(1990) 11 CAL CK 0041

In the Calcutta High Court

Case No : WT Reference No. 2072 of 1981

Dinesh Chandra Mukherjee APPELLANT

Vs

Commissioner of Wealth Tax RESPONDENT

Date of Decision : 06-11-1990

Acts Referred:
Wealth Tax Act, 1957 — Section 16(3), 2(m)(ii), 27(1), 5(1)(vi)

Citation : (1993) 70 TAXMAN 114

Hon'ble Judges : Bhagabati Prasad Banerjee, J;Ajit K. Sengupta, J

Bench : Division Bench

Judgement

Ajit K. Sengupta, J.—In this reference made at the instance of the assessee, the following question of law has been referred by the Tribunal to this Court u/s 27(1) of the Wealth-tax Act, 1957 (''the Act'') for the assessment years 1972-73, 1973-74 and 1976-77:

Whether, on the facts and circumstances of the case, the loan of Rs. 15,000 raised by the assessee on the security of the life insurance policies, but admittedly invested in the capital of his business and the net value of the assets was taxable, was to be deducted in arriving at the net wealth, of the assessee for the purpose of the Wealth-tax Act, 1957 ?

Shortly stated, the facts are that the assessee who is a contractor holds insurance policies on the security of which he borrowed money from LIC and that debt on the relevant date of valuation corresponding to the assessment year 1972-73 was Rs. 15,000. The amount of such debt for the other two years was Rs. 15,000 and Rs. 48,517, respectively. Such borrowed money was lying invested by the assessee in his said business in each of the three relevant accounting years, forming the loan-capital which correspondingly merged with all business assets and debts on the date of valuation. The assessee in his wealth-tax return included the value of all the assets (which are taxable) and also the amounts of debts concerning his said business on the relevant date of valuation for the assessment year 1973-74, including the said borrowed money of Rs.

15,000 from LIC for arriving at his ''net wealth''. In the assessment made u/s 16(3) of the Act, the WTO disallowed the assessee''s claim for deduction of the debt so owed by him to the LIC, holding that it was not allowable because the surrender value of the policies had not been taken into account for the purpose of taxation. Similar treatment was done in each of the subsequent two years, i.e., assessment years 1973-74 and 1976-77 as well.

2. On appeal, the AAC reversed such finding of the WTO and allowed the appeal preferred by the assessee. The revenue preferred appeals to the Tribunal against the said orders of the AAC. The Tribunal allowed the revenue''s appeal and restored the order of the WTO holding that such loan taken by the assessee from LIC would not be considered as a debt for the purpose of determining the assessee''s net wealth in view of section 2(m)(ii), read with section 5(1)(vi) of the Act.

3. The short question in this case relates to the interpretation of section 2(m)(ii) which reads as under:

(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;

4. It is an admitted fact that the borrowing in question was made from the LIC on the security of the Insurance Policy. The right or interest of the assessee in any policy of insurance before the monies covered by the policies become due and payable to the assessee is wholly exempt from charge to wealth-tax u/s 5(1)(vi). Admittedly, in this case, the right or interest of the assessee in the insurance policies which were the subject-matter of security given to the LIC for making the borrowings in question has not been included in the net wealth of the assessee in view of the provisions of section 5(1)(vi). In these circumstances, it is obvious that the loan obtained on the security of such life insurance policies cannot be deducted. This is clear on a plain reading of section 2(m)(ii), read with section 5(1)(vi).

Similar view has been taken by the Andhra Pradesh High Court in D. Renuka Vs. Commissioner of Wealth-tax, , Mohd. Ashroff Khan v. CWT [1985] 154 ITR 830 (AP) , the Madras High Court in T.V. Srinivasan Vs. Commissioner of Wealth-tax, and in T.V. Srinivasan v. CWT [1980] 123 ITR 464 (Mad.) ; Madhya Pradesh High Court in Commissioner of Wealth-tax Vs. Narayandas J. Hemani, , Raj Kumar Singh Kasliwal Vs. Commissioner of Wealth-tax, , CWT v. Premnarayan Garg [1982] 134 ITR 315 (MP) and the Karnataka High Court in D. Basappa Vs. Commissioner of Wealth Tax, .

5. For the foregoing reasons we answer the question in the negative and in favour of the revenue. There will be no order as to costs.

Banerjee, J. -I agree.