

## WEALTH TAX REFERENCE

*Before Prem Chand Pandit and B. S. Dhillon, JJ.*

THE COMMISSIONER OF WEALTH-TAX, PUNJAB, J. & K. AND  
CHANDIGARH, PATIALA,—*Applicant*

*versus*

YUVRAJ AMRINDER SINGH, NEW MOTI BAGH PALACE,  
PATIALA,—*Respondent.*

*Wealth Tax Reference No. 2 of 1972*

April 30, 1973.

*Wealth Tax Act (XXVII of 1957)—Section 5(1)(vi)—Annuity insurance policy—Whether exempt from payment of wealth-tax—Amounts becoming due and payable to an assessee under such policy—Whether taxable under the Act.*

*Held*, that under the provisions of clause (vi) of sub-section (1) of section 5 of the Wealth Tax Act, 1957, exemption from the payment of wealth tax is available to an assessee in respect of his right or interest in any policy of insurance before the moneys covered by the policies become due and payable to him. The Legislature has used the words "any policy of insurance" in this provision and this will include all types of insurance policies whether they are regarding life insurance or any other type of insurance. The Legislature intentionally made all the policies of insurance, whether of life or other, exempt from the payment of the Wealth Tax, and, therefore, it cannot be said that the holders of annuity insurance policies are not entitled to this benefit. When all types of insurance policies including the Annuity Insurance Policies are covered by this clause, no implied inference can be drawn regarding the Annuity Insurance Policies that they are not covered by this clause merely because two other instances of annuities payable, which annuities are other than the insurance policy annuities, are mentioned in clauses (vi-a) and (vii) of sub-section (1) of section 5 of the Act. Hence Annuity Insurance Policies are exempt from payment of wealth-tax.

*Held*, that exemption available to the assessee under clause (vi) of sub-section (1) of section 5 of the Act only extends to his right or interest in annuity insurance policy for which the moneys covered by the policy have not become due and payable to the assessee. Wealth-tax, however, can be levied on the amounts which become due and payable on the basis of such policy during a particular assessment year.

*Reference made under section 27(1) of the Wealth Tax Act, 1957 by the Income-tax Appellate Tribunal (Chandigarh Bench), for opinion on the following question of law arising out of the order of the Income Tax Appellate Tribunal, Chandigarh Bench, dated 22nd*

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April, 1971, passed in W.T.A. Nos. 4 and 5 of 1969-70, regarding assessment years 1964-65 and 1965-66:—

*“Whether on the facts and in the circumstances of the case, the right or interest of the assessee in the annuity policy is exempt from Wealth-tax under the provisions of section 5(1)(vi) of the Wealth-tax Act, 1957, for the assessment years 1964-65 and 1965-66”.*

D. N. Awasthy, Advocate with B. S. Gupta, Advocate, for the applicant.

Atma Ram, Advocate, for the respondent.

#### JUDGMENT

Dhillon, J.—This judgment will dispose of Wealth Tax References Nos. 2, 3 and 4 of 1972. Briefly stated, the facts giving rise to these references are that Yuvraj Amrinder Singh, who is an assessee in W. T. References Nos. 2 and 3 of 1972 and Princess Rupinder Kumari, who is an assessee in W.T. Reference No. 4 of 1972, are individual assessees. The dispute regarding the assessment of Yuvraj Amrinder Singh relates to the assessment years 1964-65 and 1965-66 for which the valuation dates respectively are 31st March, 1964 and 31st March, 1965; whereas the assessment year in the case of Princess Rupinder Kumari is 1965-66 and the valuation date is 31st March, 1965. The assessees claimed exemption under section 5(1)(vi) of the Wealth Tax Act, 1957. The value of the annuity policy in the case of Yuvraj Amrinder Singh is Rs. 2,13,000.00, whereas in the case of Princess Rupinder Kumari, the value of the annuity policy is Rs. 2,35,176. The assessees claimed that the amount of the annuity policies was not assessable to the Wealth Tax as the same was exempt under the provisions of section 5(1)(vi) of the Wealth Tax Act. The Wealth Tax Officer did not allow this exemption that included the above mentioned amounts for the above mentioned assessment years in the assessees' net wealth. Being aggrieved, the assessees filed appeals before the Appellate Assistant Commissioner which appeals were accepted by him holding that the assessees were entitled to exemption under section 5(1)(vi) of the Wealth Tax Act as the annuity insurance policies were covered by the term “any policy of insurance” used in the said sub-section. The Appellate Assistant Commissioner also relied upon a decision of the Supreme Court in *Chandu Lal Harjiwan Das v. Commissioner of Income Tax* (1). The Revenue having felt aggrieved against this decision of the Appellate

(1) (1967) 63 I.T.R. 627.

Assistant Commissioner, then preferred appeals before the Income Tax Appellate Tribunal. The said appeals having been dismissed by the Tribunal vide its consolidated order dated 22nd April, 1971 in the case of Yuvraj Amrinder Singh, and the order dated 14th May, 1971, in the case of Princess Rupinder Kumari, the reference applications have been filed before the Tribunal at the instance of the Revenue, on which, according to the Tribunal, the following question of law arises in the case of Yuvraj Amrinder Singh, which has been referred to us by the Tribunal for opinion :—

“Whether on the facts and in the circumstances of the case, the right or interest of the assessee in the annuity policy is exempt from Wealth-tax under the provisions of section 5(1)(vi) of the Wealth Tax Act, 1957 for the assessment years 1964-65 and 1965-66?”

(2) In the case of Princess Rupinder Kumari, the same question has been referred to us by the Tribunal for opinion though the assessment year in dispute in her case is 1965-66. The said question is in the following terms :—

“Whether on the facts and in the circumstances of the case, the right or interest of the assessee in the annuity policy is exempt from wealth-tax under the provisions of section 5(1)(vi) of the Wealth-tax Act, 1957 for the assessment year 1965-66?”

(3) The terms and conditions of the annuity insurance policy, in the case of Yuvraj Amrinder Singh, and Princess Rupinder Kumari are the same which are in the following terms :—

“Type of Annuity :	Deferred annuity without profits guaranteed for 35 years.
Date on which the annuity vests :	Twenty-second day of January, Twenty-second day of January,
Event on the happening of which annuity ceases or determines.	On expiry of 35 years calculated from the date on which the annuity vests or at the death of annuitant, if later.
To whom annuity payable.	To the annuitant.
Dates when annuity payable:	On the stipulated due date of the 1st Annuity instalment and monthly thereafter.

(1) If the annuitant shall die before the date on which the annuity vests, the amount of the single premium paid

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but without any interest shall be returned to the proposer or in case he shall be then dead to his Proving Executors or Administrators or other legal representatives who should take out representation to his Estate or limited to the money payable under this policy from any Court of any State or Territory of the Union of India, or in case the Annuitant (provided he is also the proposer) shall have appointed any nominee to receive such money or executed any assignment in favour of any assignee to such nominee or assignee.

- (2) In lieu of the payment of the annuity under this policy the proposer has the opinion to be exercised before the date on which the annuity vests to receive a cash payment of Rs. 2,88,184 on 22nd January, 1964."

(4) Before the contentions of the learned counsel for the parties are gone into, the relevant provisions of the Wealth Tax Act, 1957 and The Insurance Act, 1938, may be referred to. Section 2 of the Wealth Tax Act provides certain definitions and in clause (e) of section 2 of the said Act is given the definition of assets, which is as follows :—

"2(e) 'Assets' includes property of every description, movable or immovable, but does not include,—

- (i) \* \* \* \*
- (ii) \* \* \* \*
- (iii) \* \* \* \*
- (iv) a right to any annuity in any case where the terms and conditions relating thereto preclude the commutation of any portion thereof into a lump sum grant.
- \* \* \* \* \*
- \* \* \* \* \*
- \* \* \* \* \*

(5) The next relevant provision is section 5 of the Wealth Tax Act, which prescribes regarding the exemption in respect of certain assets, which is in the following terms :—

- "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—

- |       |   |   |   |
|-------|---|---|---|
| (i)   | * | * | * |
| (ii)  | * | * | * |
| (iii) | * | * | * |
| (iv)  | * | * | * |
| (v)   | * | * | * |
- (vi) 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;
- (vi-a) The right of the assessee to receive any annuity payable by the Central Government under the provisions of section 280D of the Income Tax Act;
- (vii) The right of the assessee to receive a pension or other life annuity in respect of past services under an employer.

\* \* \*

(6) It may be pointed out at this place that the words "policy of insurance" used in sub-section (vi) of section 5 of the Wealth Tax Act, has nowhere been defined in the said Act or anywhere else. The only nearer definition is given to the words "Life insurance business" in the Insurance Act of 1938. Section 2 of the said Act defines certain definitions and sub-section (11) of this section defines "life insurance business" in the following terms :—

"2(11) 'Life insurance business' means the business of effecting contracts of insurance upon human life, including any contract whereby the payment of money is assured on death (except death by accident only) or the happening of any contingency dependent on human life, and any contract which is subject to payment of premiums for a term dependent on human life and shall be deemed to include—

- (a) the granting of disability and double or triple indemnity —accident benefits, if so provided in the contract of insurance,
- (b) the granting of annuities upon human life, and

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- (c) the granting of superannuation allowances and annuities payable out of any fund applicable solely to the relief and maintenance of persons engaged or who have been engaged in any particular profession, trade or employment or of the dependants of such persons."

(7) It was the common ground between the parties before the Wealth Tax Authorities that since the terms of the policies provided that the policies could be commuted before the same vested in the annuitant on 22nd January, 1964, therefore, the policies in question would be termed as assets as defined in sub-section (e) of section 2 of the Wealth Tax Act. We pointedly asked Shri Atma Ram the learned counsel for the assessees, in this respect and he conceded before us in clear terms that the policies in question are assets as defined in sub-section (e) of section 2 of the Wealth Tax Act. The learned counsel further conceded that the present cases would not be governed by clause (iv) of sub-section (e) of section 2 of the Wealth Tax Act and, therefore, no exemption under this provision was available to the assessees. In this situation, the only question which falls for determination in order to answer the questions referred to us for opinion is whether the provisions of clause (vi) of sub-section (1) of section 5 of the Wealth Tax Act, in the present cases are attracted or not?

(8) The first contention of Mr. Awasthy, the learned counsel for the Revenue, is that the present cases are the cases of the purchase of annuity from the Life Insurance Corporation of India. The learned counsel contends that no premium is payable in the instant cases at fixed intervals like the normal insurance policies, such as, life insurance, insurance against fire, riots and all risks, civil commotions and insuring the property against theft, fire etc. The learned counsel contended that since the payments of the instalments in these cases are in lump sum, therefore, this can only be termed as a purchase of annuity in the form of investment, wherein the assessees invested certain amounts with the speculation that they would get the said amounts by way of annuity instalments. Therefore, the learned counsel for the Revenue contends that these policies are not exempt under section 5(vi) of the Wealth Tax Act. I have already reproduced the provisions of sub-section (vi) of section 5 of the Wealth Tax Act and I find that there is no indication in the said section wherein the policies in which the payment is made by the

assesseees in instalments are only to be exempted. If the following ingredients are satisfied, in my opinion, the cases will be covered by section 5(vi) of the Wealth Tax Act :—

- (1) That there must be an assessee.
- (2) That the right or interest of the assessee should be in any policy of insurance.
- (3) That the exemption will be available to him in respect of that right or interest in any policy of insurance before the moneys covered by the policies become due and payable to the assessee.

(9) The Legislature has used the words “any policy of insurance” in this provision which will include all types of insurance policies whether they are regarding life insurance or any other type of insurance. The intention of the Legislature in providing this exemption, seems to be clear that people should be encouraged to invest in the insurance policies which investments go a long way in making available the private money for the public use and public investments. Therefore, the contention that since the premiums in the present cases were not being paid by the assesseees in instalments or that the assesseees purchased the annuity by way of investment and, therefore, they cannot avail of the exemption, cannot prevail. The only material ingredient which has to answer the description of the above referred to provision is :—“Whether is there any policy of insurance?” This is conceded by Mr. Awasthy, the learned counsel for the Revenue, that the present policies have been issued by the Life Insurance Corporation of India. It is also conceded by him that the policies in question are covered by the definition of “Life insurance business” as given in sub-section (11) of section 2 of the Insurance Act of 1938. The learned counsel also concedes that the policies in question are the policies of insurance, but he contends that the said policies being policies are not entitled to exemption. Having conceded that the present policies are policies of insurance and are covered by the definition of the words “Life insurance business”, which business after the enactment of the Life Insurance Corporation Act, 1956, could only be undertaken by the Life Insurance Corporation of India, it is apparent that the present policies answer the description of policies of insurance and, therefore, the said policies are covered by the provisions of sub-section (vi) of section 5 of the Wealth Tax and are exempt.

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(10) The next contention of Mr. Awasthy, the learned counsel for the Revenue, is that since the provisions regarding the annuities have been separately made by the Legislature, in enacting sub-sections (vi-a) and (vii) of section 5 of the Wealth Tax Act, and since there is a separate provision made for the annuities being exempted regarding the life insurance, therefore, impliedly it be construed that the Legislature never wanted to exempt the annuity policies. This contention of the learned counsel for the Revenue is again without any merit. Sub-sections (vi-a) and (vii) of section 5 of the Wealth Tax Act deal with particular matters. Sub-section (vi-a) deals with the receipt of annuity payable by the Central Government under the provisions of section 280-D of the Income-Tax Act. Sub-section (vii) of section 5 of the Wealth Tax Act deals with the right of the assessee to receive a pension or other life annuity in respect of past services under an employer. Admittedly, the cases covered by these clauses cannot be covered by clause (vi) of section 5 of the Wealth Tax Act, because the subject matter of sub-section (vi) of section 5 of the Wealth Tax Act is "any policy of insurance" and as I have already said that the Legislature intentionally made all the policies of insurance, whether of life or otherwise, exempt from the payment of the Wealth Tax, it cannot be said that the annuity insurance policies are not entitled to this benefit. When all types of insurance policies including the Annuity Insurance Policies, are covered by sub-section (vi) of section 5 of the Wealth Tax Act, there is no question of any implied inference being drawn on the annuity insurance policies that they are not covered in clause (vi) of section 5 of the Wealth Tax Act merely because two other instances of annuities payable, which annuities are other than the insurance policy annuities, are mentioned in sub-sections (vi-a) and (vii) of that section.

(11) The only other contention raised by the learned counsel for the Revenue is that even though it be held that the present insurance policies are covered under clause (vi) of section 5 of the Wealth Tax Act even then the policies in the case of both the assesseees become due and payable on 22nd January, 1964. Therefore, the policies, having become due and payable to the assesseees, could be charged to the Wealth Tax on the whole amount insured under the policies, as the said exemption can no more be availed of by them, the policies having become due and payable. It may be mentioned here that the policies in question are deferred annuity policies without profits guaranteed for 35 years. The annuitants are entitled to



receive equal instalments for a period of 35 years starting from 22nd January, 1964. According to the terms of the policies, if the annuitant dies before the date on which the annuity vests, that is, 22nd January, 1964, the amount of single premium paid but without any interest shall be returned to the proposer or in case he shall be then dead, to the persons inheriting his estate. Thus it would be apparent that the present policies are not the cases of ordinary insurance policies which become mature at a particular date on which date the insurer is entitled to receive the amount of the policies in lump sum. Therefore, according to the terms of the policies, each year certain amount becomes due and payable to the assessee and this will continue in the same fashion for a period of 35 years starting from 22nd January, 1964, in view of the provisions of sub-section (vi) of section 5 of the Wealth Tax Act, the exemption to the assessee is only available regarding his right or interest in the policy of insurance for which the moneys covered by the policies have not become due and payable to the assessee and regarding the money which has become due and payable to the assessee, no exemption could be enjoyed by him. Thus it would be apparent from the above discussion that merely because the policies vested on 22nd January, 1964, the whole sum of money, that is, Rs. 2,13,000 in the case of Yuvraj Amrinder Singh, and Rs. 2,35,176, in the case of Princess Rupinder Kumari, had not become due and payable on 22nd January, 1964. Only certain sums, which are not clear from the facts of the present cases on record, would become due and payable to both the annuitants every year and will continue to be so for the next 35 years starting from 22nd January, 1964. Therefore, at the most the wealth tax can be levied on the amount which became due and payable during the assessment years in question. Since there is nothing on record to show as to what amount in the policies had become due and payable during the assessment years in question, therefore, it is not possible to mention that amount in this judgment.

(12) In this connection I specifically put to the learned counsel for the Revenue that if his contention is accepted, that the moment the policies vested in the annuitants on 22nd January, 1964, the whole amounts in the policies should be assessed to wealth tax, in that case, for 35 years the same amount of the policies will be subjected to Wealth-tax, though the payment of the said amount will go on exhausting from year to year from the policies and the balance moneys under the policies will go on reducing from year to year. To this the learned counsel for the Revenue replied that the amounts

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received by the assessees in the previous years shall have to be excluded from the total amount under these policies for the purpose of assessment of the Wealth-tax in the succeeding years. I asked him as to from which provisions of sub-section (vi) of section 5 of the Wealth Tax Act, this interpretation can be drawn. To this the learned counsel for the Revenue had no answer. I have already discussed, that the only possible interpretation to sub-section (vi) of section 5 of the Wealth Tax Act, when it talks of the moneys in the policies becoming due and payable, is that the amount which becomes due and payable in the terms of a particular insurance policy, during a particular assessment year, is the only amount which can be subjected to the wealth tax and the remaining amount which has not become due and payable under the insurance policies, will remain exempted till it becomes due and payable in the terms of the insurance policies.

(13) As regards the authority of the Supreme Court in *Chandu Lal Harjiwan Das's case* (1) (supra), on which the reliance has been placed by the Wealth Tax Authorities, suffice it to say that the said authority is an authority wherein their Lordships of the Supreme Court considered the provisions of section 15(1) of the Income Tax Act, 1922, which is in the following terms :—

“15. *Exemption in the case of life insurances.*—

(1) The tax shall not be payable in respect of any sums paid by an assessee to effect an insurance on the life of a assessee or on the life of a wife or husband of the assessee or in respect of a contract for a deferred annuity on the life of the assessee or on the life of a wife or husband of the assessee or as a contribution to any provident fund to which the Provident Funds Act, 1925 (XIX of 1925), applies.”

(14) The precise question before their Lordships was whether the annuity policy, according to the terms of which the said policy could also be termed as a deferred annuity life policy, was covered for exemption under section 15(1) of the Income Tax Act or not ? Their Lordships, after taking into consideration the terms and conditions of the policy, came to the conclusion that the policy in question was a life insurance policy and, therefore, it was covered for exemption under section 15(1) of the Income Tax Act. It would be

seen from the bare language of section 15(1) of the Income Tax Act that the said section grants exemption to the assessee for the sum paid by him to effect an insurance on his life, or on the life of a wife or husband of the assessee or in respect of a contract for a deferred annuity on the life of the assessee or on the life of a wife or husband of the assessee or as a contribution to any provident fund to which the Provident Funds Act, 1925 (XIX of 1925), applies. The exemption under the Wealth Tax Act, under section 5(iv), applies to all types of policies of insurance, whereas the exemption under section 15(1) of the Income Tax Act applies to the life insurance policies only. The language of the two provisions is couched in quite different words and, therefore, the interpretation put forth by their Lordships of the Supreme Court to the provisions of section 15(1) of the Income Tax Act, cannot be said to be applicable to the provisions of section 5(vi) of the Wealth Tax Act as it is. Their Lordships, during the course of the said judgment, observed that the contract of insurance between the assessee's father and the Life Insurance Corporation must be read as a whole and, therefore, the main purpose to be achieved by the policy was to be taken into consideration which was the insurance of life of the assessee. Their Lordships also observed that the object of enacting section 15(1) of the Income Tax Act is the encouragement of thrift and the section should hence be interpreted in such a manner as not to nullify that object. These observations may be helpful in interpreting the provisions of section 5(vi) of the Wealth Tax Act as the main object of making those provisions appears to be to encourage people for effecting insurance of any kind. The money invested by the assessee in the insurance certainly becomes the national wealth for a certain period and it can be used for developmental purposes. Except to this extent, the authority referred to above is of not much relevance for the interpretation of section 5(vi) of the Wealth Tax Act.

(15) No other point has been pressed before us.

For the reasons recorded above, the questions referred to us for opinion are answered in affirmative in favour of the assesseees. Though I have held that the money under the insurance policies, which becomes due and payable during the assessment years, is liable to the levy of Wealth-tax but since no such amount has been specified either in the orders of the authorities below or in the statements of the cases; nor any such amount of annuity is mentioned in the policies, Annexures 'A' with these references,

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therefore, it is not possible to say as to what amount had become due and payable under the policies to the assesseees during the course of the relevant assessment years. The Wealth-tax Authorities may proceed to calculate the Wealth-tax on the basis referred to above, if the law so permits. But since my conclusion is that the policies of the assesseees are covered by the exemption clause of section 5(1)(vi) of the Wealth Tax Act as the whole amount under the policies has not become due, therefore, the questions referred to us in these Wealth Tax References for our opinion have to be answered in affirmative in favour of the assesseees and the same are hereby answered in the affirmative in favour of the assesseees. Keeping in view the facts and circumstances of these references, there will be no order as to costs.

Pandit, J.—I agree to the answer proposed.

B. S. G.

LETTERS PATENT APPEAL

Before Harbans Singh, C.J. and Bal Raj Tuli, J.

SHMT. HARBANS KAUR,—Appellant

versus

SARDARA SINGH, ETC.,—Respondents.

Letters Patent Appeal No. 130 of 1972.

May 2, 1973.

*Punjab Pre-emption Act (1 of 1913 as amended by 11 of 1973)—Sections 2 and 3 of the amending Act—Decree for pre-emption—Whether can be passed after the enforcement of the amending Act—Pending vendees' appeals against decrees of pre-emption—Whether have to be allowed merely because of the provisions of section 3.*

*Held*, that after coming into force of the Punjab Pre-emption (Repeal) Act, 1973, repealing the Punjab Pre-emption Act, 1913, no decree for pre-emption can be passed in favour of a pre-emptor. The appeals filed by the pre-emptors against the dismissal of their suits have to be disallowed because if they are accepted, the appellate Court will be passing decrees of pre-emption in their favour, which cannot be done in view of section 3 of the amending Act.