

Commissioner of Wealth Tax, Madras

Vs

Spencer & Co. Ltd.

Civil Appeal Nos. 2275 and 2276 of 1969

(H. K. Hegde, P. Jagmohan Reddy, H. R. Khanna JJ)

10.11.1972

JUDGMENT

HEGDE, J. -

1. These appeals are by certificate. They arise from the consolidated judgment of the High Court of Judicature at Madras in a reference under Section 27(1) of the Wealth Tax Act, 1957 (hereinafter referred to as "the Act"). The question of law referred to the High Court was :

"Whether, on the facts and in the circumstances of the case, the Tribunal is right in holding that the claim of the assessee for the deduction of Rs. 31,26,000 was rightly rejected as coming under Section 2(m)(ii) of the Wealth Tax Act ?"

2. The Wealth Tax Officer, the Appellate Assistant Commissioner as well as the Income Tax Appellate Tribunal took the view that the amount of Rs. 31,26,000 mentioned in the question referred to the High Court was not a "debt" due from the assessee. The High Court differed from that view and answered the question referred to it in the negative and in favour of the assessee.

3. The facts of the case are not in dispute and they lie within a narrow compass. The assessee is a public limited company established with a view to carry on the business of merchants, store-keepers, commission agents, retailers, manufacturers, hotel-keepers and catering service. The assessee was mainly carrying on business in South India. There was another company known as M/s. G. F. Kellner & Co. (hereinafter referred to as "Kellners") which had a subscribed capital of Rs. 36 lakhs divided into 1,60,000, 7 1/2 cumulative preference shares of Rs. 10 each, and Rs. 2 lakhs equity shares of Rs. 10 each. The main activity of the Kellners was railway catering in Northern India. The respondent-company acquired 1,59,924 preference shares out of 1,60,000 preference shares issued by Kellners and 1,99,948 equity shares out of 2 lakhs ordinary shares issued by Kellners. The acquisition was done partly for cash and partly in lieu of shares of the assessee-company issued to the shareholders of Kellners. These shares were acquired sometime in 1929. In 1930 the assessee-company acquired all the assets of Kellners excepting those relating to the catering on the East Indian Railway, the Great Indian Peninsular Railway, and the Bengal and North Western Railway and its goodwill for a consideration of Rs. 31,26,000. Part of this consideration was to be paid in cash on demand by Kellners. One of the terms of the agreement was as under :

"If while the said Rs. 31,26,000 mentioned in clause (2) or any part thereof remains unpaid G. F. Kellner and Company Ltd. shall propose to go into voluntary liquidation any special resolution submitted to shareholders for that purpose by the board of directors shall provide that this company instead of paying to the liquidators the said Rs. 31,26,000 or the unpaid part thereof in cash, shall be entitled to surrender to the liquidators any share of G. F. Kellner and Company Ltd. held by them and thereby set off or reduce the said indebtedness by Rs. 10 in respect of each preference share so surrendered and by 1,526/2,000 of Rs. 10 in respect of each ordinary share so surrendered."

4. Later on they acquired all the assets of the Kellners subject to these conditions.

5. The question for decision is whether Rs. 31,26,000 mentioned above is a "debt" due from the assessee within the meaning of Section 2(m)(ii) of the Act. There is no dispute that the Kellners is a legal entity by itself. It is true that the

assessee had a controlling interest in Kellners but that does not, in law, make Kellners a part of the assessee-company. The Kellners and the assessee-company are two different legal entities. It was alleged by the assessee and not denied by the revenue that Kellners have been assessed to wealth-tax in the relevant accounting periods and in computing its net wealth the debt of Rs. 31,26,000 due to it by the assessee was taken into consideration. It is also not denied that in respect of the assets purchased by the assessee from Kellners the assessee had not paid a part of the consideration, i.e., Rs. 31,26,000. Prima facie that part of the consideration is a debt due from the assessee to the Kellners. The fact that under certain circumstances the assessee, instead of paying back the debt in cash, could discharge the same by transfer of shares, as provided in the resolution quoted above, does not change the character of the liability. The mode of discharging a liability does not change its true character. It is also not denied that the assets purchased by the assessee from Kellners had been taken into account in computing the net wealth of the assessee.

6. The contention of Mr. A. N. Kirpal, the learned counsel for the revenue, that because the assessee had a controlling interest in Kellners, its liability ceased to be "debt" is unsustainable in law. As mentioned earlier, the two companies are different legal entities. Whatever control the assessee may have had over Kellners, the Kellners continued to be a separate legal entity.

7. We see no merit in these appeals. In our opinion the High Court was right in coming to the conclusion that Rs. 31,26,000, mentioned in the question referred to the High Court, is a "debt" due from the assessee-company.

8. In the result these appeals fail and they are dismissed with costs. One hearing fee.

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