

# CALCUTTA HIGH COURT

Dipti Kumar Basu

Vs

Commissioner of Wealth Tax

(Deb, J.)

16.05.1975

## JUDGEMENT

**Deb, J.**

( 1. ) THE following questions of law of great importance are involved in this reference under Section 27(1) of the Wealth-tax Act, 1957, hereinafter stated as the " Act" : "(a) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the 'outstandings' due to the firm constituted assets the value of which was required to be included in its net wealth for the purpose of assessing the assessee's interest therein ? (b) If the answer to question No. 1 is in the affirmative whether the value of the 'outstandings' should not be reduced by (i) the estimated tax payable by the firm on the outstandings ? and (ii) the estimated tax payable by the assessee on his share therein ? (c) Whether, on the facts and in the circumstances of the case, the Tribunal was right in upholding the principle and method of valuation of the outstandings as adopted by the Appellate Assistant Commissioner ? "

( 2. ) THE assessment year is 1964-65, and the valuation date is March 31, 1964. M/s. Om Dignam and Co., a firm of solicitors, is hereinafter stated as the "firm" THE assessee is a partner of the firm. THE firm maintains its books on cash basis. THE firm is entitled to get costs from its clients and has submitted the bills to them. In the assessment year, the firm did not include in its balance sheet these unrealised sums, hereinafter stated as the "outstandings". THE Tax Officer has included them in the balance sheet on the ground that these outstandings are the assets of the firm and are includible in the computation of the net wealth of the assessee and on estimate, has determined the assessee's share in these outstandings at Rs. 2,50,000. The Appellate Assistant Commissioner, on appeal by the assessee, has directed the Tax Officer to determine the assessee's share in the net wealth of the firm, under Rule 2 of the Wealth-tax Rules, 1957, by taking these outstandings into account in accordance with the percentage determined by him. And, save as to certain matters, the Appellate Tribunal has affirmed the decision of the Appellate Assistant Commissioner and has also passed an order under Section 35 of the Act with which we are not concerned. Mr. Ginwalla, the learned counsel for the assessee, has accepted the percentages

determined by the Appellate Assistant Commissioner without prejudice to his following submissions : (i) In *Sandersons and Morgans v. Mohanlal Lalluchand Shah*, it has been held that a solicitor is entitled to a reasonable and fair remuneration that may be allowed by the court on taxation of his bills in terms of the Rules of the Original Side of this court relating to the taxation of the bill of costs. Therefore, the amounts specified in these bills are unascertained sums of money, because these bills are liable to be taxed under our taxation rules, Hence, these out standings are not debts within the meaning of the terms "debt", for a "debt", as stated in Mulla's *Transfer of Property Act (5th edn.)* at p. 794. "is an obligation to pay a liquidated or certain sum of money ". Further, a reasonable remuneration is not a debt, for it is a compensation and, therefore, these outstundmgs are not at all debts. Hence, they are not the assets of the firm and should be excluded from the computation of the net wealth of the assessee. (ii) Section 2(e) of the Act defines the term "asset", but in order to determine whether these outstandings are assets or not the court should take into consideration Section 7(1) of the Act which provides that the valuation of any asset, other than cash, shall be estimated to be the price, which in the opinion of the Tax Officer, it would fetch if sold in the open market on the valuation date. There is no market in which these bills of the firm can be sold. In any event, nobody will buy the solicitor's bill, because the Rules of the Original Side of this court do not provide for taxation of the bill of costs at the instance of an assignee who will be left without any remedy. Therefore, the solicitor's bill is not a chose-in-action and it cannot be equated with a trader's bill. Hence, these outstandings are not the assets of the firm and, therefore, they are not includible in the computation of the net wealth of the assessee. (iii) These outstandings do not form part of the assets of the firm on the valuation date because of its cash system of accounting and they should be excluded from the computation of the net wealth of the assessee in view of the decision of the Orissa High Court in the case of *Commissioner of Wealth-tax v. Vysyaraju Badreenarayanamoorthy Raju*. (iv) The Tax Officer should not have included these outstandings in the balance-sheet of the firm, because the assessee will not get his share in these outstandings in the event of his not remaining in the firm on the date of realisation of these outstandings under Clause 20 of the partnership deed and this is a circumstance which justifies their non-inclusion under Section 7(2)(a) of the Act. (v) If these outstandings are included in the computation of the net wealth of the firm the estimated income-tax liability of the firm on these outstandings should also be taken into account and the assessee should be allowed a proportionate deduction in respect thereof in accordance with his share in the firm.

( 3. ) THERE is no dispute that property of every description, movable and immovable, is included in the term "asset" barring the properties specified ill Section 2(e) and other sections of the Act. "Property", as said by the Supreme Court in *Ahmed. G.H. Ariff v. Commissioner of Wealth-tax<sup>1</sup>*, "is a term of the widest import and, subject to any limitation which the context may require, it signifies every possible interest which a person can clearly hold and enjoy". It has also been said, at page 476 of the report, as follows : "The meaning of the word 'property' has come up for examination before this court in a number of cases.....it was observed in *Commissioner, Hindu Religious Endowments v. Shri Lakshmindra Thirtha Swamiar of Sri Shirur*

Mutt, [1954] SCR 1005 that there was no reason why that word should not be given a liberal and wide connotation and should not be extended to those well-recognised types of interests which had the insignia or characteristic of proprietary right." To put it briefly, the "net wealth" is the amount which is arrived at after deducting the aggregate value of all the debts and liabilities allowable under the Act on the valuation date from the aggregate value of all the assets of the assessee as on that date. The Bombay High Court has considered the scope and ambit of Sections 2(e) and 2(m) of the Act in *Commissioner of Wealth-tax v. Purshottam N. Amersey*<sup>2</sup>, and the Supreme Court has approved it in Ariff's case, at p. 477 of the report, in the following terms: "It was held that the definition of the word 'assets' in Section 2(e) and that of 'net wealth' in Section 2(m) were comprehensive provisions and all assets were included in the net wealth by the very definition. Therefore, when Section 3 imposed the charge of wealth-tax on the net wealth it necessarily included in it every description of the property of the assessee, movable and immovable, barring the exceptions stated in Section 2(e) and other provisions of the Act. We are in entire concurrence with that view. There is no reason or justification to give any restricted meaning to the word 'asset' as defined by Section 2(e) of the Act when the language employed shows that it was intended to include property of every description." ;

#### Cases Referred.

1[1974] 76 ITR 471, 476(SC)

2[1969] 71 ITR 180 (Bom)