

A
COMMISSIONER OF WEALTH TAX, GUJARAT

v.

B
VIMLABEN VADILAL MEHTA

. October 21, 1983

[R.S. PATHAK AND E.S. VENKATARAMIAH, JJ.]

C
Wealth Tax Act—Computation of assessee's net wealth—Whether income tax or wealth tax liability created in consequence of rectification orders passed after the relevant valuation date can be the subject of a claim to deduction?

D
During the course of the hearing of an appeal against an assessment order made under the Wealth Tax Act for the assessment year 1964-65, the respondent who was the assessee, claimed deduction of an amount in the computation of net wealth which *inter alia* included the income tax and wealth tax liabilities created in consequence of certain rectification orders made under s. 154 of the Income Tax Act and s. 35 of the Wealth Tax Act. The rectification orders related to assessment of income tax/wealth tax for the previous years and had been made after the completion of the assessment proceedings under the Wealth Tax Act for the assessment year 1964-65. The deduction claimed was allowed by the Appellate Assistant Commissioner and his decision was upheld by the Appellate Tribunal and the High Court.

E
Dismissing the appeal,

F
HELD: The rectification of an assessment must be treated on the same basis as an original assessment for the purpose of a claim to deduction in the computation of the assessee's net wealth. The rectification merely quantifies the true tax liability which had already been crystallised and become a debt on the last day of the previous year in the case of income tax liability, and, on the valuation date in the case of a wealth tax liability. [484 C-D]

G
Commissioner of Wealth Tax, Gujarat v. Shri Vadilal Lalubhai (C.A. Nos. 1524 to 1527 of 1973 decided on 21.10.1983) referred to.

H
When an appeal is filed against an assessment order before the Appellate Assistant Commissioner, the assessment case is thrown open and the appellate proceeding constitutes a continuation of the assessment proceeding. Even if the tax liabilities, of which a deduction is claimed, are created by rectification orders or by assessment orders made after the date of the wealth tax assessment order under appeal, the law requires the claim to deduction being considered on the same basis as if it had been made in the original wealth tax assessment proceeding. [483 F-H]

In the instant case, it is true that the rectification orders related to tax liabilities which were not claimed by the assessee in the course of the original assessment proceeding before the Wealth Tax Officer but as the Appellate Assistant Commissioner permitted the claim to be made during the hearing of the appeal, there is no reason why the assessee should be denied consideration of his claim. [483 H; 484 A]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1423 (NT) of 1973.

From the Judgment and Order dated the 13th December, 1972 of the Gujarat High Court at Ahmedabad in Wealth Tax Reference No. 21 of 1971.

S.C. Manchanda, B.B. Ahuja and Miss A. Subhashini for the appellant.

The Judgment of the Court was delivered by

PATHAK, J. : This appeal is directed against the judgment of the Gujarat High Court disposing of a wealth tax reference and answering against the Revenue the following two questions :

“Whether on the facts and in the circumstances of the case the assessee is entitled to the deduction of—

- (i) income tax liabilities for the assessment years 1962-63, 1963-64 and 1964-65; wealth tax for the assessment year 1964-65 and gift tax for the assessment years 1962-63 to 1964-65 as determined payable on the basis of the assessment orders passed after the valuation date, and
- (ii) income tax liability for the assessment years 1958-59 and 1960-61 and wealth tax liability for the year 1961-62 created as a result of rectification orders passed of the relevant valuation date in determining the value of the net wealth ?”

In assessment proceedings under the Wealth Tax Act for the assessment year 1964-65, the respondent assessee claimed a deduction of Rs. 2,42,535/- in the computation of her net wealth, on the ground that the amount represented the assessee's tax liabilities for different

A years. The Wealth Tax Officer rejected the claim. An appeal by the assessee was allowed by the Appellate Assistant Commissioner, who held the assessee entitled to the deduction claimed but remanded the case to the Wealth Tax Officer for verifying the arithmetical accuracy of the claimed deductions. The Wealth Tax Officer appealed to the Appellate Tribunal. He contended that the assessee's claim to the deduction of income tax liabilities for the assessment years 1962-63, 1963-64 and 1964-65, the wealth tax liability for the assessment year 1964-65 and the gift tax liabilities for the assessment years 1962-63, 1963-64 and 1964-65 determined on the basis of assessment completed after the valuation date were not admissible deductions in computing the net wealth, and that in any event, the deductions should have been allowed on the basis of the returns filed and not on the basis of the assessment orders. The Appellate Tribunal rejected the contention in view of the judgment of this Court in *Commissioner of Income Tax v. Kesoram Industries Pvt. Ltd.*⁽¹⁾ and *H.H. Setu Parvati Bayi v. Commissioner of Wealth Tax, Kerala.*⁽²⁾ The Wealth Tax Officer also contended that the income tax liability for the years 1958-59 and 1960-61 and the wealth tax liability for the year 1961-62 created as a result of rectification orders made after the valuation date were not admissible deductions. This contention was also rejected by the Appellate Tribunal. Finally, the Wealth Tax Officer pointed out that the tax liabilities were not deductible in view of the provisions of s. 2 (m) (iii) of the Wealth Tax Act. The Appellate Tribunal observed that this aspect of the case had not been considered by the Appellate Assistant Commissioner and, accordingly, the Appellate Tribunal directed the Appellate Assistant Commissioner to consider the case again and determine which of the liabilities were covered by the provisions of s. 2 (m) (iii). On a reference being made to the Gujarat High Court at the instance of the Revenue on the questions of law set forth earlier, the High Court held that both questions were concluded by its judgment in *Commissioner of Wealth Tax, Gujarat II v. Kantilal Manilal*,⁽³⁾ and answered the questions in the affirmative.

As regards the first question, we have already expressed our view on the point in our judgment in *The Commissioner of Wealth Tax, Gujarat, Ahmedabad v. Shri Vadilal Lalubhai etc.* in Civil Appeals

(1) (1966) 59 I.T.R. 767.

(2) (1969) 69 I.T.R. 864.

(3) (1973) 88 I.T.R. 125.

Nos. 1524 to 1547 of 1973. We need add nothing more on that point, and answer the question in the affirmative.

The second question raises the point whether the income tax liability and wealth tax liability created in consequence of rectification orders passed after the relevant valuation date can be the subject of a claim to deduction in the computation of an assessee's net wealth. It appears from the record before us that while the Wealth Tax Officer completed the assessment proceeding for the assessment year 1964-65 by the assessment order dated November 23, 1964, the rectification order under s. 154 of the Income Tax Act for the assessment year 1958-59 was made on May 13, 1966 and the rectification order under the same provision for the assessment year 1960-61 was made on January 1, 1965, and the rectification order under s. 35 of the Wealth Tax Act for the assessment year 1961-62 was made on June 10, 1965. In short, the rectification orders were made after the assessment proceeding had been completed by the Wealth Tax Officer. It would seem that the claim to deduction on account of the income tax liabilities and the wealth tax liability was made in the course of the appeal before the Appellate Assistant Commissioner. From the record, it appears also that the income tax liabilities, the wealth tax liability and the gift tax liabilities claimed as a deduction were quantified by assessment orders made after the Wealth Tax Officer had completed the assessment proceeding. Those assessment orders were apparently brought to the notice of the Appellate Assistant Commissioner by the assessee during the hearing of Appeal filed by the assessee. Shri S.C. Manchanda, learned counsel for the Revenue, urges that the judgment of Gujarat High Court in *Kantilal Manilal* (supra) does not conclude the question arising on this claim because the High Court was concerned with a claim to deduction on account of income tax, wealth tax and gift tax liabilities which had arisen before the Wealth Tax Officer had completed the assessment before him. Be that as it may, it is well-settled that when an appeal is filed against an assessment order before the Appellate Assistant Commissioner, the assessment case is thrown open and the appellate proceeding constitutes a continuation of the assessment proceeding. Even if the tax liabilities, of which a deduction was claimed, were created by rectification orders or by assessment orders made after the date of the wealth tax assessment order under appeal the law requires the claim to deduction being considered on the same basis as if it had been made in the original wealth tax assessment proceeding. It is true that the rectification orders and the gift tax assessments related to tax

A liabilities which were not claimed by the assessee in the course of the
original assessment proceeding before the Wealth Tax Officer, but
as the Appellate Assistant Commissioner permitted the claim to be
made during the hearing of the appeal, we see no reason why the
assessee should be denied consideration of his claim. And as
B regards the quantification of the other income tax and wealth tax
liabilities effected after the Wealth Tax Officer had completed the
original wealth tax assessment proceeding, the quantification of the
liabilities related to claim which had already been raised before
C the Wealth Tax Officer in the course of the original assessment pro-
ceeding. As we have observed in *The Commissioner of Wealth Tax,
Gujarat, Ahmedabad v. Shri Vadilal Lallubhai etc.*⁽¹⁾ in Civil Appeals
Nos. 1524 to 1547 of 1973, the rectification of an assessment must
be treated on the same basis as an original assessment for the purpose
of a claim to deduction in the computation of the assessee's net
wealth. The rectification merely quantifies the true tax liability which
D had already been crystallised and become a debt on the last day of
the previous year in the case of an income tax liability, on the valu-
ation date in the case of a wealth tax liability and on the last day of
the previous year in the case of a gift tax liability.

E In the result, we hold that both the questions set forth earlier
must be answered in favour of the assessee and against the Revenue.
The appeal is therefore dismissed. As the assessee is absent, there is
no order as to costs.

H.L.C.

Appeal dismissed

(1) Judgment dated October 21, 1983.