

(1984) 03 MAD CK 0015

In the Madras High Court

Case No : Tax Case No"s. 1252 to 1255 of 1979 and 122 to 126 of 1980 in
Reference No"s. 790 to 793 of 1979 and 89 to 93 of 1980

Commissioner of Wealth-tax

APPELLANT

Vs

D.C. Barley Dharmaraja and Others

RESPONDENT

Date of Decision : 03-03-1984

Acts Referred:

Wealth Tax Act, 1957 — Section 5(1)

Wealth Tax Rules, 1957 — Rule 2(1)

Citation : (1986) 158 ITR 369

Hon'ble Judges : V. Ratnam, J;G. Ramanujam, J

Bench : Division Bench

Advocate : Nalini Chidambaram, for the Appellant; S.V. Subramaniam, for the Respondent

Judgement

Ramanujam, J.—In all these cases, the following common question has been referred to this court for its opinion by the Income Tax

Appellate Tribunal :

Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the value of the assessee-

partner"s interest in the firm to be excluded from his total wealth u/s 5(1)(xxxii) read with rule 2(1) of the Wealth-tax Rules should include the value

of land and buildings forming part of the assets of the said firm ?

2. In all these cases, on the relevant valuation dates, the assesseees were partners in a firm owning an industrial undertaking known as M/s.

Coronation Litho Works at Sivakasi. In computing the exemption u/s 5(1)(xxxii) of the Wealth-tax Act, hereinafter referred to as ""the Act"", read

with rule 2(1) of the W. T. Rules, 1957, in respect of the assesseees"interest as a

partner in the industrial undertaking, the Wealth-tax Officer deducted the value of the land and building belonging to the firm of M/s. Coronation Litho Works, Sivakasi, after rejecting the contention of the assesseees that since the land and building represent the items of assets referred to in the earlier sub-clauses of section 5(1) of the Act, the same cannot be excluded under the said section 5(1)(xxxii). The assesseees took the matter to the Appellate Assistant Commissioner, who justified the exclusion of the assesseees' interest in the land and building belonging to the industrial undertaking, which was owned by the partnership of which each of the assesseees is a partner. The matter was then taken on a further appeal to the Tribunal and the Tribunal has taken the view that the Wealth-tax Officer and the Appellate Assistant Commissioner were in error in interpreting section 5(1)(xxxii) of the Act as excluding the land and building and rights in land and building of whatsoever nature and that what could be excluded is only that type of land or building or rights in such land or building as would fall under the other sub-sections of section 5(1), e.g., the buildings in section 5(1)(iv), to the stipulated extent of value of land in section 5(1)(iv-a), etc., of course, subject to the monetary limit in section 5(1A). The Tribunal, therefore, accepted the assessee's contention and directed the Appellate Assistant Commissioner to recompute the exemption u/s 5(1)(xxxii) in accordance with its order. Aggrieved by the order of the Tribunal, the Revenue has sought for and obtained the above reference on the question set out above.

3. From what has been stated above, it will be clear that the case involves the determination of the true scope and effect of section 5(1)(xxxii) read

with rule 2(1) of the Wealth-tax Rules. Section 5(1) is in the following terms :

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 -

(xxxii) the value, as determined in the prescribed manner of the interest of the assessee in the assets (not being any land or building or any rights in

any land or building or any asset referred to in any other clause of this sub-section) forming part of an industrial undertaking belonging to a firm or

an association of persons of which the assessee is a partner or, as the case may be, a member.

4. As per the above provision, wealth-tax is not payable by an assessee in respect of the land and building or any rights in any land or building or any assets referred to in any other clauses of sub-section (1) of section 5 and, therefore, the said assets shall not be included in the net wealth of the assessee. A close reading of the said clause (xxxii) of section 5(1) seems to indicate that the value of the interest of the assessee in the assets forming part of an industrial undertaking belonging to a firm or an association of persons of which the assessee is a partner or member, as the case may be, has to be excluded from the net wealth of the assessee. However, the clause specifically provides that the assets which come up for exclusion under this clause should not be any land or building or any rights in any land or building or any asset (referred to in any other clause of this sub-section). In these cases, the controversy between the assesseees and the Revenue is as to whether the expression "referred to in any other clause of this sub-section" qualifies "any land or building or any rights in any land or building or any assets as contended by the Revenue. According to the assesseees, any land, building or any rights in any land or building or any asset which had been referred to in the other clauses of the sub-section will stand excluded for consideration u/s 5(1)(xxxii) of the Act, while the stand of the Revenue is that it is only assets other than land and building which is referred to in the earlier clauses that will stand excluded and not any land and building or any rights in any land or building whether referred to or not in the earlier clauses. We are inclined to agree with the contention advanced on behalf of the assesseees that there was no warrant for excluding the value of the land or building in computing the exemption. Section 5(1)(xxxii) provides for the exclusion of the value as determined in the prescribed manner of the interest of the assessee in the assets forming part of an industrial undertaking belonging to a firm. The prescribed manner referred to in the section is the manner prescribed in rule 2(1) of the Wealth-tax Rules. According to the Revenue, the assets forming part of the industrial undertaking belonging to the firm which comes up for exclusion u/s 5(1)(xxxii) of the Act have to be other than the land, building or rights in land and building of whatsoever nature, whereas the assessee contends that what could be excluded for exemption is only that type of land or building or rights in such land or building as would fall under other clauses of section 5(1). According to the Revenue, land or building or interest

in land or building whether they are referred to or not in the earlier clauses of the said sub-section have to be excluded for exemption and the

assessee's case is that all those lands and buildings or interests in the land and building of such a nature as has been referred to in the earlier clauses

in the sub-section will stand excluded. A close scrutiny of the various sub-clauses in sub-section (1) of section 5 of the Act indicates that there are

no sub-clauses referring only to rights in any particular land or building though there are sub-clauses referring to land and building. Perhaps the

Legislature wanted to exclude not only the value of the land or building where the assessee had full ownership rights (because a partner could

allow a property owned by him to be used by a firm) but also those rights in lands or buildings which were less than full ownership rights. For this

purpose not only a particular asset that is land or building has been specifically mentioned but also the value of the rights in the land or buildings. In

the case of other assets, the rights in such assets are not to be excluded but only the value of the assets themselves. In this view, the interpretation

sought to be placed by the Revenue on clause (xxxii) of section 5(1) is not possible of acceptance. Even if such an interpretation is accepted as

being possible, we consider that the interpretation beneficial to the assessee should be adopted, as that is one of the well-known canons of

interpretation of statutes as has been held by the Supreme Court in *The Commissioner of Income Tax, West Bengal 1, Calcutta Vs. Vegetables*

Products Ltd., . As already pointed out, in the earlier clauses of sub-section (1) of section 5, reference is made to land or building as also assets.

But there is no clause referring to interest in land or building. The learned counsel for the Revenue would say that since interest in land or building

has not been referred to in any other clauses in the sub-section, the Legislature would not have thought of its exclusion in clause (xxxii) of sub-

section (1) of section 5 of the Act and, therefore, the expression referred to "in any other clause of this sub-section" in clause (xxxii) should be

taken to qualify only the word "assets" and not land and building or any rights in any land or building. It is also urged by the learned counsel that if

only land or building as is referred to in any other sub-clauses of section 5 were to be left out of consideration, then section 5(1)(xxxii) would have

been framed in the following manner :

The value, as determined in the prescribed manner of the interest of the assessee in the assets (not being any asset referred to in any other clauses of this sub-section) forming part of an industrial undertaking belonging to a firm or an association of persons of which the assessee is a partner or, as the case may be, a member

and not in the present form. However, we are not inclined to agree with the learned counsel for the Revenue that clause (xxxii) of section 5(1)

could be interpreted in the manner suggested by him. According to us, having regard to the object and purpose of clause (xxxii) of excluding those

items of land and building or interest in such land or building or assets in respect of which exemption had already been given under other clauses

should not again come up for exemption under this clause, if any land or building or interest in any land or building or any other asset had been

excluded under other clauses in sub-section (1) of section 5, those items cannot again be excluded under clause (xxxii) of sub-section (1) of

section 5 of the Act. Such being the object of the provision, we have to interpret clause (xxxii) as not including any land or building or interest in

any land or building or asset which has been referred to in any other sub-clauses under sub-section (1) of section 5 of the Act.

5. In this view, we have to agree with the interpretation given by the Tribunal on clause (xxxii) of section 5(1) of the Act.

6. We have to, therefore, answer the question in the affirmative and against the Revenue. There will be no order as to costs.