

---

**(1991) 04 BOM CK 0080**

**Bombay High Court**

**Case No:** Wealth-tax Reference No. 6 of 1978

Commissioner of  
Wealth-tax

APPELLANT

Vs

D.H. Venaina

RESPONDENT

---

**Date of Decision:** April 2, 1991

**Acts Referred:**

- Wealth Tax Act, 1957 - Section 2, 27(1), 5(1)

**Citation:** (1991) 97 CTR 150

**Hon'ble Judges:** T.D. Sugla, J; B.N. Srikrishna, J

**Bench:** Division Bench

**Advocate:** G.S. Jetley, for the Appellant; S.J. Mehta, for the Respondent

---

### **Judgement**

T.D. Sugla J.

1. In this department reference relating to the assessee's wealth-tax assessments for assessment years 1971-72 and 1972-73, the Tribunal has referred to this court the following questions of law for opinion u/s 27(1) of the Wealth-tax Act, 1957 :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the loans aggregating to Rs. 1,59,045 and raised by the assessee on the security of his life insurance policy, motor car and shares were deductible as debts in the computation of his net wealth and were not hit by sub-clause (ii) of clause (m) of section 2 of the Wealth-tax Act ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the loans aggregating to Rs. 1,95,550 and raised by the assessee on the security of his life insurance policy, house property and shares were deductible as debts in the computation of his net wealth and were to not hit by sub-clause (ii) of clause (m) of section 2 of the Wealth-tax Act ?"

2. It is seen from the orders of assessment as reproduced in the statement of the case that the loans in dispute were taken by the assessee on the security of certain assets as under :

| Assessment year | Security for loan obtained or overdraft | Amount of loan | Total    | Remarks                                                                                                                                                                                                                              |
|-----------------|-----------------------------------------|----------------|----------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (1)             | (2)                                     | (3)            | (4)      | (5)                                                                                                                                                                                                                                  |
|                 |                                         | Rs.            | Rs.      |                                                                                                                                                                                                                                      |
| 1971-72         | Life insurance policy :                 | 3,050          |          | Bank overdraft to the extent of value of shares exempted not allowed.                                                                                                                                                                |
|                 | Motor car :                             | 5,995          |          |                                                                                                                                                                                                                                      |
|                 | Bank overdraft :                        | 1,50,300       | 1,59,045 |                                                                                                                                                                                                                                      |
| 1972-73         | Life insurance policy :                 | 3,050          |          | Bank overdraft to the extent of Rs. 1,50,000 and overdraft to the extent of Rs. 42,500 not allowed as they were secured against property not liable to wealth-tax and shares to the extent of Rs. 1,50,000 not liable to wealth-tax. |
|                 | House property :                        | 42,500         |          |                                                                                                                                                                                                                                      |
|                 | Bank overdraft :                        | 1,50,000       | 1,95,550 |                                                                                                                                                                                                                                      |

Counsel are agreed that, in view of our court's judgment in the case of [Commissioner of Wealth-tax Vs. Vasantkumar Govindji Kotak](#), the loans, in so far as they are taken on the security of assets not chargeable to wealth-tax, wholly require to be disallowed u/s 2(m)(ii) of the Wealth-tax Act, 1957. Counsel are also agreed that the loans of Rs. 3,050 taken in both the years against the life insurance policy will fall under this category. As regards the loan of Rs. 42,700 taken against house property in the assessment year 1972-73, the facts are not clear on record. In view of our court's judgment in [Commissioner of Wealth-tax Vs. Vasantkumar Govindji Kotak](#), if the value of the house property is less than Rs. 1 lakh - and the house property is, therefore, wholly exempt from tax u/s 5(1)(iv) of the Wealth-tax Act - the amount of loan will have to be excluded, as it will be hit by the provision of section 2(m)(ii). In the case of loans taken against the security of shares, it is seen that the assessee's shareholdings in these two years are to

the extent of Rs. 5,22,838 and Rs. 4,79,225 respectively. The loan obtained is to be tune of Rs. 1,50,000 odd only. There being no materials to identify the shares pledged, it may be reasonably assumed that the loans were taken against the security of the shares which were not exempt from tax. We drew this presumption as we find that the limit of exemption in the two years under reference was an overall limit which was applicable to a number of clauses. On course, clause (iv) was not included therein. Accordingly, we answer the questions thus :

3. The loan to the extent of Rs. 3,050 obtained on the security of the life insurance policy is hit by the provisions of section 2(m)(ii). The loan of Rs. 42,500 on the security of the house property will require examination by the Tribunal while giving effect to the judgment of this court. In other words, if the value of the house property is found to be less than Rs. 1 lakh that is wholly exempt, then the loan amount will not be excluded u/s 2(m)(ii); otherwise, it will have to be excluded. So far as loans taken against shares are concerned, they will not be hit by section 2(m)(ii).

4. The loan taken against the motor car which is admittedly not exempt will have to be allowed as a liability.

5. No order as to costs.