

Executors of the Estate of Late Vs. Wealth-tax Officer

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Court : Income Tax Appellate Tribunal ITAT Mumbai

Decided On : Dec-22-1992

Reported in : (1993)45ITD49(Mum.)

Judge : G Veerabhadrappe, A S O.

Appellant : Executors of the Estate of Late

Respondent : Wealth-tax Officer

Judgement :

1. These two appeals relate to the assessment years 1984-85 and 1985-86 and are directed against the orders of Dy. Commissioner of Wealth-tax (Appeals) J-Range, Bombay dated 28 January 1992 in appeal Nos. J/W-9/WT 8, 9/89-90.

2. In the appeals filed by the Executors of the Estate of Late Mrs.

Shirin S. Mody, the grounds of appeal are common for both the assessment years. It is claimed by the Appellant that the Dy. C.W.T.(Appeals) erred in confirming the non-deductibility of the assessee's outstanding tax liabilities arising on self-assessment of Income-tax for the earlier assessment year in computing the assessee's net wealth and such tax liabilities arising on self-assessment and outstanding on valuation date are not covered by the restrictive provisions of Section 2(m) and are deductible in computing the assessee's net wealth.

3. The facts relating to the dispute in these appeals are mentioned in the assessment orders for 1984-85 and 1985-86 and also in the appeal orders.

According to the assessee a sum of Rs. 2,00,685 was payable as Income-tax for the assessment year 1983-84. There was no order passed by any officer in this regard. The amount was only paid on 11-6-1985.

The return for the assessment year 1984-85 was filed on 19-9-1985 and the return for the assessment year 1985-86 was filed on 6-11-1985. In both the returns the claim of the assessee was that at the relevant valuation date i.e., 31-3-1984 and 31-3-1985 the amount of Income-tax liability of the assessee worked out at Rs. 2,00,685 for the assessment year 1983-84 was an outstanding liability which was deductible in the computation of net wealth. This claim was negated by the WTO in the assessment orders in which it was stated that the demand pertains to the assessment year 1983-84 and it does not qualify for deduction in view of Section 2(m)(iii)(b) of the Wealth-tax Act.

4. In the first appeal the Dy. CWT (Appeals) upheld the assessment orders with the reasoning that for the purpose of Section 2(m)(iii)(b) it is not necessary that the tax liability should be in consequence of any order passed. Before the Appellate Tribunal the learned Counsel for the assessee stated that the self-assessment tax under the Income-tax Act for the assessment year 1983-84 amounting to Rs. 2,00,685 was paid on 11-6-1985 and though such self-assessment tax was not paid in pursuance of any order it nevertheless constitutes a liability as on the relevant valuation dates i.e., 31-3-1984 and 31-3-1985. As the Income-tax liability was debt owed by the assessee as on the dates of valuation which was discharged subsequently, the assessee is eligible to claim a deduction for the same in the computation of net wealth.

Section 140A of the Income-tax Act only states that where any tax is payable on the basis of any return required to be furnished under Section 139 or 142 or as the case may be Section 148 the assessee shall be liable to pay such tax, before furnishing the return. It does not say when it becomes due. Referring to Section 4 of the Income-tax Act the learned Counsel for the assessee argued that the charge of tax relates to the income of the previous year and it falls due at the end of the previous year.

5. The learned Departmental Representative stated that the self-assessment tax claimed as a deduction by the assessee relates to the assessment year 1983-84 and it is not the intention of the Legislature to allow it as a deduction for the subsequent years i.e., 1984-85 and 1985-86. Adverting to the provisions in Section 140A(3) of the Income-tax Act the learned Departmental Representative stated that the said provision provides for treating the assessee who fails to pay the self-assessment tax as an assessee in default in respect of the tax remaining unpaid and the provisions of Income-tax Act relating to assessee in default shall be applicable to him. The intention of the Legislature, according to the learned Departmental Representative is not to allow an assessee to remain in arrears of self-assessment tax payable by him for any length of time so that it can be claimed as a deduction in the subsequent years for the purpose of computation of net wealth.

6. We have heard the arguments of either side. Section 2(m) of the Wealth-tax Act defines net wealth to mean the amounts by which the aggregate value computed in accordance with the provisions of Wealth-tax Act of all the assets belonging to the assessee on the valuation date is in excess of the aggregate value of all the debts owed by the assessee on the valuation date other than certain debts.

The Sub-clause (iii) of the said provision provides that the amount of 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 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, shall not be deductible as a debt.

The claim of the Appellant is that the income-tax liability as per Section 4 of the Income-tax Act is on the valuation date and as self-assessment tax is payable by a statutory provision and not in pursuance of any order passed it should be allowed as a deduction in computing the net wealth of the assessee for the subsequent assessment years so long as such self-assessment tax was outstanding and was

not paid. Section 140A only states that the assessee should pay self-assessment tax in respect of the return of income to be furnished by him but does not refer to the period within which it should be paid.

It only states that such tax shall be paid before furnishing the returns. The return of income was to be furnished on different dates depending upon the sources of income of the assessee. Though Section 140A(3) provides for treating the assessee who has not paid self-assessment tax as an assessee in default there is no prescribed time limit for enforcing those provisions. In the case of CWT v. J.K.Cotton Mfrs. Ltd. [1984] 146 ITR 552 (SC) it was held that the expression "Outstanding" in Section 2(m)(ii)(a) and (b) has to be construed in the background of the phrase "Amount of tax...payable in consequence of an order" and in that context it must mean remaining unpaid after the obligation to file the income tax return and to pay the tax under Section 140A. This obligation arose during the assessment year 1983-84. The financial year 1983-84 is the accounting year for the assessment year 1984-85. As on 31-3-1984 the self-assessment tax was an outstanding liability which was remaining unpaid. There was no order by any authority to the assessee to pay the self-assessment tax but it was a statutory obligation which fastened the liability on the assessee.

The liability continued even as on 31-3-1985. Section 140A does not prescribe the period before which the amount is to be paid like say 30 days before the filing of the return. It can be paid at any time before filing of the return. Section 140A(3) also does not prescribe a definite time limit for the enforcement of the liability. The return which can be filed under Section 139 can be filed either under Section 139(1) or 139(2) or 139(3) or 139(4). Therefore till the prescribed time limit under Section 139 has expired the assessee was entitled to furnish the return of income and pay the self-assessment tax before the furnishing of such return. In view of the language of Section 140A self-assessment tax is not payable as result of any order under the Act.

7. If we take a second look at the provisions of Section 2(m)(iii) from the net wealth debts owed by the assessee on the valuation date other than the amount of tax, penalty or interest payable in consequence of any order passed under or in

pursuance of Wealth-tax Act or any law relating to taxation of Income or profits etc. are to be deducted. The issue in this case is whether payments to be done by an assessee under the provisions of Section 140A of the Income-tax Act is to be excluded from the debts owed. In one of the early cases on this issue in the case of Kesoram Industries & Cotton Mills Ltd. v. CWT [1966] 59 ITR 767 it was held by the Supreme Court that the verb 'OWE' means to be under an obligation to pay, it does not really add to the meaning of the word 'debt' and that the liability to pay income-tax was a present liability though the tax became payable after it was quantified in accordance with the ascertainable data and held that there was a perfect debt of income-tax on the last date of the accounting year and not a contingent liability and all the ingredients of a debt were present and it was a present liability of an ascertainable amount. In the said case it was held that the provisions for payment of income-tax in respect of the year of accounts ending on 31-3-1957 was a "debt owed" within the meaning of Section 2(m) on the valuation date, i.e., 31-3-1957 and shall as such chargeable in computing the net wealth. In the present appeal before us the liability to pay tax under Section 140A arises after 1st April i.e., the commencement of the assessment year and it is to be done at any time before the filing of the return. It is not payable in pursuance of "an order" which is the word used to exclude such liability under Section 2(m)(iii), if it was outstanding as a result of the order for a period of more than 12 months. We derive support for this view from the decision of the Calcutta High Court in the case of Textile Machinery Corporation Ltd. v. CWT [1968] 67 ITR 122. In that case the Calcutta High Court dealt with Section 4 of Bengal Finance (Sales Tax Act) 1941 which is couched in the following language: With effect from such date as the State Government may by notification in the Official Gazette, appoint, being not earlier than 30 days after the date of the said notification that every dealer whose gross turnover during the year immediately preceding the commencement of this Act exceeds taxable quantum shall be liable to pay tax under this Act on all sales effected after the date so notified....

After considering the said provision and the particular interpretation by the Supreme Court in the cases cited supra it was held by the Calcutta High Court that the assessees claiming deduction of such a tax debt under Section 2(m) of the Wealth-tax Act was justified. Therefore, the claim of the assessee which is on pari

materia with the claim of the appellant before the Calcutta High Court in the case discussed above has to be upheld.⁸ We hold for the reasons given above that the assessee is entitled for the deduction of the tax payable under Section 140A in respect of the return filed for the assessment year 1983-84 while computing the net wealth for the assessment years 1984-85 and 1985-86.

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