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Court : Kolkata

Decided On : Jul-12-2002

Reported in : (2002)177CTR(Cal)343

Appeal No. : AWT No. 93 of 1993 12 July 2002 A.Y. 1987-88

Appellant : Cwt

Respondent : Bajoria Properties (P) Ltd.

Judgement :

Ajoy Nath Ray, J.

This is a wealth-tax matter and the only question which has come up for answer at the instance of the revenue, is as follows :

'Whether, on the facts and in the circumstances of the case, the Tribunal was justified in directing the assessing officer to allow the sum of Rs. 50 lakhs received as advance sale consideration in terms of agreement dated 22-9-1986, as debt owed in computing the net wealth under section 40(2) of the Finance Act, 1983 ?'

2. The undisputed facts of this case are as follows :

The assessee is a private limited company and is the owner of a property being 3, Alipore Road, Calcutta.

On 22-9-1986, the said company entered into an agreement with one Satyam Properties and Finance (P) Ltd. for sale of the said property, at Alipore, at a consideration of Rs. 3 crores. Out of the said amount of Rs. 3 crores Rs. 50 lakhs was paid during the year ended on 31-3-1987. The intending purchaser, however, obtained the possession of the land for the purpose of construction of a multi-storeyed building on the said land. The conveyance of the property had not been executed, however, the purchaser took steps for construction of the multi-storeyed building after obtaining the possession. The assessment year involved in this reference is 1987-88, and the relevant valuation date is 31-3-1987.

The revenue has never disputed the valuation of the said property. The valuation of the said property is Rs. 3 crores.

It was contended by the assessee before the assessing officer that the sum of Rs. 50 lakhs paid by the intending purchaser should be deducted as a liability from the said sum of Rs. 3 crores. Under the said agreement for sale dated 22-9-1986, the assessee was to receive the total sale consideration of Rs. 3 crores in several instalments. The assessee received Rs. 50 lakhs from the said Satyam Properties and Finance (P) Ltd., during the year ended on 31-3-1987. The dates of payments of the said sum of Rs. 50 lakhs were as follows :

Date of Payment

Amount (Rs.)

8-10-1986

20,00,000

15-10-1986

20,00,000

3-11-1986

10,00,000

Total

50,00,000

It appears from the order of the assessing officer that the said claim for deduction was rejected on the ground that it was part of the sale consideration and was not a liability against the value of the property. Therefore, according to the assessing officer the assessee was not entitled to claim the said amount of Rs. 50 lakhs 'As liabilities debts in terms of the provision of sub-section (2) of section 40 of the Finance Act, 1983, nor under the provisions of section 2(m) of the Wealth Tax Act, 1957.'

The assessee, no doubt, preferred an appeal and the said order of the assessing officer was affirmed by the Commissioner (Appeals), Calcutta. The Commissioner, however, was of the view that the amount of Rs. 50 lakhs which had been received by the assessee as advance did not form part of the net wealth computed in terms of section 40(3) of the Finance Act and, therefore, no deduction could be allowed in relation to such an asset which was not forming part of the computation of the net wealth.

The Commissioner (Appeals) held further that the said sum of Rs. 50 lakhs was not a debt owed by the appellant in relation to the said property inasmuch as the appellant was the owner of the property and had not encumbered the said property by the said sum of Rs. 50 lakhs.

The Commissioner (Appeals), in fact, affirmed the order of the assessing officer. The assessee having been aggrieved by the said order of the Commissioner (Appeals) preferred yet another appeal to the Tribunal.

The learned Tribunal, however, accepted the contention of the assessee by allowing the said sum of Rs. 50 lakhs as deductions from the value of the said property as claimed by the assessee. The learned Tribunal in its order directed the assessing officer to deduct Rs. 50 lakhs in computing the net wealth of the assessee.

Against the said order of the learned Tribunal dated 9-3-1992, the revenue sought this reference on the above question of law under the provisions of section 27(1) of the Wealth Tax Act, 1957.

3. Before dealing with the respective contentions and submissions both on behalf of the revenue and on behalf of the assessee it is to be noted that companies were granted exemption from payment of wealth-tax under the Finance Act, 1983, the levy of wealth-tax was revived in the case of closely held companies which are those companies in which the public were not substantially interested. Such companies were brought under the cover of the wealth-tax in respect of net wealth of certain specified assets owned by such companies. All the assets owned by such companies were not subjected to wealth-tax but only net wealth of the specified assets which were invested in non-productive activities were subjected to such tax.

4. In the present case the assessee has not, however, disputed that it is liable to wealth-tax in terms of section 40 of the Finance Act, 1983, in respect of the said property namely 3, Alipore Road. On a simple approach it appears that the assessee is a company and the public are not substantially interested in the said company and the said property falls within the assets specified under sub-section (3) of section 40 of the Finance Act, 1983. The real issue in this reference, I think, is the scope and ambit of sub-section (2) of section 40 of the Finance Act, 1983. Thus, section 40 (sub-section (2)) of the Finance Act, 1983, provides :

'Section 40(2).

For the purpose of sub-section (1), the net wealth of a company shall be the amount by which the aggregate value of all the assets referred to in sub-section (3), wherever located belonging to the company on the valuation date is in excess of the aggregate value of all the debts owed by the company on the valuation date which are secured on, or which have been incurred in relation to the said assets'.

5. On a plain reading of the above provision it appears that the net wealth of a company is to be computed after allowing deductions for the debts owed by the company which are secured on, or which have been incurred in relation to the

assets.

6. Mr. Prasad, learned advocate on behalf of the revenue strongly supported the order of the assessing officer as well as the Commissioner (Appeals) and submitted that the order of the learned Tribunal was not only wrong both in law and on facts but also 'had no legs to stand'.

Mr. Prasad submitted that the learned Tribunal relied on a decision *Govind Das & Ors.* AIR 1980 SC 1334, which according to Mr. Prasad was quite different on facts and had no manner of application to the facts of the instant case. According to him the decision rendered in the said judgment had no relation to net wealth or gross wealth. The learned Tribunal was wrong in applying the case and by virtue of the decision of the learned Tribunal in the instant case the amendments made to the Wealth Tax Act would be nugatory.

7. Mr. Prasad submitted that the sale of the said property in question was complete for all practical purposes and the terms and conditions as contained in the said agreement for sale of the said property were quite specific and the said terms of the agreement infact support the contention of the revenue. Mr. Prasad in this connection also referred to a decision in his written submission (though the said decision was not referred to at the time of hearing of the case). The said decision is reported in the case *CIT v. Podar Properties Ltd.* : [1997]226ITR625(SC) .

In the said case the Supreme Court was dealing with the assessment of income from property under the provisions of the Income Tax Act, 1961. It was held in that case that the liability of a person to be assessed for the income from property is on the person who actually received or is entitled to receive such income. In that case the Supreme Court was primarily engaged with the interpretation of the word 'owner' and held that though under the common law owner means a person who has got valid title legally conveyed to him after complying with the requirements of law such as the Transfer of Property Act, the Registration Act, etc., in the context of section 22 of the Income Tax Act, 1961, having regard to the ground realities and further having regard to the object of the Income Tax Act, namely, to tax the income, owner is a person who is entitled to receive income from the property in

his own right. The requirement of registration of sale deed in the context of section 22 was held to be unwarranted.

8. No doubt the above decision was given under the provisions of the Income Tax Act for the purposes of taxing the income in the hands of a person actually receiving the same. It is difficult to appreciate, however, as to how the said decision could be said to be relevant to the issue involved in the instant case which is assessment of a property owned by a person under the Wealth Tax Act. In my opinion, the said case has no application to the case in hand.

9. Mr. Prasad in his written submission merely repeated the order of the assessing officer and also the order of the Commissioner (Appeals) and said that the payment of Rs. 50 lakhs was nothing but a part-payment of the entire consideration in terms of the agreement in question. The payment of Rs. 50 lakhs was neither an advance nor an earnest money in the nature of a debt within the meaning of section 2(m) of the Wealth Tax Act read with section 40(2) of the Finance Act, 1983.

10. Mr. Prasad in this connection also relied, in his written notes, on a decision of this High Court in the case of Salimar Chemical Works (P) Ltd. v. CIT : [1987]167ITR13(Cal) .

The issue involved in the said case was as to the year in which the deduction could be allowed in respect of contributions made under the ESI Act. In the said case the assessee claimed deduction for the year in which the provisions of the ESI Act, were applied to it by the authorities and the amount of contribution to be made by it was determined by them. The department contended that the contribution in respect of the earlier years could not be allowed in the year in which such claim was made. His Lordship Justice Dipak Kumar Sen speaking on behalf of the Division Bench held that the amount was allowable in the year in which the claim was made since the liability became real and enforceable in that year. In fact, I find from the judgment that the court held that the amount as claimed by the assessee was allowable as a deduction for the assessment year in question in the said case. I have no hesitation in mind to hold that the said decision has no application to the present case.

11. Mr. Prasad also mentioned a Full Bench decision of Patna High Court in his written notes. The said decision was rendered in the case of CIT v. Sheo Kumari Devi : [1986]157ITR13(Patna) . Relying on the said decision Mr. Prasad contended that the learned Tribunal was not entitled in law to give a liberal meaning to the provisions of the relevant section or sections in the instant case instead it should have given a literal meaning of such section or rather the provisions of such sections. The said case involved a reopening of an assessment under the provision of the Income Tax Act, 1961.

It was observed by the Full Bench in the said case that if the provision of a statute has to prevent evasion of tax then the same need not be construed in favour of the assessee. Having considered the case in full I find it extremely difficult to appreciate as to how the principles of the said case would at all be applied to the facts and circumstances of the case in hand. I have no hesitation to hold that the principles of the said Full Bench decision of Patna High Court have no manner of application to the instant case either. Mr. Prasad, however, while making his submissions during the course of hearing sought to emphasize on a point that in interpreting a taxing provision if two views were possible then the view which favour the assessee should prevail was no longer a good proposition of law. Possibly Mr. Prasad was trying to draw some support from the observations made by the Patna High Court in the said Full Bench decision.

12. In my opinion, the Full Bench decision of the Hon'ble Patna High Court is not an authority for the proposition for which Mr. Prasad relied on the said case. Interestingly enough the case relied upon by Mr. Prasad that is the CIT v. Poddar Cement (P) Ltd. (referred to herein above in this judgment) reiterates the well known proposition of law regarding interpretations of provisions of taxing statutes. It was observed by the Supreme Court in the said judgment at para 648 :

'Assuming that there are two possible interpretations on section 22 of the 1961 Act. which is akin to a charging section, it is well-settled that the one which is favourable to assessee has to be preferred.'

The contention of Mr. Prasad especially in his written submission, that if two views are possible the view which favours the assessee should prevail is no more good

law cannot be accepted and infact the same should be rejected. I have not been able to find any such proposition from the decisions referred to or relied upon in the instant case. On the contrary, the Supreme Court seems to have reiterated the well-known principles of interpretation of taxing statute that if two interpretations were possible then the one which favours the assessee should be preferred.

13. It was contended by the learned counsel, Mr. R.N. Bajoria on behalf of the assessee, that section 40 of the Finance Act, 1983, is a charging section and as such the contention of Mr. Prasad in this regard should be altogether rejected as the said contention is utterly fallacious. Mr. Prasad, however, lastly contended that the point involved in the instant case is a debatable one and if two views are possible then the view which favours the assessee should prevail is no more good law. On that basis Mr. Prasad submitted that the question referred to at the instance of the revenue, should be answered in the negative and I favour of the revenue by holding that the Tribunal was not justified in directing the assessing officer to deduct Rs. 50 lakhs in computing the net wealth of the assessee.

14. Mr. R.N. Bajoria, learned senior counsel, on behalf of the assessee, sought to contend that the sum of Rs. 50 lakhs was secured on or had been incurred in relation to the said property and should be deducted from its value of Rs. 3 crores computed by the assessing officer. The only ground given for not allowing the deduction of the said amount was that it was part of the sale consideration and as such it was not allowable as a deduction. The other contention of the revenue (sic- assessee) was that the sum of Rs. 50 lakhs as received was not to be included in the net wealth, since it was not one of the specified assets under sub-section (3) of section 40 of the Finance Act, 1983.

15. Mr. Bajoria submitted that the assessee on the date of the valuation was the owner of the property in question. The conveyance of the property was not executed. The only question was whether the sum of Rs. 50 lakhs could be said to be a debt incurred in relation to or secured on the said property, The assessee had no right to appropriate the said sum as sale consideration till the sale was complete. The amount paid by the purchaser according to Mr. Bajoria, was a liability which the assessee had to discharge in case the transaction of the sale in

question did not materialise. At this stage the provisions under section 55(6)(b) of the Transfer of Property Act, 1882, were referred to and relied upon on behalf of the assessee. For the sake of convenience the provisions of the said section are set out below :

'Section 55(6)The buyer is entitled :

(a)

(b) Unless he has improperly declined to accept delivery of the property, to a charge on the property, as against the sellers and all persons claiming under him, to the extent of the sellers' interests in the property, for the amount of any purchase money properly paid by the buyer in anticipation of the delivery and for interest on such amount and, when he properly declines to accept delivery also for the earnest (if any) and for the costs (if any) awarded to him of a suit to compel specific performance of the contract or to obtain a decree for his rescission.'

Mr. Bajoria, learned counsel, submitted that in terms of the provisions of the above section the sum of Rs. 50 lakhs as paid in advance to the assessee by the intending purchaser was nothing but a charge on the said property and as such was an allowable deduction.

16. On a plain reading of the above section and on a grammatical construction thereof, keeping in view also the true intent of such provisions, the payment of Rs. 50 lakhs by the intending purchaser in favour of the assessee can certainly be termed as a charge on the said property. In this connection the learned Tribunal had in fact relied on a judgment of the Supreme Court in the case of Bai Dosa Bai v. Mathura Das Gobind Das & Ors. (supra). The said judgment, however, was referred to and relied upon on behalf of the assessee. No doubt the said judgment of the Supreme Court seeks to support the proposition of Mr. Bajoria, learned counsel, on behalf of the assessee.

17. It was further contended that the revenue did not deal with the submissions made at the time of the hearing of the reference on behalf of the assessee, on section 55(6)(b) of the Transfer of Property Act, 1882, the revenue also did not

meet the argument on behalf of the assessee that the said sum of Rs. 50 lakhs was secured on or was a charge in relation to the said property. According to Mr. Bajoria the revenue only sought to emphasize that the possession had been given to the purchaser and as such the sale should be treated as complete in all practical purposes. It was submitted on behalf of the assessee that the provisions of section 55(6)(b) of the Transfer of Property Act were applicable irrespective of whether possession of the property had been delivered or not, In this connection a judgment of the Bombay High Court reported in 1957 Bombay para 79 was also referred to.

It was next contended on behalf of the assessee that it would not be disputed in any event that the said sum of Rs. 50 lakhs was incurred in relation to the said property. The words 'In relation to' are of very wide import and it could not be disputed that the said sum of Rs. 50 lakhs was received by the assessee in relation to the said property and the said property alone.

It was argued on behalf of the assessee that the value of the said property on the date of the valuation could not be arrived at ignoring the fact that 50 lakhs had been received towards such value in advance. The tax could only be levied, therefore, on the net value of the asset.

18. According to Mr. Bajoria the fact that the cash of Rs. 50 lakhs received in advance or any investment made, therefrom, could not be assessed as they were not one of the specified assets under sub-section (3) of section 40 of the Finance Act, 1983, was not at all relevant. There is no doubt, however, that the wealth-tax was being levied only in respect of specified non-productive assets of closely held companies. The value of the said property on the relevant valuation date cannot be made ignoring the fact that Rs. 50 lakhs had been received towards such value in advance.

19. On a plain reading of section 40(2) of the Finance Act, 1983, it is quite clear that the deduction is to be allowed in respect of any amount secured on or in relation to the property being the subject-matter of assessment.

In my opinion a plain reading of section 40(2) of the Finance Act, 1983 or rather the grammatical construction thereof is to be preferred and on such construction one should not hesitate to agree with the proposition put forward by the learned counsel on behalf of the assessee.

20. Mr. Prasad on behalf of the revenue, in his written submission, sought to raise a technical point that the cases which were cited before the learned Tribunal on behalf of the assessee, were not in fact cited before, the Hon'ble court at the time of hearing of the reference. To meet such technical objection it has been contended on behalf of the assessee that it was not necessary to place those decisions relied upon before the learned Tribunal since no issue had been raised, as was done before the learned Tribunal on behalf of the revenue.

In other words, it was contended on behalf of the assessee that no issue was raised at the time of hearing of the reference as to the real intrinsic value of a property subject to a contract for sale, in respect of which part of the consideration had been received.

It was pointed out in the written notes of submission on behalf of the assessee that a point was emphasized before the learned Tribunal with reference to the cases cited before it, that the value of the property was bound to be affected by reason of the agreement for sale and the receipt of the part of the consideration thereunder by the assessee. However, it was argued on behalf of the assessee, that the said aspect had or has no relevance to the issue whether the said sum of Rs. 50 lakhs was an allowable deduction under section 40(2) of the Finance Act, 1983.

21. I have had the advantage of considering the arguments on behalf of the revenue as well as the assessee and I have also had the advantage of considering the written notes of submissions on behalf of both the assessee and the revenue. I have also had the advantage of considering the cases relied upon on behalf of the revenue in its written notes of submissions. In my opinion, the cases relied upon on behalf of the revenue do not really throw any light on the issue involved in the present reference at all. On the basis of undisputed facts and the circumstances of the case and on a plain reading of the relevant provisions of law, namely, section

40(2) of the Finance Act, 1983, and also the provisions under section 55(6)(b) of the Transfer of Property Act. I think the learned Tribunal did not go wrong in law and the conclusion of the learned Tribunal should also be accepted.

The only question referred to us in this reference, is, therefore, answered in the affirmative and in favour of the assessee.

Maharaj Sinha, J.

I agree.

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