

The Burma Oil Co. (I) Trading Ltd., Calcutta

Vs

The Commissioner of Wealth Tax (Central), Calcutta

Civil Appeal No. 71 of 1972

(H.R. Khanna, V.R. Krishna Iyer JJ)

01.12.1976

JUDGMENT

KHANNA, J. –

1. This appeal on certificate is against the judgment of the Calcutta High Court whereby the High Court answered the following question referred to it under Section 27 of the Wealth Tax Act in favour of the revenue and against the assessee-appellant :

Whether on the facts and in the circumstances of the case, the provision of Rs. 49,19,520 made by the assessee for its tax liability less the amount of the last installment of advance tax constituted a debt owed by the assessee within the meaning of clause (m) of Section 2 of the Wealth Tax Act on the relevant valuation date ?

2. The matter relates to the assessment year 1958-59, the relevant valuation date for which was December 31, 1957. A sum of Rs. 49,19,520 was provided for in the books of the appellant for the discharge of its tax liabilities. The appellant claimed the amount as a deduction in the computation of the net wealth. The claim was disallowed by the Wealth Tax Officer, the Appellate Assistant Commissioner of Wealth Tax and the Tribunal. On an application filed by the appellant, the tribunal referred the question reproduced above to the High Court.

3. The High Court, while answering the question in favour of the revenue and against the assessee-appellant, relied upon its earlier decision in the case of Assam Oil Co. Ltd. v. Commissioner of Wealth Tax, Central Calcutta [(1963) 48 ITR 49 (Cal)].

4. The decision in the case of Assam Oil Co. Ltd. relied upon by the High Court was reversed on appeal by this Court. Naturally therefore at the hearing of the appeal, Mr. Ramachandran, learned counsel for the appellant, has drawn our attention to that decision of this Court in the case of Assam Oil Co. v. Commissioner of Wealth Tax, Central Calcutta [(1969) 60 ITR 267 (SC)]. It was held in that case by majority that the amount set apart by the appellant-company in its balance-sheet as on December 31, 1956 as an estimated provision for meeting its tax liability, less the last installment of the demand of the advance tax, was a debt owed by the appellant company on December 31, 1956, the relevant valuation date, within the meaning of Section 2(m) of the Wealth Tax Act, 1957, and was deductible in computing its net wealth as on that date. Following that decision, we are of the view that the answer to the question referred by the tribunal to the High Court should be in the affirmative in favour of the assessee-appellant and against the revenue. Mr. Ahuja submits that the view taken by the majority in the case of Assam Oil Co. Ltd. needs reconsideration. This Bench,

however, in bound by that decision Following that decision, we accept the appeal, set aside the judgment of the High Court and answer the question referred by the tribunal in the affirmative in favour of the assessee-appellant and against the revenue. The parties in the circumstances shall bear their own costs of this Court as well as of the High Court.

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