

BURMA OIL CO. (I) TRADING LTD. CALCUTTA

A

v.

COMMISSIONER OF WEALTH TAX (CENTRAL) CALCUTTA

December 1, 1976

[H. R. KHANNA AND V. R. KRISHNA IYER, JJ.]

B

Wealth Tax Act 1957—Sec. 2(m)—Whether provision for tax liability is a debt deductible in computing wealth.

The appellant made a provision for a sum of Rs. 49,19,520/- in his books of account for the discharge of its tax liabilities. The appellant claimed deduction of the said amount for computation of his net wealth on the ground that it was a debt owed by the assessee within the meaning of s. 2(m) of the Wealth Tax Act. The claim was disallowed by the Wealth Tax Officer, the Appellate Assst. Commissioner of Wealth Tax and the Tribunal. The High Court of Calcutta answered the reference in favour of the revenue and against the assessee relying on its earlier decision in the case of Assam Oil Co. Ltd.

C

Allowing the appeal by certificate,

HELD : This Court has reversed the decision of Calcutta High Court in the case of Assam Oil Co. Ltd. In that case this Court held by majority that the amount set apart by an assessee in his balance sheet on the valuation date as an estimated provision for meeting its tax liability less the last instalment of the payment of the advance tax was a debt owed by the assessee within the meaning of s. 2(m) of the Wealth Tax Act, 1957 and was deductible in computing its net wealth as on that date. The Court followed the said decision. [296C-G]

D

Assam Oil Co. v. Commissioner of Wealth Tax, Central Calcutta, 60 I.T.R. 267 followed.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 71 of 1972.

E

(From the Judgment and Order dated the 18th December, 1964 of the Calcutta High Court in Matter No. 199/61).

T. A. Ramachandran and *D. N. Gupta*, for the appellant.

B. B. Ahuja and *R. N. Sachthey*, for respondent.

F

The Judgment of the Court was delivered by

KHANNA, J. This appeal on certificate is against the judgment of the Calcutta High Court whereby the High Court answered the following question referred to it under section 27 of the Wealth Tax Act in favour of the revenue and against the assessee-appellant :

“Whether on the facts and in the circumstances of the case, the provision of Rs. 49,19,520/- made by the assessee for its tax liability less the amount of the last instalment of advance tax constituted a debt owed by the assessee within the meaning of clause (m) of section 2 of the Wealth Tax Act on the relevant valuation date?”

G

The matter relates to the assessment year 1958-59, the relevant valuation date for which was December 31, 1957. A sum of Rs. 49,19,520/- was provided for in the books of the appellant for the dis-

H

A charge of its tax liabilities. The appellant claimed the amount as a deduction in the computation of the net wealth. The claim was disallowed by the wealth tax officer, the Appellate Assistant Commissioner of Wealth Tax and the Tribunal. On an application filed by the appellant, the Tribunal referred the question reproduced above to the High Court.

B The High Court, while answering the question in favour of the revenue and against the assessee-appellant, relied upon its earlier decision in the case of *Assam Oil Co. Ltd. v. Commissioner of Wealth Tax, Central Calcutta*⁽¹⁾.

C The decision in the case of *Assam Oil Co. Ltd.* relied upon by the High Court was reversed on appeal by this Court. Naturally therefore at the hearing of the appeal, Mr. Ramachandran, learned counsel for the appellant, has drawn our attention to that decision of this Court in the case of *Assam Oil Co. v. Commissioner of Wealth Tax, Central Calcutta*⁽²⁾. It was held in that case by majority that the amount set apart by the appellant-company in its balance-sheet as on December 31, 1956 as an estimated provision for meeting its tax liability, less the last instalment of the demand of the advance tax, was a debt owed by the appellant company on December 31, 1956, the relevant valuation date, within the meaning of section 2(m) of the Wealth Tax Act, 1957, and was deductible in computing its net wealth as on that date. Following that decision, we are of the view that the answer to the question referred by the Tribunal to the High Court should be in the affirmative in favour of the assessee-appellant and against the revenue. Mr. Ahuja submits that the view taken by the majority in the case of *Assam Oil Co. Ltd.* needs reconsideration. This Bench, however, is bound by that decision. Following that decision, we accept the appeal, set aside the judgment of the High Court and answer the question referred by the Tribunal in the affirmative in favour of the assessee-appellant and against the revenue. The parties in the circumstances shall bear their own costs of this Court as well as of the High Court.

P.H.P.

Appeal allowed.

(1) 48 I.T.R. 49.

(2) 60 I.T.R. 267.