

# KERALA HIGH COURT

C. K. Babu Naidu

Vs

Wealth-Tax Officer

(Govindan Nair, Actg. C.J.)

06.06.1973

## JUDGMENT

### **Govindan Nair, Actg. C.J.**

1. These appeals arise from a common judgment of Issac J. dismissing O. P. Nos. 1511 and 1512 and 1969 [C. K. Babu Naidu v. Wealth-tax Officer [1971] 82 ITR 410 (Ker)]. The two petitioners contended that in ascertaining the taxable wealth of the petitioners the entirety of the income declared by the petitioners for the purpose of section 68 of the Finance Act, 1965, is not liable to be taxed. According to them, the income-tax due on the income declared according to the provisions in section 68 of the Finance Act, 1965, must be deducted from the income declared and the net wealth arrived at. The contention is based on the definition of "net wealth" in section 2(m) of the Wealth-tax Act, 1957, which is in these terms :

"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 - ....."

Valuation date is defined thus :

"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....."

The years with which we are concerned in the two original petitions and in these writ appeals are 1962-63, 1963-64, 1964-65, in O.P. No. 1511 of 1969, from which Writ Appeal No. 279 of 1971 is taken and the four years 1962-63, 1963-64, 1964-65 and 1965-66 in O. P. No. 1512 of 1969 which gave rise to Writ Appeal No. 280 of 1971. As provided by section 68 of the Finance Act, 1965, the two petitioners declared their income and distributed them in a certain manner for the years concerned. This distribution has been accepted by the assessing authorities and it is

admitted that tax has been levied on the basis of such distribution. It is unnecessary to refer to the figures as it is sufficient to state, as we have already stated, that the contention was that out of the income attributable to each of the assessment years, the tax leviable under section 68 of the Finance Act, 1965, must be deducted for the purpose of arriving at the net wealth assessable to wealth-tax. The assessee, the appellants, had already been assessed to wealth-tax before the declaration under section 68 of the Finance Act, 1965, was made by them excepting for the year 1965-66 in Writ Appeal No. 280 of 1971. Consequent on the declaration under section 68 of the Finance Act, 1965, and the assessment to income-tax steps were taken under section 17 of the Wealth-tax Act, 1957, to reopen the wealth-tax assessments and what has been done is to add to the net wealth of the assessee for each of the years what we have mentioned, the entirety of the income declared for that year under section 68 of the Finance Act, 1965. Counsel for the assessee has repeated the argument that was advanced by him before the learned single judge that the procedure adopted is not justified by the principles that are applicable to the case. There is no dispute that the valuation date for the four years with which we are concerned are March 31, 1962, March 31, 1963, March 31, 1964 and March 31, 1965. On these dates, it is submitted, it must be taken that the assessee owed debts to the extent of the income-tax liabilities on the amount declared as the income from the assessment years, namely, 1962-63, 1963-64, 1964-65 and 1965-66. This contention is sought to be supported by the decision of the Supreme Court in *Kesoram Industries and Cotton Mills Ltd. v. Commissioner of Wealth-tax*. It is clearly ruled therein that the word "owe" meant "to be under an obligation to pay" and that it did not really add to the meaning of the word "debt" and further that "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. As we understand this decision, it is unnecessary that the amount of income-tax should have been ascertained or that it was owed in praesenti; what was payable in future and was ascertainable as payable will be a debt that is owed by the assessee on the valuation date is clear from the decision. In the judgment under appeal, the learned judge has taken the view that the principle of the decision will be applicable only to income-tax assessed under the Income-tax Act, 1961, that what has been decided on in the cases is to assess tax on the declarations made by the assessee under section 68 of the Finance Act, 1965, that the liabilities arising from such declarations under section 68 of the Finance Act, 1965, can only arise at the time of the declaration and not on the valuation dates. With great respect, we are unable to agree with this view. The liability for tax arising out of the declaration under section 68 of the Finance Act, 1965, is nothing other than the liability under the Income-tax Act, 1961, which was the Act that was applicable. It is the charging section, section 4 of that Act, which has imposed the liability. This is so, notwithstanding the fact that enabling provisions have been made in the Finance Act, 1965, by permitting the assessee, if so minded, to make a declaration under section 68(2) of the Finance Act, 1965, and providing that the amount so declared will be taken as the income of the assessee. A further concession has been granted by section 68(3) of the Finance Act, 1965, that the rate of tax that is applicable in such cases will be a uniform rate of tax of 60 per cent. on the amounts so declared. We shall now read the relevant part of the section, sub-section (1) to (3) of section 68 of the Finance Act, 1965 :

"68. Voluntary disclosure of income - (1) Where any person makes a declaration in accordance with sub-section (2) in respect of the amount representing income -  
(a) which he has failed to disclose in a return of income for any assessment year filed by him before the 1st day of March, 1965, under the Indian Income-tax Act, 1922, or the Income-tax Act, 1961, or

(b) which has escaped assessment for any assessment year for which an assessment has been made before the 1st day of March, 1965, under either of the said Acts, or  
(c) for the assessment of which no proceeding under either of the said Acts has been taken before the 1st day of March, 1965, he shall, notwithstanding anything contained in the said Acts, be charged income-tax at the rate specified in sub-section (3) in respect of the amount so declared if he,-

(i) pays the amount of income-tax as computed at the said rate, or

(ii) furnishes adequate security for the payment thereof in accordance with sub-section (4) and undertakes to pay such income-tax within a period, not exceeding six months, from the date of the declaration as may be specified by him therein, or

(iii) on or before the 31st day of May, 1965, pays such amount as is not less than one-half of the amount of income-tax as computed at the said rate or furnishes adequate security for the payment thereof in accordance with sub-section (4), and in either case assigns any shares in or debentures of, a joint stock company or mortgages any immovable property, in favour of the President of India by way of security for the payment of the balance, and undertakes to pay such balance within the period referred to in clause (ii).

(2) The declaration shall be made to the Commissioner, and shall specify the period required to be specified under clause (ii) of sub-section (1), contain the name, address and signature of the person making the declaration and also full information in respect of the following matters, namely :-

(a) Whether he has assessed to income-tax or not and, if assessed the name of the income-tax circle in which he was assessed.

(b) The amount of income declared, giving where available, details of the financial year or years in which the income was earned and the amount pertaining to each such years.

(c) Whether the amount declared is represented by cash (including bank deposits), bullion, investments in shares, debts due from other persons, commodities, or any other assets, and the name in which it is held and location thereof :

Provided that the declaration shall be of no effect unless it is made after the 28th day of February, 1965, and before the 1st day of June, 1965.

(3) The rate of Income-tax chargeable in respect of the amount referred to in sub-section (1) shall be sixty per cent. of such amount :

Provided that if before the 1st day of April, 1965, the tax on the amount declared is paid by the declarant at the rate of fifty seven per cent. of such amount, he shall not be liable to pay any further tax on such amount."

When we read the provisions in the above section with section 4 of the Income-tax Act, 1961, we have irresistibly to come to the conclusion that the Finance Act, 1965, only provided the rate of tax that is to be imposed and also provided that it should be imposed on the income declared by the assessee. The latter part is only a machinery provision and the earlier provisions provides what is envisaged by section 4 of the Income-tax Act, 1961, that the Finance Act, 1965, shall declare the rates applicable. Neither of these things can alter the liability, a liability that arises and stems from the existence of the Income-tax Act containing the charging section, section 4. We have no doubt that the liability is a liability that arose on the valuation date (vide the Supreme Court decision in *H. H. Sethu Parvati Bayi v. Commissioner of Wealth-tax<sup>2</sup>*) and that the liability was a debt owed by the assessee on the valuation dates falling under section 2(m) of the Wealth-tax Act, 1957. The Wealth-tax Officer was, therefore, in error in not having deducted the income-tax liability on the various valuation dates for the four years in question on the amounts declared

by the assesseees under section 68(2) of the Finance Act, 1965. We, therefore, allow these writ appeals, set aside the judgment in the original petitions and further set aside exhibits P-1, P-2, P-3, P-4 and P-7 in O. P. No. 1511 of 1969, and exhibits P-1, P-2, P-3, P-4 and P-9 in O. P. No. 1512 of 1969. The assesseees in the two petitions are entitled to their costs including counsel fee which we fix at Rs. 250 in each of the cases.

#### Cases Referred.

1[1966] 59 ITR 767

2[1968] 69 ITR 864