A COMMISSIONER OF WEALTH TAX, LUCKNOW

v.

RAJA VISHWANATH PRATAP SINGH

APRIL 3, 1996

B [J.S. VERMA AND SUHAS C. SEN JJ.]

Wealth Tax Act 1957—Sections 2(m) and 1—Net wealth—Deductions—Debts owed—Personal liability—Application for liquidation of debts by assessee's father—On his death, estate taken over by court of ward, savings C *invested in Government securities, interest earned thereon collected by the assessee—Decree passed in the name of the assessee—Decree holder's claim against amount held in Government securities opposed by assessee as the amount was not part of estate of his father—Proceedings under Section 17 of Wealth Tax Act—Amount held in Government securities is net wealth of the assessee and there can not be any deduction of any decretal dues since as-* D *sessee is not personally Liability for the debt—Plea of pious obligation—Rejected—On the relevant valuation date the assessee was not saddled with a decretal debt—Having successfully thwarted the attempts of the decree holders to proceed against the aforesaid Government securities and the income arising therefrom, the assessee can not claim that the decretal dues are* E *his debts which are personally payable by him.*

Hindu Law—Pious obligation—The obligation of the son to pay off the debts contracted by his father—Limited to the properties inherited by the son from his father.

F **The Respondent's father, a Zamindar, filed an application for liquidation of his debts under section 4 of U.P. Encumbered Estates Act 1934 and he died during the pendency of the application and the respondent was brought on record as his "Legal representative. The court of Wards took over the estate and a sum of Rs. 6,11,324 secured out of savings of** G **the estate was invested by it in Government securities. The interest accrued thereof was collected by the respondent.**

The proceedings under U.P. Encumbered Estates Act was decreed in the name of the respondent for Rs. 30,00,000. Decree-holder's claim against the amount held in Government securities was opposed by the respondent. H **The special Judge held that the decree-holders could not proceed against**

the amount which did not form part of estate of the deceased. The High Court upheld the order of the special Judge.

The Wealth Tax assessment of the assessee was completed for the assessment years 1957-58, 1958-59, 1959-60, during the pendency of the application for liquidation of debts. And, the decretal amount of Rs. 30,00,000 was treated as 'debt owed' by the respondent and it was held that respondent was not liable to pay tax under the wealth tax Act. But, proceedings under Section 17 of wealth tax Act were initiated against the respondent after the High Court order. The Wealth Tax Officer concluded that the amount held in Government securities constituted the net wealth of the respondent against which the decretal amount could not be set off, and that since the decretal amount of Rs. 30,00,000 could not be recovered from the respondent personally it was not a debt owed by the respondent.

In an appeal to the Appellate Assistant Commissioner, plea of pious obligation was taken up which was dismissed holding that under the Hindu Law the creditors could not proceed against the assets of the assessee for fulfilling his pious obligation to pay the decretal dues of his father. Appeal preferred against this order was dismissed by the Tribunal.

At the instance of the assessee, the following two questions of law were referred to the High Court under Section 27 of the Wealth Tax Act :

"1. Whether on the facts and in the circumstances of the case the debts amounting to Rs. 30 Lacs and odd, more or less for each of the assessment years under appeal, were rightly not allowed as a deduction in calculating the net wealth of the assessee ?

2. Whether on the facts and under the circumstances of the case the provisions of Section 17 of the Wealth Tax Act were applicable so far as the assessment years 1957-58, 1958-59 and 1959-60 are concerned ?

The High Court answered the first question by holding that the debt amount to Rs. 30,00,000 and odd should have been allowed as a deduction in calculating the net wealth of the assessee. As a consequence of the answer given to the first question, the second question was answered by saying that Section 17 of the The Wealth Tax Act could not be applied for the assessment years 1957-58, 1958-59, 1959-60. Hence this appeal.

Allowing the appeal, this court

A **HELD : 1.1. It is not the case of the assessee that he had a personal liability to pay the decretal amount of Rs. 30,00,000 and that was payable by him ultimately. The decree-holders have been unable to proceed against his assets (the Government securities of Rs. 6,87,000) for the realization of their decretal dues. It is not the case of the assessee that on the relevant valuation date the assessee was saddled with a decretal debt and the assessee was under a legal obligation to pay that amount sooner or later. Having successfully thwarted the attempts of the decree-holders to proceed against the aforesaid Government Securities and the income arising therefrom, the assessee cannot now claim that the decretal dues are his debts which are personally payable by him. [1157-B-C]**

C

Kesoram Industries and Cotton Mills Ltd. v. *Commissioner of Wealth Tax (Central),* **Calcutta (1969) 59 ITR 767, referred to.**

2. The obligation of the son to pay off the debts contracted by his father is limited to the properties inherited by the son from his father. It D **is not the case of the assessee that he has inherited the amount of Rs. 6,87,000 held in Government securities from his father. In any event, it was held by the High Court in its order dated March 25, 1961 that a decree obtained by the creditors could not be executed against these Government securities. [1157-E-F]**

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Mulla's Hindu Law, **12th Edition P-426, referred to.**

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 1364-68 of 1974.

F From the Judgment and Order dated 22.6.71 of the Allahabad High Court in W.T.R. No. 284 of 1965.

T.L. Viswantha Iyer, S. Rajappa and S.N. Terdol, Advs. for the Appellants.

G Shivpujan Singh for the Respondents.

The Judgment of the Court was delivered by

SEN, J. The assessee Raja Vishwanath Pratap Singh is the son of late Captain Raja Bahadur Ram Gopal Singh, who was the owner of extensive H zamindari and other properties. Ram Gopal Singh ran debts. He applied

under Section 4 of the U.P. Encumbered Estates Act, 1934 for the liquidation of his debts. While his application under Section 4 was pending, Ram Gopal Singh passed away and his estate was taken over by the Court of Wards on September 16, 1941. The estate was released on February 16, 1953. All the proceedings pursuant to the application before the Special Judge after the death of Ram Gopal Singh went on in the name of the assessee.

Out of the savings of the estate, the Court of Wards invested an amount of Rs. 6,11,324 in Government securities. The investment fetched an income of Rs. 76,000 per annum by way of interest. The amount of interest used to be collected by the assessee.

In the proceedings under the U.P. Encumbered Estates Act, the Special Judge passed a simple money decree for Rs. 30,00,000 and odd add. Since the assessee had been substituted in the place of his father, the decree was passed against the assessee. When some of the decree-holders wanted to proceed against the amount of Rs. 6,87,000 held in Government securities, the assessee opposed the claim of the decree-holders. The Special Judge held that the decree-holders could not proceed against this amount which did not form part of the estate of the deceased Ram Gopal Singh. The decree-holders went on appeal to the High Court which upheld the order of the Special Judge by an order passed on March 25, 1961.

While all these proceedings were going on under the U.P. Encumbered Estates Act, Wealth Tax Assessment of the assessee was completed for the assessment years 1957-58, 1958-59, 1959-60. However, the proceedings for the assessment years 1960-61 and 1961-62 were pending. In the wealth Tax Assessments proceeding upto the assessment year 1959-60, the decretal amount of Rs. 30,00,000 an odd had been treated as 'debt owed' by the assessee. Taking this debt into consideration, it was held that the assessee was not liable to tax under the Wealth Tax Act. But, when the judgment of the High Court dated March 25, 1961 came to the knowledge of the Department that the decree-holders could not proceed against the amount of Rs. Rs. 6,87,000 and odd held by the assessee in his own name for recovery of the decretal debt, the Wealth Tax Officer initiated proceedings under Section 17 of the Wealth Tax Act against the assessee for the assessment years 1957-58, 1958- 59 and 1959-60.

After giving a hearing to the assessee, the assessments were com-

A pleted by the Wealth Tax Officer for the aforesaid years of assessment holding that since the decretal amount of Rs. 30,00,000 could not be recovered from the assessee personally, it was not a debt owed by the assessee. The sum of Rs. 6,78,000 constituted the net wealth of the assessee against which the decretal amount could not be set off. Similar orders were
B passed for the assessment years 1960-61 and 1961-62.

The assessee appealed to the Assistant Appellate Commissioner who examined the facts of the case in depth and dismissed the appeals by a consolidated order disposing of all the five cases.

C One of the points taken before the Appellate Assistant Commissioner was that the assessee had a pious obligation to discharge the debts contracted by his father and, therefore, the decretal dues of Rs. 30,00,000 should be treated as 'debt owed' by the assessee. The Appellate Assistant Commissioner, however, held that under the Hindu Law the creditors could not proceed against the assets of the assessee for fulfilling his pious
D obligation to pay the decretal dues of his father.

There was a further appeal to the Tribunal. Before the Tribunal the point of pious obligation of the son to pay the debts contracted by the father under Hindu Law was given up. It was contended that the aggregate
E value of the debts of the assessee was more than Rs. 30,00,000. If this was deducted from the assets held by the assessee, the resultant figure would be negative. Therefore, no Wealth Tax was needed to be paid by the assessee. It was pointed out that Section 2(m) of the Wealth Tax Act enjoined deduction of debts owed by the assessee. The decrees passed under the U.P. Encumbered Estates Act were personal decrees against the
F assessee and, therefore, the amount had to be deducted from the assets of the assessee as 'debts owed' by the assessee. The payability of the debt was not very material for this purpose. For this proposition, reliance was placed upon the judgment of this Court in the case of *Kesoram Industries and Cotton Mills Ltd.* v. *Commissioner of Wealth Tax (Central), Calcutta,* (1969)
G 59 ITR 767. It was further argued that a decree could not be passed against a dead person. The decree in question was actually passed against the assessee. Therefore, it could not be said that no decree was passed against the assessee personally.

The Tribunal rejected all these arguments. The Tribunal held that in
H order to get any deduction of any amount on 'debt owed' by the assessee,

it will have to be shown that he was personally liable to pay the debts. In a case where a person was liable to pay debts only to the extent of property which he had received from another person, there could be no personal liability to pay the tax. The creditors could proceed against the assets and recover their dues from the assets of the deceased. But the creditors could not enforce their claim against the assessee personally or against the personal assets of the assessee. Since the creditors could not proceed against the assessee personally for recovery of their decretal dues, it could not be said that the assessee owed any debt which had to be deducted from his assets for the purpose of computation of net wealth. The Tribunal, therefore, dismissed the appeal.

At the instance of the assessee, two following questions of law were referred to the High Court under Section 27 of the Wealth Tax Act :–

"1. Whether on the facts and in the circumstances of the case the debts amounting to Rs. 30 lacs and odd, more or less for each of the assessment years under appeal, were rightly not allowed as a deduction in calculating the net wealth of the assessee ?

2. Whether on the facts and under the circumstances of the case the provisions of Section 17 of the Wealth Tax Act were applicable so far as the assessment years for 1957-58, 1958-59, 1959-60 are concerned ?"

The High Court took the view that the Tribunal had misconstrued the expression 'debts owed by the assessee' in Section 2(m) of the Wealth Tax Act. The Tribunal had also misunderstood the true nature of the obligation of heir of the deceased debtor to pay his debts. The High Court referred to Mulla's Hindu Law, 12th Edition, p.426 and observed that the assessee was liable to pay the debts incurred by his deceased father. But his liability was restricted to the extent of the property inherited by him from his deceased father. So his father's debts which may be satisfied from the property which he had inherited from his father were 'debts owed by the assessee'. The High Court, therefore, answered the first question by holding that the debt amount to Rs. 30,00,000 and odd should have been allowed as a deduction in calculating the net wealth of the assessee. As a consequence of the answer given to the first question, the second question was answered by saying that Section 17 of the Wealth Tax Act could not

A be applied for the assessment years 1957-58, 1958-59 and 1959-60.

We fail to see how the High Court went to the question of pious obligation of the Hindu son for payment of his father's debt. This question was given up before the Tribunal and no argument was advanced on this point. Moreover, the High Court noted that the assessee's liability to pay B his father's debt was restricted to the properties which he had inherited from his father. The amounts invested in the Government securities were investments made by the Court of Wards out of savings from the income of the estate in its hands. It was held by the Special Judge that this property was not available for payment of the decretal dues obtained by the C creditors in the proceedings under the U.P. Encumbered Estates Act. The High Court in appeal had affirmed that view. Therefore, the creditors of the deceased Ram Gopal Singh could not proceed against these Government securities to recover the decretal dues. The reference Court obviously overlooked these facts in coming to the conclusion that the assessee had a pious obligation to pay his father's debts even out of these Government D securities.

In the case of *Kesoram Industries and Cotton Mills Ltd.* (supra), it was held that 'debt owed' under Section 2(m) of the Wealth Tax Act could be defined as the liability to pay in praesenti or in futuro an ascertainable E sum of money. Debitum in praesenti solvendum in futuro. In that case, the question was whether liability to pay income Tax which had not been computed by an assessment order could be treated to be a present liability and, therefore, a debt. This Court held that the liability to pay Income Tax arose by virtue of the Income Tax Act. At the end of the accounting period there was a perfected debt. This was not a contingent liability. It was a F present liability to pay an ascertainable amount in futuro. Therefore, it came within the meaning of the phrase 'debts owed' in Section 2(m) of the Wealth Tax Act on the Valuation date.

This decision does not come to the aid of the assessee in any way. G Under the Wealth Tax Act, 'net wealth' has been defined as under :—

> "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 H 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 which have been incurred in relation to the said assets." A

It was not the case of the assessee that he had a personal liability to pay the decretal amount of Rs. 30,00,000 and that it was payable by him ultimately. The decree-holders have been unable to proceed against his assets (the Government securities of Rs. 6,87,000) for the realisation of B their decretal dues. It is not the case of the assessee that on the relevant valuation date the assessee was saddeled with a decretal debt and the assessee was under a legal obligation to pay that amount sooner or later. Having successfully thwarted the attempts of the the decree-holders to proceed against the aforesaid Government securities and the income aris- C ing therefrom, the assessee cannot now be heard to say that the decretal dues are his debts which are personally payable by him. We are of the view that the Tribunal had given good reasons for its decision and the decision of the Tribunal should have been upheld by the High Court.

On behalf of the assessee our attention was invited to the provisions D of the U.P. Encumbered Estates Act and also the judgment of the High Court passed on March 25, 1961. It was argued that the judgment must be understood in the context of the provisions of that Act. It was emphasised that there was a pious obligation of the assessee to pay off the debts incurred by his father. This argument had been advanced before the E Appellate Assistant Commissioner, but was not pressed before the Tribunal. Moreover, the obligation of the son to pay off the debts contracted by his father is limited to the properties inherited by the son from his father. It is not the case of the assessee that he has inherited the amount of Rs. 6,87,000 held in Government securities from his father. In any event, it was held by the High Court in its order dated March 25, 1961 that a F decree obtained by the creditors could not be executed against these Government securities.

In view of the aforesaid, we answer both the questions in the affirmative and in favour of the Revenue. The appeals are allowed. Each party G will bear its own costs.

Mrs. M.K. Appeals allowed.

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