(1984) 07 MAD CK 0065

In the Madras High Court

Case No : Tax Case No''s. 1252 to 1255 of 1979 and 122 to 126 of 1980

Commissioner of Wealth Tax APPELLANT

Vs

D.C. Barley Dharmaraja RESPONDENT

Date of Decision : 03-07-1984

Acts Referred:
Wealth Tax Act, 1957 — Section 5, 5(1), 5(1)(iv), 5(1)(iva), 5(1)(xxxii)

Citation : (1984) 07 MAD CK 0065

Hon'ble Judges : Ratnam, J;Ramanujam, J

Bench : Division Bench

Advocate : Nalini Chidambaram and C.V. Rajan, for the Appellant; S.V. Subramaniam Subbaraya Aiyar, Padmnabhan and Ramamani, 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 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, 1957 should include the value of land and buildings forming part of the assets of the said firm?

In all these cases on the relevant valuation dates, the assessees were partners in a firm owning an industrial undertaking known as Coronation Litho Works at Sivakasi. In computing the exemption u/s 5(1)(xxxii) of the Wealth-tax Act, 1957 (''the Act'') read with rule 2(1) of the Wealth-tax Rules, 1957 (''the Rules''), in respect of the assessee''s interest as a partner in the industrial undertaking, the WTO deducted the value of the land and building belonging to the firm of Coronation Litho Works, Sivakasi, after rejecting the contention of the assessees that since the land and building represent the items of assets referred to in the earlier clauses of section 5(1), the same cannot be excluded under the said section 5(1)(xxxii). The assessees took the matter to the AAC, who justified the exclusion of the assessees'' interest in the land and building belonging to the industrial undertaking, which was owned by the partnership of which each of the assessee is a partner. The matter was then taken on a further appeal to the Tribunal and the Tribunal has taken the view that the WTO and the AAC are in error in interpreting section 5(1)(xxxii) as excluding the land and building and rights in land and building of whatsoever nature and that what could be excluded is only that typo of land or building or rights in such land or building as would fall under other clauses 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)(iva), etc., of course, subject to the monetary limit in section 5(1A). The Tribunal, therefore, accepted the assessee''s contention and directed the AAC 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 and obtained the above reference on the question set out above.

2. 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). Section 5(1) is in the following terms:

(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) to (xxxi) ******

(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.

As per the above provision, the wealth-tax is not payable by an assessee in respect of the land and building or any right in any land or building or any asset referred to in any other clause 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 section 5(1)(xxxii) seems to indicate the value of the interest of the assessee in the assets forming part of industrial undertaking belonging to a firm or an AOP 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 right in any land or building or any asset (referred in any other clause of this sub-section). In these cases, the controversy between the assessees 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 asset'' as contended by the revenue. According to the assessees, any land, building or any right in any land or building or any asset which had been referred in other clauses of sub-section that will stand excluded for consideration u/s 5(1)(xxxii), 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 will stand excluded and not any land and building or any right 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 assessees, 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 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). 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) have to be other than the land, building or rights in land and building of whatsoever nature, whereas the asesseee 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 assessees'' 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 said sub-section that will stand excluded. A close scrutiny of the various clauses in sub-section (1) of section 5 indicates that there are no clauses referring only to rights in any particular land or building, though there are clauses referring to land and building. Perhaps the Legislature wanted to exclude not only the value of the land or building where the assessees had full ownership right (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 canon 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 the interest in the land or building. The learned counsel for the revenue would say that since the interest in land or building has not been referred to in any other clause in the sub-section, the Legislature would not have thought of its exclusion in clause (xxxii) of sub-section (1) of section 5 and, therefore, the expression referred to ''in any other clause of this sub-section'' therein 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 clauses of section 5(1) were to be left out of consideration, then section 5(1)(xxxii) would have been framed in the following manner:

(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;

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 on 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. Such being the subject 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 clause under sub-section (1) of section 5.

3. In this view, we have to agree with the interpretation given by the Tribunal on clause (xxxii) of section 5(1). We have, therefore, to answer the question in the affirmative and against the revenue. There will be no order as to costs.

