

THE COMMISSIONER OF WEALTH TAX,
GUJARAT, AHMEDABAD

v.

KANTILAL MANILAL ETC. ETC.

March 13, 1985

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

Wealth Tax Act, Section 2 (m) (iii) (a), scope of — New wealth, computation of — Debt due — Ingredients necessary for invoking the bar prescribed by Section 2 (m) (iii) (a), explained — Admissibility of the assessee's claim for a deduction of certain sums representing the estimated liabilities on account of Income Tax and Wealth Tax.

For the assessment years 1961-62 and 1962-63, the corresponding valuation dates of which were March 31, 1961 and March 31, 1962, assessment orders were made under the Wealth Tax Act on March 24, 1961 and March 23, 1962 respectively while the notice of demands were served on the assessee on April 11, 1961 and April 11, 1962 respectively. Against the said notices of demand the assessee preferred appeals on May 9, 1961 and May 9, 1962 respectively. For the purpose of determining the assessee's net wealth, the assessee's claim for a deduction of certain sums representing the estimated liabilities on account of income tax and wealth tax was rejected in both assessments by the Wealth Tax Officer. On appeal by the assessee, the Appellate Assistant Commissioner of Wealth Tax allowed a part of the claim. In appeal before the Appellate Tribunal, the Revenue contended that since the assessee had disputed the wealth tax liability of Rs. 22,679/- in respect of the assessment year 1960-61 and the sum of Rs. 39,692/- in respect of the assessment year 1961-62, he was not entitled to a deduction of the same, being barred by reason of the provisions of section 2(m) (iii) (a) of the Wealth Tax Act. The Tribunal rejected the said contention and held that section 2 (m)(a) was not attracted as the tax had not become payable on the relevant valuation dates. The Wealth Tax References made at the instance of the Revenue were decided in favour of the assessee by the High Court of Gujarat by its common judgment in *Commissioner of Wealth Tax v. Kantilal Manilal* reported in (1973) 88 I.T.R. 125. The present appeal by special leave arises therefrom.

Dismissing the appeal, the Court

HELD : 1.1. In order to invoke the bar prescribed by Section 2(m)(iii) (a) of the Wealth Tax Act it is necessary for the Revenue to establish that both

A requirements therein are satisfied, that is to say, that an amount of the tax is outstanding on the valuation date and further that the amount is claimed by the assessee in an appeal as not being payable by him. [302E-F]

B 1.2 An amount of tax is outstanding if it is payable and has remained unpaid. In other words, if there is a debt due and there has been no payment of the debt. There are three stages in respect of an income tax liability. The tax liability comes into existence on the last day of the previous year relevant to the assessment year. Thereafter when the assessment proceedings take place an assessment order is made quantifying the assessable income and determining the tax payable. Thereupon, a notice of demand is served for payment of the tax, and the tax then becomes payable and a debt becomes due to the Revenue. A survey of the provisions of the Wealth Tax Act contained in Sections 14 to 17 and Section 30 makes it clear that in all material respects the scheme of the Wealth Tax Act is in this regard substantially, the same as that incorporated in the Income Tax Act. The notice of demand requiring payment of the tax, interest or penalty is issued pursuant to Section 30 of the Act. If the amount remains unpaid within the periods specified in the notice, the amount of the tax is said to be outstanding. [303D-F]

D 1.3 Section 2(m)(iii)(a) of the Wealth Tax Act comes into play only after a demand for payment of tax has been made. The clause, read in its entirety, speaks of a debt owed by the assessee represented by an amount of tax "payable in consequence of any order" passed under the relevant tax statute and "outstanding on the valuation dates." [303H ; 304A]

E 1.4 The expression "debt owed" is a debt which the assessee is under an obligation to pay and, therefore, it includes both a liability to pay in present as well as a liability to pay in future an ascertainable sum of money. Both kinds of liabilities are included within the expression "debt owed". But Section 2(m)(iii)(a) narrows the scope down to a liability which exists in present time because the clause speaks of tax outstanding in consequence of an order passed under the relevant taxing statute. [304B-C]

F 1.5 In the present case, the notice of demand in each case was served after the valuation date had been passed. There was no demand already subsisting on the respective valuation dates. As the notices of demand respecting the wealth tax liability of Rs. 22,679 and Rs. 39,692 were served on the assessee subsequent to the valuation dates, if cannot be said that on the respective valuation dates the amount of tax were outstanding. In the result a material requirement of Section 2(m) (iii) (a) is not satisfied and therefore, it cannot be invoked by the Revenue. [304D-E]

Commissioner of Wealth Tax v. Kantilal Manilal, (1973) 88 I.T.R. 125, approved.

H *Doorga. Prosad v. The Secretary of State*, (1945) 13 I.T.R. 285, quoted with approval.

Kesoram Industries & Cotton Mills Ltd. v. Commissioner of Wealth Tax (Central), Calcutta, (1966) 59 I.T.R. 767, followed,

1.6 The appeals in the present case, though filed subsequent to the respective valuation dates, would none-the-less have sufficed to bring the second requirement of section 2 (m) (iii) (a) into operation. But for Section 2 (m) (iii) (a) an amount of a tax outstanding on the valuation date would constitute a debt owed by the assessee on the valuation date, and the assessee would be entitled to claim its deduction in the process of computing his net wealth. Parliament, however, intended that if the amount of the tax was challenged by the assessee as not being payable by him by recourse to any of the statutory remedies prescribed in the relevant Act, such claim to deduction would be barred. Plainly, in order to give full effect to that intent it is immaterial whether the statutory remedy is being availed of on the valuation date or has been taken thereafter. A challenge by the assessee that the amount outstanding is not payable by him is sufficient to bar his claim to deduction whether the challenge is subsisting on the valuation date or is initiated after the valuation date has passed. [305 D ; A-C]

Late P. Appaoo Pillai v. Commissioner of Wealth Tax, Madras, (1973) 91 I.T.R. 138 overruled.

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 1311 and 1312 of 1973.

From the Judgment and Order dated 26/27.6.1972 of the Gujarat High Court at Ahmedabad in Wealth Tax Reference Nos. 3, 4, 20, 25, 29, 32, 32 & 36 of 1970 and 1 of 1971.

S.G. Manchanda, B.B. Ahuja, R.N. Poddar and Miss A. Shubhashini for the Appellant.

S.T. Desai Mrs. A.K. Verma and K.J. John for the Respondents.

The Judgment of the Court was delivered by

PATHAK, J. These appeals are directed against the judgment of the Gujarat High Court disposing of a wealth tax reference and answering the following question of law against the Revenue :—

“Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the provisions of s. 2 (m) (iii) (a) were not applicable in respect of liability—

A. ties arising under the wealth tax assessments of the assessee for the assessment years 1960-61 and 1961-62 ?”

B. For the purpose of determining the assessee's net wealth in assessment proceedings under the Wealth Tax Act in respect of the assessment years 1961-62 and 1962-63, the corresponding valuation dates being March 31, 1961 and March 31, 1962, the assessee claimed a deduction of certain sums representing the estimated liabilities on account of income tax and wealth tax. The claim was rejected by the Wealth Tax Officer in both assessments. On appeal by the assessee the Appellate Assistant Commissioner of Wealth Tax allowed a part of the claim. In the appeal pertaining to the assessment year 1961-62, he allowed a deduction of Rs. 22,679 on account of wealth tax relating to the assessment year 1960-61, Rs. 39,692 on account of wealth tax relating to the assessment year 1961-62 and Rs. 2,25,053 on account of income tax for the assessment year 1961-62. In the appeal pertaining to the assessment year 1962-63, the Appellate Assistant Commissioner allowed the total claim of Rs. 9,02,377 comprising a deduction of Rs. 39,692 on account of wealth tax relating to the assessment year 1961-62, Rs. 77,716 on account of wealth tax for the assessment year 1962-63 and the balance on account of income tax for the assessment year 1962-63. The Revenue appealed to the Appellate Tribunal. In the appeal for the assessment year 1961-62 it contended inter alia, that the assessee was not entitled to a deduction of the wealth tax liability of Rs. 22,679 in respect of the assessment year 1960-61 because he had disputed the said liability in appeal and, therefore, the deduction was barred by reason of s. 2(m) (iii) (a) of the Wealth Tax Act. Similarly, in the appeal for the assessment year 1962-63, the Revenue urged that the assessee was not entitled to a deduction of the wealth tax liability of Rs. 39,692 for the assessment year 1961-62 as he had disputed that liability in appeal and the deduction was barred by s. 2(m) (iii) (a) of the Act. The Appellate Tribunal did not accept the contention of the Revenue and held that s. 2(m) (iii) (a) was not attracted in respect of those liabilities as they had not become payable on the relevant valuation dates. At the instance of the Revenue, a reference, being Wealth Tax Reference No. 20 of 1970, was made to the Gujarat High Court for its opinion on the question of law set forth earlier.

H. It may be mentioned that another question was also framed in that reference, and that this reference along with several other

references were disposed of together by the Gujarat High Court by its judgment in *Commissioner of Wealth Tax v. Kantilal Manilal*.¹ Against that judgment corresponding special leave petitions were filed by the Revenue in this Court, but all the special leave petitions, except Special Leave Petitions (Civil) Nos. 505 and 506 of 1973, arising out of Wealth Tax Reference No. 20 of 1970, were dismissed on the merits, and in respect of these two special leave petitions the grant of special leave was restricted to the consideration of the question set forth earlier.

While dealing with the question whether the provisions of s. 2(m) (iii) (a) of the Wealth Tax Act barred the deduction of the wealth tax liabilities claimed by the assessee the High Court held that as the liabilities were not outstanding on the respective valuation dates s. 2(m) (iii) (a) was not attracted even though the assessee had challenged in appeal that the liabilities were not payable by him.

In these appeals, Shri S.C. Manchanda, appearing for the Revenue, contends that the High Court has erred insofar as it has held that the wealth tax liabilities were not outstanding on the valuation dates. His case is that the bar imposed by s. 2(m) (iii) (a) operates against the claim to deduction made by the assessee. Shri S.T. Desai, appearing for the assessee, urges that s. 2(m) (iii) (a) is not attracted because no amount of tax was outstanding on the respective valuation dates and in any event, he says, the appeals challenging those liabilities were not pending on the valuation dates, and therefore the further requirement, according to him, of the statute was not satisfied.

Section 2(m) of the Wealth Tax Act provides :—

“(m) “net wealth” means the amount by which the aggregate value computed in accordance with the provisions of this Act of all the assets, wherever located, belonging to the assessee on the valuation date, including assets required to be included in his net wealth as on that date under this Act, is in excess of the aggregate value of all the debts owed by the assessee on the valuation date other than—

(i)

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(1) (1973), 88 I.T.R. 124,

- A. (ii) XX XX XX
- (iii) the amount of the 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 1953), the Expenditure Tax Act, 1957 (29 of 1957), or the Gift-tax Act, 1958 (18 of 1958),—
- B. (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
- C. (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.”

D. In the process of computing the net wealth, the statute requires the aggregation of the value of all the debts owed by the assessee on the valuation date, except those debts which are specifically described in sub-clauses (i), (ii) and (iii). We are concerned with sub-clause (iii) (a). A debt which ordinarily falls within the scope of the substantive provision of s. 2(m) cannot be taken into account for the purpose of determining the net wealth if it falls within the term of sub-clause (iii) (a) of s. 2(m). Sub-clause (iii) (a) speaks the amount of the tax, penalty or interest payable in consequence of any order passed under or in pursuance of any of the tax laws mentioned therein, 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.

F. For the assessment years 1961-62 and 1962-63 under reference, the corresponding valuation dates, as we have mentioned earlier are March 31, 1961 and March 31, 1962 respectively. The claim to deduction in the wealth tax assessment for the assessment year 1961-62 relates to Rs. 22,679 representing the wealth tax liability for the assessment year 1960-61. The assessment order for the assessment year 1960-61 was made on March 24, 1961 but the notice of demand was served on the assessee on April 11, 1961. It is apparent that the notice of demand was served some days after the valuation date, March 31, 1961. In the wealth tax assessment of the assessment year 1962-63 the deduction claimed relates to the wealth tax liability of Rs. 39,692 for the assessment year 1961-62. The assessment order

on March 23, 1962 but the notice of demand was served on April 11, 1962 and that notice of demand was also served a few days after the relevant valuation date, March 31, 1962. Therefore, the notice of demand in each case was served after the valuation date had passed. There was no demand already subsisting on the respective valuation dates.

In order to invoke section 2 (m) (iii) (a) the Revenue must establish that an amount of the tax was outstanding on the valuation date. An amount of tax is outstanding if it is payable and has remained unpaid. In other words, if there is a debt due and there has been no payment of the debt. In a case under the Indian Income Tax Act, 1922, *Doorga Prosad v. The Secretary of State*, (1) the Privy Council laid down that an income tax liability becomes a debt due when payment of the tax is demanded by a notice issued under section 29 of the Act. There are three stages in respect of an income tax liability. The tax liability comes into existence on the last day of the previous year relevant to the assessment year. Thereafter when the assessment proceedings take place, an assessment order is made quantifying the assessable income and determining the tax payable. Thereupon, a notice of demand is served for payment of the tax, and the tax then becomes payable and a debt becomes due to the Revenue. That was the position under the Indian Income Tax Act, 1922 and continues to be the position under the Income Tax Act, 1961. A survey of the provisions of the Wealth Tax Act will demonstrate that in all material respects the scheme of the Wealth Tax Act is in this regard substantially the same as that incorporated in the Income Tax Act. The provisions for the assessment of an assessee are contained in sections 14 to 17A of the Wealth Tax Act. The notice of demand requiring payment of the tax, interest or penalty is issued pursuant to section 30 of the Act. If the amount remains unpaid within the period specified in the notice the amount of the tax is said to be outstanding.

A question was raised whether for the purposes of attracting section 2(m) (iii) (a) it is not sufficient that the tax liability has accrued and it is necessary that a tax demand should have been made by the assessing authority. It seems to us that section 2(m) (iii) (a) comes into play only after a demand for payment of tax has been made. The clause, read in its entirety, speaks of a debt owed by the

(1) (1945) 13 I.T.R. 285.

A assessee represented by an amount of tax "payable in consequence of any order" passed under the relevant tax statute "outstanding on the valuation date". The expression "debt owed" has been held by this Court in *Kesoram Industries & Cotton Mills Ltd. v. Commissioner of Wealth Tax (Central), Calcutta*, (1) to mean a debt which the assessee is under an obligation to pay and, therefore, it includes both a liability to pay in praesenti as well as a liability to pay in future an ascertainable sum of money. Both kinds of liabilities are included within the expression "debt owed". But when we refer to the clause under consideration, it narrows the scope down to a liability which exists in present time. That is so because the clause speaks of tax outstanding in consequence of an order passed under the relevant taxing statute. As discussed earlier, tax becomes payable in consequence of such order when a notice of demand is served on the assessee.

D In the present case, it is clear that as the notices of demand respecting the wealth tax liability of Rs 22,679 and Rs. 39,692 were served on the assessee subsequent to the valuation dates, it cannot be said that on the respective valuation dates the amounts of tax were outstanding. In the result a material requirement of s. 2 (m) (iii) (a) is not satisfied and therefore that provision cannot be invoked by the Revenue.

E We now propose to consider the other point in controversy. As is apparent, if the Revenue desires to invoke section 2 (m) (iii) (a), it must establish not only that the amount of the tax, penalty or interest envisaged in that provision is outstanding on the valuation date but it must also show that the amount is claimed by the assessee in appeal, revision or other proceeding as not being payable by him. The question is whether it is a necessary requirement of the provision that the appeal, revision or other proceeding should be pending on the valuation date itself or it suffices that the appeal, revision or other proceeding is filed subsequent to the valuation date. In the present case the appeal against the wealth tax assessment order for the assessment year 1960-61 was filed on May 9, 1961, and the appeal against the wealth tax assessment order for the assessment year 1961-62 was filed on May 9, 1962. Both the appeals were filed, therefore, after the respective valuation dates, March 31, 1961 and March 31, 1962 corresponding to the assessment years 1961-62 and 1962-63

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

under reference. But for section 2(m) (iii) an amount of a tax outstanding on the valuation date would constitute a debt owed by the assessee on the valuation date, and the assessee would be entitled to claim its deduction in the process of computing his net wealth. Parliament, however, intended that if the amount of the tax was challenged by the assessee as not being payable by him by recourse to any of the statutory remedies prescribed in the relevant Act, such claim to deduction would be barred. Plainly, in order to give full effect to that intent it is immaterial whether the statutory remedy is being availed of on the valuation date or has been taken thereafter. A challenge by the assessee that the amount outstanding is not payable by him is sufficient to bar his claim to deduction whether the challenge is subsisting on the valuation date or is initiated after the valuation date has passed. Accordingly, we are of opinion that the appeals in the present case, though filed subsequent to the respective valuation dates, would nonetheless have sufficed to bring the second requirement of section 2(m) (iii) (a) into operation. The contrary view in respect of section 2 (m) (iii) (a) adopted by the Madras High Court in *Late P. Appavoo Pillai v. Commissioner of Wealth Tax, Madras*⁽⁴⁾ appears to us to be incorrect.

However, as in order to invoke the bar prescribed by section 2 (m) (iii) (a), it is necessary for the Revenue to establish that both requirements are satisfied, that is to say, that an amount of the tax is outstanding on the valuation date and further that the amount is claimed by the assessee in an appeal as not being payable by him, and the Revenue has been unable to show that in the present case the sum of Rs. 22,679 and Rs. 39,692 representing the wealth tax liabilities for the assessment years 1960-61 and 1961-62 were outstanding on the respective valuation dates corresponding to the assessment year under reference, the Revenue must fail.

In the result, the appeals are dismissed.

S.R.

Appeals dismissed.