Smt. Smitaben N. Ambani Vs Commissioner of Wealth Tax

Court: Bombay High Court

Date of Decision: Jan. 16, 2009

Acts Referred: Compulsory Deposit Scheme (Income Tax Payers) Act, 1974 â€" Section 11, 3, 4, 5(10), 7
Income Tax Act, 1961 â€" Section 154, 154(1), 155, 23(1)
Maharashtra Municipal Councils Nagar Panchayats and Industrial Township Act, 1965 â€" Section 114, 114(1)
Wealth Tax Act, 1957 â€" Section 2, 27, 5
Wealth Tax Rules, 1957 â€" Rule 1BB

Citation: (2009) 222 CTR 225 : (2010) 323 ITR 104 : (2009) 181 TAXMAN 233

Hon'ble Judges: R.S. Mohite, J; F.I. Rebello, J

Bench: Division Bench

Advocate: J.D. Mistry, instructed by Raj Barak, for the Appellant; P.S. Sahadevan, for the Respondent

Judgement

R.S. Mohite, J.
The three questions which have been referred u/s 27 of the WT Act, are as follows:

1. Whether on the facts and circumstances of the case, the Tribunal was right in law in holding that the amount of Rs. 1,99,750 under the

Compulsory Deposit Scheme (IT Payers) Act, 1974, constituted an asset u/s 2(e) of the WT Act, and therefore, includible in the net wealth of the

assessee, for the asst. yr. 1980-81 ?

2. Whether on the facts and circumstances of the case, the Tribunal was right in law in holding that the amount of Rs. 2,76,449 representing

Income Tax refund likely to be due on the basis of the returns filed, forms part of the taxable asset u/s 2(e) of the WT Act, on the valuation date?

3. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that while applying provisions of Rule 1BB for

valuing the self-occupied property, municipal rateable value has to be adopted instead of standard rent?

2. Of these, question Nos. 1 and 2 have been referred by the Tribunal at the behest of the assessee whereas question No. 3 has been referred at

the behest of Revenue.

3. As regards question No. 1, the making of a compulsory deposit was mandated in respect of persons specified in Section 3 of the Compulsory

Deposit Scheme (IT Payers) Act, 1974 (hereinafter referred to as the ""said Act""). The said Act was enacted in the interest of national economic

development and Section 4 required persons as specified and whose annual income exceeded Rs. 15,000 to make a compulsory deposit at the

rates specified in the Schedule to the Act. Section 7 of the said Act laid down that every compulsory deposit would carry a simple rate of interest,

which would be equal to the bank deposit rate. Section 8 of the Act provided for the repayment of compulsory deposit and was in the following

terms:

Repayment of Compulsory Deposit-The amount of compulsory deposit made by or recovered from a depositor in any financial year shall be

repayable in five equal annual installments commencing from the expiry of two years from the end of that financial year, together with the interest

due on the whole or, as the case may be, part of the amount of the compulsory deposit which has remained unpaid:

Provided that nothing in this section shall prevent earlier repayment of the deposit or any installment thereof together with the interest due in any

case in which the ITO is satisfied that extreme hardship will be caused unless such repayment is made.

4. The present assessee was one of the persons who was required to make a compulsory deposit under the said Act. While filing her wealth-tax

return, she however, contended that the amount deposited by her in such compulsory deposit did not constitute an asset within the meaning given

to the expression in Section 2(e) of the WT Act, as it was exempted u/s 2(e)(2)(ii) of the WT Act 1957. Section 2(e)(2)(ii) reads as follows:

a right to any annuity (not being an annuity purchased by the assessee or purchased by any other person in pursuance of a contract with the

assessee) in any case where the terms and conditions relating thereto preclude the commutation of any portion thereof into a lump sum grant.

The answer to the question therefore, turns on the question as to whether the amounts which are receivable by the assessee u/s 8 of the said Act

can be said to be an amount of annuity.

5. At the very outset, we may state that this Court has held in the case of Commissioner of Wealth-tax Vs. Master Asutosh K. Mahadevia, , that

deposits made in the Compulsory Deposit Scheme under the Act would form a part of the asset of the assessee within the meaning of Section 2(e)

of the WT Act, 1957. The same view was taken by this Court in the case of Commissioner of Wealth-tax Vs. Vidur V. Patel, . It appears that

both these judgments were delivered on the same day and by the same Bench. Counsel appearing for the applicant however, contended that while

deciding the aforesaid two cases, this Court did not consider the point as to whether the deposit was exempted u/s 2(e)(2)(ii). It was contended

that the aforesaid two judgments of this Court were delivered only on the footing that u/s 2(e) the term ""asset"" included properties of every

description, movable or immovable but did not consider whether such compulsory deposit could be said to be an annuity exempted u/s 2(e)(2)(ii).

6. Counsel for the applicant brought to our notice the conflicting judgments of various other High Courts on this issue. He first brought to our notice

a judgment of the Allahabad High Court in the case of Udai Chand Jain and Others Vs. Commissioner of Wealth-tax and Another, , in which the

Single Judge of the Allahabad High Court took the view that the deposit in the Compulsory Deposit Scheme under the said Act amounted to

annuity within the meaning of Section 2(e)(2)(ii). While deciding the case the Allahabad High Court considered the meaning of word ""annuity"" as

given by the Supreme Court in Commissioner of Wealth-tax Vs. P.K. Banerjee (decd., by legal representatives), , wherein the apex Court held

that ""annuity"" was a payment to be made periodically and should be a fixed or predetermined. The Allahabad High Court held that the petitioners

were entitled to receive back the said amount in five equal installments by way of repayment under the Compulsory Deposit Scheme u/s 8 of the

Act. Therefore, since such repayment was fixed, the repayment was in the nature of an annuity which was exempted u/s 2(e)(2)(ii).

7. Counsel for the assessee brought to our notice that a different view was taken by the Calcutta High Court in the case of Smt. Sunanda Devi

Singhania Vs. Commissioner of Wealth Tax, . In that case while dealing with the meaning to be given to the word ""annuity"" the Calcutta High Court

referred to various judgments on the point including the judgment of the apex Court in the case of CWT v. P.K. Banerjee (supra) and concluded

as follows:

In the light of the aforesaid decisions, we have to consider whether the deposit under the Compulsory Deposit Scheme is an annuity, not purchased

by the assessee and is, therefore, exempt. It is not disputed that, unless exemption can be claimed as an annuity u/s 2(e)(2)(ii), it would clearly be

includible in the net wealth of the assessee for the simple reason that it is a deposit in the name of the assessee in a bank with only the restriction on

the right of withdrawal thereof for two years absolutely and, thereafter, the right to withdraw one-fifth thereof for the next five years. Interest runs

on the amount in deposit at more or less the higher rate of interest. It has all the attributes of a deposit in a bank because the assessee, when he

makes a deposit, gets a pass book in which an entry is made as is made in the case of any other deposit in a bank. Interest is calculated on the

balance due every year by the bank and credited in the pass book. The assessee has a right of withdrawing it subject to the restrictions noted

earlier.

An annuity is generally a fixed sum of money payable periodically and not subject to variation. An annuity cannot be related to a fixed proportion

of capital. When an assessee deposited out of his income under the Compulsory Deposit Scheme Act, it remains invested in the bank and income

is transferred into capital. Deposit is no doubt made out of the earned income, but it does not retain the character of income thereafter when

invested. A fixed deposit in a bank is a capital asset.

When the assessee receives one-fifth of the amount deposited by him in each year for a period of five years, after the lapse of two years of

deposit, it cannot be treated as an annuity because it is related to a fixed proportion of capital.

Further, the rate of interest is fixed every year and not only that there is a right to vary the rate of interest but also as a fact the rate of interest has

been varied from year to year. Therefore, the only fixed part of the Compulsory Deposit Scheme repayment is the one-fifth of the deposits actually

made by the assessee and that is not variable though the interest part is a variable sum and is actually varied from year to year. Therefore, on the

ratio of this ruling, the deposit in the Compulsory Deposit Scheme cannot be called an annuity. That apart, the repayment of the installment due on

1st April, 1985, on both principal and interest was postponed by one year by the statute. That indicates that Parliament did not treat it as an

annuity because the very fact that repayment for one year was denied to the recipients would be against the concept of the annuity itself.

It may be mentioned that by the Finance (No. 2) Act, 1980, Section 7A was inserted in the Compulsory Deposit Scheme Act, 1974, w.e.f. 1st

April, 1975. Section 7A provides that, for the purposes of exemption u/s 5 of the WT Act, 1957, the amount of compulsory deposit shall be

deemed to be a deposit with a banking company to which the Banking Regulation Act, 1949, applies.

The introduction of Section 7A in the Compulsory Deposit Scheme Act, granting exemption u/s 5 of the 1957 Act to the compulsory deposits is

another indication of the intention of the legislature to treat the deposit as an asset and grant exemption because the deposits under the Compulsory

Deposit Scheme would not otherwise be entitled to any exemption under the WT Act. If the deposit is an annuity and is, therefore, not includible in

the wealth, Section 7A would be rendered redundant.

The insertion of Section 8(2) entitling a depositor not to withdraw any amount of installment or interest which has become repayable and providing

that such deposit could continue to carry interest further shows that this is not an annuity because there is no such option available in the case of an

annuity. That the installment falling due would be treated as a deposit clearly shows that it was akin to an ordinary deposit and not to an annuity.

8. We are inclined to agree with the reasoning and view taken by the Calcutta High Court in the case of Smt. Sunanda Devi Singhania (supra) and

disagree with the view taken by the Allahabad High Court in the case of Uday Chand Jain (supra). In our view, the reasoning of the Allahabad

High Court does not take into account the fact that the amounts that would be repayable under the Compulsory Deposit Scheme would not

necessarily be a fixed amount which was the requirement laid down by the apex Court in the case of CWT v. P.K. Banerjee (supra). The amount

repayable every year may vary simply because interest could vary due to a change in the bank rates from year to year. That apart, in the case of a

compulsory deposit, unlike an annuity the amount invested becomes a part of the capital and under the scheme, a fixed proportion of this very

capital was to be repaid. That being the position on facts and in law we answer question No. 1 in the affirmative, against the assessee and in favour

of Revenue.

9. As regards question No. 2, in our view, merely because the refund is claimed in a return, the amount of refund claimed does not become

payable to the assessee. The claim for refund has to be assessed when the assessment of the return is done by the AO. He may refuse or reduce

the claim. Till he performs this exercise, the refund, if any, remains an unquantified sum. Advocate for the assessee relied upon a judgment of this

Court in the case of Estate of Late Gen. Sir Shankar S.S.J.B. Rana Vs. Controller of Estate Duty, . In the said case, the question which was

referred under the ED Act was:

Whether, on the facts and circumstances of the case, Income Tax refund of Rs. 13,69,092 payable to the deceased was includible in the estate of

the deceased, though it was received after the deceased''s death, by the accountable person?

This Court after referring to several judgments of various High Courts answered the said question in the negative and in favour of the accountable

person. We note that in the case of Commissioner of Wealth-tax, Gujarat-III Vs. Arvindbhai Chinubhai, , the Gujarat High Court took the view

that when assessment proceedings are pending on the valuation date, even assuming that there was likelihood of refund in the future and the likely

amount of refund might be an asset, it was not capable of valuation on the valuation date and such an asset was not capable of being ascertained.

The Rajasthan High Court considered the very question in the case of Commissioner of Income Tax Vs. Rangnath Bangur (Decd. by L. RS.), and

held that the assessee had no claim or title to the refund prior to the date on which the assessment was completed and therefore, the amount of

refund was not an asset in the hands of the assessee on the valuation date.

10. In our view, therefore, the refund which is merely claimed but not assessed has unascertainable value on the date of valuation and cannot form

a part of the taxable asset u/s 2(e) of the WT Act. We therefore, answer question No. 2 in the negative, in favour of the assessee and against the

Revenue.

11. As regards question No. 3, the relevant part of Rule 1BB (as it then stood) read as under:

(2) For the purpose of this rule:

(i) ""gross maintainable rent"", in relation to a house, means:

(i) the sum for which the house might reasonably be expected to let from year to year or;

(ii) where the house is let and the annual rent received or receivable by the owner in respect thereof is in excess of the sum referred to in Sub-

clause (i), the amount so received or receivable.

(emphasis, italicized in print, provided)

From the above, it is clear that in the case of self-occupied property, the valuation of a house for the purpose of wealth-tax is to be calculated on

the basis of gross maintainable rent which is the sum for which the house might reasonably be expected to let from year to year. As far as rateable

value is concerned, we note that under the various Acts that govern municipalities/municipal corporations rateable value is also calculated on the

basis of reasonable rent that the property may fetch. For example, Section 114 of the Maharashtra Municipal Councils, Nagar Panchayats and

Industrial Townships Act, 1965, rateable value is to be determined u/s 114. The relevant part of which is in the following terms:

114(1) In order to fix the rateable value of any building or land assessable to a property tax, there shall be deducted from the amount of rent for

which such building or land might reasonably be expected to let or for which it is actually from year to year, whichever is greater, a sum equal to

ten per centum of the said annual rent, and the said deduction shall be in lieu of all allowances for repairs or on any other account whatever.

(emphasis, italicized in print, provided)

12. Under the Bombay Municipal Corporation Act, 1888, rateable value is calculated u/s 154(1) and the relevant portion of the section is in the

following terms:

154. Rateable value how to be determined-(1) In order to fix the rateable value of any building or land assessable to a property tax, there shall be

deducted from the amount of the annual rent for which such land or building might reasonably be expected to let from year to year a sum equal to

ten per centum of the said annual rent and the said deduction shall be in lieu of all allowances for repairs or on any other account whatever.

13. Advocate for the assessee relied upon the judgment of the Calcutta High Court in the case of Commissioner of Income Tax Vs. Prabhabati

Bansali, . In that case the Tribunal had directed the ITO to determine the annual value of the property afresh with reference to its rateable value as

determined by the municipal corporation. In a reference, the Calcutta High Court held that the Tribunal had (was) justified in giving these

directions.

14. Advocate for the assessee then relied upon a judgment of this Court in the case of M.V. Sonavala Vs. Commissioner of Income Tax, , where

this Court following the view taken by the Calcutta High Court in the case of CIT v. Smt. Prabhabati (supra), held that the annual value of different

properties should be calculated on the basis of which the property might reasonably be let from year to year or the annual municipal value. The

aforesaid decision was given for calculating the annual value within the meaning of Section 23(1)(a) of the IT Act and the reference was one under

the IT Act. The question in the case was also framed not in relation to standard rent but in relation to actual compensation received but the ultimate

finding of this Court was it could be calculated on the basis of annual municipal value. To that extent, this judgment of our Court is relevant to the

issue raised before us.

15. That it may be that in areas which are governed by rent control legislation the reasonable letting value cannot exceed the standard rent but if we

consider the statutory definition of the term ""standard rent"" in rent control legislations and the mode and manner of calculating municipal rateable

value, situations can be countenanced where the standard rent of a given premises might be more or different than the sum for which a house might

reasonably be expected to be let from year to year as calculated by the local municipal authority for the purpose of arriving at the municipal

rateable value. This possibility was noticed by this Court in the case of Nirlon Synthetic Fibres & Chemical us. Municipal Corporation (2002) 104

(1) Bom. L.R. 762 wherein in para 20 this Court observed as under:

It is therefore to be held that the authorities, while determining the rateable value u/s 154 of the said Act, have to bear in mind the provisions of the

Rent Act and while deciding the rateable value have to take into consideration the provisions of the said Act as well as the Rent Act and

considering the facts and materials placed before them have to arrive at the figure pertaining to the rateable value of the premises. While doing so,

in cases where the Court under the Rent Act has already fixed the standard rent for any such premises, undoubtedly the same will have to be

considered for determining the rateable value of the building. However, in case no such standard rent has been fixed under the Rent Act, the

reasonable amount of rent, which can be expected by the owner from a hypothetical tenant, has to be arrived at by taking into consideration the

provisions of Section 11 r/w Section 5(10) of the Rent Act as also Sections 154 and 155 of the said Act. Section 155 of the said Act empowers

the Commr. to call for information and returns from the owner or enter an exigible premises. It should be also borne in mind by the authorities that

whatever figure which can be arrived at shall be a reasonable amount of rent which can be expected by the owner from a hypothetical tenant; i.e.,

the amount so arrived at should not be more than the standard rent which can be calculated in terms of the provisions contained in Section 11 r/w

Section 5(10) of the Rent Act.

(emphasis, italicized in print, provided)

16. In our view, the basis on which a self-occupied property is valued under Rule 1BB of the WT Rules and municipal rateable value is arrived at

under municipal law is the same i.e. ""a reasonable amount of rent that can be expected by the owner from a hypothetical tenant"". That while

arriving at such reasonable amount of rent that can be expected by the owner from a hypothetical tenant, the amount of statutory deduction, if any,

permissible under the local municipal law must be added to the rateable value. We thus answer question No. 3 as follows:

That while applying provisions of Rule 1BB for valuing the self-occupied property, municipal rateable value with addition of statutory deductions, if

any, may be adopted instead of standard rent, for arriving at the gross maintainable rent.

In view of the questions as answered, the wealth-tax reference is disposed of with no order as to costs.