

KERALA HIGH COURT

Commissioner of Wealth Tax Kerala

Vs.

Travencore Rayons Ltd

Income Tax Referred Case No. 1 of 1963

(M.S. Menon, C.J. and M. Madhavan Nair, J.)

04.03.1964

JUDGMENT

M.S. Menon, C.J.

1. This is a reference by the Income-tax Appellate Tribunal, Madras Bench, under Section 27(1) of the Wealth-tax Act, 1957. The reference has been made at the instance of the Commissioner of Income-tax, Ernakulam.

2. The Assessee is the Travencore Rayons Limited, Rayonpuram. The year of assessment is 1959-60 and the valuation date for the assessment which has been made under Section 16(3) of the Act is the 31st December, 1958.

3. The assessment provided by the Act is on the net wealth of the assessee as on the valuation date. The expression "net wealth" is defined in clause (m) of Section 2 of the Act. The definition is

" '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 asset in respect of which wealth-tax is not payable 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, the Expenditure-tax Act 1957, or the Gift-tax Act, 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."

4. Sub-clause (iii) of clause (m) of Section 2 was inserted with retrospective effect to the commencement of the Wealth-tax Act, 1957, by Section 20 of the Finance Act, 1959. Section 20 of the Finance Act, 1959, was clause 20 of Bill No. 17 of 1959. The Notes on Clauses appended to that Bill says :

"Clause 20 amends Section 2 of the Wealth-tax Act, 1957, with retrospective effect to make it clear that taxes which are disputed and taxes which are in arrears for more than a year are not to be deducted as debts in the computation of the net wealth of an assessee."

5. The sole question for determination in this reference is whether the income-tax liability of the assessee for the accounting year 1958-assessment! year 1959-60 should be deducted in computing the net wealth of the assessee as on the 31st December 1958. The question referred is worded as follows :

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was correct in allowing under Section 2(m) of the Wealth-tax Act, 1957, the deduction of the provisions for income-tax from the taxable net wealth of the assessee ?"

6. The answer to the question depends on whether the income-tax liability for the accounting year 1958 assessment year 1959-60 constitutes a debt owed by the assessee on the valuation date or not. All debts are liabilities; but all liabilities are not debts. One of the essentials of a debt, as pointed out by the Madras High Court in *Commissioner of Wealth-tax Madras v. Pierce Leslie and Co. Ltd*¹, a case in which a question similar to the one before us was decided in favour of the Department - is "an ascertained or readily calculable amount."

7. It is true that the liability under the Indian Income-tax Act, 1922., arises not later than the close of the year of account and that in this case it arose not later than the 31st December 1958. As stated by the Supreme Court in *Kalwa Devadattan v. Union of India*²,

"Under the Indian Income-tax Act liability to pay income-tax arises on the accrual of the income, and not from the computation made by the taxing authorities in the course of assessment proceedings; it arises at a point of time not later than the close of the year of account".

8. The material point however, is not when the liability arose but when that liability matured into a debt owed by the assessee within the meaning of that expression as used in Section 2(m) of the Wealth-tax Act, 1957. In other words, when did the liability become, a sum ascertained or readily ascertainable.

9. On the 31st December, 1958 the rate at which the tax should be calculated was unavailable and in view of Sections 3 and 676 of the Indian Income Tax Act, 1922, we find it impossible to say that the said rate became available at any time earlier than

¹1963-48 I.T.R. 1005 : AIR 1963 Mad 356

²1963-49 I.T.R. (SC) 165 : AIR 1964 SC 880

the 1st April 1959. Section 3 of the Indian Income Tax Act, 1922, says :

"Where any Central Act enacts that income-tax shall be charged for any year at any rate or rates, tax at that rate or those rates shall be charged for that year in accordance with, and subject to the provisions of, this Act in respect of the total income of the previous year of every individual, Hindu undivided family, company and local authority, and of every firm and other association of persons or the partners of the firm or the members of the association individually"; and Section 67B :

"If on the 1st day of April in any year provision has not yet been made by a Central Act for the charging of income-tax for that year, this Act shall nevertheless have effect until such provision is so made as if the provision in force in the preceding year or the provision proposed in the Bill then before Parliament, whichever is more favorable to the assessee, were actually in force".

10. In *Neptune Assurance Co. Ltd. v. Life Insurance Corporation*³. the Supreme Court had to consider when the right to a refund under the Indian Income Tax Act, 1922, arose in respect of the accounting years 1954 and 1955 assessment; 1955-56 and 1956-37. The Supreme Court held that it arose not during the accounting years 1954 and 1955 but on the 1st April 1955 and the 1st April 1956 respectively. The Court said :

"It is well established that under the income-tax law the liability to be charged to tax if any exists all along. The amount of the liability depends on the Finance Act of the year concerned. That is the effect of Section 3 of the Income-tax Act which says that the tax at the rates mentioned in the Finance Act shall be charged for the year specified in that Act" :

And :

"Now, the Finance Acts for the years 1955 and 1956, like all other such Acts, provided the rates at which income-tax was payable for the assessment years commencing from 1st April of the year in which the Acts were respectively passed. It would follow that on the 1st of April in 1955 and in 1956 the amounts of the tax payable by the appellant became determinable for the income was then capable of computation and the rate was also known. So on those dates the appellant became entitled to a refund of the amount of tax deducted at the source or treated as paid on its behalf under the provisions of the Income-tax Act earlier mentioned which was in excess of the tax payable by It for each of these years. The assessment only the amounts; it did not create the right for the right came into existence as soon as according to the relative Finance Act it became ascertainable that the tax deducted at source or treated as paid on its behalf had exceeded the tax payable."

11. In *Doorga Prosad v. Secretary of State*⁴, the Privy Council said:

In their Lordships' opinion, although income-tax may be popularly described as due

³1963-48 I.T.R. (SC) 144 : AIR 1963 SC 900

⁴ AIR 1945 P.C. 62

for a certain year it is not in law so due. It is calculated and assessed by reference to the income of the assessee for a given year, but it is due when demand is made under Section 29 and Section 45. It then becomes a debt due to the Crown, but not for any particular period."

12. Three decisions which have come to the same conclusion as that of the High Court of Madras in the case mentioned in paragraph 6 above are *Kesoram Cotton Mills Ltd. Calcutta v. Commissioner of Wealth-tax, Calcutta*⁵, *Assam Oil Co. Ltd. v. Commissioner of Wealth-tax (Central), Calcutta*⁶, and *Commissioner of Wealth-tax, Bombay City v. Standard Mills Co. Ltd.*⁷,. Two decisions to the contrary are *Commissioner of Wealth-tax, Assam v. Ahmed Tea Co., (Pvt.) Ltd.*⁸. and *Commissioner of Wealth-tax v. Raipur Manufacturing Co. Ltd.*⁹.

13. We entertain no doubt that we must hold income-tax liability with which we are concerned did not mature into a debt owed by the assessee earlier than the 1st April 1959, that it is hence not deductible as held by the Appellate Tribunal under Section 2(m) of the Wealth-tax Act, 1957, and that the question referred has to be answered the negative and against, the assessee. We do so but without any order as to costs.

14. Sub-Section (1) of Section 7 of the Wealth-Tax Act, 1957 says :

"The value of any asset, other than cash, for the purposes of this Act, shall be estimated to be the in the opinion of the Wealth-tax Officer it would fetch if sold in the open market on the valuation date."

It was submitted on behalf of the assessee that the Stability even though it had not matured into a debt should enter into the calculation of the market value of the assets of the assessee and effect a reduction thereof. Income-tax under the Indian Income-tax Act, 1922, is a tax imposed upon a person in relation to his income; it is not made a charge on the assets of the assessee not even on the income upon which it is levied. The impact of this and other matters on the submission made, however, does not arise for consideration in this judgment as no such contention was raised at any stage before the Department or the Appellate Tribunal.

15. A copy of this judgment under the seal of the High Court and the signature of the Registrar will be forwarded to the Appellate Tribunal as required by Sub-Section (6) of Section 27 of the Wealth-tax Act, 1957.

Order accordingly.

⁵1963-48 I.T.R. 31: AIR 1963 Cal592

⁷1963-50 ITR 267 (Bom)

⁶1963-48 ITR 49 AIR 1963 Cal 112

⁸1963-48 ITR 943 (Ass)

⁹1963-4 Guj LR 741: AIR 1964 Guj154