

The Commissioner of Wealth Tax, Mysore

Vs

Her Highness Vijayaba, Dowger Maharani Saheb of Bhavnagar Palace, Bhavnagar and Others

Civil Appeal Nos. 2170-2172 of 1972

(N. L. Untwalial, R. S. Pathak JJ)

09.03.1979

JUDGMENT

UNTWALIA, J. –

1. These are three appeals by special leave filed by the Commissioner of Wealth Tax, Mysore from the judgment of the Mysore (now Karnataka) High Court. The assessee is the Dowger Maharani of Gondal. Her husband, His Highness Bhojrajji Maharaja Saheb of Gondal, died intestate on July 31, 1952 leaving considerable moveable and immoveable properties. Certain disputes and differences arose after his death between his two sons namely Maharaja Vikramsinghji and his younger brother Shivaraj Singhji in respect of the assets left by the late Maharaja Saheb. The younger brother was contemplating legal proceedings against his elder brother. Their mother intervened. The idea of litigation, thereupon, was dropped because the assessee gave a letter dated May 14, 1953 to Shivaraj Singhji stating therein :

Your father had expressed in the presence of many people that he will give you rupees fifty lakhs. To keep up his words and promise and also that I should get peace of mind I am writing to you that if your brother Vikramsinghji, Maharaja of Gondal does not give you the full amount, then you must get the balance of amount from me. That is my sincere desire. I will also press Vikram that he should give you the amount of rupees fifty lakhs.

2. Vikramsinghji paid only Rs. 20,00,000 to Shivaraj Singhji. The latter, therefore, claimed the balance amount of Rs. 30,00,000 from the assessee on the basis of her letter dated May 14, 1953. On or about September 12, 1959, pursuant to her commitment made in the letter aforesaid, the assessee transferred War Stock valued at Rs. 11,00,000 to Shivaraj Singhji and also agreed to hand over certain ornaments in full settlement of his claim. The ornaments were however not given. That led to disputes between the mother and the son but eventually they were also settled on February 22, 1962 which settlement was evidenced by a document setting out all the relevant facts of the history of the dispute. By virtue of this settlement a sum of Rs. 10,00,000 was paid by the assessee to Shivaraj Singhji.

3. The assessee's wealth was assessed to wealth-tax under the Wealth Tax Act, 1957 for the three assessment years in question, viz. 1960-61, 1961-62 and 1962-63. The corresponding valuation dates of the said assessment years are December 31, 1959, December 31, 1960 and December 31, 1961. It would be noticed that the assessee, under the arrangement arrived at between the parties became liable to pay the balance of the amount of Rs. 30,00,000 to Shivaraj Singhji as Vikramsinghji out of the sum of Rs. 50,00,000 mentioned in the letter dated May 14, 1953, paid

only Rs. 20,00,000. The assessee succeeded in wiping off her liability to the extent of Rs. 11,00,000 on September 12, 1959 by transfer of War Stock. The balance of the liability, i.e. Rs. 19,00,000 remained due and continued to be due on all the three valuation dates aforesaid. It could be wiped off by a further settlement only in February, 1962. In respect of the three assessment years in question, however, a question arose as to whether while assessing the net wealth of the assessee within the meaning of clause (m) of Section 2 of the Wealth-Tax Act the said sum of Rs. 19,00,000 was to be deducted. The Wealth-Tax Tribunal held in favour of the assessee. At the instance of the Revenue for all the three years a common question of law was referred to the High Court for its opinion. The questions being in identical terms it would suffice to quote the question with respect to the assessment year 1960-61. It reads as follows :

Whether on the facts and circumstances of the case, the sum of Rs. 19 lakhs could constitute a debt owed by the assessee and deductible under the Wealth-Tax Act from the value of the total assets as on December 31, 1959 ?

The High Court has answered the question in the affirmative, in favour of the assessee and against the department. Hence this appeal.

4. Mr. Ahuja appearing in support of the appeal contended that by the letter dated May 14, 1953 no debt was created as the undertaking given by the assessee to her son agreeing to pay the deficit in respect of Rs. 50,00,000 on his elder brother's failure to pay any portion of the sum was an agreement without consideration and hence under Section 25 of the Contract Act it was void and was not saved by any of the exceptions mentioned therein. He, therefore, contended that it was not an enforceable liability on any of the valuation dates and could not be deducted from the valuation of the assessee's wealth. In our opinion the argument is not sound. Taking the totality of the facts as found by the Tribunal and mentioned in the impugned judgment of the High Court it was a case of family settlement or family arrangement which is binding on the parties concerned. The assessee agreed to purchase peace for the family, and to pay to her son the amount which fell short of Rs. 50,00,000 if her elder son did not pay any portion thereof. It is well established that such a consideration is a good consideration which brings about an enforceable agreement between the parties. Section 25 of the Contract Act does not hit this.

5. It may be further pointed out that even if it be held that the letter dated May 14, 1953 had not the effect of bringing about the family arrangement and any binding agreement between the parties, their subsequent conduct up to September 12, 1959 brought about a concluded family arrangement. Vikramsinghji paid Rs. 20,00,000. Out of the balance of Rs. 30,00,000 the assessee discharged her liabilities to the extent of Rs. 11,00,000 and reiterated her obligation to pay the balance of Rs. 19,00,000 in the shape of ornaments. That was not honoured. Shivaraj Singhji had a right to enforce the family arrangement against his mother, as arrived at partly in writing and partly orally as evidenced by the conduct of the parties. The assessee would have been bound to pay Rs. 19,00,000 if a suit had been filed against her by Shivaraj Singhji as he had refrained from going to the law court against his brother on her bringing about the family arrangement.

6. Mr. Ahuja then submitted that at best the undertaking given by the assessee in her letter dated May 14, 1953 was a contingent contract within the meaning of Section 31 of the Contract Act. Even so, under Section 32 such a contract becomes enforceable by law when the future event contemplated in the contingent contract has happened. In this case the contingency was the liability of the mother to pay a certain sum of money on the failure by her elder son to pay Rs. 50,00,000 or any part thereof. This did happen sometime between May 14, 1953 and September 12, 1959. In that

view of the matter, if not earlier, the liability of the mother became enforceable by law on the latter date.

7. Learned Counsel for the appellant cited three decisions of this Court to support his argument, viz. Kesoram Industries and Cotton Mills Ltd. v. C. W. T. (59 ITR 767 : (1966) 2 SCR 688 : AIR 1966 SC 1370); Standard Mills Co. Ltd. v. C. W. T. (63 ITR 470 : (1967) 1 SCR 768 : AIR 1967 SC 595) and Bombay Dyeing and Manufacturing Co. Ltd. v. C. W. T. (93 ITR 603 : AIR 1975 SC 756 : (1974) 1 SCJ 215). None of them is quite apposite on the point at issue before us. In the case of Kesoram Industries it was held that "debt owed" within the meaning of Section 2(m) of the Wealth-tax Act, 1957 could be defined as the liability to pay in presenti or in futuro an ascertainable sum of money. It was held that a liability to pay income-tax was a present liability though the tax became payable after it was quantified in accordance with ascertainable data. Subba Rao, J., as he then was, delivering the majority opinion said at page 780 :

The said decisions also accept the legal position that a liability depending upon a contingency is not a debt in presenti or in futuro till the contingency happened. But if there is a debt the fact that the amount is to be ascertained does not make it any the less a debt if the liability is certain and what remains is only the quantification of the amount. In short, a debt owed within the meaning of Section 2(m) of the Wealth-tax Act can be defined as a liability to pay in presenti or in futuro an ascertainable sum of money.

The other two decisions of this Court were concerned with the question as to whether the liability of the assessee to pay gratuity to its employees on determination of employment was a mere contingent liability which arose only when the employment of the employee was determined by death, incapacity, retirement or resignation and whether it could be deducted as a debt in computing the net wealth of the assessee. The answer given was against the assessee. In the present case we have held that the liability of the assessee was created by the family arrangement arrived at between the parties and even if it was a contingent liability the contingency did happen and the assessee became liable to pay the amount as a debt before September 12, 1959, which is anterior to the relevant valuation dates. The sum of Rs. 19,00,000 was a subsisting debt on the said valuation dates.

8. For the reasons stated above, we hold that there is no merit in these appeals. They are accordingly dismissed with costs.

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