SUPREME COURT OF INDIA

R. K. Deo

Vs.

Commissioner of Wealth-Tax, Orissa

C.A.Nos.788-791

(R. M. Sahai and Dr. A. S. Anand JJ.)

12.05.1992

JUDGEMENT

R.M. SAHAI J.:-

1. These appeals are directed against order of the Orissa High Court which decided the Wealth Tax Reference under S. 27(1) of the Wealth-tax Act, 1957 in favour of the department. The assessment years in dispute are 1962-63, 1963-64, 1964-65 and 1965-66. The question of law referred to the High Court was:

"Whether on the facts and in the circumstances of the case, the claim of the assessee for deduction of the tax liability amounting to Rs. 6,69,766/ - in computing the net wealth in four wealth-tax assessments is admissible under the provisions of the Wealth-tax Act."

2. According to the statement of case the appellant, erstwhile Raja of Jeypore, owner of extensive

forests, prior to abolition of estate in 1953, was assessed to income-tax, on forest income, for assessment years 1942-43 to 1946-47 to an aggregate of Rupees 6,69,766/-. Validity of the levy, was decided ultimately, by the High Court in reference under S. 66 of the Income-tax Act 1922 (in brief 'the Act') in Vikram Deo Varma, Maharaja of Jeypore v. Commr. of Income-tax, Bihar and Orissa, (1956) 29 ITR 76: (AIR 1955 Orissa 185), and it was held that the income being from agriculture was not exigible to tax. On further appeal to this Court, at the instance of the department, the order of the High Court was set aside on 14th October 1958 and the assessee was held liable to pay tax on the forest income, in conformity with the order, passed by this Court, the tribunal passed the order under S. 66(5) read with S. 66A(4) of the Act after 30th June 1964. In pursuance of this order the Income-tax Officer issued fresh notice of demand on 4th October 1964 and the amount was paid on 25th March 1965. In wealth-tax assessments for the years 1962-63 to 1965-66 the assessee disputed his liability in view of the judgment given by this Court in 1958 and claimed that it being a debt within meaning of sub-sec. (m) of S. 2 of the Wealth-tax Act the amount was liable to be deducted while computing his net wealth. The Wealth-tax Officer did not allow the claim as the tax payable remained outstanding for more than twelve months on the valuation date. The Appellate Assistant Commissioner allowed the appeals as the liability was created by the judgment of this Court which was discharged in 1965, therefore, the assessee was held entitled to claim its deduction for determination of the net wealth in the assessment years in dispute. On further appeal, at the instance of the department, the order of the appellate authority was set aside by the tribunal and it was held,

"The decision of the Supreme Court was only to declare the correct state of law, applicable to the income disputed by the assessee in appeal and not to create, for the first time, a liability to tax on such income. The demands in respect of the amounts in question were admittedly created as a result of assessment of such income and the assessee has been claiming in appeal and further in reference proceedings that the same was not payable by him. The demands were also admittedly outstanding for more than 12 months if the period is computed from the date of original demand notices pertaining to assessments made."

The finding was affirmed by the High Court and it was held that the amount was not deductible while computing the net wealth of the assessee.

3. That an income-tax liability is a debt within meaning of S. 2(m) of the Act is settled by series of decisions of this Court beginning from Kesoram Industries and Cotton Mills Ltd. v. Commr. of Wealth-tax (Central), Calcutta, (1966) 59 ITR 767 : (AIR 1966 SC 1370). In Commr. of Wealth-tax, Gujarat v. Kantilal Manilal, (1985) 152 ITR 447: (AIR 1985 SC 924) (SC) this Court approved the decisions of Privy Council in Doorga Prasad v. Secretary of State, (1945) 13 ITR 285 (AIR 1945 PC 62), that an income-tax liability becomes a debt when payment of the tax is demanded by a notice issued u/S. 29 of the Act. The question, therefore, that requires consideration is if the High Court was right in its conclusion that even though the amount was debt it could not be deducted while determining the net wealth as either the payability of tax was in dispute on the valuation date or the demand had remained unpaid for more than 12 months on the valuation date. To examine the correctness of it S. 2(m) of the Wealth-tax Act is extracted below:

"'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 S. 6 are not to be taken into account;

(ii) debts which are secured on, or which have been incurred in relation to, any property in respect of which wealth-tax is not chargeable under this Act; and

(iii) the amount of the tax, penalty or interest payable in consequence of any order passed under or in pursuance of this Act or any law relating to taxation of income or profits, or the Estate Duty Act, 1953 (34 of 1953), the Expenditure-tax Act, 1957 (29 of 1957), or the Gift-tax Act, 1958 (18 of 1958),-

(a) which is outstanding on the valuation date and is claimed by the assessee in appeal, revision or other proceeding as not being payable by him, or

(b) which, although not claimed by the assessee as not being payable by him, is nevertheless outstanding for a period of more than twelve months on the valuation date."

4. The net wealth according to subsection (m) of S. 2 is aggregate value computed in accordance with the provisions of the Act less the value of all the debts owed by the assessee. Since income-tax liability is a debt the assessee was entitled to claim its deduction from the aggregate value to arrive at the net wealth. But the deduction of debt was permissible, only, if it did not fall in one of the sub-clauses mentioned in caluse (iii). Relevant date for operation of either clause was the valuation date. Clause (a) was construed in Commr of Wealth-tax v. Kantilal Manilal (AIR 1985 SC 924) (supra) and it was held that in order to invoke the bar prescribed by Ss. 2(m), 3(a) it was necessary for the department to establish that both the requirements were satisfied, that is, the amount of tax was outstanding on the valuation date and further that it was claimed by the assessee in appeal, revision or any other proceeding as not being payable by him. The valuation dates for the assessment years in dispute were 30th June 1961, 1962,1963,1964 respectively. Since the amount had not been paid by the assessee it was outstanding on the valuation date but on these dates no appeal, revision or any other proceeding was pending in which the assessee had claimed that the amount was not payable by him. On plain reading of the provisions it is doubtful if the appellant could be precluded from claiming deduction of the income-tax dues under sub-cl. (a). To this extent the order of the High

Court and the tribunal do not appear to be well founded. To support the order of the High Court the learned counsel for the department urged that the proceedings which had been started by the appellant by way of reference before the High Court did not come to an end in 1958 by the order passed by this Court in appeal filed by the department as the order passed in advisory jurisdiction either by the High Court or in appeal by this Court could become final only when the tribunal passed the order in conformity with the order passed by this Court. Since admittedly the order under S. 66(5) of the Act was passed in October 1964 the proceedings initiated at the instance of appellant shall be deemed to have been pending till then. In our opinion it appears unnecessary to express any opinion on the nature of reference proceedings and whether the appeal filed by the department should be deemed to be continuation of the claim that the tax was not payable by the appellant for purposes of sub-cl. (a) as once the question of law, was decided against the appellant by this Court in 1958, may be in appeal filed by the department, the appellant's claim that the amount was not payable by him stood finally adjudicated. Nothing more remained to be decided. The order of the tribunal, in conformity with the order passed by this Court, could be relevant for the department, only, to enable it to proceed to realise the amount. It could not stand as bar to the claim of the appellant under S. 2(m) by operation of sub-clause (a) of clause (iii).

5. For operation of sub-clause (b) the revenue had to establish that the amount remained outstanding for a period of more than 12 months on the valuation date. In Commr. of Wealth-tax v. Kantilal Manilal : (AIR 1985 SC 924) (supra) it was held that an amount becomes outstanding after it had been quantified. The liability under the Income-tax Act arises in the previous year corresponding to the assessment year and it becomes due as held in Kesoram's case (AIR 1966 SC 1370) after it had been, 'quantified in accordance with ascertainable data. The liability of the assessee was determined by the Income-tax Officer and a demand notice was also served on him. The amount thus became due and payable and if the period of 12 months is calculated from this date the amount, obviously, emained outstanding for a period of more than 12 months on the valuation date. But the learned counsel for the appellant urged that on facts of this case the department cannot succeed on this ground. He urged that the High Court having answered the reference in favour of the appellant the quantification stood set aside and the period could be counted from the date fresh notice of demand was served by the Income-tax Officer in 1964. The submission ignores that once proceedings became final and the law was declared by this Court and it was held that forest income was taxable then the liability to pay the amount shall be deemed to have existed from the date the demand was created by the Income-tax Officer. Therefore, the tax payable for which a notice of demand had been served on the assessee but it had not been paid because of pendency of appeal, revision or other proceedings, became payable and since it remained outstanding for a period of more than 12 months on the valuation date bar under clause (b), in our opinion, applied squarely. Reliance was placed by the learned counsel for appellant on Commr. of Wealth-tax, Gujarat v. Vimlaben Vadilal Mehta, (1984) 145 ITR 11 : (AIR 1984 SC 302)and it was urged that the liability of the appellant crystallised on the last day of the previous year and it became a debt but it having been quantified in October 1964 when Income-tax Officer issued fresh notice of demand the period of 12 months was liable to be counted from this date. We do not think that this decision can be applied in the manner as argued by learned counsel for appellant. The jurisdiction exercised by the High Court under S. 66 or by the Supreme Court in an appeal against that order was only advisory. There would have been some substance in the submission of the learned counsel if the tribunal would have passed the order under S. 66 in conformity with the opinion given by the High Court that the assessee was not liable to pay any tax on the forest income. That may have resulted in wiping off the demand created initially by the Income-tax Officer. But the High Court found and it was not disputed that no order

was passed by it before the law was declared by this Court in 1958. The original demand thus remained outstanding and became operative after the decision of this Court. Reliance was also placed on Commr. of Wealth-tax v. Vadilal Lallubhai (1984) 145 ITR 7 : (AIR 1984 SC 157) and it was urged that in computing the net wealth of assessee the deductions admissible must be calculated on the basis of the tax as finally quantified even though the assessment may have been made subsequent to the valuation date. It was urged that even assuming that the liability arose from the order passed by this Court in 1958 it having been finally quantified after the order was passed by the tribunal the period of 12 months should be calculated from that date. The facts of the case were entirely different. In Vadilal's case the question was whether deduction could be claimed on basis of estimated liabilities mentioned in the return or the amount which is finally determined at the final assessment. It was held that it was not possible to accept the claim of the department that the net wealth for purposes of S. 2(m) was the tax liability disclosed by an assessee in his return. What could be deducted was the liability ultimately determined as payable. In the case of appellant quantification had already been done. If the order of this Court would have necessitated variation in it, as happened in Commr. of Wealth-tax v. Vimlaben Vadilal Mehta (AIR 1984 SC 302) (supra) something could be said in favour of appellant. From the decision in Commr. of Wealth-tax, Madras v. K.S.N. Bhatt (1984) 145 ITR 1 : (AIR 1984 SC 495) it is clear that payability of tax for purposes of clauses (a) and (b) is dependent on liability to pay. If the liability goes then the amount ceases to be debt even if the determination of liability takes place after the valuation date. In appellant's case liability stood determined finally in 1958 therefore the payability of tax started operating from this date and the period of 12 months could be calculated from this date and not from October, 1964. The decision in Ahmed Ibrahim Sahigra Dhoraji v. Commr. of Wealth-tax, Gujarat (1981) 3 SCC 77 : (AIR 1981 SC 1562) is also not of any help, to the appellant, as the amount payable by the appellant was, undoubtedly, a debt owed by him on the valuation dates. But the appellant could claim its deduction only if the revenue failed to show that it was not outstanding for more than 12 months on the valuation date.

6. There is yet another reason why the claim of the department that the bar of sub-clause (b) operated appears to be well founded. Sub-section (7) of S. 66 of the Act reads as under

"(7) Notwithstanding that a reference has been made under this section to the High Court, income-tax shall be payable in accordance with the assessment made in the case:

Provided that, if the amount of an assessment is reduced as a result of such reference, the amount overpaid shall be refunded with such interest as the Commissioner may allow unless the High Court, on intimation given by the Commissioner within thirty days of the receipt of the result of such reference that he intends to ask for leave to appeal to the Supreme Court makes an order authorising the Commissioner to postpone payment of such refund until the disposal of the appeal to the Supreme Court."

7. The appellant was, therefore, bound to pay the tax assessed irrespective of whether he had filed a

reference or not. This, admittedly, was not done by the assessee, and the amount remained outstanding throughout the period the reference was pending in the High Court. Effect of answering the reference in favour of assessee was that he could claim refund. But that occasion could arise only if order under S. 66(5) was passed by the High Court. But before that the correctness of the order was challenged by the department by filing an appeal in this Court which was allowed and liability of the appellant to pay tax was upheld. The tax assessed thus remained unpaid during pendency of the reference in High Court, and during pendency of the appeal in this Court and it was paid only in March 1965. Effect of non-payment of tax under sub-sec. (7) of S. 66 was that the tax payable became outstanding by operation of law and it remained so on the valuation date. Therefore, the bar of sub-clause (b) of clause (iii) of Section 2(m) operated and the appellant could not claim the amount as deductible while computing his net wealth. It was outstanding on the valuation dates for more than 12 months whether the period is calculated from service of notice of demand in pursuance of assessment order or from the final determination of liability by the order passed by this Court in 1958 or because of operation of sub-sec. (7) of S. 66 of the Act. On the facts of this case it could not be calculated from October, 1964 when the notice of demand was served by the Income-tax Officer in pursuance of the order passed by the tribunal.

8. For these reasons the High Court rightly held that the amount of Rs. 6,69,766/- was not admissible as deduction while computing the net wealth of the appellant under the Wealth-tax Act in assessment years 1962-63 to 1965-66. The appeals, accordingly, fail and are dismissed with costs.

Appeals dismissed.