KARNATAKA HIGH COURT

D.C. Shah

Vs.

Commissioner of Wealth-Tax

TRC. 5-11 of 1972

(Venkataramaiah and Srinivasa Iyengar, JJ.)

11.04.1978

ORDER

Venkataramaiah, J.

1. Since common questions of law and facts are involved in these cases, they are disposed of by this common order.

2. These seven reference are made by the Income-tax Appellate Tribunal, Bangalore Bench, under the Wealth-tax Act, 1957. The relevant assessment years are 1959-60 to 1965-66.

3. On April 26, 1965, the assessee made a voluntary disclosure before the Commissioner of Income-tax, Mysore, Bangalore, declaring a total amount of Rs. 11, 67, 008 distributed over several previous years as his income which had not been disclosed in his return before March 1, 1965, and which had escaped assessment before that date. The said disclosure was made under s. 68 of the Finance Act of 1965. On the basis of the said disclosure, the assessee paid on May 10, 1965, an amount of Rs. 7, 00, 205, being 60% of the disclosed amount. Thereafter, the WTO issued notices under s. 17 of the Wealth-tax Act, in respect of the assessment years 1958-59 to 1964-65, on basis of the information furnished by the assessee in the statement accompanying the disclosure made by him on April 26, 1965. During the assessment years 1958-58 to 1964-65, the assessee had not filed any return of wealth in respect of any part of the amount disclosed by him nor had he been assessed to wealth-tax prior to the date of notice.

4. In the course of the enquiry held by the WTO subsequent to the issue of the said notices, the assessee furnished information to the WTO in respect of his assets, etc., in respect of the relevant years. On the basis of the information furnished by the assessee, the WTO passed orders of assessment under s. 16(3) read with s. 17 of the W.T. Act. Aggrieved by the order of the WTO, the assessee preferred appeals before the concerned AAC of Wealth-tax who allowed the appeals

in part. On further appeal to the Tribunal in all the cases, the orders passed by the AAC of Wealth-tax were affirmed. The Tribunal found that the WTO had reason to believe that the wealth of the assessee had escaped assessment during the years 1958-59 to 1964-65 and that the income-tax liability in respect of the income disclosed in the disclosure application on April 26, 1965, could not be deducted in computing the net wealth on the relevant valuation dates.

5. At the instance of the assessee, in respect of the assessment years 1959-60 to 1964-65, the following two questions have been referred for the opinion of this court:

> (1) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the Wealth-tax Officer had reason to believe that the wealth of the assessee had escaped assessment for the year under consideration ?
> (2) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the income-tax liability in respect of the income disclosed in the disclosure application of April 26, 1965, could not be deducted in arriving at the net wealth of the appellant on the relevant valuation date ?"

6. The reference made in respect of these years are registered as T.R.C. No. 5 of 1974 to T.R.C. No. 10 of 1974 on the file of the court. T.R.C. No. 11 of 1974 relates to the assessment year 1965-66 and the only question referred to by the Tribunal in that case for the opinion of this court at the instance of the assessee is similar to the second question referred to above.

7. In so far as the first question in T.R.C. Nos. 5 to 10 of 1974 is concerned, it has to be observed that the declaration made by the assessee under s. 68 of the Finance Act, 1965, and the annexure thereto themselves contain the material on which reasonable belief could be entertained by the WTO that some wealth which was assessable to tax had been withheld from the knowledge of the department during the relevant years. After looking into the records, the Tribunal has found that in initiating proceedings under s. 17 of the W.T. Act, the WTO had noted the assessee's wealth which appeared in the form of loans to certain parties had escaped assessment and the source of that information was the disclosure made by the assessee on April 26, 1965. We, therefore, feel that the Tribunal was right in holding that the WTO had reason to believe that some wealth of the assessee had escaped assessment for the years under consideration.

8. We shall not take up for consideration the second question in T.R.C. Nos. 5 to 10 of 1974 and the only question in T. R. C. No. 11 of 1974. The Tribunal has held that the income-tax liability in respect of the income disclosed in the disclosure application dated April 26, 1965, could not be deducted in arriving at the net wealth of the assessee on the relevant valuation dates. The conclusion of the Tribunal was entirely based on the decision of the Kerala High Court in the case of *C. K. Babu Naidu v. WTO*[1], in which a single judge of the Kerala High Court had held that the income-tax payable under s. 68 of the Finance Act, 1965, could not be considered as a debt which could be deducted under s. 2(m) of the W.T. Act for purposes of determining the net

wealth. It has to be observed at this stage that the above decision of the Kerala High Court has been reserved in appeal by a Division Bench of the Kerala High Court in *C. K. Babu Naidu v. WTO*[2],

9. Section 2(m) of the W.T. Act, 1957, defines the expression "net wealth" as follows:

[1]82 ITR 410
[2]112 ITR 341

> "2. (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-....."

The expression "valuation date" is defined in s. 2(q) of the W.T. Act as follows:

> "2. (q) 'Valuation date', in relation to any year for which an assessment is to be made under this Act, means the last day of the previous year as defined in section 3 of the Income-tax Act, if an assessment were to be made under that Act for that year....."

10. In *Kesoram Industries and Cotton Mills Ltd. v. Commissioner of Wealth Tax*[3], the Supreme Court held that the income-tax payable during any assessment year was deductible by the assessee from his gross wealth in arriving at his net wealth under s. 2(m) of the W.T. Act, as it was a debt owned by the assessee within the meaning of s. 2(m) of the W.T. Act because it was a perfected debt at any rate on the last date of the accounting year and not a contingent liability. In the decision of the Kerala High Court in *C. K. Babu Naidu v. WTO*[4], on which the Tribunal relied, it was held that s. 68 of the Finance Act, 1965, was a special provision to compound the income-tax liability in respect of an income which an assessee might choose to disclose under the scheme envisaged by it and that, by such a disclosure, an assessee did not incur a liability to pay any tax under the that section. In that view, the learned judge who decided the case held that the amount of tax paid under s. 68 of the Finance Act, 1965, was not a debt owned by the assessee on the valuation date for the purpose of determining the net wealth under the W.T. Act. The reason given by the learned judge is not at all in conformity with the language of s. 68 of the Finance Act, 1965. Section 68 of the Finance Act, 1965, provides that where any person makes a declaration in accordance with sub-s. (2) thereof, any amount representing income which he has failed to disclose in a return of income for any assessment year filed by him before the March 1, 1965, or which has escaped assessment for any assessment year for which an assessment has been made before March 1, 1965, or for the assessment of which no proceeding either under the India I.T. Act, 1922, or the I.T. Act, 1961, has been taken before the March 1, 1965 he shall, notwithstanding anything contained in the said Acts, be charged income-tax at the rate specified

in sub-section (3) in respected of the amount so declared. Sub-s. (3) of s. 68 provides that the rate of income-tax chargeable in respect of the amount referred to in sub-s. (1) shall be sixty per cent. of such amount and the proviso there under states that if the declarant paid such tax within the April 1, 1965, the rate shall be fifty-seven per cent. of such amount. It is thus seen that what is disclosed under s. 68 of the Finance Act, 1965, is deemed to be the income of the person who makes the declaration and what is paid to the Government is the income-tax thereon. The tax payable there under is in substance the tax payable by him either under the Indian I.T. Act, 1922, or under the I.T. Act, 1961, read with the

[3]59 ITR 767

[4] 82 ITR 410

Finance Act, 1965. We cannot, therefore, agree with the view taken by the learned single judge of the Kerala High Court in the above decision that the amount paid by the declarant under s. 68 of the Finance Act. 1965, in respect of the income disclosed by him under that section is not income-tax, but it is an amount of a different nature altogether. We respectfully agree with the view expressed by the Division Bench in *C. K. Babu Naidu v. WTO*[5], in which the earlier judgment has been set aside.

11. Sri. S. R. Rajesekharamurthy, learned counsel for the revenue, drew our attention to the decision of the Gujarat High Court in *CWT Gujarat v. Ahmed Ibrahim Sahigara*[6], in which a view similar to the view taken in the case of *C. K. Babu Naidu*[7], had been expressed. The learned judges of the Gujarat High Court have depended upon three circumstances to distinguish the amount payable under s. 68 of the Finance Act, 1965, from the income-tax payable either under the Indian I.T. Act, 1922, or under the I.T. Act, 1961:

> (i) that the charge under the I.T. Act is on the total income of the previous year and not on any particular item of income, but the tax referred to in sub-s. (1) of section 68 cannot be construed to mean charge of income-tax;
> (ii) payment of income-tax under s. 68 has no reference to any assessment year; and
> (iii) the disclosed income is chargeable to income-tax under s. 68 without taking into account any deductions or allowances which would be permissible, if the charge were under the I. T. Act.

This decision of the Gujarat High Court has been considered by the Allahabad High Court in *Commissioner of Wealth Tax v. B. K. Sharma*[8], by the Calcutta High Court in *CWT, W.B., III Calcutta v. Bansidhar Poddar*[9], and by the Delhi High Court in *CWT Haryana, H.P. and Delhi-III v. Girdhari Lal*[10], The Allahabad, Calcutta and Delhi High Courts have expressed their disagreement with the reasons given by the Gujarat High Court for reaching the conclusion that the tax payable under s. 68 of the Finance Act of 1965 was not income-tax. The reasons given by these three High Courts appeal to us. As already mentioned by us, the tax payable under s. 68 of the Finance Act is called by Parliament as income-tax. The said tax is payable in lieu of income-

tax payable under the Indian I.T. Act of 1922, or under the I.T. Act of 1961, read with the relevant Finance Act on the amount which is income in the hands of the assessee which would have been subject to income-tax if he had disclosed it during the relevant years. The fact that the mode of computation of taxable income adopted by s. 68 is different from the mode provided in the Indian I.T. Act, 1922, or the I.T. Act, 1961, the fact that the income does not find a place in the order of the assessment of any particular year and the fact that certain deductions which can normally be claimed when the assessment is under the regular I.T. Act are not allowed, would not in any way make the tax payable under s. 68 anything other than income-tax, that being a tax on the income already earned. It can, however, be as in this case, income which has been earned in the several previous years on which tax is paid as per a single Finance Act.

[5]112 ITR 341 [7](1971) 82 ITR 410 [9]1978 Tax LR 24
[6]93 ITR 288 [8](1971) 110 ITR 902 [10]99 ITR 79

12. It is very clear that the charge under s. 68 is not at all a new charge, but it is a charge which is imposed under the I.T. Act, though at a rate different from the usual rates prescribed by the relevant Finance Act. As observed in Bansidhar Poddar's case , s. 68 of the Finance Act does not impose a new charge but only provides that: "The disclosure envisaged under section 68 is in respect of an amount which is already liable to be assessed as income under the relevant Income-tax Act. The condition precedent to disclosure under the said section is that the said amount of income has not been so assessed in the regular course for some reason or other (see p. 968 of 112 ITR)."

13. We are of the opinion that the liability under s. 68 of the Finance Act, is nothing other than the liability under the I.T. Act.

14. In order to claim deduction of the amount payable as income-tax in determining net wealth under s. 2(m) of the W.T. Act, it is unnecessary that it should have been ascertained. What is ascertained or payable will be a debt that is owned by the assessee on the valuation date (vide *Kesoram Industries' case*[11],

15. The Tribunal was, therefore, in error in not having deducted the income-tax liability on the various valuation dates for the assessment years in question on the amounts declared by the assessee under s. 68(2) of the Finance Act, 1965. In the result, we answer the first question in T.R.C. Nos. 5 to 10 of 1974 in the affirmative and the second question in T.R.C. Nos. 5 to 10 of 1974 and the only question in T.R.C. No. 11 of 1974 in the negative and in favour of the assessee. No costs.

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[11] 59 ITR 767