

(1990) 03 BOM CK 0041

In the Bombay High Court

Case No : Wealth-tax Reference No. 113 of 1976

Commissioner of Wealth-tax

APPELLANT

Vs

Vasantkumar Govindji Kotak

RESPONDENT

Date of Decision : 23-03-1990

Acts Referred:

Wealth Tax Act, 1957 — Section 2

Citation : (1990) 186 ITR 91

Hon'ble Judges : T.D. Sugla, J; Sujata V. Manohar, J

Bench : Division Bench

Advocate : G.S. Jetley, for the Appellant; Dilip Dwarkadas, for the Respondent

Judgement

T.D. Sugla J.

1. The Tribunal has, at the instance of the Commissioner, referred to this court the following question of law :

"Whether, on the facts and in the in the circumstances of the case, the Tribunal was right in law in holding that the provisions of sub-clause (ii) of section 2(m) were not applicable to the assessee's case for the assessment years 1970-71 and 1971-72 ?"

2. The facts are in a narrow compass and are not in dispute. The assessee owned a plot of land at Vile Parle. He constructed a house thereon during the previous year relevant to the assessment year 1970-71 by spending Rs. 1,43,789 which he withdrew from the partnership firm, Messrs. Vasant Kotak and Brothers, in which he was a partner. This amount appeared as a debit balance in his name in the books of the partnership firm. In the next year, the assessee, it appears, spent more amounts on the construction of the house. Like in the earlier year, the amount was also withdrawn from the partnership firm. At the end of that year, the debit balance in his name in the books of the firm stood at Rs. 1,57,489. However, the value of the said "property" as on the two valuation dates was estimated by the Wealth tax Officer at Rs. 1,85,000 and Rs. 1,99,000

respectively.

3. The assessee claimed that the debit balance in his name in the books of the firm on the two valuation dates at Rs. 1,43,789 and Rs. 1,57,489, respectively, should be allowed as a debt in the computation of his net wealth. The Wealth-tax Officer held that the debt was incurred in relation to property the value of which was exempt to the extent of Rs. 1,00,000 u/s 5(1)(iv) of the Wealth-tax Act. Therefore, to that extent, the debt was in relation to an assets not chargeable of wealth-tax and was hit by section 2(m)(ii) and could not be allowed as such.

4. It was reiterated before the Appellate Assistant Commissioner that, even after availing of the exemption u/s 5(1)(iv) of the Wealth-tax Act, "property" was charged to wealth-tax in value to the extent of Rs. 85,000 for the assessment year 1970-71 and Rs. 99,000 for the assessment year 1971-72. The debt, it was contended, did not fall within the ambit of section 2(m)(ii). It was pointed out that, on the valuation date relevant to the assessment year 1970-71, the assessee had two accounts in the books of the firm. As against the debit balance in one account, there was a credit balance of Rs. 71,467 in the other account. The Appellate Assistant Commissioner accepted the assessee's claim that the debt was incurred in relation to the "property" which was chargeable and charged to wealth-tax and, therefore, the provisions of section 2(m)(ii) were not applicable in the case. For the assessment year 1971-72, the Appellate Assistant Commissioner followed his order for the assessment year 1970-71. Agreeing with the orders of the Appellate Assistant Commissioner, the Tribunal dismissed the departmental appeals.

5. The disallowance out of the debit balance in the assessee's account in the books of the partnership firm was made by the Wealth-tax Officer u/s 2(m)(ii) of the Wealth-tax Act to the extent of the amount of exemption, i.e., Rs. 1,00,000 in both the years. The Appellate Assistant Commissioner and the Tribunal, on the other hand, held that the provisions section 2(m)(ii) were not attracted in this case. It is, therefore, necessary to refer to the provisions of section 2(m)(ii) of the Wealth-tax Act :

"(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...

(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; and

The debt was incurred in relation to the residential house which, to the extent of Rs. 1,00,000 in value, was exempt from wealth-tax u/s 5(1)(iv) of the wealth-tax Act. It is, therefore, desirable to refer to that provision also :

"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-...

(iv) one house or part of a house belonging to the assessee"

6. The moot question is whether the debt herein, i.e., the amount standing to the debit of the assessee in the books of the partnership firm on the two valuation dates which was admittedly incurred in relation to the construction of the "property" (a residential house), is hit by the provision of section 2(m)(ii). From the manner in which the provisions of section 2(m)(ii) are worded, the answer will depend upon whether or not the said property is not chargeable to wealth-tax. For this purpose, it is necessary to bear in mind that the value of the property as on the two valuation dates was estimated at Rs. 1,85,000 and Rs. 1,99,000 respectively. The exemption available u/s 5(1)(iv) at the material time was to the extent of Rs. 1,00,000. The property was, thus, charged to wealth-tax in respect of its value to the extent of Rs. 85,000 for the assessment year 1970-71 and Rs. 99,000 for the assessment year 1971-72.

7. The question involving the first part of the clause, namely, debts secured on property in respect of which wealth-tax is not chargeable, came up for consideration before the Allahabad High Court in the case of *JIWAN LAL VIRMANI Vs. COMMISSIONER OF WEALTH-TAX*, U. P., , the Gujarat High Court in the case of *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*, , the Madras High Court in the case of *T.V. Srinivasan Vs. Commissioner of Wealth-tax*, , the Madhya Pradesh High Court in the case of *CWT v. Premnarayan Garg* [1982] 134 ITR 315 which was followed by the same court in the case of *Commissioner of Wealth-tax Vs. Narayandas J. Hemani*, and in the case of *Raj Kumar Singh Kasliwal Vs. Commissioner of Wealth-tax*, and the Andhra Pradesh High Court in the case of *Mohd. Ashroff Khan Vs. Commissioner of Wealth-tax*, Andhra Pradesh, Hyderabad, . The property in all these cases was life insurance policies. It was uniformly held that the value of the Life Insurance Corporation policies being totally exempt u/s 5(1)(vi), the debt secured thereon was hit by the provision of section 2(m)(ii). In some cases, a view was canvassed that, by the amendment with effect from April 1, 1965, the word "chargeable" was substituted for the word "payable" in the clause, that the Allahabad High Court decision in *JIWAN LAL VIRMANI Vs. COMMISSIONER OF WEALTH-TAX*, U. P., was rendered when the word obtaining in the clause was "payable" and not "chargeable" and that the two words were materially and conceptually different. The view canvassed, however, did not find approval and it was held that there was no material difference between the words "payable" and "chargeable". In the present case, this aspect of the matter is not material.

8. The issue arising in the present case precisely came up for consideration

before the Madras High Court in the case of T.V. Srinivasan Vs. Commissioner of Wealth-tax, . In that case, an owner-occupied house valued at Rs. 85,000 has a subsisting mortgage on it which stood at Rs. 36,000 on the valuation date. It was held that the assessee's claim for reduction in respect of the debt went counter to the specific provisions of section 2(m)(ii) read with section 5(1)(iv) of the Wealth-tax Act. When a similar question again came up for consideration before the Madras High Court in the case of Commissioner of Income Tax Vs. M.N. Rajam, , however, a contrary view was taken. The assessee had in that case raised a mortgage loan of Rs. 40,403 on the security of a residential property. The value of the property was Rs. 1,23,000 out of which the value to the extent of Rs. 61,500 was exempt u/s 5(1)(iv). The case was, thus, of property the value of which was partly exempt but the property as such was chargeable to wealth-tax as in the case before us. It was held that, since it was impossible to answer the question, without fear of contradiction, that it was a property in respect of which wealth-tax was not chargeable, the debt was not hit by the prohibitory provisions of section 2(m)(ii). The Madras High Court followed its above decision in its subsequent decision in Commissioner of Wealth-tax, Tamil Nadu-I Vs. Satish, . A similar question again came up for consideration. Reference was then made to a Full Bench by reason of the conflicting views expressed by the court in T.V. Srinivasan Vs. Commissioner of Wealth-tax, on the one side and Commissioner of Income Tax Vs. M.N. Rajam, and Commissioner of Wealth-tax, Tamil Nadu-I Vs. Satish, , on the other. The Full Bench, in the case of Premier Electro Mechanical Fabricators Vs. The State of Tamil Nadu, , by a majority of two to one, held (headnote) :

"That when a debt is secured in several items of properties one of which alone is exempted from wealth-tax, that portion of the debt which is attributable to the value of property exempted from wealth-tax cannot be deducted in the computation of the net wealth of the assessee. Similarly, when a debt is secured or acquired in relation to property which is only partially exempted from wealth-tax, that portion of the debt which is attribute to the portion of the property exempted from wealth-tax cannot be deducted in the computation of the net wealth of the assessee."

"The rule of strict construction applies only to charging sections and not to machinery section. Section 2(m) of the Wealth-tax Act, 1957, is not a charging section and the rule of strict construction cannot be applied to it. The principle of "purposive construction" has to be applied. This is a construction which will promote the general legislative purpose underlying the provision. Section 2(m) (ii) speaks of 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. In cases where as assets is only partially exempt from chargeability to wealth-tax, then it must necessarily follow that the portion of the debt secured on such portion of the asset or incurred in acquiring such portion of the asset has to be excluded from reckoning. This construction will be in harmony with the scheme and purpose of the Wealth-tax Act."

9. Balsubrahmanyam J., in his dissenting judgment, however, held (headnote) :

"Section 2(m)(ii) does not speak of exempted assets. It only refers to property in respect of which wealth-tax is not chargeable. This phrase must be understood as meaning "property in respect of which wealth-tax is not at all chargeable". Not at all" is not a gloss. It is very much a part of the meaning. If the secured properties fit in with the meaning of section 2(m)(ii), the connected debts to out of the reckoning. But if the properties are not comprehended by section 2(m)(ii), the general rule of deductibility operates, and this general rule knows no restrictions. In other words, depending on its relation to the asset in question, a debt is either deductible or not deductible. Section 2(m)(ii) does not contain any provision for partial abatement, or apportionment, of a debt under which part of it is deductible and part of it is not. On the words of section 2(m)(ii), once as asset which secures the debt is treated as an asset on which wealth tax is chargeable, even though a part of the value of the asset is exempt from tax, the whole of the secured debt must be deducted."

10. We have carefully considered the judgments referred to above. In our judgment, the language of the provisions, i.e., section 2(m)(ii), is clear and unambiguous. The question to be answered is whether the property in relation to which the debt is incurred is not in respect of which wealth-tax is not chargeable. If the answer is in the affirmative, the debt must be held as hit by the provision of section 2(m)(ii). On the other hand, if it is not possible to answer that question in the affirmative, the consequence must necessarily follow and it should be held that the debt is not hit. The admitted position is that only a part of the value of the property is exempt. The property as such is chargeable and is charged to wealth-tax. In the circumstances, we find it difficult to hold that the property is not chargeable to wealth-tax. The result must follow that the debt herein is not incurred in relation to a property which is not chargeable to wealth-tax. Since the answer cannot be that the property is not chargeable to wealth-tax, we are inclined to answer the question referred to us in the affirmative and in favour of the assessee. With respect, we find ourselves in agreement with the view expressed by Balasubrahmanyam J. In his dissenting judgment in the Full Bench case of the Madras High Court in Premier Electro Mechanical Fabricators Vs. The State of Tamil Nadu, and the views expressed by that court its earlier decisions in Commissioner of Income Tax Vs. M.N. Rajam, and Commissioner of Wealth-tax, Tamil Nadu-I Vs. Satish,

11. A similar question in a different context came up for consideration before the Rajasthan High Court in the case of Commissioner of Wealth-tax Vs. Sanwarmal Shivkumar, . It was held therein that the Department was bound to follow the circulars issued by the Central Board of Direct Taxes and that the Tribunal's order was in conformity with Circular No. 1070 dated June 28, 1977, issued by the Central Board of Direct Taxes. The Rajasthan High Court, it appears, was not called upon to consider the question whether. In a case like the one before us, the debt was at all hit by the provision of section 2(m)(ii). The controversy was

limited to the question whether the disallowance out of the debt hit by the provision should have been made on pro rata basis or on conformity with the circular of the Board. In the view we have taken of the provision, it is not necessary to consider this aspect of the matter in this case.

12. No order as to costs.