
(1991) 03 MP CK 0029

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 708 of 1985

Commissioner of Wealth-tax

APPELLANT

Vs

Rakesh Kumar Agarwal

RESPONDENT

Date of Decision : 08-03-1991

Acts Referred:

Citation : (1991) 95 CTR 288 : (1992) 198 ITR 256 : (1991) MPJR 357 : (1991) 36 MPLJ 686 : (1991) MPLJ 686

Hon'ble Judges : R.D. Shukla, J; B.C. Varma, J

Bench : Division Bench

Advocate : B.K. Rawat, for the Appellant; None, for the Respondent

Judgement

B.C. Varma, J.

Rakesh Kumar Agarwal is an assessee under the Wealth-tax Act, 1957, and the matter relates to the assessment year 1977-78. The assessee has a fixed deposit of Rs. 1 lakh in Dena Bank. He raised a loan against this fixed deposit and, at the relevant time, was indebted to that bank in a sum of Rs. 77,425 under this transaction of loan. He, therefore, claimed deduction of this amount of Rs. 77,425 from his wealth in terms of Section 2(m)(ii) of the Wealth-tax Act, 1957. The contention was that the loan was raised on the security of an exempted asset. This claim for deduction was rejected and the appeal before the Appellate Assistant Commissioner also failed. The assessee preferred a further appeal before the Appellate Tribunal. The Tribunal held that since the fixed deposit receipt was not fully exempt from tax, the loan cannot be said to have been raised on the security of the exempted asset. The Tribunal, therefore, found that the debt to the extent of Rs. 77,425 qualified for deduction as a liability in computing the assessee's net wealth. The appeal succeeded and the deduction claimed was allowed. The Department applied for a reference to the High Court u/s 27(1) of the Wealth-tax Act. That application was allowed and the Tribunal has submitted the statement of case to the High Court for its opinion on the following question of law :

" Whether, on the facts and in the circumstances of the case and in terms of Section 2(m)(ii) of the Wealth-tax Act, the Tribunal was justified in allowing deduction of the loan raised against the fixed deposit receipt ? "

Section 2(m) of the Wealth-tax Act, 1957, defines " net wealth " to mean the amount by which the aggregate value computed in accordance with the provisions of the 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 the Act, is in excess of the aggregate value of all the debts owed by the assessee on the valuation date other than 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 the Act. Thus, in computing the net wealth of the assessee for the purpose of the Act in terms of Sub-clause (ii) of Clause (m) of Section 2 of the Act, such debts have to be excluded which are secured on property not chargeable to tax under the Act or debts which have been incurred in relation to such property. Thus, in the instant case, the loss of Rs. 77,425 may be kept aside in computing the net wealth of the assessee if it is held that it was incurred on the security of the fixed deposit of Rs. 1 lakh in the Dena Bank and further that this security is not chargeable under the Act.

According to Section 5(1)(xxvi) of the Act, wealth-tax shall not be payable by an assessee in respect of any deposits with a banking company to which the Banking Regulation Act, 1949 (10 of 1949), applies and the deposits in such bank by the assessee shall not be included in the wealth of the assessee for the purposes of computing wealth-tax. There may not be much difficulty in applying these provisions when the whole debt is incurred on the security of the entire deposit in the bank. (See T.V. Srinivasan Vs. Commissioner of Wealth-tax, CWT v. Premnarayan Garg [1982] 134 ITR 315 Commissioner of Wealth-tax Vs. Narayandas J. Hemani, ; Raj Kumar Singh Kasliwal Vs. Commissioner of Wealth-tax,). This view has also been shared by the Gujarat High Court in APOORVA SHANTILAL (HUF) (WTR NO. 7 OF 1980) ARUN K. PARIKH (WTR NO. 19 OF 1980) ASHOK K. PARIKH (WTR NO. 20 OF 1980) AJIT K. PARIKH (WTR NO. 21 OF 1980) SMT. KAMAL K. PARIKH (WTR NO. 26 OF 1980) Vs. COMMISSIONER OF WEALTH-TAX., where the debt which was secured on a life insurance policy, and the assessee's right and interest in such policies being not chargeable to wealth-tax, the court held that the debt has to be ignored while computing the net wealth of the assessee u/s 2(m)(ii) of the Act.

Difficulty may, however, arise when the debt is secured on a property which is only partially excluded in computing the net wealth. Section 4 of the Act specifies certain assets which shall be included while Section 5(1) enumerates the assets which are not to be included in the net wealth of the assessee. It may thus be seen that the assessee is not liable to pay wealth-tax on certain assets mentioned in Section 5(1) of the Act and such assets shall not be included in the computation of net wealth. The exclusion of assets is in terms of the value of assets as mentioned in the various clauses of Section 5(1). Wealth-tax is a tax

not on any particular asset of any individual but on his net wealth, i.e., it is imposed on the total net assets owned by the assessee. The aggregate value of the assets is obtained by inclusion and exclusion of assets in accordance with Sections 4 and 5(1) of the Act. Since an assessee under the Wealth-tax Act is also entitled to deduction- of the aggregate value of all his debts, this has to be ascertained with reference to Section 2(m)(i) and (ii). Section 2(m)(ii), as we have seen above, speaks of debts secured on or which have been incurred in relation to any property in respect of which wealth-tax is not chargeable under the Act. It must, therefore, follow that debts which are secured on, or which have been incurred in relation to any property which has not been taken into the reckoning for the purposes of arriving at the net wealth have to be excluded and debts which are secured on, or which have been incurred in relation to any property which have been taken into account have to be deducted from the aggregate value of the assets.

A Full Bench of the Madras High Court, by a majority, held in *Premier Electro Mechanical Fabricators Vs. The State of Tamil Nadu*, (Balasubrahmanyam J., dissenting), that Section 2(m) of the Wealth-tax Act is not a charging section and, therefore, the principle of positive construction must apply as it is such construction which will promote the general purpose underlying the provisions. Applying such rule, it was held (Balasubrahmanyam J., contra) that where an asset is only partially exempted from chargeability to wealth-tax, then it has necessarily to follow that the portion of the debts secured on such portion of the asset or incurred in acquiring such portion of the asset has to be excluded from reckoning. The Full Bench also negated the argument that, inasmuch as Section 2(m)(ii) does not expressly provide for an apportionment of the debt as between a portion of the debt which is partially exempt and which is partially not exempt, or as between an asset which is totally exempt and which is not exempt at all, apportionment of the debt cannot be done. The Full Bench also did not accept the contrary ratio laid down by that court in two earlier Division Bench decisions in *Commissioner of Income Tax Vs. M.N. Rajam*, and *Commissioner of Wealth-tax, Tamil Nadu-I Vs. Satish*, . We are in respectful agreement with the view taken by the Full Bench of the Madras High Court in *Premier Electro Mechanical Fabricators Vs. The State of Tamil Nadu*,

In the instant case, the finding of the Tribunal is :

". . . . the assessee has other assets too which were liable to exemption and the total claim was limited to Rs. 1,50,000 only and, as is shown above, either no exemption has been granted to the assessee in respect of the asset in question or it has been granted on a small portion thereof only."

Our answer to the question referred, therefore, is that, on the facts and in the circumstances of the case and in terms of Section 2(m)(ii) of the Wealth-tax Act, the debt in question must be disallowed only in proportion to the exempted value of the asset or the property securing the debt, i.e., the fixed deposit receipt.

Reference answered accordingly. There shall be no order as to costs.