Allahabad High Court
Jiwan Lal Virmani vs Commissioner Of Wealth-Tax, U. P. on 23 December, 1966
Equivalent citations: 1967 66 ITR 338 All
JUDGMENT M. H. BEG J. - This is a reference made under section 27 of the Wealth-tax Act made at the instance of an assessee whose wealth was assessed at Rs. 11,75,103 for the assessment year 1959-60. The objection which has given rise to this reference relates to a sum of Rs. 71,820 representing loans from the Life Insurance Corporation taken on the security of the life insurance policies of the assessee. The assessee, who is an individual, claimed that although this sum of money was taken ostensibly as a loan, yet, it was really an advance payment out of the right or interest of the assessee in insurance policies "before the moneys covered by the policies became due and payable to the assessee". Hence, according to the assessee, the amount was exempt from the computation of net wealth as defined by section 2(m) by virtue of section 5(1)(vi) of the Wealth-tax Act, 1957 (hereinafter referred to as the Act). The department relied upon the provisions of section 2(m)(ii) of the Act. Section 2(m) of the Act may be quoted here :

"(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 asset in respect of which wealth-tax is not payable under this Act."

It has been held by the wealth-tax authorities right up to the tribunal that the loan of Rs. 71,820 raised on the security of the life insurance policies cannot be deducted in determining the "net wealth" because section 2(m)(ii) of the Act excludes debts which are secured by an asset on which wealth-tax is not payable from the debts which are to be deducted for determining "net wealth".

It was contended for the assessee that the security for the amount advanced was exempted under section 5(1)(vi) of the Act, which provides that wealth-tax shall not be payable in respect of the assets enumerated in section 5(1) of the Act. These enumerated assets are expressly excluded from the definition of "net wealth" of the assessee. The sixth item of the list of excluded assets consists of "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". The assessee having contended that the amount of Rs. 71,820, taken by him on the strength of the insurance policies and converted into taxable assets, constituted an amount which should be deducted in computing the "net wealth", the following question was framed by the Tribunal and referred to this court :

"Whether, on the facts and circumstances of the case, the loan of Rs. 71,820 raised on the security of life insurance policies, but admittedly utilized in acquiring taxable assets, was to be deducted in arriving at the net wealth of the assessee for purposes of the Wealth-tax Act ?"

It is evident, from the question itself, that the assessee, at whose instance the question was framed, treated the advance of Rs. 71,820 as a "loan" raised on the security of the insurance policies. If that is the position, we are unable to see how this amount can escape from the purview of section 2(m)(ii) of the Act. It was contended that the amount advanced was not a loan but only an encashment of an interest in the life insurance policies. No such argument seems to have been advanced at any earlier stage. The question before us is not whether the amount advanced was or was not a loan or a debt. On the other hand, as already pointed out, the question on which the assessee sought the reference proceeds on the assumption that the amount advanced was a loan "raised on the security of the life insurance policies."

Even if we were to assume that the amount advanced was not a loan at all - there is no material to infer this - the assessees position would not be improved. The amount advanced has been converted into assets which are to be included in the net wealth of the assessee as defined by section 2(m) of the Act. In computing the net wealth it is only debts which can be excluded. If the amount taken on the life insurance policies not a debt at all, no question of including it in the aggregate value of any debts, which have to be deducted from the aggregate value of the assets, arises at all. We fail to see how the amount continues to enjoy the exemption given by section 5(1)(vi) of the Act even after it has ceased to be a part of the right or interest of an assessee in an insurance policy. If we were to accept the argument of the assessee, it would mean that the amount advanced will cease to be a part of the money which will become due and payable by the assessee when the insurance policies mature. The scheme of the Wealth-tax Act is that, when an insurance policy matures, the amount so received will constitute a part of the net wealth of the assessee. It the assessee chooses to capitalise any interest before it actually matures, under an insurance policy and to convert it into assets of a different character, the new assets of a changed character can certainly not continue to enjoy the benefit or exemption conferred by section 5(a)(vi) of the Act. That benefit is confined to assets so long as they retain a character upon which exemption is conferred by the Act. It seems clear to us that the assessee will not be required, when a policy matures, to pay wealth-tax again upon any advance payments made which are not treated as loans which are repayable. Such "advance payments" will be presumably deducted from the final payment made to the assessee on the maturity of an insurance policy. The facts stated by the Tribunal are too meager to enable us to conclude anything about the effect of the agreement between the assessee and the Life Insurance Corporation apart from what may be inferred from the question framed.

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 saving by payments 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 come 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.

We, therefore, answer the question in the negative and against the assessee. We assess the costs of this reference at Rs. 200 and the counsels fee also at Rs. 200.