

## COMMISSIONER OF WEALTH TAX, MADRAS

v.

K. S. N. BHATT

October 21, 1983

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

*Wealth Tax Act, 1957 (27 of 1957)—Sections 2(m), 2(g) and 3—Wealth tax—Liability of—Crystallises on the valuation date for the relevant assessment year—Computing net wealth—Tax liability on valuation date—Whether deductible as 'debt owed'.*

*Gift Tax Act, 1958 (18 of 1958)—Sections 2, 3, 13 and 15—Gift tax—Liability of—Crystallises on the last date of the previous year.*

*Income Tax Act, 1961 (43 of 1961) Section 80B.—Income tax—Liability of—Crystallises on the last date relevant to the assessment year.*

In assessment proceedings under the Wealth Tax Act for four assessment years the assessee claimed a deduction in the computation of his net wealth on account of income tax, wealth tax and gift tax liabilities. The Wealth Tax Officer allowed only part of the deductions claimed. The appeal of the assessee was dismissed by the Appellate Assistant Commissioner of Wealth Tax. In the second appeal before the Appellate Tribunal, the assessee filed statements showing particulars of the income tax, wealth tax and gift tax liabilities in respect of the different assessment years. The Revenue contended that the income tax liability and the gift tax liability for one of the assessment years [1965-66] had been cancelled by the Appellate Assistant Commissioner in appeals against the assessment orders and those appellate orders of the Appellate Assistant Commissioner having become final in view of the dismissal of the Revenue's appeals by the Appellate Tribunal, there was no outstanding demand on account of income tax and gift tax for that year and that therefore these two items do not constitute 'debts owed' by the assessee and so would not qualify for deduction under section 2(m) of the Wealth Tax Act. The Appellate Tribunal following two judgments of this Court [*Commissioner of Income Tax v. Keshoram Industries Pvt. Ltd.* (1966) 59 I.T.R. 767 and *H.H. Setu Parvati Bayi v. Commissioner of Wealth Tax Kerala* (1969) 69 I.T.R. 864], held that so long as the liability to pay the tax had arisen before the relevant valuation dates it was immaterial that the assessments were quantified after the valuation of dates, that the question whether a debt was owed by the assessee must be examined with reference to the position obtaining on the valuation date and that nothing happening subsequently could be considered in computing the net wealth.

The High Court having refused to call for a reference from the Appellate Tribunal under section 27(3) of the Act the Revenue appealed to this Court.

Allowing the appeals in part.

**HELD :** 1. Whether a debt was owed by the assessee on the valuation date would depend on the fact that a liability had already crystallised under the relevant taxing statute on the valuation date. [494 D]

2. An income tax liability crystallises on the last day of the previous year relevant to the assessment year under the Income Tax Act, a wealth tax liability crystallises on the valuation date for the relevant assessment year under the Wealth Tax Act and a gift tax liability crystallises on the last day of the previous year for the relevant assessment year under the Gift Tax Act.

[494 E]

3. The quantification of the income tax, wealth tax or gift tax liability is determined by a corresponding assessment order, and even if the assessment order is made after the valuation date relevant to the wealth tax assessment in which the claim to deduction is made, there is a debt owed by the assessee on the valuation date. It is the quantification of the tax liability by the ultimate judicial authority which will determine the amount of the debt owed by the assessee on the valuation date. So long as such ultimate determination indicates the existence of a positive tax liability, it must be held that there is a debt owed by the assessee on the valuation date even though such determination may be subsequent in point of time to the valuation date. If, however, it is found on such ultimate determination that there is no tax liability it cannot be said that merely because originally a tax liability could be envisaged there was a debt owed by the assessee. [495 B-E]

4. Section 2(m) (iii) (a) denies deduction of an amount of tax which is outstanding on the valuation date if the assessee contends in appeal, revision or other proceeding that he is not liable to pay the tax. It presupposes that there is a subsisting tax demand and the assessee has challenged its validity. It refers to the initial stage only where an appeal, revision or other proceeding is pending merely. It does not proceed beyond that stage to the point where, in consequence of such appeal, revision or other proceeding, the tax liability has been found to be nil. Once it is determined that the tax liability is nil, it cannot be said that any amount of tax is outstanding. Such a situation does not bring section 2(m) (iii) (a) into operation at all. If upon the ultimate determination it is found that the amount of tax is nil, the assessee is denied the deduction claimed by him not on the ground of section 2(m) (iii) (a) but because the superior authority has found that there is no tax liability whatever. [496 A-D]

In the instant case, the income tax and the gift tax liabilities for the assessment year 1965-66 subsequently set aside on appeal after the valuation dates, cannot be regarded as debts owed by the assessee on the relevant valuation dates. [495 G]

*Commissioner of Income Tax v. Keshoram Industries Pvt. Ltd.* (1966) 59 I.T.R. 767; *H.H. Setu Parvati Bayi v. Commissioner of Wealth Tax, Kerala* (1969) 69 I.T.R. 864 referred to.

*Late P. Appavoo Pillai v. Commissioner of Wealth Tax Madras* (1973) 91 I.T.R. 138 reversed.

**CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 384 to 387 of 1978.**

From the Judgment and Order dated the 18th January, 1977 of the High Court at Madras in T.C. Petitions Nos. 409 to 412 of 1976.

*S.C. Manchanda* and *Miss A. Subhashini* for the Appellant.

*Gopala Subramaniam* and *Mrs. S. Gopalakrishnan* for the Respondent.

The Judgment of the Court was delivered by

**PATHAK, J.** These appeals are directed against the judgment of the Madras High Court refusing to call for a reference from the Appellate Tribunal under s. 27 (3) of the Wealth Tax Act on the following two questions :—

- “1. Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the liabilities claimed by the assessee, though existence of the very liability was questioned by the assessee, should be allowed as a ‘debt owed’ in computing the net wealth of the assessee ?
2. Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the tax liabilities as allowed by the Wealth Tax Officer was not in accordance with law ?”

We think that the questions are indeed questions of law and the High Court should have called for a statement of the case from the Appellate Tribunal and rendered its opinion on the said questions. Ordinarily, we would have allowed the appeal and directed the High Court to requisition [a reference from] the Appellate Tribunal to enable

the High Court to decide the two questions of law. But we refrain from doing so as the points have already been considered on the merits by us in judgments delivered today in the appeals listed and heard along with these cases, and therefore we shall express our opinion directly on the two questions.

In assessment proceedings under the Wealth Tax Act for the assessment years 1964-65, 1965-66, 1966-67 and 1967-68, the corresponding valuation dates being March 31, 1964, March 31, 1965, March 31, 1966 and March 31, 1967, the assessee claimed a deduction in the computation of the assessee's net wealth on account of income-tax, wealth-tax and gift-tax liabilities. The Wealth Tax Officer allowed only part of the deductions claimed, and an appeal by the assessee was dismissed by the Appellate Assistant Commissioner of Wealth Tax. In second appeal before the Appellate Tribunal, the assessee filed statements showing particulars of the income tax, wealth tax and gift tax liabilities in respect of the different assessment years. The Appellate Tribunal found that so far as the assessment year 1964-65 was concerned all the demands were raised only after the relevant valuation date, that in respect of the assessment year 1965-66, the demands, except for items Nos. 1 to 5 and 12, were raised subsequent to the relevant valuation date, that in respect of the assessment year 1966-67 all the demands, except items 1 to 3 and 8 to 10, were raised subsequent to the relevant valuation date and that so far as the assessment year 1967-68 was concerned, except the first item, the demands in respect of the rest of the items were raised subsequent to the relevant valuation date. The Appellate Tribunal held, following the judgment of this court in *Commissioner of Income Tax v. Keshoram Industries Pvt. Ltd.*<sup>(1)</sup> and *H.H. Setu Parvati Bayi v. Commissioner of Wealth Tax, Kerala*,<sup>(2)</sup> that so long as the liability to pay the tax had arisen before the relevant valuation dates it was immaterial that the assessments were quantified after the relevant valuation dates. It was pointed out by the Revenue before the Appellate Tribunal that the income tax liability for the assessment year 1965-66 of Rs. 72,399 and the gift tax liability for the assessment year 1965-66 of Rs. 1,13,650 had been cancelled by the Appellate Assistant Commissioner in appeals against the assessment orders, and those appellate orders of the Appellate Assistant Commissioner had become final in view of the dismissal of the Revenue's appeals by the Appellate

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

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

A Tribunal, with the result that there was no outstanding demand on  
account of income tax and gift tax for that year. It was urged that  
the two sums of income tax liability and gift tax liability would not  
constitute 'debts owed' by the assessee and, therefore, would not  
qualify for deduction under s. 2(m) of the Wealth Tax Act. The  
B Appellate Tribunal rejected the contention, holding that the question  
whether a debt was owed by the assessee must be examined with  
reference to the position obtaining in the valuation date, and that  
nothing happening subsequently could be considered in computing  
the net wealth. It observed that the fact that the assessee had filed  
appeals subsequent to the valuation dates and that relief had been  
granted by the Appellate Authority would have no relevance for  
C determining whether a debt was owed on the relevant valuation date.  
Reference was made to the decision of the Madras High Court in  
*Late P. Appavoo Pillai v. Commissioner of Wealth Tax, Madras*.<sup>(1)</sup>  
We are unable to agree with the view taken by the Appellate  
Tribunal. Whether a debt was owed by the assessee on the valuation  
D date would depend, as was observed by this Court in *Keshoram  
Industries Pvt. Ltd.* (supra) and *H.H. Setu Parvati Bai* (supra), on  
the fact that a liability had already crystallised under the relevant  
taxing statute on the valuation date. An income tax liability crystal-  
lises on the last day of the previous year relevant to the assessment  
year under the Income Tax Act, a wealth tax liability crystallises on  
E the valuation date for the relevant assessment year under the Wealth  
Tax Act and a gift tax liability crystallises on the last day of the pre-  
vious year for the relevant assessment year under the Gift Tax Act.  
En passant, we may explain why we say that a gift tax liability crys-  
tallises on the last day of the pertinent previous year under the Gift  
F Tax Act. Section 3 of the Gift Tax Act levies gift tax in respect of  
the gifts made by a person during the previous year at the rates  
specified in the Schedule. Section 13 provides for the filing of a  
return of the gifts made during the previous year. Section 15 requires  
the Gift Tax Officer to assess the value of the taxable gifts made  
G during the previous year and determine the amount of gift tax  
payable. The gift tax so payable is envisaged as a single sum in  
respect of the totality of the gifts made by the assessee during the  
previous year. Moreover, the Schedule prescribes graduated scales  
of rates of gift tax in ascending order. All these considerations  
point to the conclusion that the liability to gift tax crystallises,  
H not in relation to each gift individually, but in relation

(1) (1973) 91 I.T.R. 138.

to the assessed aggregate value of the gifts made during the previous year. In other words, a gift tax liability crystallises on the last day of the previous year. Now the quantification of the income tax, wealth tax or gift tax liability is determined by a corresponding assessment order, and even if the assessment order is made after the valuation date relevant to the wealth tax assessment in which the claim to deduction is made, there is a debt owed by the assessee on the valuation date. The quantification effected by an assessment order may be varied as the income tax, wealth tax and gift tax case is carried in appeal to the Appellate Assistant Commissioner, or thereafter to the Appellate Tribunal, and indeed even in reference later to the High Court or subsequent appeal to this Court. It is the quantification of the tax liability by the ultimate judicial authority which will determine the amount of the debt owed by the assessee on the valuation date. So long as such ultimate determination indicates the existence of a positive tax liability, it must be held that there is a debt owed by the assessee on the valuation date even though such determination may be subsequent in point of time to the valuation date. If, however, it is found on such ultimate determination that there is no tax liability, it cannot be said that merely because originally a tax liability had been determined and stood existing on the valuation date there was a debt owed by the assessee. The fact cannot be ignored that when the case was carried in appeal or reference it was found by the superior authority that in fact there was no tax liability at all. That final determination, even though rendered after the valuation date, directly relates to the question whether on the valuation date there was a debt owed by the assessee. If the finding is that there was no tax liability, it must be held that there was no debt owed by the assessee on the valuation date. In this regard, we do not agree with what has been said by the Madras High Court to the contrary in *P.A. Appavoo Pillai* (supra). We are of opinion that the income tax liability for the assessment year 1965-66 of Rs. 72,399 and the gift tax liability for the assessment year 1965-66 of Rs. 1,13,650, subsequently set aside on appeal after the valuation dates, cannot be regarded as debts owed by the assessee on the relevant valuation dates.

Towards the close of its order the Appellate Tribunal pointed to the fact that the different demands of tax were served on the assessee subsequent to the respective valuation dates and, on that ground, observed that the tax liabilities did not fall within the prohibition of s. 2(m) (iii) (a) and had to be taken into account as debts

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owed by the assessee on the valuation dates. It seems to us that the Appellate Tribunal has not correctly appreciated the scope of s. 2(m) (iii) (a). Section 2(m) (iii) (a) denies deduction to an amount of tax which is outstanding on the valuation date if the assessee contends in appeal, revision or other proceeding that he is not liable to pay the tax. It presupposes that there is a subsisting tax demand and the assessee has challenged its validity. It refers to the initial stage only where an appeal, revision or other proceeding is pending merely. It does not proceed beyond that stage to the point where, in consequence of such appeal, revision or other proceedings, the tax liability has been found to be nil. Once it is determined that the tax liability is nil, it cannot be said that any amount of tax is outstanding. Such a situation does not bring s. 2(m) (iii) (a) into operation at all, as is clear indeed from its very terms. If upon the ultimate determination it is found that the amount of tax is nil, the assessee is denied the deduction claimed by him not on the ground of s. 2(m) (iii) (a) but because the superior authority has found that there is no tax liability whatever. It must be taken that in law there never was any tax liability.

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So far as the remaining tax liabilities are concerned, the Tribunal is right in allowing the income tax, wealth tax and gift tax liabilities to be deducted in computing the net wealth of the assessee for the respective assessment years, even though, the assessment orders were finalised after the respective valuation dates. We may point out that it has not been shown to us that the assessee filed appeals questioning the income tax, wealth tax and gift tax liabilities other than the income tax liability of Rs. 72,399 and the gift tax liability of Rs. 1,13,650 for the assessment years 1965-66 referred to earlier.

The questions of which reference was sought by the Revenue are answered accordingly.

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The appeals are allowed in part in the terms already set out. There is no order as to costs.

N.V.K.

*Appeals partly allowed.*