

Commissioner of Wealth-Tax (Central), Calcutta

Vs

Standard Vacuum Oil Co. Ltd.

Civil Appeals Nos. 627 and 628 of 1964

(K. Subba Rao, J. C. Shah, S. M. Sikri JJ)

25.10.1965

JUDGMENT

SIKRI J. –

Two questions were referred to the High Court by the Appellant Tribunal under section 27 of the Wealth-tax Act, 1957 (XXVII of 1957). We are only concerned with the second question which reads as follows :

"Whether, on the facts and in the circumstances of the case, in computing the net wealth of the assessee, the arrears of tax as determined as per notice under section 18A of the Indian Income-tax Act for the two assessment years under the section consideration constitute a debt owed by the assessee within the meaning of section 2(m) of Wealth-tax Act as on the valuation date ?"

The facts and circumstances of the case are as follows. Demands in respect of the payment of tax under section 18A of the Indian Income- tax Act, 1922, were made against the respondent-company, M/s. Standard Vacuum oil Co. Ltd., for the two years ending December 31, 1956, and December 31, 1957, by notice of demand dated May 28, 1956, and May 31, 1957, respectively. The final installment of the amount of Rs. 47,69,653 for each of the two years was outstanding on the respective valuation dates. The assessee claimed that the demand for such tax should be allowed be deduction in the net wealth of the assessee under the Wealth-tax Act. The Appellant Tribunal held that this sum should be deducted from the total computation of the wealth if the said amount was outstanding for less than a year. It further held that the demand created under section 18A of the Income-tax Act was a debt owed by the assessee, and it directed the Wealth-tax Officer to ascertain "whether the demand referred to in this case was outstanding

Mr. Viswanatha Sastri, learned counsel for the revenue, contents that on a interpretation of section 18A of amount which is payable under it is not an ascertain amount as the assessee can estimate the amount which he should pay as advanced tax. He says that the section contemplates more or less the opening of the running amount between the State the assessee and the exact amount is not finalised till the 15th of March each year, which is the last date by which the assessee has to exercise his option to pay the amount demanded or a lesser sum. He says that the debt really becomes a debt on the 15th March when no option is exercised to pay a lesser sum. In order to appreciated the contention of the learned counsel, it is necessary to consider the relevant statutory provisions, first of the Wealth-tax Act and then of the Income-tax Act. Section 2(m) of the Wealth-tax Act defines "net wealth" as follows :

"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 under section 6 are not to be taken into account; and

(ii) debts which are secured on, or which have been incurred in relation to any assets in respect of which wealth-tax is not payable under this Act."

Section 2(q) defines "valuation date" as "in relation to any year for which an assessment is to be made under this Act, means the last day of the previous year as defined in clause (11) of section 2 of the Income-tax Act if an assessment were to be made under that Act for that year". It is not necessary to set out the proviso to this definition. Section 3 is the charging section, which reads as follows :

"Subject to the other provisions contained in this Act there shall be charged for every financial year commencing on and from the first day of April, 1957, a tax (hereinafter referred to as wealth-tax) in respect of the net wealth on the corresponding valuation date or every individuals, Hindu undivided family and Company at the rate or rate specified in the Schedule."

The question with which we are concerned is whether the amount directed to be paid by the notice of demand dated May 28, 1956, and May 31, 1957, are debts "debts owed" by the assessee within the section 2(m) of the respective valuation dates. Now the notice of demand were issued under section 18A(1) of the Income-tax Act. The exact notices of demand which were issued are not on record, but the learned counsel drew our attention to the form of notice prescribed under the Act. Section 18A(1), inter alia, provides that the Income- tax Officer may "by order in writing, require an assessee to pay quarterly to the credit of the Central Government on the 15th day of June, 15th day of September, 15th day of December and 15th day of March in that year, respectively, and amount equal to one-quarter of the income-tax and super-tax payable on so much of such income as is included in his total income of the latest previous year in respect of which he has been assessed." It is not necessary to refer to the rate at which he

In our opinion, the High Court was right in answering the question in favour of the assessee. Section 18A(10) provides that if the assessee does not submit a revised estimate under sub-section (2) of section 18A, and he does not pay on the specified date any instalment of tax that he is required to pay under sub-section (1), he shall be deemed to be an assessee in default respect of such instalment or instalments, and if does submit, a revised estimate but does not pay an instalment in accordance therewith on the dates specified in sub- section (1), he shall be deemed to an assessee in default in respect of such instalment or instalments. Under sub-section (11) any sum paid or recovered from the assessee in pursuance of the provisions of section 18A is given credit towards the tax due in respect of the appropriate year. We cannot find any substantial difference between the advanced tax paid under the provisions of section 18A and tax due and paid under a demand notice passed after an assessment. The only diff

In the result, we agree with the Calcutta High Court that the answer to the question referred to it should be in favour of the assessee. The appeals, therefore, fail and are dismissed with costs; one set

of hearing fee.

Appeal dismissed.

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