

CALCUTTA HIGH COURT

Assam Oil Co. Ltd

Vs.

Commissioner of Wealth Tax

Wealth Tax Matter No. 153 of 1960

(G.K. Mitter and C.N. Laik, JJ.)

14.05.1962

JUDGMENT

G.K. Mitter, J.

1. This is a reference under Section 27 (1) of the Wealth Tax Act.

2. The assessee company was assessed to Wealth Tax for the assessment year 1957-58 as a non-resident company. In its return it showed its net wealth as valued at Rs. 5,46,26,050/- as on December 31, 1956 being the valuation date taking into account a sum equivalent of ₹2,486,180 representing the amount owing for taxation as on December 31, 1956. The Wealth Tax Officer allowed the said deduction but the Commissioner of Wealth Tax, in exercise of power under S. 25(2) of the Wealth Tax Act disallowed the same increasing the net wealth by ₹2,486,180. The assessee appealed to the appellate tribunal taking a supplementary ground, namely, that the last installment of Rs. 47,86,207/- of the demand made under Section 18A(1) of the Indian Income Tax Act which remained outstanding on the valuation date should be allowed as a deduction in the computation of the net wealth. The assessee's contention was two-fold :

(a) provision for taxation on the amount of the income as at December 31, 1956 was a debt owed by the company and therefore the entire amount should be deducted in arriving at the net wealth.

(b) In any event the last installment of the demand made under Section 18A (1) of the Indian Income Tax Act should be deducted from the total valuation in computing the net wealth.

3. The Tribunal rejected the first contention holding that there was no debt owed by the assessee in the absence of quantification and ascertainment of the same due as tax. With regard to the second ground it held that debts outstanding for not more than 12 months should be allowed as a deduction and the demand created under Section 18A was a debt owed by the assessee. It directed the Wealth Tax Officer to ascertain whether the demand referred to in this case was outstanding for less than one year and if so he should allow the same as a deduction.

4. On the above the following questions of law have been referred to this Court:

(1) Whether on the facts and in the circumstances of the case, the sum of £ 2,486,180 which had been set apart by the assessee company as an estimated provision for meeting its tax liability in future less the last installment of demand under Section 18A (1) of the Indian Income Tax Act was a debt owed by the assessee on the relevant valuation date within the meaning of clause (m) of Section 2 of the Wealth Tax Act?

(2) Whether on the facts and in the circumstances of the case, in computing the net wealth of the assessee the final installment of Rs. 47,86,207/- due under Section 18A of the Indian Income Tax Act constituted a debt owed by the assessee within the meaning of clause (m) of Section 2 of the Wealth Tax Act as on the valuation date being 31st December 1956?

5. So far as the first question is concerned, the position has been discussed at length in the case of *Kesoram Cotton Mills Ltd. v. Commr. of Wealth Tax*¹, in which we have held that although an assessee is under a liability to pay income tax on the working of the whole year, it does not owe a debt in respect of that liability on the date of valuation the liability ripening into a debt only on quantification which necessarily has to take place after the passing of the Finance Act in any assessment year sometime in the month of April. The answer to the first question therefore apart from the consideration of payments directed under section 18 must be in the negative and against the assessee.

6. So far as the second question is concerned, it seems to me that the assessee's contention must be accepted. Under section 18 (1) of the Income-tax Act the Income-tax Officer may, on or after the first day of April in any financial year, by order in writing, require an assessee to pay quarterly to the credit of the Central Government on the 15th day of June, 15th day of September, 15th day of December and 15th day of March in that year, respectively, an amount equal to one quarter of the income-tax and super tax payable on so much of such income as is included in his total income of the latest previous year in respect of which he has been assessed, if that total income exceeded the maximum amount not chargeable to tax in his case by Rs. 2500/-. Such income-tax and super tax has to be calculated at the rates in force for the financial year in which he is required to pay the tax. Under sub-section (2) of section 18-A the assessee is however given an option of estimating his income at any time before the last installment becomes due and pay tax on the basis of his estimate. The other sub-sections of Section 18-A deal with adjustments of the tax due against the estimate made by the assessee, payment of interest and penalty etc., with which we are not concerned in this case. It is clear however that when an order under section 18-A (1) is made calling upon the assessee to pay tax in advance in certain installments he becomes indebted to the State for the payment of the amounts mentioned although no doubt the same is subject to adjustment thereafter on the making of the regular assessment. So far as the amount to be paid on June 15, September 15, and December 15, are concerned no question arises because the sums had already been paid. So far as the amount directed to be paid on March, 15, 1957, is concerned, in my view the position is the same. There is a debt owed by the assessee although no doubt it was payable after the valuation date. The assessee had the option to pay the same on March 15, 1957, but if it had paid it before December 31, 1956, the Income-tax Authorities could not refuse to take it. It was for the convenience of the

assessee that time was given to it so that it could pay the tax not in one lump sum for the whole year but in four installments. It

¹ Cal Matter No. 178 of 1960 (Cal)

cannot be said that the assessee was not entitled to make the payment before March 15, 1957 and that the debt only became owed on that date. The debt was already there, the liability of the assessee had been quantified and it was only its option to defer the payment till March 15, 1957.

7. In this view of the matter the second question must be answered in favour of the assessee. In view of the divided success there will be no order as to costs of this reference.

Laik, J.

8.I agree.

Answer accordingly.