(1983) 11 MP CK 0013

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 179 of 1981

Commissioner of Wealth Tax APPELLANT

Vs

D.D. Jhavar RESPONDENT

Date of Decision : 30-11-1983

Acts Referred:
Wealth Tax Act, 1957 — Section 2(m), 2(m)(ii), 27(1), 5(1)(xxvi), 7(1)

Citation : (1985) 20 TAXMAN 70

Hon'ble Judges : J.S. Verma, J

Bench : Single Bench

Judgement

J.S. Verma, J.—This is a reference made u/s 7(1) of the Wealth-tax Act, 1957 (''the Act'') for decision of this Court on the following question: "Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that if the loan of Rs. 37,678 obtained on the security of an exempted asset has been utilised in bringing into existence a taxable asset and included in the net wealth of the assessee, the assessee would be entitled to deduction of the said loan as a debt from his net wealth, and that the provisions of section 2 (m)(ii) of the Wealth-tax Act, 1957, would not come in the way?"

The assessee had taken a loan of Rs. 37,678 from the Punjab National Bank on the security of a fixed deposit for Rs. 40,000 which was an exempted asset u/s 5 (1)(xxvi) of the Act. In the wealth-tax assessment for the assessment year 1975-76, for which the valuation date is 31-3-1975, the assessee claimed deduction of the amount of Rs. 37,678 as ''debts owed'' on the relevant valuation date. The WTO disallowed the assessee''s claim in view of the provision contained in section 2 (m)(ii) of the Act. On appeal by the assessee, the AAC confirmed the disallowance of the assessee''s claim. However, on second appeal by the assessee, the Tribunal held that though the loan might have been taken on the security of an exempted asset, if it was utilised for creation of an asset, the valuation of which was liable to be included in the total wealth of the assessee, the loan should be allowed as a ''debt owed'' on the valuation date. On reaching this conclusion, the Tribunal directed the WTO to find out the manner in which the loan of Rs. 37,678 was utilised by the assessee for the purpose of deciding the question finally.

2. In view of the above decision of the Tribunal, the Commissioner applied for a reference to this Court, u/s 27(1) of the Act, of the above question of law for its decision. This is how the question comes for decision before us.

3. In our opinion, the above question of law is concluded by the earlier decisions of this Court in CWT v. Premnarayan Garg [1982] 134 ITR 315 and Commissioner of Wealth-tax Vs. Narayandas J. Hemani, . It was held by a Division Bench of this Court in Premnarayan Garg''s case (supra) that a loan obtained by the assessee from the Life Insurance Corporation of India (LIC) against the security of his life insurance policies which had not matured would fall within the purview of section 2 (m)(ii) and is not deductible in computing the net wealth of the assessee. This decision was followed by another Division Bench in Narayandas J. Hemani''s case (supra).

4. In ascertaining the ''net wealth'' as defined in section 2 (m), the ''debts owed'' by the assessee on the valuation date are to be deducted and clause (ii) therein excludes deduction of a debt which is secured against an exempted asset. It is, therefore, clear that the assessee cannot claim deduction of a loan obtained against the security of an exempted asset treating it as a ''debt owed'' for computation of the ''net wealth'' in view of section 2 (m)(ii), which expressly excludes such a secured debt from the category of ''debts owed''. The further question of utilisation of such a debt is, therefore, unnecessary and the view taken by the Tribunal with reference to utilisation of the debt, therefore, cannot be upheld. Following the aforesaid decisions of this Court, the above quoted question referred for the decision of this Court is answered in the negative, as follows:

"The Tribunal was not right in law in holding that the loan of Rs. 37,678 obtained by the assessee on the security of an exempted asset could be deducted as a ''debt owed'' or that the provisions of section 2 (m)(ii) of the Wealth-tax Act, 1957, would be inapplicable."

5. The reference is answered accordingly. Since no one has appeared to oppose the petition, there shall be no direction as to costs.

