
(1981) 01 MAD CK 0010
In the Madras High Court
Case No : Tax Case No. 538 of 1976

Commissioner of Income Tax

APPELLANT

Vs

M.N. Rajam

RESPONDENT

Date of Decision : 12-01-1981

Acts Referred:

Wealth Tax Act, 1957 — Section 2, 5(1)

Citation : (1982) 31 CTR 85 : (1983) ILR (Mad) 135 : (1982) 133 ITR 75

Hon'ble Judges : V. Ramaswami-II, J; N.V. Balasubramanian, J

Bench : Division Bench

Advocate : J. Jayaraman, for the Appellant; N.C. Rangarajan, for the Respondent

Judgement

Balasubrahmanayn, J.—This case stated by the Income Tax Appellate Tribunal poses a problem in the simultaneous application of two

provisions in the W. T. Act, 1957, namely, ss. 5(1)(iv), namely, ss. 5(1)(iv) and 2(m)(ii). The problem has arisen in a wealth-tax assessment for the

assessment year 1971-72. Section 5(1)(iv), is it stood at the material time, exempted from wealth-tax one house or part of a house or part of a

house owned and exclusively used by an assessee as his or her residence. This exemption, however, was subject to a monetary upper limit of Rs.

1,00,000. Section 2(m)(ii) deals with the computation of net wealth for purposes of levy of wealth-tax. This provision, inter alia, provides that

while all debts owed by the assessee are deductible, debts secured on assets which are not chargeable to wealth-tax shall not be deducted. It is

easy to visualize an illustrative case of an owner-occupied residential house worth less than Rs. 1,00,000 but subject to a subsisting mortgage. In

such a case, the value of the house will be exempt from wealth-tax, but the mortgage debt will not be eligible for deduction in the computation of

the taxable net wealth. In the present case, however, the facts were not as simple as all that. The assessee owned a house in Madras City. She lived in one-half of the house and let out the other half to tenants. The house was under mortgage to the Egmore Benefit Fund. The house was worth Rs. 1,23,000 on the relevant valuation date. The mortgage debt, on that date, stood at Rs. 40,403. In this situation, the WTO completed the assessment in the following fashion. He accepted the assessee's exclusive residence in one-half of her house and exempted the value of that half-portion, namely, Rs. 61,500, under s. 5(1)(iv) of the Act. Then, turning to the mortgage debt, he bifurcated it into two, and disallowed one-half of it, namely. Rs. 20,202, under s. 2(m)(ii), allowing the balance as a deductible debt.

2. The assessee went up in appeal and got a decision from the Tribunal that the entire mortgage debt of Rs. 40,403 was a wholly deductible debt under s. 2(m)(ii) of the Act, and no part of it can be disallowed merely for the reason that one-half of the house on which the debt was secured happened to enjoy exemption under s. 5(1)(iv).

3. In this reference, brought at the instance of the department, no question is raised as to the exemption of one-half value of the house property under s. 5(1)(iv). The only controversy is about the deductibility of the mortgage debt. The question of law for our decision has, accordingly, been propounded in the following manner :

Where, on the facts and in the circumstances of the case, and having regard to the provisions of section 2(m)(ii) of the Wealth-tax Act, the

Appellate Tribunal was right in holding that the entire mortgage loan on the property half of which was exempte ?

4. The department's contention in this reference is that the Tribunal has misunderstood the nature of the exemption under s. 5(1)(iv) and thereby misapplied s. 2(m)(ii) in this case. The argument addressed by their standing counsel, Mr. Jayaraman, was that since the subject-matter of the exemption was the house property, the whole of the debt secured on it was non-deductible, even though the house was exempt only as to a part.

Learned counsel's view of s. 5(1)(iv), as well as of other items of exemption covered by the section, was that the exemption attached to the asset itself, irrespective of the quantum of exemption of which it was eligible.

5. We do not accept the general proposition advanced by Mr. Jayaraman that the exemptions under the W. T. Act are of the assets themselves.

Our understanding of the scheme of the Act, on the contrary, is that tax exemption has not been, and could not possibly be, granted to assets as

such. For, wealth-tax is not a tax on assets. It is not even a tax on gross assets less certain deduction. The true view of the impost is that it is a

periodical tax on the taxpayer's net worth reduced in terms of money. That this is so has been made clear beyond doubt by the Supreme Court in

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INTERVENERS : (1) STATE OF ASSAM;

(2) STATE OF KERALA; AND (3) STATE OF UTTAR PRADESH., . Indeed, on any other idea of the nature of the tax, many of the

provisions in the enactment would have had to be struck down as unconstitutional. That the tax is based on the conception of net worth, and not on

any idea of the imposition being based on assets alone, is manifest from the vital definition in the Act of the expression ""net wealth"". The definition

begins by saying that net wealth is an amount. It is an amount by which the aggregate value of the assessee's assets exceeds the aggregate value of

his debts. Wealth-tax thus deals with figures of assets and with figures of debts, not as ends in themselves, but as the means to derive a final net

figure of net wealth. The charge attaches only on the net wealth. It does not attach on the assets, either in the gross or otherwise. Since the tax is

not on the assets neither can the exemption be of assets, as such.

6. Mr. Jayaraman, however, dwelt on the opening words of s. 5(1). He laid particular emphasis on that part of the section which laid down that

wealth-tax shall not be payable in respect of the following assets."" We must, however, ascribe this phraseology to a pardonable lapse on the part

of the draftsman whose idea of wealth-tax, to start with, was as hazy as that of the sponsors of the measure, not to speak of some of the judicial

utterances of earlier days. Now, that we know what the tax is and on what the charge is laid, especially after Sudhir Chandra Nawn's case [1968]

69 ITR 897 (SC), this part of the language of s. 5(1) cannot be allowed to cloud our interpretation. It is an accepted code for a court of

construction that its ""duty.... is to find out what the legislature must be taken to have early meant by the expressions which it has used, without

necessarily attributing to the Legislature a precise appreciation of the technical appropriateness of its language"" [Per Viscount Simon L. C. in R. v.

City of London I. T. Commissioners [1942] 24 TC 221 (HL)]. The words of s. 5(1) relied on by Mr. Jayaraman are technically inappropriate to

carve out the tax exemptions, having regard to the nature of the wealth-tax. We have, therefore, to see what Parliament must be taken to have

exempted under s. 5(1).

7. By a lucky chance, the opening words of s. 5(1) also lay down that ""Such assets shall not be included in the net wealth of the assessee."" As we

have already noticed, net wealth is an amount by which the aggregate value of the assets exceeds the aggregate value of the debts. The words,

Such assets shall not be included in the ""net wealth"", can only mean the value, in terms of money, of any such assets. This is because, only the

value of an asset is capable of being either included or not included in the net wealth. The second part of the opening words of s. 5(1) accordingly

shows that the subject-matter of the exemption cannot be assets as such, but only their value, in terms of money.

8. To turn from the general to the particular, s. 5(1)(iv) itself contains a clue to show that what is exempt is the value of the house property and not

the property as such. In its enacting part, s. 5(1)(iv) refers to ""One house or part of a house belonging to an assessee and exclusively used by him

for residential purposes."" It proceeds to lay down the limit of the exemption in the following proviso :

Provided that, where the value of such house or part exceeds one hundred thousand rupees, the amount that shall not be included in the net wealth

of the assessee under this clause shall be one hundred thousand rupees.

9. The words underlined by us for emphasis show close their meaning is to the language of s. 2(m). The words of exemption refer to an amount

which has to be arrived at by reckoning the value of the house. It is clear that this process of reducing the house in terms of money value has to be

done in the case of every claim for exemption, just to see if the amount exceeds Rs. 1,00,000 or not. This part of s. 5(1)(iv) is yet another

indication as to why we do not accept the department's thesis that the subject-matter of the exemption under s. 5(1)(iv) is the house itself. It stands

to reason, therefore, that in a case where only a portion of its value gets

exempted, it would not be correct to regard the house as such as being exempt from tax.

10. It is easy to see why the department wants the court to hold that under s. 5(1)(iv) the house as such is an asset on which wealth-tax is not payable. A finding to this effect would have its repercussion on the applicability of s. 2(m)(ii) of the Act. This provision which defines net wealth as an amount by which the aggregate value of the assets exceeds the aggregate value of the debts, contains certain savings and exceptions set out in cls. (i) to (iii). Claus (ii) excludes from the computation of net wealth.

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.

11. At one time, in the place of the words underlined, the language was "'any property in respect of which wealth-tax is not payable'". The change in the phraseology does not materially alter the meaning. According to Mr. Jayaraman, the meaning of this provision is that where an exemption relates to any asset, be the exemption ever so little, still the asset will come under the description of "'property on which wealth-tax is not chargeable'", with the inevitable consequence that any debt secured on such property or any debt incurred in respect of such property shall not be deducted in the computation of the net wealth.

12. We have already disposed of the argument for the revenue that the exemption under s. 5(1)(iv) is of the house as such. We have held that the amount of the value of the house alone, to the extent allowed by the proviso, is the subject of the exemption. In our view, a similar construction must also be placed on the similar words to be found in s. 2(m)(ii) "'property on which wealth-tax is not chargeable'". But this construction of some only of the words in s. 2(m)(ii) does not get us anywhere on the pertinent question of deductibility or non-deductibility of the debt. For an answer to the question the basis on which s. 2(m)(ii) excludes the debts from deduction must be ascertained. The real basis is not far to seek. The Legislature does not wish to grant an assessee a double advantage, as it were, in his assessment - once by exempting the value of the asset and a second item by permitting the debt secured on that asset to be deducted. The logic behind the legislative policy is clear enough. If you include the

value of an asset, then exclude the debt secured on it; but where you must exclude the value of the asset, that is quite a relief in itself, and you

cannot have another relief by way of deduction of the debt secured on the asset. Section 2(m)(ii) thus sees debts in a dichotomous classification :

(i) debts secured on assets (which may be described colloquially as taxable assets); and (ii) debts secured on assets (which may be described,

again colloquially, as exempted assets). As we have earlier indicated, the present case is not neatly drawn on simple, uncomplicated, facts. It is not

the case of a debt about which we can say that it is secured on an taxed asset. The truth is that the debt in question is secured on house property

whose value is chargeable to tax as to one-half, and exempted from tax as to the other half. What, then, is its position in terms of the dichotomy in

s. 2(m)(ii)? The position is that it falls between two stools, as it were. It assumes an intermediate, or a third, position. This position s. 2(m)(ii) does

not clearly provide for at all, and apparently does not even envisage. It must be a case of *causus omissus*.

13. We can arrive at the same result by adhering to the language of the statute. The general rule as to deduction of debts in s. 2(m) is that all debts

must come into the reckoning. Clause (ii) excludes from the computation only debts which are secured on property in respect of which wealth-tax

is not chargeable. Accordingly, the one and only inquiry under s. 2(m)(ii) is to see whether it can be said of any item of asset that it is property in

respect of which wealth-tax is not chargeable. An item of house property can be brought within the charge either because it is not used as the

assessee's residence or to the extent that its value exceeds Rs. 1,00,000. In either case, it would be property of a kind about which nobody can

confidently assert, without fear of contradiction, that it is property "in respect of which wealth-tax is not chargeable". The Tribunal have expressed

this very idea when they observed that the disallowance of a secured debt under s. 2(m)(ii) is possible only if no wealth-tax at all is payable on the

property on which the debt is secured, and not otherwise.

14. We have thus arrived at our answer to the question on the plain terms of s. 2(m)(ii), in the light of s. 5(1)(iv) of the Act, Mr. Jayaraman,

however, called our attention to a judgment of a Division Bench of this court in *T.V. Srinivasan Vs. Commissioner of Wealth-tax*, which, according

to him, laid down a different view of the two provisions. The ratio of the decision, however, does not bear out this contention. An owner-occupied

house valued at Rs. 80,000 had a subsisting mortgage on it, which stood at Rs. 36,000 on the valuation date. On these plain facts, the Bench had

no hesitation in rejecting the assessee's claim for deduction of the debt. The Bench observed, simply, that the assessee's contention ran "counter to

the specific provision of s. 2(m)(ii) read with s. 5(1)(iv) of the W. T. Act". With respect, this was the only correct conclusion on the facts.

15. Before the learned judges another argument, on facts, was pressed for the assessee in that case. It was urged that although the debt was

secured on an exempted asset, the claim for deduction cannot be denied since the proceeds of the debt were subsequently invested by the

assessee in acquiring chargeable assets. The Bench rejected this contention too. They observed, picturesquely, that a debt excluded from

deduction as a debt on an exempted asset under s. 2(m)(ii) cannot "stage a comeback", and claim deduction as a debt in relation to a taxable

asset. This enunciation of the law is also, with respect, quite correct.

16. Mr. Jayaraman's intention in referring to the Bench decision aforesaid was not, however, to edify us with the ruling of the Bench on the two

points which pertinently arose in that case on the facts. His objet was rather to draw our attention to the folloing observations, which appear at the

end of the judgment (p.468 :

We are not concerned with a case where the house property exceeds the sum of rupees one hundred thousand. However, as rightly pointed out

by the learned counsel, the interpretation that we have to place on the section would have to be uniform so as to cover cases where the value of

the property exceeds the sum of rupees one hundred thousand. Section 5(1)(iv) provides for a ceiling on the exemption up to a sum of rupees one

hundred thousand, and what is exempted is the property but the exemption is taken away proportionately, where the value of the property exceeds

rupees one lakh. If so understood, then even in a case where the debt is taken on the security of the house property which exceeds the sum of

rupees one lakh, the assessee would not be eligible for the deduction of the debt, at any rate up to a limit of a lakh of rupees as it would be secured

on a property which was exempt from assessment to that extent.

17. It is plain to see that this passage does not represent the ratio decidendi in that case. The observation with which the passage begins makes this

point quite clear. The learned judges had to consider the case of a debt secured on a wholly-exempted owner-occupied residential house of a

value of less than Rs. 1,00,000, whereas the point about which they expressed themselves in the passage quoted concerned the proviso to s. 5(1)

(iv) which applied only to a house property whose value is in excess of Rs. 1,00,000.

18. Mr. Jayaraman remarked that the observations of the Bench were addressed to a matter of construction of s. 5(1)(iv) and hence those

observations cannot be treated as obiter. He maintained that a statutory construction cannot differ from case to case. It would also be incorrect, he

said, to identify the decision of a court of construction with the particular argument addressed before it or accepted or rejected by it. The authority

of a court decision as to the meaning of an enactment cannot, according to learned counsel, be isolated or whittled down as a mere argument-

oriented or a fact-oriented decision.

19. We agree that where courts of co-ordinate or superior jurisdiction have construed a statute before, their decision must be thereafter accepted

as a precedent. We must, however, guard against unwarranted extensions of the doctrine of stare decisis in the field of statutory interpretation.

Where courts of law interpret statutes, they do so only with a view to decide the dispute between the parties and not to write a commentary on the

legislation at large. Statutory construction by courts is always and ever a two-in-one process. It consists of the ascertainment of statutory meaning,

and its application to the facts of a concrete case. It is in the latter phase that the interpretative process attains due fulfillment as a judicial

determination, with all that it implies. Now and again a court may feel tempted to look beyond the fence and animadvert on provisions, or on

aspects of provisions, which are not in point in the case on hand. Those observations can be valued, if at all, only as dicta. To attribute to such off-

the cuff remarks the binding authority of a precedent would be to misunderstand alike the doctrine of stare decisis and the judicial process of

statutory construction. In the case cited, the Bench had uttered the caution that the proviso to s. 5(1)(iv) did not call for an interpretation and

application at their hands. It follows, therefore, that the present case, is not concluded by the opinions expressed by the Bench on the meaning of that proviso.

20. The Tribunal in its order had remarked that s. 2(m)(ii) does not contemplate the divisibility of a debt as allowable in part and disallowable as to rest. The Tribunal proceeded to observed that a debt which is secured on an asset must be fully allowed, even though the asset is entitled to partial exemption from tax. This line of reasoning, is, however, vulnerable. Mr. Jayaraman was not slow to exploit it to his advantage and to adopt for purposes of his argument the same slogan, that a debt, for purposes of deduction, is one and indivisible. His argument was that since a debt cannot be bifurcated, it must be disallowed in whole even if it is secured on a partially exempted asset. We would avoid the pitfall of this theory about the non-divisibility of a debt. The quality of non-divisibility of a debt cannot be derived as a matter of construction, from the terms of s. 2(m)(ii). We would prefer to base our decision rather on the circumstance that a debt secured on property, which is neither wholly taxable nor wholly exempt, is not contemplated by the statute. In any case of such a debt, it cannot be asserted, in terms of s. 2(m)(ii), that it is secured on property on which wealth-tax is not chargeable at all.

21. We may observe that the department's case, as put forward in this reference, for a wholesale disallowance of the debt in its entirety does not quite accord with the assessment order itself. For, the WTO had granted, without a murmur, one-half of the debt as an allowable deduction. All the subsequent fight about the deductibility of the debt was only as respects the other half of the debt disallowed by the officer.

22. Another contention which Mr. Jayaraman urged before us also tended to ignore what was common ground between the parties, namely, that the house was entitled to exemption as to one-half of its value, because the assessee was using that half for his exclusive residence. The argument before us was addressed to construing the terms of s. 5(1)(iv) of the Act. Mr. Jayaraman urged that the words, "'part of a house belonging to the assessee exclusively used by him for residential purposes'" must be construed strictly. According to his construction, where an assessee uses part only of a house for residential purposes, it is an essential requirement of the

section that he should own only that part of the house, and no other part of the house, in order that he may be eligible for the exemption even of that part. In other words, the argument was that if the whole house is resided in by the assessee, the whole house must be owned by him, but if a part of the house is resided in by him, it is essential that he must not own any other portion excepting the portion under the residence.

23. We must, however, reject this construction of the provision as untenable. The expressions "whole" and "part" are used in s. 5(1)(iv) to denote a variety of circumstances. An assessee, for instance, may own the whole house and reside in the whole house. He may own a part, and reside in that part. He may own a part, but reside in the whole. In our judgment, the provision in s. 5(1)(iv) must apply in all case and to the extent that ownership and residence coalesce either in the whole, or in a part, of the house. We reject the argument that the reference in the section to a part of the house requires and insists that the assessee must occupy the part he owns and must not own any other part of the house. And, as we earlier indicated, the question of construction of s. 5(1)(iv) arises, and could at all arise, only in the context of the assessee's claim for an exemption. It does not, and cannot, arise in the context of a claim for an exemption. It does not and, and cannot, arise in the context of a claim for deduction of the mortgage debt over the house, under s. 2(m)(ii) of the Act. The present reference is limited to the question of deductibility of a debt, and does not cover the question of exemption of an asset such as the residential house. Furthermore, exemption had already been granted up to the value of a half-portion of the house in the assessment order itself on an application of s. 5(1)(iv). The line of argument now addressed, which has the effect of altogether ruling out the exemption in such a case cannot, in reason, be addressed at this stage.

24. Having regard to all the considerations set out above, we answer the question of law in the affirmative and in favour of the assessee. The assessee will have her costs. Counsel's fee Rs. 500.