

# CALCUTTA HIGH COURT

Commissioner of Wealth-Tax

Vs

Banarashi Prasad Kedia

(S P Mitra, C.J, Sabyasachi Mukharji, J)

08.07.1969

## JUDGMENT

### **Sabyasachi Mukharji, J.**

1. For the assessment year 1957-58, for which the relevant valuation date was 31st March, 1957, M/s. Banarashi Prasad Kedia filed a return of net wealth in the status of a Hindu undivided family. From the gross value of the assets shown, the assessee claimed a sum of Rs. 3,81,098 on account of income-tax liability as a deduction before arriving at the net wealth. The Income-tax Officer disallowed the entire amount on the ground that this was not admissible under the Act.

2. The assessee preferred an appeal from the decision of the Wealth-tax Officer to the Appellate Assistant Commissioner. It was contended before the Appellate Assistant Commissioner that the Wealth-tax Officer should have allowed deduction of income-tax liabilities before arriving at the net wealth of the assessee. The amount mentioned in the grounds of appeal before the Appellate Assistant Commissioner on account of income-tax liability was only Rs. 3,81,098 but in a statement filed at the time of hearing of the appeal before the Appellate Assistant Commissioner this amount had been shown as Rs. 7,47,181. It appears that the said sum of Rs. 7,47,181 consisted of the following items :Rs. P.

(a) Income-tax Investigation Commission's demands outstanding in respect of liabilities under section 34(1B) of the Indian Income-tax Act, 1922 2,66,737.00

(b) Income-tax liabilities for 1951-52 and 1952-53 assessment years 94,983.00

(c) Income-tax liabilities for 1953-54 to 1957-58 assessment years 3,85,561.00 7,47,181.00

3. The Appellate Assistant Commissioner rejected the entire claim of the assessee and held that no portion of the sum of Rs. 7,47,181 claimed by the assessee as deduction could be allowed as

debt owed within the meaning of Section 2(m) of the Wealth-tax Act, 1957.

4. The assessee thereafter preferred an appeal to the Tribunal. Though in the grounds of appeal, the assessee had claimed that the entire sum of Rs. 7,47,181 should be allowed as deduction before arriving at the net wealth of the assessee, in the course of hearing before the Tribunal it was conceded on behalf of the assessee that only the following two claims could be made, namely :

Rs.

(i) Demands outstanding in respect of Income-tax Investigation Commission under section 34(1B) of the Indian Income-tax Act, 1922 2,66,737

(ii) Demand in respect of assessment year 1952-53 for which demand notices had been served on the assessee by the valuation date 30,626

5. As regards item No. (i) it appears that although the demand notice in respect of a large sum of money had been served on the assessee in December, 1954, the income-tax authorities had granted an instalment scheme for the payment of the same and according to the said scheme, the assessee had been paying, The sum of Rs. 2,66,737 represented the "outstanding" amount in respect of instalments falling due after the relevant valuation date, namely, 31st March, 1957. The Tribunal held that the said sum of Rs. 2,66,737 was a debt owed and as the said sum had not become due and payable under the instalment scheme it was not outstanding for a period of more than twelve months within the meaning of Section 2(m)(iii)(b) of the Wealth-tax Act, 1957. The Tribunal, therefore, directed that the said sum of Rs. 2,66,737 should be allowed as deduction as a debt within the meaning of Section 2(m) of the Act. So far as item No. (ii) being a sum of Rs. 30,626 is concerned the Tribunal came to the conclusion that this was also a debt which was to be deducted in computing the net wealth of the assessee.

6. The following question has been referred to this court under Section 27(1) of the Wealth-tax Act, 1957:

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the demands remaining unpaid in respect of instalments falling due after the valuation date cannot be treated to be 'outstanding' for a period of more than 12 months on the valuation date within the meaning of Section 2(m)(iii)(b) of the Wealth-tax Act, 1957, and in directing accordingly that the entire amount of Rs. 2,66,737 should be treated as a debt owed by the assessee under Section 2(m) of the Said Act ?"

7. As mentioned hereinbefore it appears that there was a settlement under Section 34(1B) of the

Indian Income-tax Act, 1922. Under the provisions of that Act it appears that an instalment scheme was sanctioned by the department whereunder a sum of Rs. 2,66,737 was due to be paid by the assessee after the relevant valuation date. The question that calls for determination is, whether in those circumstances it can be said that this amount, was outstanding for a period of more than 12 months on the relevant valuation date. The demand notice for the entire sum under Section 34(1B) of the Indian Income-tax Act, 1922, was served on the assessee in December, 1954, long before the relevant valuation date. In order to resolve the controversy in this case we have to refer to the provisions of Subsection (m) of Section 2 of the Wealth-tax Act, 1957, after the amendment by the Finance Act of 1959, with retrospective effect. The provisions are in the following terms :

"(m) '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 Section 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."

8. The sum of Rs. 2,66,737 represented income-tax liability in respect of which order under Section 34(1B) had been passed and demand notice had been issued. Therefore, it is a debt owed by the assessee. But, learned counsel for the revenue contends that inasmuch as this amount comes within the mischief contemplated by Section 2(m)(iii)(b) of the Wealth-tax Act, 1957, the assessee is not entitled to deduction of this sum of money. It is also not disputed that this is an amount which is also payable in consequence of an order passed under the law relating to

taxation of income. Therefore, it fulfills the requirement of Sub-clause (iii) of Section 2(m) of the Wealth-tax Act, 1957. The question that requires consideration is whether an amount which under the instalment scheme was due to be paid by the assessee on dates subsequent to the relevant valuation date can be said to be "outstanding" on the relevant valuation date for a period of more than 32 months. Learned counsel for the revenue drew our attention to the decision of the Supreme Court in the case of Third Income-tax Officer, Mangalore v. M. Damodar Bhat, . There what had happened was a notice of demand under Section 156 of the Income-tax Act, 1961, was served on the assessee for the assessment years 1962-63 and 1963-64, but time given for payment was to expire on the 21st May, 1965, but before the expiry of the period specified therein for the payment of the amount of the demand, the Income-tax Officer had issued on the 23rd April, 1965, a notice on a third party under Section 226(3) of the Income-tax Act, 1961. It was held by the Supreme Court that there was nothing in the language of Section 226(3) to suggest that the assessee had to be in default before a notice under that section could be issued ; and the notice, therefore, was validly issued. It was observed in the judgment of the Supreme Court at page 813 of the report as follows :

"It was argued by Mr. Srinivasan on behalf of the respondent that the amount of tax must be 'due to be paid' by the assessee before a notice can be issued under Section 226(3) of the new Act. It is not disputed in this case that the notices of demand under Section 156 of the new Act were served on the respondent before the issue of the notice under Section 226(3) of the new Act. As pointed out by this court in Kesoram Industries & Cotton Mills Ltd. v. Commissioner of Wealth-tax, , the liability to pay income-tax is a present liability, though the tax becomes payable after it is quantified in accordance with ascertainable data and, therefore, the amount of the provision for payment of income-tax and super-tax in respect of the year of account ending March 31, 1957, in that case, was a 'debt owed' within the meaning of Section 2(m) of the Wealth-tax Act, and was as such deductible in computing the net wealth. It was further observed in that case that there was a perfected debt at any rate on the last date of the accounting year and not a contingent liability. In the present case, there is the additional circumstance that the assessments of tax and penalty have been made against the respondent and demand notices have also been issued under Section 156 of the new Act. It is, therefore, not possible to argue that the amount of tax and penalty for the assessment years 1962-63 and 1963-64 were not 'due by the assessee' em April 23, 1965, when the notice under Section 226(3) of the new Act was issued."

9. Reliance was placed by learned counsel for the revenue on the aforesaid observations of the Supreme Court in support of his argument that even though the instalments granted by the department did not fall due, the amount of tax payable was still outstanding for a period of more than twelve months on the relevant valuation date. Counsel for the revenue also submitted that

according to the dictionary meaning of "outstanding", any liability which is unsettled or unpaid would come within the mischief of Section 2(m)(iii)(b) of the Act.

10. In the case of Kesoram Industries and Cotton Mills Ltd, v. Commissioner of Wealth-tax, the Supreme Court has held that the expression "debt owed" within the meaning of Section 2(m) of the Wealth-tax Act, 1957, could be defined as the liability to pay in praesenti or in future an ascertainable sum of money. The Supreme Court has further 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. There was, therefore, a perfected debt at any rate on the last day of the accounting year and not a contingent liability. The Supreme Court, therefore, held that such liability was a debt owed and, therefore, was deductible in computing the net wealth. It appears, therefore, on the aforesaid decision of the Supreme Court, that a debt may involve a liability to pay in praesenti or in futuro. In view of the aforesaid decision of the Supreme Court it is also manifest that the sum of Rs. 2,66,737 was a debt owed by the assessee. In the decision of the Supreme Court in the case of Third Income-tax Officer, Mangalore v. M. Damodar Bhat, it has been held that these amounts were also "due by the assessee". But in order to construe the expression "outstanding" it has to be borne in mind, in view of the language used, that it is not only that the amount of tax that must be outstanding for more than twelve months on the relevant valuation date, it must be the amount of tax which is payable and is still outstanding. The expression "outstanding" in Section 2(m)(iii)(b) of the Wealth-tax Act, 1957, in our opinion, has therefore to be construed in the background of the expression "amount of tax .... payable in consequence of an order ....". Learned counsel for the revenue further contends that the moment notice of demand in respect of the sum was served these amounts became payable though the instalments had been granted. He urges that there is nothing to prevent the assessee from paying these amounts earlier. But in the context in which it has been used, the expression "outstanding" means an amount which the assessee was obliged to pay prior to the valuation date and has not been paid. An amount which the assessee had the right to pay subsequent to the valuation date cannot be outstanding on the valuation date. It is true that the expression "outstanding" according to the dictionary meaning is "unsettled" or "unpaid". But the expression "outstanding", in our opinion, in this context would require careful handling and should be construed in relation to the expression "amount payable in consequence of an order" by the Income-tax Officer. If we construe the expression "outstanding" in that background, keeping in view the scheme of Section 2(m) of the Act, it seems to us, that in order to be "outstanding" the amount must be such which the assessee was obliged to pay prior to the relevant valuation date and not an amount which the assessee had the right to pay subsequent to the valuation date. An amount which according to the instalment scheme the assessee has an option or right to pay on a date subsequent to the relevant valuation date cannot in that context be said to be "outstanding" on the relevant valuation date.

11. In that view of the matter we are of the opinion that the Tribunal came to the correct conclusion on this question. The question referred to this court is, therefore, answered in the affirmative. The Commissioner of Wealth-tax will pay the costs of the reference.

Sankar Prasad Mitra, J.

12. I agree.