

Commissioner of Wealth Tax, T. N. -III, Madras

Vs

T. S. Sundaram, Madras

Tax Reference Case No. 5 of 1982

(J. S. Verma, S. P. Bharucha, Sujata V. Manohar JJ)

23.01.1996

ORDER

1. This is a reference made by the Tribunal under Section 27(3-A) of the Wealth Tax Act, 1957 to answer the following question of law namely :

"Whether, on the facts and in the circumstances of the case, in computing the net wealth of a firm under Rule 2 of the Wealth Tax Rules, assets exempt under Section 5 should be excluded, or whether such assets also should be included therein and then apportioned among the partners for granting exemption in their individual assessments after computing their own individual net wealth ?"

The occasion for such a reference was the conflicting view taken on this point by the Karnataka and the Patna High Courts.

2. The relevant assessment year is 1975-76 corresponding to the valuation date 31-3-1975. The assessee-HUF had an interest in the firm called M/s Properties Development Syndicate through its Karta who is the partner of the firm. The assessee returned the balance in the capital account with the firm at Rs 1,25,000 and claimed deduction of Rs 75,000 being share in fixed deposit and agricultural lands held by the firm under Sections 5(1)(xxvi) and 5(1)(iv-a) respectively of the Wealth Tax Act. The Wealth Tax Officer rejected the claim for exemption on the ground that the firm was not a separate entity and the exemption under Section 5(1) could be claimed only if the assets were owned by the assessee. On appeal, the Appellate Assistant Commissioner allowed the claim and directed that the benefit had to go to the partner who was the assessee. The appeal of the Revenue was allowed by the Tribunal and the following direction was given :

"In the circumstances, we set aside the order of both the authorities below and restore the matter to the Wealth Tax Officer. He shall first determine the net wealth of the firm including in it the net value of the exemption assets (i.e., after setting off the secured liability against the value of the exempted assets on which such debts are secured). He shall allocate the net wealth of the firm among the partners in accordance with Rule 2. When allocating the share of each partner, he shall also indicate the nature of the assets and liabilities allotted to the share of a particular partner. He shall then compute the net wealth of the assessee-partner by taking into account all his assets and liabilities including the share allotted to him as provided in Section 2(m). Thereafter, he shall give deductions in respect of the assets exempted under Section 5 to the extent to which the assessee is entitled to such exemption. The balance will be the taxable net wealth of the assessee on which the wealth tax will be

imposed. We direct the Wealth Tax Officer to redo the assessment accordingly."

At the instance of the Revenue, the above-quoted question of law has been referred directly for decision by this Court under Section 27(3-A) of the Act.

3. Having heard learned counsel, we are of the opinion that the view taken by the Tribunal is correct. In the statement of the case, the Tribunal has stated the correct position as under :

"The third case would be one in which the claim for exemption is to be considered only in the hands of the assessee both in respect of the assessee's own assets as well as the assets of the firm in which he has an interest. The Appellate Tribunal found that Rule 2 of the Wealth Tax Rules was designed to achieve this result since the Act itself required that the assets of the firm should be apportioned among the partners as if there was a dissolution on the valuation date. The detailed reasons for coming to the conclusion that the interest in each asset and liability of the firm had to be ascertained and apportioned among the partners for the purposes of inclusion in their net wealth are given in paras 8 to 12 of the order of the Appellate Tribunal and it is respectfully submitted that those paragraphs may be read as part of the statement of the case. Briefly, Section 4(1)(b) provided that where the assessee is a partner in a firm, the value of his interest in the firm determined in the prescribed manner shall be included in computing the net wealth of the individual. Sub-section (2) states that in making such rules, the Board shall have regard to the law for the time being in force relating to the manner in which the accounts are to be settled between the partners of the firm on the dissolution of a firm. Rule 2 which has been made by the Board under Section 4(1)(b) provides for the valuation of interest in a partnership by stating that the net wealth of the firm so assessed be determined and then apportioned among the partners. The first question that arose was whether the expression 'net wealth' would mean the determination of the net wealth after deducting the exemptions available under the Act. Though the word 'net wealth' was not defined in the Rules, Rule 1-A(m) states that all words and expressions not defined in Rule 2 have the same meaning assigned to them in the Act and it had also been held by the Madras High Court in the case of Vasantha [CWT v. Vasantha, (1973) 87 ITR 17 (Mad)] that the word 'net wealth' in Rule 2 has to be understood according to the definition given in Section 2(m) of the Act. The definition stated that 'net wealth' means the amount by which the aggregate value computed in accordance with the provisions of the Act of all the assets belonging to the assessee is in excess of the aggregate value of the debt owned by the assessee on the valuation date.

Thus, the expression 'net wealth' had to include assets exempt under Section 5 since they were otherwise taxable unlike certain things which are excluded from the definition of 'assets' under Section 2(m) of the Act. This led to the result that the net wealth of the firm determined in accordance with the Rules had to include also the assets which may be exempt under Section 5 and all the assets and liabilities had to be apportioned and allocated by the partners. It followed that the exemption under Section 5 could be given only after determining the net wealth of the individual partner in the same manner and the problem was, thus, solved by the very definition of 'net wealth' on the application of the principle laid down by the Supreme Court.

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Thus, there are two conflicting opinions, one by the Karnataka High Court in the case of Christine Cardoza [CWT v. Christine Cardoza (1978) 114 ITR 532 (Kant)] holding that the exemption can be given only in the hands of the individual partner and the other by the Patna High Court in the case of Nand Lal Jalan [CWT v. Nand Lal Jalan, (1980) 122 ITR 781 (Pat)] holding that the exemption may be given in computing the net wealth of the firm before ascertaining the interest of the partner."

The Tribunal was right in following the view taken by the Karnataka High Court in the case of Christine Cardoza [CWT v. Christine Cardoza, (1978) 114 ITR 532 (Kant)] in preference to the view of the Patna High Court in Nand Lal Jalan [CWT v. Nand Lal Jalan, (1980) 122 ITR 781 (Pat)]. The ultimate direction given by the Tribunal in the appeal filed by the Revenue as quoted earlier is also the correct direction to give in such a case.

4. The above question of law is answered as follows :

"In computing the net wealth of a firm under Rule 2 of the Wealth Tax Rules, the assets exempt under Section 5 should be included and then apportioned among the partners for granting exemption in their individual assessments after computing their own individual net wealth."