
(1979) 12 KAR CK 0003
In the Karnataka High Court
Case No : Writ Petition No. 7210 of 1976

V.C. Handi

APPELLANT

Vs

Wealth Tax Officer, Bagalkot and Another

RESPONDENT

Date of Decision : 13-12-1979

Acts Referred:

Wealth Tax Act, 1957 — Section 16 (3), 2 (m), 2 (m) (ii), 25 (1)

Citation : (1980) 122 ITR 506

Hon'ble Judges : M.K. Srinivas Iyengar, J

Bench : Single Bench

Advocate : K. Srinivasan, for the Appellant; S.R. Rajasekharamurthy, for the Respondent

Judgement

Srinivasa Iyenger, J.—In this writ petition, the petitioner has challenged the order made by the Commissioner, Bangalore, rejecting part of the claim of the petitioner in a revision petition filed before him under s. 25(1) of the W.T. Act, 1957, in relation to the assessment to wealth-tax for the assessment year 1974-75. The order of the Commissioner is dated January 28, 1976, a copy of which has been filed as Ex. "C" in this writ petition.

2. The petitioner filed his return in the status of an HUF for the said year on February 18, 1975, and the WTO made an assessment on June 27, 1975, under s. 16(3) of the Act. In the course of the assessment, the petitioner claimed a deduction in regard to Income Tax and wealth-tax liabilities for the assessment years 1966-67 to 1974-75. He claimed the said liabilities as a debt outstanding due and that they were allowable as the assessments in that behalf were made only on June 27, 1975. The WTO, however, allowed deduction of only the wealth-tax liability for the previous year under consideration and disallowed the claim in regard to wealth-tax for the earlier assessment years as also the Income Tax liabilities. It is against this order that the petitioner filed a revision petition to the Commissioner praying that the wealth-tax liabilities of the earlier years as also the Income Tax liabilities were to be deducted in computing the net wealth of the

assessee for the relevant assessment year.

3. The Commissioner accepted the claim of the petitioner only in regard to Income Tax liabilities for the previous year, but did not accede to the prayer in regard to liabilities for the earlier years. It is this rejection of the claim that is challenged in this writ petition.

4. The Commissioner's order is based upon a reference to s. 2(m)(iii) of the Act. After referring to the said section, he observed as follows :

"Sub-clause (iii) to clause (m) has two limbs -

(i) the amount of tax, penalty or interest payable in consequence of any order passed under this Act or any other tax laws;

(ii) the amount of tax, penalty or interest payable in pursuance of this Act or under any tax laws.

It is clear from the words underlined that in order to attract the prohibition contained in Section 2(m)(iii), it is not necessary that there should be an order passed by the Wealth-tax Officer as a result of which the amount of tax, penalty or interest was payable. It is sufficient if the amount of tax, penalty or interest in Pursuance of this Act or under any tax laws are payable. In view of this specific clause in Section 2(m), the prohibition contained in that section is clearly applicable. I, therefore, hold that the Wealth-tax liabilities. The assessee is, however, entitled to deduction of Income Tax and wealth-tax liabilities only in respect of relevant assessment year....."

5. The contention for the petitioner is that the rejection of the claim is based upon a misconception of the provisions of law. It is contended that the Income Tax and wealth-tax liabilities were debts within the meaning of the expression in s. 2(m) and all such debts existing or outstanding due as at the relevant valuation date were to be deducted from the gross assets in order to arrive at the net wealth of the assessee and that such a liability or debt would not be deducted by virtue of sub-cl.(iii)(b) only if such liability was outstanding for a period of more than 12 months on the valuation date. It is urged for the petitioner that the exception made in sub-cl. (i), (ii) and (iii) were not at all attracted to the instant case.

6. The Supreme Court in the case of Kesoram Industries and Cotton Mills Ltd. Vs. Commissioner of Wealth Tax, (Central) Calcutta, held thus :

"A liability to pay Income Tax is a present liability though it becomes payable after it is quantified in accordance with ascertainable data. There is a perfected debt at any rate on the last day of the accounting year and not a contingent liability. The rate is always easily ascertainable. If the Finance Act is passed, it is rate fixed by that Act; if the Finance Act has not yet been passed, it is the rate proposed in the Finance Bill pending before Parliament or the rate in force in the preceding year, whichever is more favorable to the assessee. All the ingredients

of the "debt" are present. It is a present liability of an ascertainable amount."

7. It was, therefore, held that-"the provision for payment of Income Tax and super-tax in respect of the year of account was a debt owed within the meaning of s. 2(m) of the Wealth-tax Act, 1957, and as such deductible in computing the net wealth of the assessee."

8. From a discussion made in above judgment of the Supreme Court, it is clear that wealth-tax is chargeable on the net wealth and it has to be ascertained by an evaluation of all the assets as at the valuation date and deducting therefrom all the debts owed by the assessee as at the valuation date. All the debts which would include Income Tax and wealth-tax liabilities would have to be deducted from the gross assets in order to determine the net wealth. Section 2(m) itself makes an exception in regard to three items, namely :

"(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, the Expenditure-tax Act, 1957 or the Gift-tax Act, 1958, -

(a) which is outstanding on the valuation date and is claimed by the assessee in appeal, revision or other proceedings 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."

9. In the instant case, the assessee was not claiming that any amount of tax was not payable by him and sub-clause (iii)(a) was not attracted. The actual tax was ascertained only on June 27, 1975, when the assessments were made. Sub-clause (iii)(b) speaks of a debt liability outstanding for more than 12 months on the valuation date. A liability to Income Tax or wealth-tax would become outstanding only after an order of assessment is made. Only thereafter and after a notice of demand is served, the assessee is considered to be an assessee in default. The conclusion reached by the Commissioner appears to be based on a misconception. Though for purposes of allowing a deduction in regard to a liability which is not yet quantified, an order of assessment may not be necessary, in order to exclude such a liability from being deducted in terms of sub-clause (iii)(b), an order would be essential. Every such liability would have to be deducted unless that was outstanding for more than 12 months on the valuation date. That is the only exception made under sub-clause (iii)(b). In the instant case, the exception made under s. 2(m) of the Act was not attracted and the rejection of the claim by the Commissioner is untenable. This view finds

support from a decision of the High Court of Allahabad in Moti Lal Padampat Sugar Mills Co. (P.) Ltd. Vs. Commissioner of Wealth Tax, , where a provision made over three years was allowed as a deduction.

10. Accordingly, the rule is made absolute. The order of the Commissioner rejecting the claim or the petitioner for deduction of the Income Tax and wealth-tax liabilities earlier to assessment year 1974-75 is set aside with a direction that the Commissioner shall make a fresh order in the light of this judgment.

11. No costs.