COMMISSIONER OF WEALTH TAX, MYSORE

v.

HER HIGHNESS VIJAYABA, DOWGER MAHARANI SAHEB OF BHAVNAGAR PALACE, BHAVNAGAR & ORS.

March 9, 1979

[N. L. UNTWALIA AND R. S. PATHAK, JJ.]

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Wealth Tax Act, 1957—S. 2(m)—By a family arrangement assessee agreed to pay certain sum to her younger son—The sum agreed to pay—If a debt owed under s. 2(m)—Whether the undertaking to pay the sum an agreement without consideration.

C

The respondent's wealth was assessed to Wealth Tax under the Wealth Tax Act, 1957 for three assessment years 1960-61, 1961-62 and 1962-63 the corresponding valuation dates being 31-12-1959, 31-12-1960 and 31-12-1961. On 14th May, 1953 the assessee wrote a letter to her younger son stating that his late father expressed the wish that he (the second son) should be paid Rs. 50 lakhs out of the family properties and that to keep his promise and also to get peace of mind, if his elder brother did not pay the sum of Rs. 50 lakhs, she would pay such balance that remains unpaid. The elder brother paid Rs. 20 lakhs. The balance liability of Rs. 19 lakhs remained due and continued to be due on all the three aforesaid valuation dates. It was finally wiped off in February, 1962. On the question "whether, while assessing the net wealth of the respondent within section 2(m) of the Wealth Tax Act, the sum of Rs. 19 lakhs was to be deducted" as debt owed by her, the Wealth Tax Tribunal held in favour of the respondent. The High Court held that the sum of Rs. 19 lakhs constituted a debt owed by the assessee and was deductible under the Wealth Tax Act from the value of the total assets as on 31-12-1959.

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On appeal to this Court, the appellant argued (i) that the letter dated 14-5-1953 created no debt as the undertaking given by the respondent to her son on his elder brother's failure to pay any portion of the sum was an agreement without consideration and hence it was void and therefore it was not enforceable at law on any of the valuation dates and could not be deducted; (ii) that the undertaking given by the respondent in her letter dated 14-5-1953 was a contingent contract within the meaning of section 31 of the Contract Act.

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Dismissing the appeal,

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HELD : (1) Taking the totality of facts it was a case of family settlement or family arrangement which was binding on the parties. The respondent agreed to purchase peace for the family and to pay to her younger son the amount which fell short of Rs. 50 lakhs if her elder son did not pay any portion thereof. It is well established that such a consideration is good consideration which brings an enforceable agreement between the parties and is not hit by section 25. Even if it be held that the letter dated 14-5-1953 had not the effect of bringing about the family arrangement or any binding arrangemen bewteen the parties, their subsequent conduct upto 12th September 1959 brought a concluded family arrangement. The respondent paid Rs. 11 lakhs and reiterated her obligation to pay the balance in the shape of ornaments.

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A That was not honoured by reason of which the younger son had a right to enforce the family arrangement against his mother. The respondent would have been bound to pay the balance if a suit had been filed against her as he had refrained from going to the law court against his brother on her bringing about the family arrangement. [548 C—G]

(2) Assuming that it was a contingent contract within the meaning of B s. 31 of the Contract act, such a contract under section 32 of the Contract Act, becomes enforceably by law when the future event contemplated in the contingent contract had happened. The contingency in this case was the liability of the mother to pay a certain sum of money on the failure by the elder son to pay Rs. 50 lakhs or any part thereof. In that view, the liability of the mother became enforceable by law on the latter date, if not earlier. [548 G—H, 549]

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Kesoram Industries and Cotton Mills Ltd. v. *Commissioner of Wealth Tax (Central), Calcutta,* 59 I.T.R. 767; *Standard Mills Co. Ltd.* v. *Commissioner of Wealth Tax, Bombay,* 63 I.T.R., 470; and *Bombay Dyeing and Manufacturing Co. Lt. v. Commissioner of Wealth Tax, Bombay City-I,* 93 I.T.R., 603, distinguished and held inapplicable.

D CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 2170-2172 of 1972.

Appeals by Special Leave from the Judgment and Order dated 22-7-1971 of the Mysore High Court in T.R.C. Nos. 3, 4 and 5 of 1967.

B. B. Ahuja and *Miss A. Subhashini* for the Appellant.

E *S. T. Desai, I. N. Shroff* and *H. S. Parihar* for the Respondents.

The Judgment of the Court was delivered by

UNTWALIA J.—These are three appeals by special leave filed by the Commissioner of Wealth Tax, Mysore from the Judgment of the Mysore (now Karnataka) High Court. The assessee is the Dowger Maharani F of Gondal. Her husband, His Highness Bhojjrajji Maharaja Saheb of Gondal, died intestate on 31.7.1952 leaving considerable moveable and immoveable properties. Certain disputes and differences arose after his death between his two sons namely Maharaja Vikramsinghji and his younger brother Shivaraj Singhji in respect of the assets left by the late Maharaja Saheb. The younger brother was contemplating legal G proceedings against his elder brother. Their mother intervened. The idea of litigation, thereupon, was dropped because the assessee gave a letter dated 14.5.1953 to Shivaraj Singhji stating therein :—

"Your father had expressed in the presence of many people that he will give you rupees fifty lakhs. To keep up his H words and promise and also that I should get peace of mind I am writing to you that if your brother Vikramsinghji Maharaja of Gondal does not give you the full amount, then you

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must get the balance of amount from me. That is my sincere desire. I will also press Vikram that he should give you the amount of Rs. fifty lakhs.

Vikram Singhji paid only Rs. 20,00,000/- to Shivaraj Singhji. The latter, therefore, claimed the balance amount of Rs. 30,00,000/- from the assessee on the basis of her letter dated 14.5.1953. On or about 12.9.1959, pursuant to her commitment made in the letter aforesaid, the assessee transferred War Stock valued at Rs. 11,00,000/- to Shivaraj Singhji and also agreed to hand over certain ornaments in full settlement of his claim. The ornaments were however not given. That led to disputes between the mother and the son but eventually they were also settled on 22.2.1962 which settlement was evidenced by a document setting out all the relevant facts of the history of the dispute. By virtue of this settlement a sum of Rs. 10,00,000/- was paid by the assessee to Shivaraj Singhji.

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The assessee's wealth was assessed to wealth-tax under the Wealth-Tax Act, 1957 for the three assessment years in question viz. 1960-61, 1961-62 and 1962-63. The corresponding valuation dates of the said assessment years are 31.12.1959, 31.12.1960 and 31.12.1961. It would be noticed that the assessee, under the arrangement arrived at between the parties, became liable to pay the balance of the amount of Rs. 30,00,000/- to Shivaraj Singhji as Vikramsinghji, out of the sum of Rs. 50,00,000/- mentioned in the letter dated 14.5.1953, paid only Rs. 20,00,000/-. The assessee succeeded in wiping off her liability to the extent of Rs. 11,00,000/- on 12.9.1959 by transfer of War Stock. The balance of the liability, *i.e.*, Rs. 19,00,000/- remained due and continued to be due on all the three valuation dates aforesaid. It could be wiped off by a further settlement only in February, 1962. In respect of the three assessment years in question, however, a question arose as to whether while assessing the net wealth of the assessee within the meaning of clause (m) of section 2 of the Wealth-Tax Act the said sum of Rs. 19,00,000/- was to be deducted. The Wealth-Tax Tribunal held in favour of the assessee. At the instance of the Revenue for all the three years a common question of law was referred to the High Court for its opinion. The questions being in identical terms it would suffice to quote the question with respect to the assessment year 1960-61. It reads as follows :—

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"Whether on the facts and circumstances of the case, the sum of Rs. 19 lakhs could constitute a debt owed by the assessee and deductible under the Wealth-Tax Act from the value of the total assets as on 31.12.1959 ?"

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A The High Court has answered the question in the affirmative, in favour of the assessee and against the department. Hence this appeal.

Mr. Ahuja appearing in support of the appeal contended that by the letter dated 14.5.1953 no debt was created as the undertaking given by the assessee to her son agreeing to pay the deficit in respect of B Rs. 50,00,000/- on his elder brother's failure to pay any portion of the sum was an agreement without consideration and hence under section 25 of the Contract Act it was void and was not saved by any of the exceptions mentioned therein. He, therefore, contended that it was not an enforceable liability on any of the valuation dates and could not be deducted from the valuation of the assessee's wealth. In our opinion C the argument is not sound. Taking the totality of the facts as found by the Tribunal and mentioned in the impugned judgment of the High Court it was a case of family settlement or family arrangement which is binding on the parties concerned. The assessee agreed to purchase peace for the family, and to pay to her son the amount which fell short D of Rs. 50,00,000/- if her elder son did not pay any portion thereof. It is well established that such a consideration is a good consideration which brings, about an enforceable agreement between the parties. Section 25 of the Contract Act does not hit this.

It may be further pointed out that even if it be held that the letter E dated 14.5.1953 had not the effect of bringing about the family arrangement and any binding agreement between the parties, their subsequent conduct upto 12.9.1959 brought about a concluded family arrangement. Vikramsinghji paid Rs. 20,00,000/-. Out of the balance of Rs. 30,00,000/- the assessee discharged her liabilities to the extent of Rs. 11,00,000/- and reiterated her obligation to pay the bala- F nce of Rs. 19,00,000/- in the shape of ornaments. That was not honoured. Shivaraj Singhji had a right to enforce the family arrangement against his mother, as arrived at partly in writing and partly orally as evidenced by the conduct of the parties. The assessee would have been bound to pay Rs. 19,00,000/- if a suit had been filed against her by G Sivaraj Singhji as he had refrained going to the law court from against his brother on her bringing about the family arrangement.

Mr. Ahuja then submitted that at best the undertaking given by the assessee in her letter dated 14.5.1953 was a contingent contract within the meaning of section 31 of the Contract Act. Even so, under section H 32 such a contract becomes enforceable by law when future even contemplated in the contingent contract has happened. In this case the cotingency was the liability of the mother to pay a certain sum of money

on the failure by her elder son to pay Rs. 50,00,000/- or any part thereof. This did happen sometime between 14.5.1953 and 12.9.1959. In that view of the matter, if not earlier the liability of the mother became enforceable by law on the latter date.

Learned counsel for the appellant cited three decisions of this Court to support his argument viz.—*Kesoram Industries and Cotton Mills Ltd. v. Commissioner of Wealth-Tax (Central) Calcutta;*(1) *Standard Mills Co. Ltd.* v. *Commissioner of Wealth-Tax, Bombay*(2) and *Bombay Dyeing and Manufacturing Co. Ltd.* v. *Commissioner of Wealth-Tax, Bombay City-I*(3). None of them is quite apposite on the point at issue before us. In the case of *Kesoram Industries* it was held 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 futuro* an ascertainable sum of money. It was held that a liability to pay income-tax was a present liability though the tax became payable after it was quantified in accordance with ascertainable data. Subba Rao J., as he then was, delivering the majority opinion said at page 780 :—

> "The said decisions also accept the legal position that a liability depending upon a contingency is not a debt *in praesenti* or *in futuro* till the contingency happened. But if there is a debt the fact that the amount is to be a-scertained does not make it any the less a debt if the liability is certain and what remains is only the quantification of the amount. In short, a debt owed within the meaning of section 2(m) of the Wealth-tax Act can be defined as a liability to pay *in praesenti* or *in futuro* an ascertainable sum of money.

The other two decisions of this Court were concerned with the question as to whether the liability of the assessee to pay gratuity to its employees on determination of employment was a mere contingent liability which arose only when the employment of the employee was determined by death, incapacity, retirement or resignation and whether it could be deducted as a debt in computing the net wealth of the assessee. The answer given was against the assessee. In the present case we have held that the liability of the assessee was created by the family arrangement arrived at between the parties and even if it was a contingent liability the contingency did happen and the assessee became liable

(1) 59 I.T.R. 767
(2) 63 I.T.R. 470
(3) 93 I.T.R. 603

A to pay the amount as a debt before 12.9.1959, which is anterior to the relevant valuation dates. The sum of Rs. 19,00,000/- was a subsisting debt on the said valuation dates.

For the reasons stated above, we hold that there is no merit in this appeal. It is accordingly dismissed with costs.

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N.K.A. *Appeal dismissed.*