
(1982) 04 AHC CK 0077

In the Allahabad High Court

Case No : Wealth-tax Reference No"s. 171 and 203 of 1978

Smt. Prem Lata Agarwal

APPELLANT

Vs

Commissioner of Wealth-tax

RESPONDENT

Date of Decision : 26-04-1982

Acts Referred:

Wealth Tax Act, 1957 — Section 2, 3, 4(1)

Citation : (1982) 29 CTR 258 : (1983) 142 ITR 586 : (1982) 10 TAXMAN 222

Hon'ble Judges : R.R. Rastogi, J;K.N. Seth, J

Bench : Division Bench

Advocate : R.R. Agrawal, for the Appellant; M. Katju, for the Respondent

Final Decision : Disposed Of

Judgement

Rastogi, J.—Both these references can be taken up together. The Income Tax Appellate Tribunal, B-Bench, Allahabad (hereafter "the Tribunal"), stated a case and referred the following questions of law for the opinion of this court u/s 27(1) of the W.T. Act (hereafter "the Act") :

"(i) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that half the value of the properties owned by the association of persons consisting of the assessee and her son was liable to be assessed as assessee's wealth ?

(ii) Whether, on the facts and in the circumstances of the case, the Tribunal was right in rejecting the assessee's claim that the entire amount of the Income Tax liabilities outstanding against the HUF of M/s. Kishori Lal Mukundi Lal was liable to be treated as a debt owed by the assessee and in holding that only 1/5th of this liability could be treated as the liability of the assessee while computing her wealth ?

(iii) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessee's claim for deduction of the Income Tax demands outstanding against M/s. Kishori Lal Mukundi Lal was hit by the

provisions of Section 2(m)(iii) of the Wealth-tax Act.

(iv) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that only half the amount payable under the decree passed against the assessee branch and Mohan Lal's branch (and not the whole) could be claimed by the assessee as a deduction in her wealth-tax assessments ?

(v) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that only 1/5th of the amount payable under the decrees against the HUF of M/s. Kishori Lal Mukundi Lal (and not the whole) could be claimed by the assessee as a deduction in her wealth-tax assessments ?"

2. The reference has been made at the instance of the assessee, Smt. Prem Lata Agarwal, an individual, and the assessment years involved are 1964-65 to 1971-72, The assessee had also sought reference of the following question for all these six years :

"Whether, on the facts and in the circumstances of the case, the value of ascertained decrees which were pending in the execution court on the date of valuation can be treated as wealth on the date of valuation for the purposes of wealth-tax ?"

3. The Tribunal did not refer this question because in its opinion the answer to it was self-evident. The assessee, thereafter, moved an application before this court, being Wealth-tax Application No, 494 of 1978, and this court issued a direction on 30th October, 1978, to the Tribunal and in compliance with the same the Tribunal has drawn up a supplementary statement of the facts of the case and referred the following question for the opinion of this court :

"Whether, on the facts and in the circumstances the value placed by the Tribunal on the decree in question was in law the correct value ?"

4. The brief facts are these. There was a bigger HUF of one Ram Dayal. He had five sons, viz., Harnam Das, Mohan Lal, Kishori Lal, Kanhaiya Lal and Mukundi Lal. Harnam Das had one son, Baijnath Prasad, The assessee, Smt. Prem Lata Agarwal is the daughter and the only issue of Baijnath Prasad. We are concerned with the branch of Baijnath Prasad in this reference. This HUF had been carrying on business in the name and style of M/s. Kishori Lal Mukundi Lal. Baijnath Prasad had made a gift of some of the immovable properties in favour of the assessee, Smt. Prem Lata Agarwal, and her son, Madhu Kailash by means of a registered deed dated 22nd October, 1955. The deed did not specify the shares of the two donees in the gifted properties and the income from the same was being assessed in their hands in the status of an association of persons. In her assessments to wealth-tax for the assessment years under consideration, that is, 1964-65 to 1971-72, the assessee claimed that since these properties belong to the association of persons consisting of herself and her son, no part of the same could be included in her wealth. This contention did not find favour with the WTO and he included the value of these properties to the extent of one-half in the net

wealth of the assessee.

5. The assessee appealed before the AAC, but remained unsuccessful and then took up the matter in further appeal before the Tribunal. The same submission was reiterated on behalf of the assessee before the Tribunal. The latter did not accept it. It held that an association of persons is not a legal entity and, therefore, even though the income from these properties was being assessed in the hands of the assessee and her son in the status of an association of persons, the property continued to be owned by the assessee and her son. Further, as the gift deed did not specify their shares in these properties, the only presumption would be that these properties were owned by them equally and, therefore, the Revenue authorities were perfectly justified in including the value of these properties to the extent of one-half in the net wealth of the assessee.

6. Question No. 1 mentioned above arises from this finding. It was urged before us on behalf of the assessee by her learned counsel, Sri Raja Ram Agarwal, that it was a case of joint tenancy and in the event of death of any one of the "two owners, the property would pass on to the surviving owner by devolution. Further, according to the counsel, the word "individual" occurring in Section 3 of the Act would include a body of individuals as laid down by the Supreme Court in *Wealth Tax Officer, Calicut Vs. C.K. Mammed Kayi* (since deceased) through his Lrs, *Shri T.M. Pocker and Others*, . That being so and an association of persons being a taxable entity no addition could be made in the net wealth of the assessee in respect of these properties. We do not agree with the learned counsel. Section 3 of the Act creates a charge of wealth-tax in respect of the net wealth of every individual, HUF and company. The word "individual" certainly includes a body of individuals and for that reason it can be said that an association of persons is a taxable entity. That, however, does not make any difference because Clause (b) of Sub-section (1) of Section 4 provides that in computing the net wealth of an individual, there shall be included, as belonging to that individual, whether the assessee is a partner in a firm or a member of an association of persons not being a co-operative housing society, the value of his interest in the firm or association determined in the prescribed manner. This provision thus clearly lays down that in case an individual is a member of an association of persons, then the value of his interest in the association determined in the prescribed manner shall be included in computing his/her net wealth. Thus, there is a clear provision that the value of the interest of an individual in an association of persons is to be included in his net wealth and the Revenue authorities and the Tribunal acted rightly in doing so. There was no dispute regarding the valuation of the properties and, therefore, our answer to question No. 1 is in the affirmative, against the assessee and in favour of the Department.

7. Questions 2 and 3 may be taken up together. The facts relevant to these questions as found by the Tribunal are these. An amount of Rs. 1,93,367 was determined as payable by the aforesaid HUF as Income Tax liability for the

assessment years 1941-42 to 1950-51. This liability was still outstanding at the time when the assessments for the years under consideration were taken up as also when the appeals before the AAC and the Tribunal were taken up. The assessee represented one of the branches of this family and she claimed that while computing her net wealth deduction should be allowed for this entire liability because she was jointly and severally liable to discharge it. The WTO did not accept this claim and made no deduction on this account, the reason given being that the liability was outstanding for a period of more than twelve months, on the valuation dates relevant to the years under consideration.

8. When the matter came up in appeal before the AAC it was claimed on behalf of the assessee that this liability represented a debt due from the assessee and she being jointly and severally liable to discharge it, the whole of this should be deducted while computing her net wealth and that in any case her liability to the extent of 1/5th should be taken into consideration for this purpose. It was claimed that the assessee had actually paid Rs. 37,000, being approximately the 1/5th of the demand on May 24, 1974, in accordance with an agreement arrived at with the Income Tax Department. The balance amount had been agreed to be realised from the other branches of the family but the Department has reserved its right to recover from the assessee any amount which it failed to realise from the other branches. It was thus claimed that the assessee was at least entitled to a deduction of 1/5th of the demand outstanding against the bigger HUF. The AAC did not accept the contention for the reason that the demand had been created against the bigger HUF long before the relevant valuation dates and had been outstanding for more than one year on those dates. He thus held that the claim of the assessee was hit by Section 2(m)(iii) of the Act.

9. On further appeal before the Tribunal, it was urged on behalf of the assessee that Section 2(m)(iii) of the Act has no application to the assessee's claim in this behalf and on any view 1/5th of the total demand was liable to be treated as a debt owed by her. The Tribunal accepted the assessee's claim and held that the liability was joint and several, but in its opinion each branch of the family was liable to the extent of 1/5th only. In its opinion if each of the five branches could, in their respective assessments, be allowed the deduction of the entire demand, it would lead to an absolutely illogical result. Thus, the claim of the assessee could be allowed to the extent of 1/5th only. However, this claim was hit by Section 2(m)(iii) of the Act and the assessee was not entitled to get any deduction on account of this liability.

10. It was urged before us on behalf of the assessee that Sub-clause (iii) of Clause (iii) of Section 2 of the Act is applicable only in regard to a person other than an assessee even though the assessee may be in law liable to discharge it. In the present case this Income Tax liability was outstanding against the HUF and not against the assessee. The assessee was certainly liable to pay it, but that would not attract the above provision. In our opinion, this contention does not have much substance. Section 3 of the Act provides a charge of wealth-tax. The

charge is leviable on three classes of assesseees :

- (a) Individual,
- (b) Hindu undivided family, and
- (c) Company (only for the years 1957-58, 1958-59 and 1959-60).

11. The charge is in respect of the net wealth of such assessee on the corresponding valuation date. The expression "net wealth" has been defined in Section 2(m), It reads :

"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 owed 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 Gift-tax 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."

12. Under this provision the net wealth is to be arrived at by finding out "the excess of the aggregate value of all the assets wherever located, belonging to the assessee on the valuation date and the aggregate value of all the debts owed by the assessee on such valuation date. In other words, the real tax base for the purposes of this Act is the total value computed in accordance with the provisions of this Act of all the assets minus the total value of all the debts. The word "debt" is not defined under the Act. Its scope and ambit, however, came up for consideration before the Supreme Court in *Kesoram Industries and Cotton Mills Ltd. Vs. Commissioner of Wealth Tax, (Central) Calcutta*, . It has been laid down that a debt owed within the meaning of Section 2(m) of the Act can be defined as a liability to pay in present or in future an ascertainable sum of money (p. 780). From this decision it comes out that the word "debt" is synonymous with liability. It has a comprehensive connotation so as to permit deduction in respect of all sums of money which justly and reasonably must be deducted in order to

ascertain the real net wealth for the levy of wealth-tax. However, the sub-clause of this Clause, "(m)", provides exceptions to this fundamental rule. The first sub-clause is linked with Section 6. Under that section a debt payable abroad by a non-citizen or by a person non-resident or not ordinarily resident is to be excluded in the computation of net wealth of such non-citizen or the person not resident, or not ordinarily resident. The second class of debts required to be left out of account consists of secured debts or which have been incurred in relation to any asset in respect of which wealth-tax is not chargeable under this Act. If certain assets are excluded from the computation of net wealth, then the debts relatable to such assets should also be left out of consideration. The third category provides for the exclusion order passed under or in pursuance of the stated Acts. There are two conditions which have to be satisfied before such a liability can be deducted. These conditions are contained in Sub-clauses (a) and (b) and if either of them is fulfilled, the deduction cannot be allowed. According to Sub-clause (a) if the sum in question is under dispute on the relevant valuation date by the assessee in an appeal, revision or other proceedings as not being payable by him, then such liability cannot be deducted. Sub-clause (b) provides that if the liability has been outstanding for a period of more than twelve months on the valuation date, then also it cannot be taken into consideration for purposes of deduction. It is evident that the purpose of this sub-clause is to force the assessee, after the assessment, to pay the tax within one year. If the assessee challenges the amount of tax assessed, by way of appeal, reference or revision, he cannot be allowed on the one hand, to take advantage of the tax levied on him and claim a deduction therefore from the value of his assets and at the same time deny his liability to pay the tax to the Department. Similarly, after assessment, he cannot be allowed to let the liability under the assessment outstanding for more than twelve months on the relevant valuation date and still claim deduction for it.

13. The brief analysis of the relevant provisions as given above would show that there is absolutely no justification for saying that Sub-clause (iii) refers only to a tax liability, outstanding against the assessee, or that it should be the assessee's own personal liability and it should not be the liability attached to property. There is absolutely no warrant for this sort of dichotomy. It is correct that in respect of a liability outstanding against an HUF, it can be enforced against the coparceners of the family to the extent of the family property in their hands. That does not mean that it is not the liability of each such member of the coparcenary. There is nothing in this provision to warrant the inference that the scope of Sub-clause (iii) is in any way limited as contended by the learned counsel.

14. Reliance was placed by the assessee's counsel on certain decisions, but we do not think that they help the assessee in any manner. As noted above, the scope and ambit of the expression "debt owed" occurring in this provision had come up for consideration in *Kesoram Industries and Cotton Mills Ltd. Vs. Commissioner of Wealth Tax, (Central) Calcutta*, and what was held was that the word "owe" means, to be under an obligation to pay; it did not really add to

the meaning of the word "debt". Further, the expression "debt owed" could be defined as the liability to pay in present or in future an ascertainable sum of money. This decision nowhere lays down that the scope of Sub-clause (iii) is in any way limited and confirmed to one's own personal liability.

15. The next case to which our attention was invited is that of Addl. ITO v. A. Thimmayya [1966] 55 ITR 666 (SC), where at p. 673 it was observed :

"Order recording the partition subsequent to the date on which the order of assessment was made must for reasons aforementioned be ignored and tax levied as if no such order was made. The effect of that step, however, is that in the absence of an order u/s 25A(1) and the consequential proceedings under Sub-section (2) liability to pay tax must rest upon the property of the Hindu undivided family; it cannot be enforced against the members of the family personally..... So long as the assessment is made of income of the Hindu undivided family, liability to satisfy the tax must be restricted to the estate of the family ; after an order of partition is recorded and assessment is made under Sub-section (2) of Section 25A but not till then, the proviso to that sub-section will operate."

16. We do not think that these observations help the present assessee. It is correct that the liability to satisfy the tax in respect of the assessment of income of an HUF has to be restricted to the estate of the family and it cannot be enforced against the members of the family personally. None the less, it is liability of an ascertained sum of money against the members of the family. The assessee in the present case had been claiming deduction of this entire liability on the basis that it was joint and several and we do not think that now she can be allowed to take a contradictory stand when it comes out that a deduction of that liability cannot be allowed because it had been outstanding for more than twelve months on the relevant valuation dates.

17. The last case on which reliance was placed is a decision of this court in Commissioner of Wealth Tax Vs. Padampat Singhania, . The question involved in that case was entirely different. There the assessee, an HUF, had an one-third share in a partnership. While computing the net wealth of the assessee, it was necessary to take into consideration the assessee's share in the wealth of the firm. In computing the net wealth of the firm the ITO ignored the arrears of Income Tax due by the firm. The AAC confirmed that order. The Appellate Tribunal held that the AAC wrongly held that Section 2(m) of the W.T. Act was applicable and, therefore, the outstanding Income Tax liability was deductible while computing the net wealth of the firm for determining the wealth of the assessee. On a reference this court confirmed the view taken by the Tribunal and held that in computing the net wealth of the assessee, any Income Tax liability outstanding against him may not be deducted u/s 2(m)(iii)(b) but the Income Tax liability of a firm, of which he was a partner, cannot be left out of consideration by virtue of the said provision. While determining the net wealth of the firm, not for the purpose of its assessment but for the purpose of finding out

an assessee's share in it, Sub-clauses (a) and (b) of Clause (iii) of Section 2(m) would not be applicable.

18. This decision supports the view which we have taken. It lays down that the provision contained in Clause (iii) of Section 2(m) is a special provision relating to liability on account of Income Tax, etc., which, though a debt in ordinary commercial sense, is not to be taken into consideration while determining the net wealth of an assessee. It has been observed (p. 421) :

"The idea of this provision obviously is to ensure that taxes are promptly paid by an assessee, otherwise he would be deprived of the benefit of their deduction while computing his net wealth. This provision obviously applies when computing the net wealth of an assessee."

19. Where, however, the net wealth of the firm is to be determined not for the purposes of its assessment, but for the purpose of finding out the value of the shares of the partners therein, then certainly Clause (iii) of Section 2(m) will not be applicable. We are, therefore, of the opinion that it has been rightly held by the Tribunal that in view of Sub-clauses (b) of Clause (iii) of Section 2(m) the assessee was not entitled to deduction of this liability.

20. Question No. 2 can be conveniently taken up with questions 4 and 5. As noted above, question No. 2 is about the extent of the Income Tax liability outstanding against the HUF of which deduction can be allowed to the assessee. In view of our finding that the assessee is not entitled to claim deduction of this liability because of Section 2(m)(iii)(b), a discussion of this aspect would be merely academic, but since questions 4 and 5 involve the same principle, we would touch upon this question as well. We may at this very place also mention that subsequently in respect of this Income Tax liability of the HUF, in pursuance of an agreement which took place between the assessee and the Department, a sum of Rs. 37,000 being approximately one-fifth of the demand was accepted by the Department from the assessee on May 24, 1974. In other words, that fact would go to show that the character of the liability that was joint and several came to an end when that agreement took place. However, this fact should not make any difference because we are concerned with the assessment years 1964-65 to 1971-72 and this agreement took place subsequent to those years.

21. The facts which have led to questions 4 and 5 may be given in brief. The assessee claimed deduction of a sum of Rs. 2,43,634 on account of decrees passed against the assessee's branch and Mohan Lal's branch. That amount consisted of Rs. 1,46,559 principal and Rs. 97,074 being interest calculated at the rate of four per cent, from September 9, 1935, to May 31, 1968. The AAC determined the total liability on account of this debt at Rs. 1,46,559 only for the reason that there was no evidence to show that the assessee had admitted its liability to pay any interest on those debts. It was not disputed by the AAC that the nature of the liability was joint and several, but in his opinion the assessee was entitled to a deduction of one-half of the aforesaid amount of Rs. 1,47,550

only. Apart from that the assessee had claimed deduction of Rs. 5,35,312 on account of a decree against the bigger HUF of M/s. Kishori Lal Mukundi Lal in favour of Calcutta parties. This amount as well consisted of Rs. 2,09,272 principal and Rs. 3,26,040 interest calculated at the rate of six per cent. from 1938 to 1964. According to the AAC the real liability was in respect of the principal amount only and he allowed deduction of one-fifth of the same. In respect of both these liabilities the Tribunal accepted the assessee's contention that the amount of interest should be included because that was awarded under orders of the court. It, however, agreed with the AAC in regard to the apportionment of the assessee's share in the said liabilities.

22. It was submitted before us on behalf of the assessee that the liabilities being joint and several, the assessee was entitled to claim deduction of the full amount thereof. The right to claim contribution from the other co-debtors will arise only when the debt is discharged. Merely because there is a right of contribution, in case the debt is discharged by one of the several debtors, it cannot be said that the entire amount due and payable has ceased to be a debt. Our attention was invited to a decision of the Bombay High Court in this connection in Commissioner of Wealth Tax, Bombay City-I Vs. Keshardeo S. Morarka, . It was laid down in that case that when a deduction in respect of a debt is claimed by an assessee, in computing as to what is the quantum of the debt that the particular assessee should be called upon to pay in law and if legally and validly he can be called to discharge the whole of the decretal debt, then it is a debt due by him for which deduction can be claimed in his wealth-tax return. In the case of joint and several liability a right of contribution will arise only if the debt was discharged and merely because there is a right of contribution in case the whole debt is discharged by the assessee, the entire amount due and payable does not cease to be a debt. We are in respectful agreement with these observations and in the present case disagreeing with the Tribunal we hold that the entire amount, that is, the two entire decretal amounts in respect of which the assessee was jointly and severally liable, are an admissible deduction in computing her net wealth. We do not think that there is any substance in the contention of the learned standing counsel that there is a difference between a debt and a liability. We have already shown above that the word debt is synonymous with liability and has a comprehensive connotation so as to permit deduction in respect of all sums of money which must be deducted in order to ascertain the net wealth for the levy of wealth-tax.

23. Now, coming to the question submitted with the supplementary statement, the brief facts are that in a partition suit this court had granted a decree for a sum of Rs. 5,52,027 in favour of late-Baijnath Prasad against the other branches of the family. One of those branches was known as the Calcutta branch and the other as Naini branch. The decree against the Calcutta branch was for a sum of Rs. 2,74,910 and against the Naini branch for Rs. 2,77,117. The claim of the assessee was that while computing her net wealth the value of this decree should be taken at nil because the judgment debtors had challenged the decree and

there was no hope of any recovery from them. That contention was repelled by the WTO as also by the AAC. The Appellate Tribunal as well took the same view. It found that the decree against the Naini branch was settled for Rs. 1,75,000 in November, 1974, and the amount was realised by the assessee. Similarly the decree against Calcutta branch was settled for Rs. 1,86,000 by means of a compromise dated 14-3-1976 and that amount as well was realised. The Appellate Tribunal hence instead of taking the face value of the decrees took into consideration the amounts at which they were ultimately settled.

24. On the facts found by the Appellate Tribunal we do not find that it can be said that it committed any error in treating the amount ultimately realised as the correct value of the decrees. The assessee at least has no occasion to raise any objection to it. It is only the Revenue which, if at all, could have had a grievance against it, but as noted above the reference 13 at the instance of the assessee.

25. We, therefore, answer the questions referred as under :

Question No. 1 : In the affirmative, in favour of the Revenue and against the assessee.

Question No. 2 : is academic and is returned unanswered.

Question No. 3 : In the affirmative, in favour of the Revenue and against the assessee.

Questions Nos. 4 and 5 : In the negative, in favour of the assessee and against the Department.

Question referred u/s 27(2) : In the affirmative, in favour of the Department and against the assessee.

26. In view of divided success, there will be no order as to costs.