

(1991) 02 CAL CK 0052
In the Calcutta High Court
Case No : Matter No. 1206 of 1982

Commissioner of Wealth Tax

APPELLANT

Vs

Bhaskar Mitter

RESPONDENT

Date of Decision : 25-02-1991

Acts Referred:

Estate Duty Act, 1953 — Section 33, 33(1)
Wealth Tax Act, 1957 — Section 5(1), 5(1A)

Citation : (1994) 122 CTR 299 : (1993) 202 ITR 612 : (1994) 73 TAXMAN 437 : (1993) 71 TAXMAN 392

Hon'ble Judges : Shyamal Kumar Sen, J;Ajit K. Sengupta, J

Bench : Division Bench

Advocate : B.K. Bagchi and S.K. Chakraborty, for the Appellant;Ranen Dutta, amicus curiae, for the Respondent

Judgement

Ajit K. Sengupta, J.—In this reference u/s 27(1) of the Wealth-tax Act, 1957, for the assessment years 1972-73 to 1975-76, the following questions of law have been referred to this court :

"1. Whether, on the facts and in the circumstances of the case, under the proviso to Section 5(1A), the raising of the exemption limit beyond Rs. 1,50,000 could be made only if the assets referred to in Sections 5(1)(xv) and 5(1)(xvi) of the Wealth-tax Act, 1957, exceed Rs. 1,50,000 ?

2. Whether, on the facts and in the circumstances of the case, the house property at 7/1, Queens Park or a part thereof can be said to belong to the assessee within the meaning of Section 5(1)(iv) of the Wealth-tax Act, 1957, where the assessee, admittedly, has only a life interest therein ?"

2. Shortly stated, the facts are that the assessee, an individual, held Government securities on the respective valuation dates as follows :

Valuation date Amount (Rs.)

31-3-1972 47,260

31-3-1973 50,020

31-3-1974 30,000

31-3-1975 20,000

3. Apart from the aforesaid securities, the assessee also held shares of various companies. Exemption to the extent of Rs. 1,50,000 was granted by the Wealth-tax Officer in respect of the various shares. In addition to the above exemption, the assessee wanted further exemption with regard to the aforesaid Government securities in terms of Clauses (xv) and (xvi) of Sub-section (1) of Section 5 of the Wealth-tax Act, 1957. The Wealth-tax Officer did not allow the assessee's aforementioned claim as, in his opinion, the securities in question were covered by the overall limit of Rs. 1,50,000 indicated in Sub-section (1A) of Section 5 of the Wealth-tax Act, 1957, and that exemption in terms of Clauses (xv) and (xvi) of Sub-section (1) of Section 5 was not over and above the said ceiling limit of Rs. 1,50,000 indicated in Sub-section (1A) of Section 5. The Wealth-tax Officer also expressed the opinion that the provision of Sub-section (1) of Section 5 of the Wealth-tax Act, 1957, relied upon by the assessee was not attracted in the present case. Aggrieved by these assessments, the assessee brought the matter by way of appeals before the Appellate Assistant Commissioner who, following the decision of the Tribunal in the case of the assessee for the assessment year 1972-73, upheld the aforesaid claims of the assessee for the year under consideration. The Revenue, thereupon, appealed to the Tribunal against the aforesaid consolidated order of the Appellate Assistant Commissioner. Inasmuch as the facts for the year under consideration as well as the rival submissions of both the sides were identical to those which were the subject-matter of the decision of the Tribunal for the assessment year 1972-73, the Tribunal confirmed the order of the Appellate Assistant Commissioner for these years also. The Tribunal held that if the assets include assets referred to in Clause (xv) or Clause (xvi), they are exempt over and above the overall limit of Rs. 1,50,000.

4. The assessee had transferred his property situated at No. 7/1, Queens Park to the trustees of the trust which was brought into being by him, vide trust deed executed on August 28, 1951. The said trust was a revocable one. Under the said deed, the assessee, along with his wife and three sons, had equal rights of residence in the said property during his lifetime. The Wealth-tax Officer on these facts held that the assessee had a life interest in the said property and, accordingly, he included the market value of the said life interest in the net wealth of the assessee for each of the years under consideration. The assessee claimed that he was entitled to the exemption in terms of Clause (iv) of Sub-section (1) of Section 5 of the Wealth-tax Act, 1957, with regard to the aforesaid life interest in the property. This claim was, however, negatived by the Wealth-tax Officer. The assessee, thereupon, appealed to the Appellate Assistant Commissioner who accepted the assessee's claim in view of the decision of this

court in the case of Controller of Estate Duty Vs. Jyotirmoy Raha, . The Revenue felt aggrieved by the aforesaid order of the Appellate Assistant Commissioner and appealed to the Tribunal. It was contended on behalf of the Revenue that the reliance on the case of Controller of Estate Duty Vs. Jyotirmoy Raha, by the Appellate Assistant Commissioner was misplaced inasmuch as the said decision was rendered under the Estate Duty Act and not under the Wealth-tax Act. It was urged by the Revenue that the Tribunal, in one of the matters, decided that the ratio of the aforesaid decision of this court in the case of Controller of Estate Duty Vs. Jyotirmoy Raha, , had no application to the cases under the Wealth-tax Act. On behalf of the assessee, the above submissions were resisted and reliance was placed on the aforesaid decision of this court. Apart from it, reference was made to the decision of the Andhra Pradesh High Court in the case of Controller of Estate Duty Vs. Estate of Late Sanka Simhachalam (by accountable person), . The Tribunal, after considering the provisions of Clause (iv) of Sub-section (1) of Section 5 of the Wealth-tax Act, 1957, and, after comparing them with the analogous provision contained in Clause (n) of Sub-section (1) of Section 33 of the Estate Duty Act, held that the ratio of the aforesaid decision applied to the facts of the present case and, therefore, the assessee was entitled to relief under Clause (iv) of Sub-section (1) of Section 5. The observations of the Tribunal on this point are as follows :

"In view of the aforesaid interpretation given to the word " belonging" in Section 33(1) of the Estate Duty Act, 1953, which we, in view of the definition of the expression " asset" in Section 2(e) of the Act, are of the considered view that the word "belonging" in Section 5(1)(iv) of the Act signifies even possession of an interest less than that of full ownership like the life interest of the assessee in the present case. In that view of the matter, we, respectfully following the aforesaid decisions of the Andhra Pradesh and the Calcutta High Courts, hold that the house in which the assessee has a life interest is one belonging to the assessee for the purpose of Section 5(1)(iv) of the Act."

5. At the hearing before us, Mr. Bagchi for the Revenue fairly submitted that the trend of the judicial decisions are against the contentions raised by the Revenue before the Tribunal. Since none appeared for the assessee, at our request, Mr. Ranen Dutta, learned advocate, assisted the court and brought to our attention several decisions on the controversies involved in this reference.

6. We will now take up the first question. Section 5(1 A) provided as follows :

"(1A) Nothing contained in Sub-section (1) shall operate to exclude from the net wealth of the assessee any assets referred to in Clauses (iva), (xv), (xvi), (xxii), (xxiii), (xxiv), (xxv), (xxvi), (xxvii), (xxviii), (xxix), (xxx), and (xxxii) (not being deposits under the Post Office Savings Bank (Cumulative Time Deposits) Rules, 1959), to the extent the value thereof exceeds, in the aggregate, a sum of one hundred and fifty thousand rupees :

Provided that where the assets include any assets referred to in Clause (xv) or

Clause (xvi) not being deposits under the Post Office Savings Bank (Cumulative Time Deposits) Rules, 1959, which have been owned by the assessee continuously from a date prior to the 1st day of March, 1970, and the value of the assets so included exceeds the limit of one hundred and fifty thousand rupees by any amount, such limit shall be raised by the said amount."

7. Thus, it is expressly provided in Section 5(1A) that nothing contained in Sub-section (1) shall operate to exclude from the net wealth of the assessee any assets referred to in the clauses mentioned in that section to the extent the value thereof exceeds, in the aggregate, a sum of Rs. 1,50,000 at the material time. Deposit under any scheme framed by the Government in Clause (xv) and deposit certificates in item (xvi) of Section 5(1) are two of the items referred to in Section 5(1A). The plain meaning of Section 5(1A) of the Act, therefore, is that, in respect of the assets which are specified in Section 5(1A), exemption from wealth-tax is permissible only to the limit of Rs. 1,50,000 and anything in excess of the value of Rs. 1,50,000 will not be entitled to exemption. The proviso to Section 5(1A) contemplates the conditions : (1) that the assets referred to in Clause (xv) and Clause (xvi) must be owned by the assessee continuously from a date prior to the first day of March, 1970, and (2) the value of those assets must exceed the limit of Rs. 1,50,000. Having regard to the opening words of the proviso, the question of raising the limit would arise only in a case where the value of the assets referred to in Clauses (xv) and (xvi) of Section 5(1) exceeds Rs. 1,50,000 and where such value does not exceed Rs. 1,50,000, the question of raising the limit under the proviso does not arise at all.

8. This is also the view taken by the Kerala High Court in *Commissioner of Wealth Tax Vs. H.H. Sethu Parvathi Bayi and H.H. Lekshmi Bayi*, and *Commissioner of Wealth-tax Vs. H.H. Sri Rama Varma Maharaja of Travancore*, ; the Karnataka High Court in *K.S. Ayodhyanath Vs. Commissioner of Wealth Tax, Karnataka*, ; the Gujarat High Court in *K.S. Digvijaysinhji Vs. Commissioner of Wealth-tax, Rajkot*, ; and the Madras High Court in *Saroja Ravindran Vs. Commissioner of Wealth-tax*, .

9. For the foregoing reasons, we answer the first question in the affirmative and in favour of the Revenue.

10. So far as the second question is concerned, it is now concluded by the two decisions referred to by the Tribunal. The first decision is of the Andhra Pradesh High Court in *Controller of Estate Duty Vs. Estate of Late Sanka Simhachalam (by accountable person)*, . In that case, the court was concerned with the interpretation of the words "belonging to" used in Section 33(1) of the Estate Duty Act. In that case, the deceased had executed a settlement retaining life interest in the residential house. Since he had only a life interest in the house, the estate duty authorities took the view that the house did not "belong" to the deceased and consequently, Section 33(1) did not apply to exempt the house from estate duty. But the Andhra Pradesh High Court held that the house property in which the deceased had a life interest and in which the deceased

resided at the time of his death was not liable to be included in the estate of the deceased for estate duty.

11. This decision was followed by a Division Bench of this court in *Controller of Estate Duty Vs. Jyotirmoy Raha*, . There also, the question of exemption u/s 33(1)(n) of the Estate Duty Act came up for consideration. In that case also, the deceased had a life interest. This court held that exemption u/s 33(1)(n) of the Act was available in respect of the value of that portion of the property which was used by the deceased for her residence and which was bequeathed and demised to her by her husband for her life with a direction that on her death, the same should go to her two sons in equal shares.

12. u/s 2(m) of the Act, an asset can be included in the wealth-tax assessment, if it belongs to the assessee. If a life interest is treated as such an asset belonging to the assessee and included in the assessment, there is no reason why such asset will not be entitled to exemption provided in respect of any such asset. In *Controller of Estate Duty Vs. Jyotirmoy Raha*, , Section 33(1)(n) came up for consideration. u/s 33, no estate duty is payable in respect of several kinds of properties "belonging to "the deceased enumerated therein. One of such properties is one house or part thereof exclusively used by the deceased for his residence to the extent specified in Clause (n) of Section 33(1). Life interest in the residential house was treated as an asset belonging to the assessee. In our view, there is no reason for different treatment of such interest for wealth-tax, the provisions of the two Acts, the Wealth-tax Act and the Estate Duty Act, in the matter, being in *pari materia*. In fiscal statutes, unless the context otherwise warrants, the same expression should be assigned same meaning occurring in different enactments where the colour, content and context of such statutes are the same or similar.

13. Following the aforesaid decisions, we answer the second question in the affirmative and in favour of the assessee.

14. There will be no order as to costs.

Shyamal Kumar Sen, J.

15. I agree.