

The Commissioner of Income-tax, Delhi v. Vijay Kumar Behal
(Mahajan, J.)

considered by the Income-tax Department as income from undisclosed sources because every other explanation tendered by the assessee was rejected. To say the least it is fair and equitable to allow him to do so because the assessee has already paid the necessary income-tax on that amount.

(15) In view of what has been said above, our answer to question No. 2 is also in the affirmative.

(16) The reference is answered accordingly but in the circumstances we make no order as to costs.

B. S. G.

WEALTH TAX REFERENCE

Before D. K. Mahajan and Bal Raj Tuli, JJ.

THE COMMISSIONER OF INCOME-TAX, DELHI,—
Applicant.

versus

VIJAY KUMAR BEHAL,—*Respondent.*

Wealth Tax Reference No. 2 of 1969

November 19, 1970.

Wealth Tax Act (XXVII of 1957)—Section 2(m)—Amount of Income-tax liability on concealed income—Whether a “debt owed”—Assessee—Whether entitled to the deduction of such amount in the computation of his net wealth.

Held, that on a true interpretation of section 2(m) of the Wealth Tax Act, 1957, the tax-liability is undoubtedly a debt. It has to be deducted from the Wealth of the assessee in order to arrive at the net wealth. The liability to pay tax arises on true income and true income will include both disclosed and undisclosed income. Consequently in the determination of the assessee's net wealth, he is entitled to the deduction of the income-tax payable by him on the concealed income included in his wealth.

(Paras 6 and 7)

Reference under Section 27(1) of Wealth Tax Act, 1957, made by the Income-tax Appellate Tribunal, Delhi Bench 'B', New Delhi,—vide its order dated 1st August, 1969, for opinion on the following question of law involved in R.A. No. 280 of 1968-69 arising out of Wealth Tax Appeal No. 417 of 1967-68 re. Assessment year 1960-61 :—

“Whether on the facts and in the circumstances of the case the Tribunal was right in holding that in the determination of the assessee's net wealth, the assessee was entitled to deduction of the Income-tax, payable by him on the concealed income included in his Wealth ?”

D. N. AWASTHY AND B. S. GUPTA, ADVOCATES, for the applicant.

NEMO, for the respondent.

JUDGMENT

The judgment of this Court was delivered by :—

MAHAJAN, J.—This order will dispose of Wealth Tax References Nos. 2, 3, 4, 5 and 7 of 1969. The assessees in all these references are different. They are partners in the same firms. The assessment year is 1960-61, and the relevant valuation date is 31st March, 1960. We only propose to deal with the facts in Wealth Tax Reference No. 2 of 1969. It is not disputed that our decision in this reference will govern all the other references.

(2) The assessee Vijay Kumar Behal of Ludhiana was a partner in Messrs Pearl Hosiery Mills and Messrs Pearl Woollen Mills, Ludhiana. The Income-tax Officer found during the assessment proceedings for the years 1959-60 and 1960-61 that the said firms had under-valued their stocks and thereby concealed their income. It was also found that the said concealed income had been introduced in the books of account in the form of *hundi* loans which in fact were fictitious. Ultimately, the firms surrendered the concealed income for assessment. These assessments were completed in July, 1956. For the assessment years 1959-60 and 1960-61, the assessee's share of the concealed income of the firms was included in his total income and he was assessed to Income-tax accordingly. When the assessment of the assessee was done for purposes of wealth tax for the year 1960-61 his share of concealed income was included in his total wealth. No allowance was made for income-tax payable on the said concealed income. The assessee claimed that the tax payable could not be included in the total wealth, being a debt owed by him to the Income-tax Department on the relevant valuation date, viz., 31st March, 1960.

The Commissioner of Income-tax, Delhi v. Vijay Kumar Behal
(Mahajan, J.)

The assessee relied on the decision of the Supreme Court in *Kesoram Industries and Cotton Mills Ltd. v. Commissioner of Wealth Tax (Central) Calcutta*, (1). The Wealth Tax Officer negated this contention. The view of the Wealth Tax Officer was that the tax due on concealed income was not a debt owed by the assessee and thus, could not be allowed as a deduction in determining his net wealth for the assessment year 1960-61.

(3) The assessee, who was dissatisfied with this decision, went up in appeal to the Appellate Assistant Commissioner of Wealth Tax, B Range, Amritsar. The Appellate Assistant Commissioner upheld the order of the Wealth Tax Officer and dismissed the appeal.

(4) The assessee then preferred a further appeal to the Income-tax Appellate Tribunal. The Tribunal relied upon the decision of the Supreme Court in *Kesoram Industries case* (1) and allowed the assessee's claim. The relevant part of the decision of the Tribunal is quoted below :—

“In the case of *Kesoram Industries and Cotton Mills Ltd.* (1), the appellant company had, in its balance-sheet for the year 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 was whether that amount was a ‘debt owed’ within the meaning of section 2(m) of the Wealth Tax Act, 1957, as on March 31, 1957, which was his valuation date, and as such deductible in computing the net wealth of the appellant company. Subba Rao J. (as he then was) delivering the majority judgment of the Court held that the word ‘owe’ meant to be under an obligation to pay, that it did not really add to the meaning of the word ‘debt’ and that ‘debt owed’ within the meaning of section 2(m) could be defined as the liability to pay in presenti or in future an ascertainable sum of money. His Lordship further observed as follows :—

‘A liability to pay income-tax is a present liability though it becomes payable after it is quantified in accordance with ascertainable data. There is 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 has not yet been 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' are present. It is a present liability of an ascertainable amount."

It was further held that the amount of provision for payment of income-tax and super-tax in respect of the year of account ending March 31, 1957, was 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.

It appears to us that that the above decision cannot be distinguished from the case in hand as has been done by the Wealth Tax authorities. The principles laid down by the Supreme Court are applicable irrespective of the intention of the assessee on the relevant valuation date. The liability to tax is based on the earning of income and not on the intention to disclose it or conceal it. Respectfully following the above decision of the Supreme Court, we hold that the Assessee is entitled to deduction of tax payable on concealed income assessed for the year under consideration."

(5) The Commissioner of Wealth Tax being dissatisfied with the order of the Tribunal applied under section 27(1) of the Wealth-Tax Act, 1957, praying that the following question of law be referred for the opinion of this Court :—

"Whether on the facts and in the circumstances of the case the Tribunal was right in holding that in the determination of the assessee's net wealth, the assessee was entitled to deduction of the Income-tax payable by him on the concealed income included in his wealth ?"

This application was allowed and the aforesaid question of law has been referred to this Court for its opinion.

(6) Mr. Awasthy, learned counsel for the Commissioner of Wealth Tax, contends that the decision of the Tribunal is erroneous

The Commissioner of Income-tax, Delhi v. Vijay Kumar Behal
(Mahajan, J.)

and the liability to tax on the income that had not been disclosed could not be equated with the liability on disclosed income. We are unable to agree with this contention. As a matter of fact, it does not matter whether the tax is payable on disclosed income or undisclosed income. The liability to pay tax arises on true income and true income will include both disclosed and undisclosed income. In any event, the matter stands concluded by the two decisions of the Supreme Court in *Kesoram Industries and Cotton Mills Ltd. v. Commissioner of Wealth Tax (Central) Calcutta* (1), and *H. H. Setu Parvati Bayi v. Commissioner of Wealth-Tax, Kerala* (2). In the latter case, their Lordships held that, "the liability to pay wealth tax crystallises on the valuation date and not on the first day of the assessment year, though the tax is levied and becomes payable in the relevant assessment year. 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." This reasoning fully covers the present case. It may be mentioned that their Lordships of the Supreme Court in *Kesoram Industries case* (1) pointed out, while dealing with the provisions of Income-tax Act, that "the tax liability at the latest will arise on the last day of the accounting year". On parity of reasoning, therefore, the decision in 69 I.T.R. 864 will fully cover the present case.

(7) What has been stated above can be supported on the basis of section 2(m) of the Wealth Tax Act. Section 2(m) is quoted below for facility of reference and on its true interpretation alone the decision of the Tribunal must stay :—

"2(m). In this Act, unless the context otherwise requires —

'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 under section 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, the Expenditure-tax Act, 1957, or the Gift-tax Act, 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;”

Undoubtedly the tax liability is a debt. It has to be deducted from the wealth of the assessee in order to arrive at the net wealth. This debt so far as the present case is concerned does not fall in the exceptions provided in section 2(m).

(8) For the reasons recorded above, we answer the question referred to us in the affirmative, that is, in favour of the assessee and against the Revenue. As there is no representation for the assessee, there will be no order as to costs.