(2007) 01 MAD CK 0180

In the Madras High Court

Case No : T.C. No. 26 of 2003

V.N. Damani APPELLANT

Vs

The Commissioner of Wealth Tax RESPONDENT

Date of Decision : 23-01-2007

Acts Referred:

Citation : (2008) 296 ITR 654

Hon'ble Judges : P.D. Dinakaran, J;Chitra Venkataraman, J

Bench : Division Bench

Advocate : N.Devanathan, for the Appellant; Pushya Sitaraman, for the Respondent

Judgement

Chitra Venkataraman, J

1. This tax case reference arises at the instance of the assessee under the Wealth Tax Act. This relates to the assessment year 1990-91. The question of law raised is as follows:

Whether on the facts and in the circumstances of the case the Appellate Tribunal is right in holding that the amount of Rs. 43,25,266/- received from the Coffee Board forms part of taxable net wealth of the applicant or not?.

2. It is stated that the assessee received a sum of Rs. 43,25,266/- from the Coffee Board being the refund of sales tax on the ground that no sales tax would be leviable on export sales. The assessee claimed that the said sum was not includable in the wealth tax since the amount would have to be deposited with the government if the decision went against the Coffee Board. The Assessing Authority however rejected the plea and included the same in the amount.

3. On appeal before the Commissioner, the claim of the assessee was rejected on the ground that the amount continued to remain with the assessee. Consequently, the assessment on the said sum was confirmed. On further appeal before the Tribunal, it affirmed the order of the Assessing Officer as confirmed by

the Commissioner of Income Tax. At the instance of the assessee, the present reference is made to this Court.

4. The Learned Counsel appearing for the assessee submitted that the amount returned to the assessee was kept in trust and that considering the undertaking by the assessee to refund the sum to the Coffee Board in the event of decision against the Coffee Board in the appeal against before the Supreme Court, the property thus loaded with a condition, would not be the property of the assessee, He contended that it would become the absolute property of the assessee only on the day when the undertaking was revoked. He further submitted that considering the undertaking given, the amount has to be excluded from the Wealth Tax Assessment.

5. The Learned Counsel appearing for the Revenue however supported the order of the Tribunal. He made a particular reference to the undertaking given by the assessee to show that the refund had been made by the Coffee Board in terms of the order passed by the Supreme Court, that the undertaking had been given by the assessee to keep the Coffee Board indemnified against future liability and that the assessee shall pay the amount on demand from the Board as and when the amount become so payable. The indemnity thus given does not in any way take the amount received by the assessee outside the scope of liability.

6. We agree with the submission made by the Learned Counsel for the Revenue . It is seen from the order passed by the Tribunal in the proceedings relating to the Income Tax Act that the liability at the hands of the assessee had been confirmed as regards the interest earned on the amount received as a refund. In the course of the order, the Tribunal has pointed out that even as on the date of the passing of the order by the Tribunal in the Income Tax proceedings, no action had been taken by the tax authorities to confirm the liability on the Coffee Board and had not credited the amount though refund was stated to be payable. The Tribunal also noted that the issue was concluded by the decision of the Supreme Court. In the circumstances, the Tribunal confirmed the order of the Commissioner of Income Tax Appeals.

7. Learned Counsel for the assessee could not controvert the statement recorded in the order. In the circumstances, we do not find any merit in the contention of the assessee to interfere with the order passed by the Tribunal. It may be noted that the order under the Wealth Tax itself was passed after considering the order passed in the proceedings taken in the Income Tax Act . The undertaking to return the amount subject to fulfillment of certain condition would not change the character of the receipt. Consequently, considering the treatment given and accepted by the assessee the question has to be answered against the assessee and in the affirmative. No costs.

