,556 by correctly applying the provisions of Section 7 of the Wealth-tax Act?"

11. This question is answered in the negative. We should not, however, be understood to mean that the book value of the assets adopted by the Tribunal is, necessarily, wrong and that the Tribunal is bound to make an adjustment therein. The Tribunal may not make any adjustment at all. What we seek to emphasised is that the Tribunal was wrong in taking the view that it could not, in law, make any adjustment, and it was bound to accept the book value. The case will now go back to the Tribunal for disposal u/s 27(6) of the Act. The assessee will get its costs which we assess at Rs. 100. Counsel's fee is also assessed at the same figure.