
(1981) 02 MP CK 0015

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 39 of 1979

Commissioner of Wealth-tax

APPELLANT

Vs

Premnarayan Garg

RESPONDENT

Date of Decision : 20-02-1981

Acts Referred:

Wealth Tax Act, 1957 — Section 2, 5(1)

Citation : (1981) 6 TAXMAN 388

Hon'ble Judges : U.N. Bhachawat, J;C.P. Singh, J

Bench : Division Bench

Advocate : S.C. Bagadiya, for the Appellant; None, for the Respondent

Judgement

U.N. Bhachawat, J.—This is a reference u/s 27(1) of the W.T. Act, 1957 (for short, hereinafter referred to as "the Act") at the instance of the department. The question referred for our answer reads as under :

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was correct in law in holding that the provisions of Section 2(m)(ii) of the Wealth-tax Act, 1957, did not apply to the loan of Rs. 41,588 obtained from the Life Insurance Corporation of India against the exempted asset, viz., LIC policies, and that the amount of Rs. 41,588 was an allowable deduction in arriving at the net wealth of the assessee ? "

2. The relevant assessment year is 1975-76.

3. The assessee had obtained a loan of Rs. 41,588 from the LIC of India against his life insurance policies and invested the same in his business. The assessee, claimed deduction of this amount of loan as a debt u/s 2(m) of the Act from the total wealth on the ground that it was invested in the business of the assessee to acquire taxable assets. The WTO negated the contention of the assessee relying on Section 2(m)(ii) of the Act. On appeal by the assessee before the AAC, the order of the WTO was reversed holding that it was deductible as a debt. This view of the AAC has been upheld by the Tribunal in the appeal by the department

holding that Section 2(m)(ii) of the Act was not attracted.

4. As is evident from the question and also from the statement of the case, it is an undisputed position that the loan in question was obtained on the security of the life insurance policies of the assessee.

5. " Net wealth " has been defined in Section 2(m) of the Act which is extracted hereinbelow so far as it is relevant.

"2. Definitions.--.....

(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 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 u/s 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;....."

6. Section 5(1) of the Act provides that subject to the provisions of Section 5(1A) of the Act, wealth-tax shall not be payable in respect of the assets enumerated therein and such assets shall not be included in the net wealth of the assessee. This section so far as relevant for the present purpose reads as under :

"5. Exemption in respect of certain assets.--(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--.....

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

7. The governing expression in Section 2(m) of the Act is " all the debts owed by the assessee on the valuation date other than " and then follows the list of the categories of debts which are not to be included in the aggregate value of the debts which have to be deducted from the aggregate value of the assets. We are concerned with the category enumerated in Clause (ii) of Section 2(m) of the Act. In this clause, one class of debts is, which are secured on any property in respect of which wealth-tax is not chargeable under the Act. It cannot be doubted that in view of Section 5(1)(vi) of the Act quoted hereinabove, an insurance policy which has not yet matured for payment is an asset which is exempted from the computation of net wealth.

8. The upshot of the foregoing discussion is that a loan raised on the security of an insurance policy clearly falls within the ken of Section 2(m)(ii) of the Act. In such a setting of the legal position, it has to be held that the loan of Rs. 41,588 obtained by the assessee from the LIC of India against the security of his life

insurance policies falls within the purview of Section 2(m)(ii) of the Act and is not deductible as a debt in calculating the net wealth of the assessee. This view of ours is in line with the view of the Allahabad High Court in *JIWAN LAL VIRMANI Vs. COMMISSIONER OF WEALTH-TAX, U. P.*, . The relevant excerpt is set out hereinbelow (p. 340).

"The real question which we have to answer, upon the reference made to us, is whether the "loan" of the nature set out in the question was to be deducted from the aggregate assets in arriving at the "net wealth" of the assessee. The loan was converted into taxable assets out of which the assessee will presumably make profits. The exemption given by Section 5(1)(vi) of the Act seems intended to encourage savings by payment towards or investment in insurance policies. If the assessee chooses to withdraw money, directly or indirectly, from the exempted stock of assets, he cannot continue to claim the benefit given by Section 5(1) of the Act to stocks of wealth of particular classes. If the assessee repays the "loan", the amount so repaid will go back into the exempted stock. But the loan taken by the assessee falls clearly within the purview of Section 2(m)(ii) of the Act and it has been converted into assets of a character different from that of any exempted asset."

9. In the result, we answer the question in the negative, that is, in favour of the department and against the assessee.