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Bombay High Court

Case No: Wealth Tax Ref. No. 13 of 1966

HINDUSTAN PETROLEUM CORPORATION LTD.	APPELLANT
Vs	
THE COMMISSIONER OF WEALTH TAX, BOMBAY CITY I, BOMBAY.	RESPONDENT

Date of Decision: Nov. 13, 1975

Acts Referred:

- Wealth Tax Act, 1957 - Section 27

Citation: (1976) 5 CTR 83

Hon'ble Judges: Desai, J

Bench: Division Bench

Judgement

Desai J. - This is a reference by the Income Tax Appellate Tribunal, Bombay, u/s 27(1) of the wealth-tax Act, 1957, and the following question has been referred to is for our opinion.

"Whether, on the facts and in the circumstances of the case, the debt owed by the Standard Vacuum Refining Company of India Ltd. to the assessee was situated in India notwithstanding the arrangement for the repayment of the debt outside India and includible as such in its net wealth for the assessment years 1957-58, 1958-59 & 1959-60 ?"

2. A few facts may be stated - We are concerned with the assessment years 1957-58, 1958-59 and 1959-60, the corresponding valuation dates being 31st December 1956, 31st December 1957 and 31st December 1958 respectively. At the relevant period the assessee was a non-resident company doing business in the manufacture of petroleum products through its organisation in India. Some time in 1951 there were negotiations

between the assessee company and the Government of India with regard to the setting up of a refinery in Bombay, and the terms and conditions between the parties pertaining to the setting up of such a refinery are to be found in the correspondence exchanged between the company and the Government of India, which correspondence is referred to in paragraph 3 of the statement of case. In pursuance of the agreement arrived at the Standard Vacuum Refining Company of India Ltd. (hereinafter referred to as the refining company) was incorporated as a 100% subsidiary of the assessee company, and subsequently the refining company became indebted to the assessee company in respect of the costs of construction, equipment, supplies and services purchased abroad. The assessee company has an organisation in India but did not treat the amount advanced to the refining company as debt to its Indian organisation but included them as part of the debts to its head office. The refining company in its books of account kept two separate accounts, one for the Indian marketing division of the assessee company which was a debtor of the refining company and the other for the head office of the assessee company which was its creditor. The amounts lying to the credit of the assessee company in the books of account of the refining company on the three valuation dates were Rs. 4,12,68,296/-, Rs. 2,89,60,279/- and Rs. 2,73,27,790/-respectively. We are concerned in this reference with these credits in the account of the assessee company in the books of the refining company.

Originally the wealth-tax assessments of the assessee company were completed for the three years in question without taking into account the transactions of the assessee company with the refining company. The assessments were, however, subsequently re-opened and the amounts owed by the refining company to the assessee company were treated as debts located in India and added to the net wealth of the assessee company. It was contended before the Wealth-tax Officer that the debts had been contracted to be repaid outside India. After considering the refinery agreement the Wealth-tax Officer observed that it was erroneous to conclude therefrom that there was a contract between the Indian and the foreign company to repay the debts outside India. The assessee carried the matter before the Appellate Assistant Commissioner, who confirmed the assessment made by the Wealth-tax Officer. The Appellate Assistant Commissioner was also of the view that there was absence of any contract specifying the place for repayment and in the absence of such provision the location of the debts due to the assessee must be deemed to be in India which was the place of residence of the debtor.

4. The assessee thereafter appealed to the Tribunal. Before the Tribunal it was contended on its behalf that it was clearly understood between the parties that the amounts were to be repaid outside India and in fact the amounts had been repaid outside India. Apart from the agreement, emphasis was placed on the actual conduct of the assessee company and the refining company. Reference was also made to the accounting procedures adopted by the refining company and the assessee company. Reliance was also placed on the principle that it was the debtor who had to find the

creditor. The Tribunal came to the conclusion that there was an understanding that the repayment of the liability of the assessee company would be in foreign currency but held that notwithstanding this, the debt due to the assessee company must be taken to be situated in India. It is this conclusion which is impugned before us.

5. According to the assessee company, it was entitled to the benefit of the provisions contained is section 6 (1) of the Wealth-tax Act by which it is provided that in computing the net wealth of the assessee the value of the assets and debts located outside India were not to be taken into account. The short question which then arises for consideration is whether the debt due to the assessee company by the refining company, which admittedly was an Indian company being a 100% subsidiary of the assessee company, was a debt located outside India.

6. It was contended by Mr. Mehta on behalf of the assessee company that the question referred to us by the Tribunal for our consideration was required to be answered in favour of the assessee by reason of the directions given in Circular No. 3 (W.T.) of 1957 dated 28th September 1957 issued by the Central Board of Revenue New Delhi, under the provisions contained in section 13(1)of the Wealth-tax Act, 1957. The relevant portions of this Circular material for our purposes are as follows :-

"..... ....

2. The question as to where the asset is located is essentially one of fact and will have to be decided in the light of evidence. The following instruction are issued for general guidance :

(a) ....

(b) ....

(c) ....

(d) Debts, secured or unsecured (other then those dealt with below) are located in India if they are contracted to be repaid in India and where the place of repayment is not specified, if the debtor is residing in India.

...."

7. It is the admitted position that in the instant case we are not concerned with the specified type of debts which are specially provided for in the Circular and, therefore, it is

the general provision contained in (d) which will apply.

8. In view of the clear finding of the Tribunal that there was an understanding for repayment of debt outside India, which is also reflected in the question referred to us, the debt under the provisions of the Circular must be regarded as one not located in India.

9. In Tata Iron & Steel Co. vs. N. C. Upadhayaya and another, 96 ITR 1, a Division Bench of this High Court had occassion to consider the binding effect of such Circulars issued by the Central Board of Revenue. After considering two decisions of the Supreme Court in (i) Navnitlal C. Javeri Vs. K.K. Sen, Appellate Assistant Commissioner of Income Tax, "D" Range, Bombay, , & (ii) Ellerman Lines Ltd. Vs. Commissioner of Income Tax, West Bengal, Calcutta, , the Division Bench held that the two Circulars being considered by it were binding on the Income Tax Officer and must be given effect to by the Court.

10. It was, however, contended by Mr. Joshi that in the matter before us the Circular was not relied on by the assessee before the Wealth-tax Officer, the Appellate Assistant Commissioner or the Tribunal and was not referred to in the order of the Tribunal, and hence, it was not permissible for the High Court in a reference u/s 27 of the Wealth-tax Act to answer the question referred to it in accordance with such Circular. Now, in my opinion, this submission by Mr. Joshi is one which deserves to be rejected. It has been held and the question is concluded as far as this Court, is concerned at any rate that such Circulars are binding on the Revenue and would be given effect to by the Court. It is true that in the TATA IRON and STEEL CO. LTD. Vs. N. C. UPADHYAYA AND ANOTHER. TATA IRON and STEEL CO. LTD. v. KUM. D. V. BAPAT and ANOTHER., and in Navnitlal C. Javeri Vs. K.K. Sen, Appellate Assistant Commissioner of Income Tax, "D" Range, Bombay, the matter had come to the Court in its writ jurisdiction; but in the Ellerman Lines Ltd. Vs. Commissioner of Income Tax, West Bengal, Calcutta, the Court had availed of the Circular in answering the question referred to it u/s 66 of the Indian Income Tax Act, 1922. Mr. Joshi contended that the position would be different if some statutory provision had through inadvertence not been brought to the attention of the Tribunal and in such a case it would have been permissible for the High Court to answer the question referred to it in the light of the statutory provision, which provision may not have been relied upon before the Tribunal and may not have been referred to by the Tribunal in its judgment. As for as the Revenue is concerned, I do not see any substantial difference in the position between such a statutory provision and the Circular which has been held to be binding and which requires to be given effect to by a Court of law as held in TATA IRON and STEEL CO. LTD. Vs. N. C. UPADHYAYA AND ANOTHER. TATA IRON and STEEL CO. LTD. v. KUM. D. V. BAPAT and ANOTHER., . I am fortified in this view by an unreported decision of this High Court in Navnit Lal Ambalal & Ors. vs. The Commissioner of Income Tax, Bombay City II (I.T. Reference No. 71 of 1966, decided on 10th July 1975). In the said reference, which was at the instance of the assessee, the Court was called upon to consider an order of the Tribunal construing the provisions contained in section 24 of the Income Tax Act, 1922. At the hearing of the reference, attention of the Court was drawn to a Circular of the Central Board of Revenue which

gave guidelines for answering questions referred to it but which Circular was not cited before or brought to the notice of the taxing authorities or the Tribunal. Despite this the Court gave effect to the provisions contained in the Circular, holding that in view of the circular it was unnecessary for the Court to consider or construe the provisions of section 24 of the Indian Income Tax Act, 1922 read with the provisions of section 6 and 10 thereof. The question was answered in accordance with the provisions contained in the Circular which had not been cited before the lower authorities or the Tribunal and not obviously referred to in the judgment of the Tribunal. In my view, it would be improper to ignore the provisions contained in the Circular and answer the question de hors the Circular.

11. It may be stated that Mr. Joshi has very fairy stated that if in the opinion of the Court it was necessary to answer the question in accordance with the Circular, then the answer to the question must be given in favour of the assessee in view of the express finding of the Tribunal that there was an understanding and arrangement for repayment of the debt outside India.

12. In my opinion, the question is required to be answered accordingly. The answer, it is obvious, must not and cannot be taken to mean that what the Tribunal has decided de hors the Circular is incorrect or erroneous. However, without giving this Courts decision, on the question it can be said that the question as to location of debt is one which is not easy to answer and not free from doubt. In this connection Mr. Joshi on behalf of the Commissioner drew our attention to a passage from Halsburys Laws of England, Third Edition, Volume XV (paragraph 115 at page 58), which states that "simple contract debts including those owing under bill of exchange and promissory notes are situate where the debtor resides". It was pointed out that this passage has been quoted with approval in Calcutta Tramways Co., Ltd. Vs. Commissioner of Wealth Tax, .

13. Our attention was also drawn to similar observations at pages 507 and 508 of DICLY & MORRIS - The Conflict of Laws (Ninth Edition) and at pages 524 and 252 of Cheshire''s Private International Law (Eighth Edition). It may be stated that the Tribunal based its decision principally on Re Helbert Wagg & Co. Ltd., (1956)1 All E.R. 129 at p. 136, where it was held that the general rule clearly was that the debt is locally situate where the debtor resides. In the said case it was held that the debt was situate in as many as that was the only place where the debtor resided notwithstanding the express provision in the loan agreement that the debt was payable in London. On the other hand, on behalf of the assessee our attention was drawn to the observations of the Supreme Court in The Delhi Cloth and General Mills Co. Ltd. Vs. Harnam Singh and Others, . The said judgment is an exhaustive judgment which considers in the context of the facts of that case the provisions of private international law regarding the situs of the debt as well as the proper law of contract. After reviewing various English authorities and principles to be found in standard works on the subject, it was observed by Bose J. speaking for the Court at p. 421 as follows :

"..... The rules, therefore, appear to have been arbitrarily selected or practical purposes and because they were found to be convenient.

But despite that the English Courts have never treated them as rigid. They have only regarded them as prima facie presumptions in the absence of anything express in the contract itself : see Lord Wrights speech in Mount Albert Borough Council case 1938 A.C. 224. Also, many exceptions have been engrafted to meet modern conditions ....."

14. The Delhi Cloth Mills case was considered and applied by the Gujarat High Court in its unreported decision in The Commissioner of Income Tax Gujarat, Ahmedabad vs. M/s. Saurashtra Cement & Chemical Industries Ltd., Income Tax Reference No. 5 of 1973, decided on 23rd September 1974. In the said reference the observations in The Delhi Cloth Mills case were referred to and it was held that a debt which was owed by a debtor company in India to a non-resident could not be held to be an asset held by the non-resident in India despite the fact that the debtor was residing in India.

15. In my view, it is unnecessary in view of the express provision in the Circular to give our views on this question, which, as stated earlier, is not free from doubt. The provisions in the Circular which are required to be applied are clear and categorical. In view of the finding of the Tribunal that the debt was required to be rapid outside India and that there was an arrangement and understanding between the parties to this effect; it must be held that the debt was not located in India.

16. Per Vimadalal J. - I agree, but would like to add that it is strange that the Department should take a stand which would permit it to disregard a Circular of the Central Board of Revenue which is binding upon it under sec 13(1) of the Wealth-tax Act, 1957.

17. By the Court :- On the facts and in the circumstances of the case, the debt owed by the Standard Vacuum Refining Company of India Ltd. to the assessee company, which is a non-resident company, was located outside India and should not, therefore, be taken into account in assessing its net wealth, in view of the finding of the Tribunal that there was an arrangement for the repayment of the debt outside India, and in view of the Circular No. 3 (W.T.), dated 28th September 1957 issued by the Central Board of Revenue under the Act.

18. In view of the fact that the Circular was not brought to the notice of the Tribunal, we however make no order in regard to the costs of the reference.