
(1985) 08 KAR CK 0013
In the Karnataka High Court
Case No : T.R.C. No. 141 of 1978

Basappa

APPELLANT

Vs

Commissioner of Wealth Tax

RESPONDENT

Date of Decision : 01-08-1985

Acts Referred:

Wealth Tax Act, 1957 — Section 2, 2 (m) (ii), 27 (1), 3, 5

Citation : (1986) ILR (Kar) 1116

Hon'ble Judges : Puttaswamy, J;Mahendra, J

Bench : Division Bench

Advocate : G. Sarangan, for the Appellant; K. Srinivasan and H. Raghavendra Rao, for the Respondent

Judgement

Puttaswamy, J.—In this reference u/s 27(1) of the Wealth-tax Act of 1957 (Central Act No. 27 of 1957) ("the Act") the Income Tax Appellate Tribunal, Bangalore Bench("Tribunal") at the instance of the assessee has referred the following question of law for the opinion of this Court:

"Whether, on the facts and in the circumstances of the case, the assessee was entitled to a deduction of Rs. 1,69,950/-representing the loan taken from the Life Insurance Corporation of India on insurance policies in view of the provisions of Section 2(m)(ii) of the Wealth Tax Act, 1957?

In order to appreciate the question of law referred to us, it is necessary to notice the facts of the case in the first instance.

2. The assessee is a Hindu Undivided Family ("HUF") For the assessment year 1974-75 relevant to the valuation date being 31-3-1974, the assessee filed his return under the Act before the Wealth Tax Officer, Mercara ("WTO") inter alia claiming a sum of Rs. 1,69,950/- "as a debt owed by him" being the amount borrowed from the Life Insurance Corporation of India on a Life Insurance policy issued by that Corporation. On an examination of the return filed by the assessee, the WTO completed his assessment on 10-6-1975 disallowing the said

sum of Rs. 1,69,950/- with which the appellate authorities have concurred by dismissing the appeals filed by the assessee under the Act. Hence, this reference at the instance of the assessee.

3. Sri G. Sarangan, Learned Counsel appearing for the assessee In urging to answer the question in his favour contends that the sum of Rs. 1,69,950/- was a debt owed by the assessee in relation to his net wealth not falling within the exceptions in Section 2(m)(ii) of the Act and was an allowable deduction under the Act.

4. Sri K. Srinivasan, Learned Senior Standing Counsel for the Income Tax Department, appearing for the revenue in urging to answer the question in favour of the revenue contends that the sum owed by the assessee was a debt owed in relation to an exempted wealth and was not an allowable deduction because of Section 2(m)(ii) of the Act. In support of his contention Sri Srinivasan strongly relies on the rulings of the High Courts of Allahabad, Madras, Gujarat and Madhya Pradesh reported in (i) *JIWAN LAL VIRMANI Vs. COMMISSIONER OF WEALTH-TAX*, U. P., T.V. Srinivasan Vs. Commissioner of Wealth-tax, Apoorva Shantilal (HUF) v. Commissioner of Wealth Tax 135 ITR 189 and Commissioner of Wealth-tax Vs. Narayandas J. Hemani, respectively.

5. The Act has been enacted to provide for the levy of wealth tax. Section 3 of the Act which is the charging Section provides for levy of wealth tax in respect of the "net wealth" of an assessee on the corresponding valuation date. The definitions found in Section 2 and all other provisions of the Act should be so read as to carry out the purposes of the Act and in particular Section 3 which is the charging section of the Act.

6. Section 2(m) of the Act only defines the term "net wealth" for purposes of the Act. Under this very definition, the term "net wealth" means the amount by which the aggregate value is computed in accordance with the provisions of the Act of all the assets, wherever located on the valuation date, The computation of "net wealth" has therefore necessarily to be made as stipulated in the other provisions of the Act and in particular Section 5 of the Act. Section 5 deals with the exemptions or the properties that are not includible in the term "net wealth" occurring in the Act. When we examine the Act as a whole with all the definitions and Section 5 in particular it is plain that an insurance policy till it matures and becomes payable, does not become an asset and is not included in the "net wealth" of an assessee under the Act at all. On this very conclusion it necessarily follows that a loan taken on such an insurance policy, whatever be the purpose of that loan, will not be an allowable "debt owed" and cannot be claimed as an allowable deduction under the Act. We are of the view that this is the clear mandate of the Act, which also is placed beyond all controversy in Section 2(m)(ii) of the Act.

7. Section 5 provides for exemptions from payment of wealth tax in respect of certain assets. Section 5(1)(vi) of the Act regulating exemption in respect of

insurance policies reads thus :

"5(1) Subject to the provisions of Sub-section (1A) Wealth tax shall not be payable by an assessee in respect of the following assets, and such assets shall not be included in the net wealth of the assessee.

XX XX XX (vi) the right to interest of the assessee in any policy of insurance before the moneys covered by the policies become due and payable to the assessee."

This Section in clear terms excludes an insurance policy which had not matured had not become payable from being included in the net wealth of an assessee. When once an insurance policy which had not matured is not included in the net wealth, it also follows that any loan taken on the same will not be a "debt owed in computing the net wealth" of an assessee.

8. The amendments made to Section 2(m) of the Act by the Wealth-tax (Amendment) Act of 1964 on which also reliance was placed by Sri Sarangan as pointed out by the High Court of Madras & Gujarat in T.V. Srinivasan Vs. Commissioner of Wealth-tax, with which we are in respectful agreement, had not really made any changes either in the scheme of the Act or in the determination of net wealth. We see no merit in this contention.

9. In the cases noticed by us earlier and relied on for the revenue, the High Courts of Allahabad, Madras, Gujarat and Madhya Pradesh have uniformly expressed the same view as we have expressed on the borrowings made on Life Insurance Policies which had not matured and had not become payable. We are in respectful agreement with the views expressed by their Lordships in all those cases on this aspect, with which only we are concerned in this case.

10. On the foregoing discussion, it follows that the question referred to us has to be answered in the negative, against the assessee and in favour of the revenue. We accordingly answer the question referred to us in the negative, against the assessee and in favour of the revenue, But in the circumstances of the case, we direct the parties to bear their own costs.