(1984) 04 RAJ CK 0021

In the Rajasthan High Court

Case No : Wealth-tax Reference No. 11 of 1978

Commissioner of Wealth-tax APPELLANT

Vs

B.T. Agrawal RESPONDENT

Date of Decision : 19-04-1984

Acts Referred:
Wealth Tax Act, 1957 — Section 4, 4(1), 4(1A), 5(1)

Citation : (1987) 163 ITR 72 : (1984) RLW 540 : (1984) WLN 339

Hon'ble Judges : S.K. Mal Lodha, J;K. Bhatnagar, J

Bench : Division Bench

Advocate : J.P. Joshi, for the Appellant; Rajendra Mehta, for the Respondent

Judgement

S.K. Mal Lodha, J.—The Income Tax Appellate Tribunal, Jaipur Bench, Jaipur (for short, "the Tribunal" herein), has referred the following question for the opinion of this court:

"Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the assessee was entitled to exemption u/s 5(1)(iv) of the Wealth-tax Act, 1957, in respect of the value of his 1/4th share in the house property thrown by him into the common hotchpotch of Hindu undivided family which was includible in his net wealth u/s 4(1A) of the Act?"

2. The assessee-respondent is an individual. The valuation date relevant to the assessment year 1975-76 was March 31, 1975. The assessee filed wealth-tax return declaring net wealth of Rs. 1,96,400. He claimed exemption of Rs. 1,00,000 u/s 5(1)(iv) of the Wealth-tax Act, 1957 (Act No. XXVII of 1957) (which will for the sake of brevity hereinafter be referred to as "the Act"), in respect of the immovable property. The Wealth-tax Officer, by his order dated February 20, 1976, was of the opinion that the ownership of property has been shifted from individual to Hindu undivided family as soon as the property is thrown in the common hotchpotch and that individual and the Hindu undivided family are two

different persons (entities) and, therefore, the ownership has changed hands. According to the Wealth-tax Officer, the property cannot be said to be owned by the assessee and, therefore, the claim for exemption u/s 5(1)(iv) of the Act was not allowed. He, therefore, determined the value of the immovable property u/s 4(1A) of the Act.

3. On appeal, the Appellate Assistant Commissioner by his order dated June 3, 1976, allowed the appeal and in view of the finding of the Tribunal for the immediately preceding year, namely, 1974-75, directed the Wealth-tax Officer to allow exemption to the assessee in terms of Section 5(1)(iv) of the Act. A further appeal was taken by the Revenue. The Tribunal by its order dated May 13, 1977, held that the assessee is entitled to exemption u/s 5(1)(iv) of the Act in respect of the property which was included in the wealth of the assessee in terms of Section 4(1A) of the Act The Tribunal, therefore, dismissed the appeal. A reference application was filed by the Commissioner of Wealth-tax, Rajasthan, Jaipur, requiring the Tribunal to refer the question of law arising out of its order. The Tribunal has, therefore, referred the aforesaid question.

4. We have heard Mr. J.P. Joshi, learned counsel for the Revenue, and Mr. Rajendra Mehta, learned counsel for the assessee-respondent.

5. The assessee-respondent had claimed exemption of Rs. 1,00,000 u/s 5(1)(iv) of the Act during the accounting year in respect of the immovable property. The assessee was asked to explain as to why the exemption should not be allowed for the reason that immovable property in question does not belong to him. The contention of the assessee was that the property in question was thrown in the common hotchpotch of the Hindu undivided family and as such its ownership was that of the Hindu undivided family. On the other hand, it was submitted on behalf of the Revenue that as the property was thrown in the common hotchpotch, the property is not owned by the assessee and, therefore, claim for exemption u/s 5(1)(iv) cannot be allowed. The Wealth-tax Officer has stated as under :

"The ownership of the property has been shifted from individual to Hindu undivided family as soon as the property is thrown in common hotchpotch. Individual and Hindu undivided family are two different persons (entities) and, therefore, the ownership has changed hands. Thus, the property is not owned by the assessee and, therefore, the claim for the exemption u/s 5(1)(iv) is not allowable."

6. The Appellate Assistant Commissioner did not agree wim the Wealth-tax Officer as according to him, the assessee was entitled to exemption u/s 5(1)(iv) of the Act. The Tribunal also held that the assessee was entitled to exemption u/s 5(1)(iv) of the Act.

7. Section 3 is the charging section which is as follows :

"3. Charge of wealth-tax.--Subject to the other provisions contained in this Act, there shall be charged for every assessment year commencing on and from the

1st day of April, 1957, a tax (hereinafter referred to as wealth-tax) in respect of the net wealth on the corresponding valuation date of every individual, Hindu undivided family and company at the rate or rates specified in the Schedule."

8. Section 4 deals with net wealth to include certain assets. Section 4(1A) of the Act runs as follows :

"4. Net wealth to include certain assets.--...

(1A) Where, in the case of an individual being a member of a Hindu undivided family, any property having been the separate property of the individual has, at any time after the 31st day of December, 1969, been converted by the individual into property belonging to the family through the act of impressing such separate property with the character of property belonging to the family or throwing it into the common stock of the family or been transferred by the individual, directly or indirectly to the family otherwise than for adequate consideration (the property so converted or transferred being hereinafter referred to as the converted property), then, notwithstanding anything contained in any other provision of this Act or in any other law for the time being in force, for the purpose of computing the net wealth of the individual under this Act for any assessment year commencing on or after the 1st day of April, 1972,--

(a) the individual shall be deemed to have transferred the converted property, through the family, to the members of the family for being held by them jointly;

(b) the converted property or any part thereof shall be deemed to be assets belonging to the individual and not to the family;

(c) where the converted property has been the subject-matter of a partition (whether partial or total) amongst the members of the family, the converted property or any part thereof which is received by the spouse or minor child of the individual on such partition shall be deemed to be assets transferred indirectly by the individual to the spouse or minor child and the provisions of Sub-Section (1) shall, so far as may be, apply accordingly :

Provided that the property referred to in Clause (b) or Clause (c) shall, on being included in the net wealth of the individual, be excluded from the net wealth of the family or, as the case may be, the spouse or minor child of the individual.

(2) In making any rules with reference to the valuation of the interest referred to in Clause (b) of Sub-Section (1), the Board shall have regard to the law for the time being in force relating to the manner in which accounts are to be settled between partners of a firm and members of an association on the dissolution of a firm or association, as the case may be."

9. Section 4(3) of the Act is as under :

"(3) Where the value of any assets is to be included in the net wealth of an assessee in accordance with Clause (a) of Sub-Section (1) or Sub-Section (1A)--....

(b) the provisions of Section 5 shall apply in relation to such assets as if such assets were assets belonging to the assessee."

10. The only other section which remains to be considered is Section 5 relating to exemptions in respect of certain assets. The relevant section for our purpose is Section 5(1)(iv) which reads as under :

"5. Exemptions in respect of certain assets.--(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-

(iv) one house or part of a house belonging to the assessee."

Having noticed the aforesaid provisions, we have to see whether exemption u/s 5(1)(iv) is available to the assessee, when the property has been thrown in the common hotchpotch of the Hindu undivided family. The question relating to exemption u/s 5(1)(iv) along with the provisions of Section 4 of the Act was examined by some of the High Courts.

11. The earliest case is S. Naganathan Vs. Commissioner of Wealth Tax, . Before the Division Bench of the Madras High Court in S. Naganathan''s case the question was with respect to Section 4(1)(a) of the Act. Ramaswami J., speaking for the court, observed as under (at p. 290) :

"There is nothing either in Section 4 or in Section 5(1), in our view, which shows an intention of Parliament either to limit the fiction created u/s 4(1) only for the purpose of including the value of the asset transferred in the net wealth of the transferor or exclude the application of Section 5(1)(iv) to a case where the transfer related to a house belonging to the assessee."

12. Another Division Bench of the same High Court followed S. Naganathan Vs. Commissioner of Wealth Tax, in V. VAIDYASUBRAMANIAM Vs. COMMISSIONER OF WEALTH-TAX, MADRAS., . Sections 4(1)(a) and 5(1)(iv) were considered and the learned judges followed the view taken in S. Naganathan ''s case and held that the benefit of Section 5(1)(iv) of the Act would also be available to a case falling u/s 4(1)(a) of the Act.

13. The aforesaid two provisions were examined by the Division Bench of the Karnataka High Court consisting of E. S. Venkataramaiah J., as he then was, and M.K. Srinivasa Iyengar J. in Commissioner of Wealth Tax, Mysore Vs. K.M. Eapen, . While following S. Naganathan Vs. Commissioner of Wealth Tax, it was held that the assessee was entitled to exemption u/s 5(1)(iv) of the Act in respect of his residential property which was transferred by him to his wife. They noticed Section 4(1)(a) of the Act. The learned judges have expressed themselves in the following words (at p. 417) :

"The section itself contemplates the house ''as belonging to'' the assessee and the exemption is in respect of a house belonging to the assessee. Therefore, when the value of the house is to be considered for the computation of the net wealth, it has to be assumed even for purpose of Section 5(1)(iv) of the Act that the house in question belongs to the assessee and the exemption that has to be allowed is in the hands of such assessee." (Underlining* is ours).

14. In Commissioner of Wealth-Tax, Bombay City-I, Bombay Vs. C. Rai, the Appellate Tribunal referred the question whether it has erred, inter alia, in holding that 400 shares of ''Colour Chem Ltd.'' transferred to the name of the assessee''s wife were exempted u/s 5(1)(xx) read with Section 4(1)(a)(i) of the Wealth-tax Act, 1957. Tulzapurkar J., as he then was, who delivered the judgment of the Division Bench of the Bombay High Court, opined that having regard to the provisions contained in Sections 2(m), 3, 4(1)(a)(i) and 5(1)(xx), it is clear that to grant exemption which was sought by the assessee is merely to give effect to the legal fiction created by Section 4(1) and not extending it beyond the purpose for which it is created or make it operate beyond its legitimate field.

15. The learned judges derived some support from S. Naganathan Vs. Commissioner of Wealth Tax, The only other authority that needs to be noticed is of the Orissa High Court in Damji Jairam Vs. Commissioner of Wealth-tax, . R.N. Misra J., as he then was, while following S. Naganathan Vs. Commissioner of Wealth Tax, disagreed with the Appellate Tribunal and observed as under (at page 250) :

"..... the scheme in Sections 4 and 5 of the Act are essentially one, namely, provisions made for the computation of net wealth of the assessee. Section 4 provides for the inclusion of certain assets which in normal circumstances may not have been included and Section 5 makes a provision for the exclusion of certain assets which keeping the law in view would have been treated as assets in the hands of the assessee for computation of his net wealth. Exemptions u/s 5 have been provided to give effect to the intention of Parliament as a matter of public policy." (Emphasis added).

16. No authority was cited by the learned counsel for the Revenue in which a contrary view has been taken.

17. The aforesaid authorities are nearer home for considering the provisions of Section 4(1A) and Section 5(1)(iv) of the Act. The reasons given in connection with Section 4(1)(a) are equally applicable while examining Section 4(1A) of the Act.

18. The expression "belonging to the family" used in Section 4(1A) seems to us to have been included for the purpose of uniformity of expression which we find in other provisions like Section 2(m) and Section 5(1)(iv) and not for any other specific purpose. For the purpose of considering Section 4(1A) and Section 5(1)(iv), we may adopt what has been stated by the learned judges of the Madras High Court in S. Naganathan Vs. Commissioner of Wealth Tax,

"We may even go to the extent of stating that these words have been used only with the intention of giving the benefit of Section 5(1)(iv) to those cases where Section 4(1)(a) is applicable. It might be, as contended by the learned counsel for the Revenue, that it would have been easier to refer in such cases of transfer that ''the property shall be deemed to be the property of the transferor in respect of the transfer'' rather than using the expression like ''as belonging to that individual.'' But the form and style are the exclusive jurisdiction of Parliament itself. So long as there is no indication that the benefit u/s 5(1)(iv) shall not be available to a case falling u/s 4(1)(a), we cannot give any restricted interpretation and deny the benefit to the assessee. It is not necessary for us to refer to those decisions where the well-settled principle is that a fiction shall not be extended for more than the purpose for which it is created because in this case we are not extending the fiction beyond the purpose for which it was created, but in effect we give only effect to the fiction created and are not extending the same."

19. While respectfully following the reasoning given in S. Naganathan Vs. Commissioner of Wealth Tax, which has consistently been followed in the authorities referred to above, we hold that the assessee was entitled to exemption u/s 5(1)(iv) of the Act in respect of the value of his 1/4th share in the house property which was thrown by him into the common hotchpotch of the Hindu undivided family which was includible in his net wealth u/s 4(1A) of the Act.

20. We answer the question referred to this court in the affirmative in favour of the assessee-respondent and against the Revenue.

21. We direct the parties to bear their own costs of this reference.

22. Let the Appellate Tribunal be informed in accordance with Section 27(6) of the Act.

