
Shri Bhagwandas Jain Vs Addl. Commissioner of Wealth Tax

Miscellaneous Civil Case No"s. 381 and 406 to 412 of 1972

Court: Madhya Pradesh High Court

Date of Decision: April 15, 1978

Acts Referred:

Finance Act, 1965 â€” Section 68#Income Tax Act, 1922 â€” Section 3#Income Tax Act, 1961
â€” Section 4#Wealth Tax Act, 1957 â€” Section 2, 3

Citation: (1979) 116 ITR 347 : (1979) J LJ 11

Hon'ble Judges: A.P. Sen, C.J; J.S. Verma, J

Bench: Division Bench

Advocate: B.L. Nema and A.S. Jha, for the Appellant; P.S. Khirwadkar, for the Respondent

Judgement

A.P. Sen, C.J.

This judgment shall also govern the disposal of the following references, viz.:

- (1) Miscellaneous Civil Case No. 406 of 1972 (Premchand Jain v. Addl. CWT),
- (2) Miscellaneous Civil Case No. 407 of 1972 (Hukumchand Jain v. Addl. CWT),
- (3) Miscellaneous Civil Case No. 408 of 1972 (Shikhar Chand Jain v. Addl. CWT),
- (4) Miscellaneous Civil Case No. 409 of 1972 (Manek Chand Jain v. Addl. CWT),
- (5) Miscellaneous Civil Case No. 410 of 1972 (Sobhalal Jain v. Addl. CWT),
- (6) Miscellaneous Civil Case No. 411 of 1972 (Dalchand Jain v. Addl. CWT), and
- (7) Miscellaneous Civil Case No. 412 of 1972 (Premchand Jain v. Addl. CWT),

as they involve a common question of law. These eight references under Sub-section (1) of Section 27 of the W.T. Act, 1957, are by the Income

Tax Appellate Tribunal, Jabalpur Bench, Jabalpur, at the instance of eight different assesseees, referring a common question of law said to arise

from its consolidated order in Wealth Tax Appeals Nos. 70 to 78 (Ind.) of 1969-70, dated December 13, 1971, to the High Court for its opinion,

viz.:

Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that neither the tax liability at the rate applicable in

accordance with the Finance Act of the year concerned on the disclosed income included on assessment nor at the rate of 60% prescribed u/s 68

of the Finance Act, 1965, was deductible in arriving at the net wealth of the assessee ?

2. The assessee is a HUF, which is carrying on business in partnership styled ""M/s. Bhagwandas Shobhalal Jain, Sagar"". through Bhagwandas,

karta of the joint Hindu family. The partnership is engaged in the business of manufacture and sale of bidis. The assessment years involved are

1957-58 to 1964-65 and the valuation date for each year is the last day of Diwali year preceding the year of assessment. During the assessment

year 1966-67, the valuation date for which was the last day of Diwali 1965, the firm made a voluntary disclosure u/s 68 of the Finance Act, 1965,

amounting to Rs. 20,60,000 comprising of three items :

(i) A sum of Rs. 3 lakhs representing intangible additions in the assessment year 1957-58 ;

(ii) A sum of Rs. 17 lakhs representing cash said to have been earned by the firm from business done in the preceding year ; and

(iii) Rs. 60,000 representing the value of bullion and coins said to be in the possession of the partners.

3. When the WTO, Central Circle, Jabalpur, came to know about the voluntary disclosure made, he reopened the wealth-tax assessments of all

the eight partners in the assessment years 1957-58 to 1964-65 for bringing to tax the value of the assets disclosed in the years under

consideration.

4. It appears that under the Voluntary Disclosure Scheme, the firm, while making a voluntary disclosure of Rs. 20,60,000 u/s 68(1) of the Finance

Act, 1965, actually paid tax amounting to Rs. 10,56,000 and the firm credited the balance of Rs. 9,44,000 after excluding Rs. 60,000, the value of

bullion and coins, which were in the possession of the partners who held equal shares. When the WTO reopened their wealth-tax assessments for

the years in question, it was claimed by the partners that the tax paid at the rate of sixty per cent. u/s 68(3) of the Finance Act, 1965, totalling Rs.

10,56,000 should be proportionately deducted for computation of their net-wealth during these years, being ""debt owed"" within the meaning of

Section 2(m) of the W.T. Act, 1957, or, in the alternative, the tax that was payable under the respective Finance Acts relating to these respective

years should be allowed to be deducted in making the computation of their net wealth u/s 3 of the Act.

5. The contention of the assesseees did not prevail before the WTO, Central Circle, Jabalpur. He rejected their claim on the ground that the liability

to pay tax at the rate of sixty per cent. u/s 68(3) of the Finance Act, 1965, arose on account of their making a voluntary disclosure u/s 68(1) of the

Act and, therefore, there was no ""debt owed"" on the valuation date within the meaning of Section 2(m) of the W.T. Act, 1957, in the respective

assessment years. In appeal, the AAC of Wealth-tax, Jabalpur Range, Jabalpur, affirmed the view of the WTO, holding that liability to pay tax on

concealed income u/s 68 of the Finance Act, 1965, was not a ""debt owed"" on the relevant valuation date, within the meaning of Section 2(m) of

the W.T. Act, 1957. On further appeal, the Tribunal upheld the view of the WTO as well as of the AAC of Wealth-tax, following the view

expressed by a single judge of the Kerala High Court in C.K. Babu Naidu and C.K. Sundara Raja Naidu Vs. Wealth-tax Officer and Another, .

6. Feeling aggrieved, the assessee applied to the Tribunal u/s 27(1) of the W.T. Act, 1957, to have the aforesaid question of law referred to this

court for its opinion. Incidentally, we may mention that the WTO, in computation of the net wealth u/s 3 of the W.T. Act of the assessee, while re-

opening their wealth-tax assessments for the assessment years 1957-58 to 1964-65, spread out the total disclosure of Rs. 20,60,000 and not the

resultant sum of Rs. 10,04,000 remaining with the firm after payment of tax amounting to Rs. 10,56,000.

7. To appreciate the rival contentions, it is necessary to set out a few relevant provisions. Section 3 of the W.T. Act, 1957, which is the charging

provision, reads :

3. Charge of wealth-tax.--Subject to the other provisions contained in this Act, there shall be charged for every assessment year commencing on

and from the first day of April, 1957, a tax (hereinafter referred to as the wealth-tax) in respect of the net wealth on the corresponding valuation

date of every individual, Hindu undivided family and company at the rate or rates specified in the Schedule.

8. The term ""net wealth"" as defined in Section 2(m) of the Act is as follows :

2. (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) debts which u/s 6 are not to be taken into account;

(ii) debts which are secured on, or which have been incurred in relation to, any property in respect of which wealth-tax is not chargeable under this

Act; and

(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),--

(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

(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.

9. Section 68 of the Finance Act, 1965, so far as relevant, reads as follows :

68. Voluntary disclosure of income.--(1) Where any person makes a declaration in accordance with Sub-section (2) in respect of the amount

representing income-

(a) which he has failed to disclose in a return of income for any assessment year filed by him before the 1st day of March, 1965, under the Indian

Income Tax Act, 1922 (XI of 1922), or the Income Tax Act, 1961 (43 of 1961), or

(b) which has escaped assessment for any assessment year for which an assessment has been made before the 1st day of March, 1965, under

either of the said Acts, or

(c) for the assessment of which no proceeding under either of the said Acts has been taken before the 1st day of March, 1965,

he shall, notwithstanding anything contained in the said Acts, be charged Income Tax at the rate specified in Sub-section (3) in respect of the

amount so declared.....

(3) The rate of Income Tax chargeable in respect of the amount referred to in Sub-section (1) shall be sixty per cent. of such amount." Section 3

of the Indian I.T. Act, 1922, runs thus :

3. Charge of Income Tax.--Where any Central Act enacts that Income Tax shall be charged for any year at any rate or rates tax at that rate or

those rates shall be charged for that year in accordance with, and subject to the provisions of, this Act in respect of the total income of the previous

year of every individual, Hindu undivided family, company and local authority, and of every firm and other association of persons or the partners of

the firm or the members of the association individually." Section 4 of the I.T. Act, 1961, reads:

4. (1) Where any Central Act enacts that Income Tax shall be charged for any assessment year at any rate or rates, Income Tax at that rate or

those rates shall be charged for that year in accordance with, and subject to the provisions of, this Act in respect of the total income of the previous

year or previous years, as the case may be, of every person ;

Provided that where by virtue of any provision of this Act Income Tax is to be charged in respect of the income of a period other than the previous

year, Income Tax shall be charged accordingly.

(2) In respect of income chargeable under Sub-section (1), Income Tax shall be deducted at the source or paid in advance, where it is so

deductible or payable under any provision of this Act.

10. The question at issue is whether the amount of Rs. 10,56,000 paid by the firm was a "debt owed" within the meaning of Section 2(m) of the

W.T. Act, 1957, on the valuation date of the respective assessment years and, as such, was deductible in computing the net wealth of the

assesseees. In answer-ing the question, we feel no doubt or difficulty. The law is clear on the subject.

11. In Kesoram Industries and Cotton Mills Ltd. Vs. Commissioner of Wealth Tax, (Central) Calcutta, , the assessee-company had, in its

balance-sheet for the period ending March 31, 1957, shown a certain amount as provision for payment of Income Tax and super-tax in respect of

that year of account. The question involved was the same, i.e., whether that amount was ""debt owed"" within the meaning of Section 2(m) of the

Act as on March 31, 1957, which was the valuation date. It was held by the majority judgment of the Supreme Court that the debt was a present

obligation to pay an ascertainable sum of money, whether the amount was payable in praesenti or in futuro : debitum in praesenti, solvendum in

futuro. A liability to pay Income Tax, according to their Lordships, was a present liability though it became payable after it was quantified in

accordance with ascertainable data. Their Lordships held that there was a perfected debt, at any rate, on the last day of the accounting year and

not a contingent liability. The rate is always easily ascertainable. If the Finance Act is passed, it is the rate fixed by that Act; if the Finance Act is

not passed, it is the rate proposed in the Finance Bill pending before Parliament or the rate in force in the preceding year, whichever is more

favourable to the assessee. All the ingredients of a ""debt"", according to their Lordships, were present and, therefore, there was present liability of

an ascertainable amount. It was further held by them that the amount of provision for payment of Income Tax and supertax in respect of the year of

account ending March 31, 1957, was a ""debt owed"" within the meaning of Section 2(m) of the Act on the valuation date, viz., March 31, 1957,

and was as such deductible in computing the net wealth of the company as on the valuation date.

12. In H.H. Setu Parvati Bayi Vs. Commissioner of Wealth Tax, Kerala, , their Lordships of the Supreme Court reiterated their view in Kesoram

Industries and Cotton Mills Ltd. Vs. Commissioner of Wealth Tax, (Central) Calcutta, , with respect to the liability to pay wealth-tax. According

to their Lordships, the wealth-tax liability of an assessee on the valuation date for the assessment year beginning on the 1st of April following, is a

debt owed"" within the meaning of Section 2(m) of the Act and should be deducted from the estimated value of the assets as on the valuation date.

That was because their Lordships were of the view that the language of the charging Section 3 of the W.T. Act, 1957, was in pari materiel with the

language of the charging Section 3 of the Indian I.T. Act, 1922, and, therefore, the same meaning must be given to the expression ""debt owed

occurring in Section 2(m) of the W.T. Act, 1957.

13. Taking up the decisions of the different High Courts, which are directly on the point, viz., whether the liability to pay tax on disclosed income

under the Voluntary Disclosure Scheme framed u/s 68 of the Finance Act, 1965, was a ""debt owed"" within the meaning of Section 2(m) of the

W.T. Act, 1957, on the relevant valuation date, but for the discordant note struck by Bhagwati C.J. in Commissioner of Wealth Tax, Gujarat-I Vs.

Ahmed Ibrahim Sahigara, and a single judge, Issac J., in C.K. Babu Naidu and C.K. Sundara Raja Naidu Vs. Wealth-tax Officer and Another, ,

which decision has since been reversed by P. Govindan Nair, Actg. C.J., and George Vadakkal J. in C.K. Babu Naidu v. WTO [1974] 112 ITR

341 , the majority of the High Courts have consistently taken the view that in the computation of net wealth, when there is voluntary disclosure

made, the tax payable thereon at rates specified in Section 68(3) of the Finance Act, 1965, was a ""debt owed"" within the meaning of Section 2(m)

of the W.T. Act, 1957, and was, therefore, deductible. We may mention that there are two decisions of the Allahabad High Court, by Gulati and

C.S.P. Singh JJ., in Commissioner of Wealth-tax Vs. B.K. Sharma, and by C.S.P. Singh and R.M. Sahai JJ. in Commissioner of Wealth-tax Vs.

Sheo Kumar Gupta, and of the Delhi High Court, by Ansari and Khanna JJ., in Commissioner of Wealth Tax Vs. Girdhari Lal, , taking the view

that the amount declared by the assessee u/s 68 of the Finance Act, 1965, partakes of the character of total income assessable u/s 3 of the Indian

I.T. Act, 1922, or Section 4 of the I.T. Act, 1961. It is liable to assessment only under the charging sections of the said two Acts and, therefore,

the tax liability on the amount declared would be a ""debt owed"" within the meaning of Section 2(m) of the W.T. Act, 1957. The Division Bench of

the Kerala High Court in C. K. BABU NAIDU Vs. WEALTH-TAX OFFICER, ""A"" WARD, CALICUT, AND ANOTHER SUNDARARAJ

v. WEALTH-TAX OFFICER, ""A"" WARD, CALICUT, AND ANOTHER., further holds that the latter part of Section 68 of the Finance Act,

1965, is only a machinery provision and the earlier provision provides what is envisaged by Section 3 of the Indian I.T. Act, 1922, or Section 4 of

the I.T. Act, 1961, that the Finance Act shall declare the rates applicable. The Division Bench has further held that that view proceeds upon the

principle that liability for tax arising out of the declaration made u/s 68 of the Finance Act, 1965, is nothing other than the liability under the I.T.

Acts, 1922, or 1961. The only difference under the Voluntary Disclosure Scheme made by Section 68 of the Finance Act, 1965, was to provide a

flat rate of sixty per cent. of the amount disclosed under the Scheme. According to the majority view, therefore, the liability to pay tax u/s 68 of the

Finance Act, 1965, was a liability that arose on the valuation date and that liability was ""debt owed"" by the assessee on the valuation date falling

within Section 2(m) of the W.T. Act, 1957, and the assessee is entitled to deduct the Income Tax liability on the valuation date on the amounts

voluntarily declared u/s 68 of the Finance Act, 1965.

14. Bhagwati C. J. (as he then was) in Commissioner of Wealth Tax, Gujarat-I Vs. Ahmed Ibrahim Sahigara, , however, held that Section 68 of

the Finance Act, 1965, was not intended to lay down a concessional rate at which Income Tax may be charged under the I.T. Act, but it enacts a

new charge to tax, on an ad hoc basis, on disclosed income irrespective of the assessment year in which it was earned. With great respect, we are

unable to subscribe to the view expressed by him. None of the High Courts have agreed with his view that the tax paid on concealed income

disclosed by an assessee u/s 68 of the Finance Act, 1965, was not in satisfaction of any liability u/s 3 of the Indian I.T. Act, 1922, or Section 4 of

the I.T. Act, 1961, or that Section 68 of the Finance Act, 1965, creates a new charge to tax, on an ad hoc basis, on disclosed income irrespective

of the assessment year in which it was earned. As already stated, the same view was taken by Issac J. in C.K. Babu Naidu and C.K. Sundara

Raja Naidu Vs. Wealth-tax Officer and Another, , but that view has been reversed by P. Govindan Nair, Actg. C.J., and George Vadakkal J. in

C. K. BABU NAIDU Vs. WEALTH-TAX OFFICER, ""A"" WARD, CALICUT, AND ANOTHER SUNDARARAJ v. WEALTH-TAX OFFICER, ""A"" WARD, CALICUT, AND ANOTHER., .

15. In that state of law, we have no hesitation in answering the common question referred in all the eight references against the CWT and in favour

of the assessee. It must accordingly be held that the Tribunal was not justified in holding that, on the facts and in the circumstances of the case, the

tax at the rate of 60% prescribed u/s 68(3) of the Finance Act, 1965, was not deductible in arriving at the net wealth of the assessee u/s 2(m) of

the W.T. Act, 1957, during the assessment years 1957-58 to 1965-66. There shall be no order as to costs.