

(1983) 12 BOM CK 0010

In the Bombay High Court

Case No : W. T. APPEAL No's. 1661 TO 1663 (BOM.) OF 1982

SAMPAT KUMAR SOMANI

APPELLANT

Vs

THIRTEENTH WEALTH-TAX OFFICER.

RESPONDENT

Date of Decision : 22-12-1983

Acts Referred:

Wealth Tax Act, 1957 — Section 5(1)

Citation : (1986) 17 ITD 449

Hon'ble Judges : I. S. Nigam, Member;I. S. Nigam, A.M.

Bench : Division Bench

Judgement

Per Shri I. S. Nigam, Accountant Member - There three appeals relating to the assessment years 1973-74 to 1975-76 filed by the assessee against the consolidated order of the AAC, Central Range-I, Bombay deal with common issues and are, therefore, for the sake of convenience, disposed of by a consolidated order.

2. The assessee is an individual. Among the claims made before the WTO, in the course of the assessment proceedings was the claim of deduction of debts amounting to Rs. 6,39,266 for the assessment year 1973-74, Rs. 6,63,304 for the assessment year 1974-75 and Rs. 7,00,233 for the assessment year 1975-76. The WTO, however, held that these debts were incurred in relation to and for the purpose of acquisition of shares the value of which amounted to Rs. 10,54,017 for the assessment year 1973-74, Rs. 10,22,919 for the assessment year 1974-75 and Rs. 8,33,853 for the assessment year 1975-76. He, therefore, disallowed the claim of deduction of the debts in the same proportion as the value of shares exempt from tax bore to the total value of the shares. The result was that out of the claim of debts which according to the assessee were to be deducted in working out the assessee's net wealth, the WTO disallowed Rs. 90,976 for the assessment year 1973-74, Rs. 97,266 for the assessment year 1974-75 and Rs. 1,26,225 for the assessment year 1975-76. When the matter went up in appeal the AAC agreed with the WTO on this issue and refused to

interfere. The assessee had, therefore, come up with the common point of dispute in the present appeals before us.

3. The assessee's learned counsel, Shri Jain, submitted to us that neither the WTO nor the AAC had pointed out any material or evidence in coming to the finding that the debts under consideration here were secured on or incurred in relation to the shares. Proceeding further, he submitted that even otherwise the shares were only partly exempt inasmuch as the exemption was limited to Rs. 1,50,000 while the total value of the shares included in the assessee's net wealth was more than Rs. 10 lakhs for the assessment years 1973-74 and 1974-75 and more than Rs. 8 lakhs for the assessment year 1975-76. Our attention was invited to the Board's Instruction No. 1070 dated 28-6-1977, reproduced in the order of the Tribunal in the case of *M. V. Subbiah v. WTO* [1983] 36 CTR (Mad.) 1 where the Board laid down that in case of debts which are secured on or incurred in relation to any property which is partly exempt u/s 5(1) of the Wealth-tax Act, 1957 (the Act) the deduction for such debts will have to be allowed in the manner which is most beneficial to the assessee, i.e., in other words, the deduction will have to be allowed to the extent of the value of the asset which is otherwise includible in the assessee's net wealth. He also referred to the example given in the Board's circular that if there was a debt of Rs. 1 lakh secured or incurred in relation to a house property of the value of Rs. 1,50,000 which was entitled to exemption up to Rs. 1 lakh, the debt will have to be allowed to the extent of Rs. 50,000 being the value of the house property which was otherwise includible in the net wealth. Relying on the authority of the Honble Supreme Court in the cases of *Navnitlal C. Javeri Vs. K.K. Sen*, *Appellate Assistant Commissioner of Income Tax, "D" Range, Bombay, v. Ellerman Lines Ltd.* *Vs. Commissioner of Income Tax, West Bengal, Calcutta*, and *K.P. Varghese Vs. Income Tax Officer, Ernakulam* and another, Shri Jain contended before us that the Board's instructions, particularly those beneficial to the assessee, were binding on the revenue authorities. On this basis, according to Shri Jain, the assessee was entitled to the claim of deduction of the entire amount of the debts for the assessment years 1973-74 and 1974-75 and to the extent of the value of the shares included in the assessee's net wealth (after the claim of the exemption of the statutory amount of Rs. 1,50,000) for the assessment year 1975-76.

4. On the other hand, the learned departmental representative, Shri Subramanian, submitted to us that there was a clear finding of the WTO in the assessment orders that the debts were incurred in relation to and for the purpose of acquisition of shares which were exempt from tax to the extent of the value of Rs. 1,50,000 and this finding of the WTO in the assessment orders was not challenged before the AAC. In these circumstances, according to Shri Subramanian, it is not open to the assessee to claim before us now that the debts were not incurred in relation to or for the purpose of acquisition of shares particularly when this claim involves investigation of facts and was not the subject matter of adjudication before the AAC. He also relied on the orders of the revenue authorities in support of the claim of deduction on account of debts

limited to what was worked out on proportionate basis.

5. We have carefully considered the rival submissions. We agree with the learned departmental representative, Shri Subramanian, that since the assessee did not challenge the finding of fact of the WTO in the assessment orders that the debts were incurred in relation to and for the purpose of acquisition of shares, the value of which to the extent of Rs. 1,50,000 was exempt u/s 5(1) was not challenged before the AAC, this challenge which involves investigation of facts cannot be entertained at this state. There is, however, merit in the submission of the assessee's learned counsel, Shri Jain, that in view of the rulings of the Honble Supreme Court in the cases cited by him, the Boards circulars, particularly where they are beneficial to the assessee, are binding on the revenue authorities. Viewed in this context it cannot be disputed that the Board by Instruction No. 1070, dated 28-6-1977 directed that where deduction was claimed in respect of debts which are secured on or have been incurred in relation to any property which is partly exempt u/s 5(1), the claim of deduction of the debt will have to be allowed to the extent the value of the partly exempted asset is otherwise includible in the assessee's net wealth. Viewed in this context we find that the value of the shares even after allowing statutory claim of exemption of Rs. 1,50,000 exceeds the amount of the debts which were claimed as a deduction for the assessment years 1973-74 and 1974-75. For the assessment year 1975-76, only we find that the debts which were claimed as deduction were of Rs. 7,00,233 while the value of the shares after allowing the statutory exemption of Rs. 1,50,000 amounted to only Rs. 6,83,853. This means that while no disallowance can be made out of the claim of debts, incurred in relation to or secured on shares for the assessment years 1973-74 and 1974-75, the disallowance for the assessment year 1975-76 will be limited to the excess of the debts over the value of the shares which after allowing the statutory exemption of Rs. 1,50,000 were included in the assessee's net wealth. The disallowance for the assessment year 1975-76, therefore, works out to Rs. 7,00,233 less (Rs. 8,33,853-Rs. 1,50,000), i.e., Rs. 16,380.

6. The other ground, common to the assessment years 1973-74 and 1974-75, against the addition made to the value of silver utensils was not pressed before us at the time of hearing.

7. The appeals are partly allowed.