

(1998) 10 MAD CK 0142

In the Madras High Court

Case No : Tax Case No's. 1345 to 1348 of 1985

Commissioner of Wealth Tax

APPELLANT

Vs

Dr. (Mrs.) Issac

RESPONDENT

Date of Decision : 28-10-1998

Acts Referred:

Wealth Tax Act, 1957 — Section 5, 5(1)(v), 5(1)(xxxiii)

Citation : (2002) 125 TAXMAN 417

Hon'ble Judges : R. Jayasimha Babu, J;A. Subbulakshmy, J

Bench : Division Bench

Advocate : C.V. Rajan, for the Appellant; P.P.S. Janarthana Raja, for the Respondent

Judgement

R. Jayasimha Babu, J.—The questions raised at the instance of the revenue arise under the Wealth-tax Act, 1957 ("the Act") for the assessment years 1979-80 to 1982-83. The assessee had claimed exemption u/s 5(1)(xxxiii) of the WT Act, in respect of the deposits in the Bank of India. The claim was negated on the ground that she had returned to India prior to 1-4-1976, she having returned on 20-10-1973. The Commissioner (Appeals) disagreed with the ITO and the decision of the Commissioner (Appeals) was affirmed before the Tribunal.

2. The questions referred to at the instance of revenue are as follows:

1. Whether, on the facts and in the circumstances of the case, the Tribunal is correct in law in directing to grant exemption u/s 5(1)(xxxiii) of the Wealth-tax Act in respect of the monies and assets acquired out of foreign earnings as for the assessment year though the assessee returned to India much earlier to 1-4-1977 (i.e., on 20-10-1973) when clause (xxxiii) of sub-section (1) of section 5 of the Wealth-tax Act was not in force?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the amounts by way of accretions or interest earnings on the original amounts brought in by the assessee represent the value of assets

acquired by her out of such moneys brought in and, therefore, exempt u/s 5(1)(xxxiii) of the Wealth-tax Act?

3. So far as the first question is concerned, a similar question was considered in respect of another assessee who had made similar plea for exemption u/s 5(1)(xxxiii), though the assessee had returned to India prior to 1-4-1976, in *Commissioner of Wealth-tax Vs. K.M.A. Segupathumal*, wherein it was held that the benefit of the provisions is available to those who have returned to India prior to 1-4-1976, and it was not limited to those who returned to India after that date. For the reasons stated in that judgment and following the same, we answer the first question in favour of the assessee and against the revenue.

4. So far as the second question is concerned, it has been held by the Tribunal that the interest accrued on the moneys brought into India by the assessee at the time of the return, such interest having been earned on the moneys which were deposited in the bank subsequent to the date of the return is also entitled to be treated as exempt. We do not find any force in the contention of the assessee's counsel who suppose to support the order of the Tribunal.

5. Section 5(1)(xxxiii), which is now renumbered as section 5(1)(v) reads as under:

in the case of an assessee, being a person of Indian origin (or a citizen of India (hereinafter in this clause referred to as such person) who was ordinarily residing in a foreign country and who, on leaving such country, has returned to India with the intention of permanently residing therein, moneys and the value of assets brought by him into India and the value of the assets acquired by him out of such moneys within one year immediately preceding the date of his return and at any time thereafter):

Provided that this exemption shall apply only for a period of seven successive assessment years commencing with the assessment year next following the date on which such person returned to India.

Explanation 1.-A person shall be deemed to be of Indian origin if he, or either of his parents or any of his grand-parent, was born in undivided India.

Explanation 2.-For the removal of doubts, it is hereby declared that moneys standing to the credit of such person in a Non-resident (External) Account in any bank in India in accordance with the Foreign Exchange Regulation Act, 1973 (46 of 1973), and any rules made thereunder, on the date of his return to India, shall be deemed to be moneys brought by him into India on that date.

6. The Explanations were added by the Finance Act, 1986, with retrospective effect from 1-4-1977. The exemption provided under this clause (xxxiii) is for the moneys and the value of the assets brought by a person of Indian origin or a citizen of India, who was ordinarily residing in a foreign country, and who, on leaving that country has returned to India with an intention of permanently residing in India, and for the assets acquired out of such moneys within one year,

immediately preceding the date of return or any time thereafter. The Explanation provides that the amount, if any, standing to the credit of such person in a non-resident external account in any bank in India in accordance with the Foreign Exchange Regulation Act, and the Rules made thereunder on the date of the return of the assessee is deemed to have been brought into India on that date.

7. The exemption does not further extend to the income or interest earned out of the use of those funds in India after the date of return. The exemption is available to the assets acquired out of the moneys brought into India within one year immediately preceding the date of return or at any time thereafter. The exemption is confined to the assets that has been brought into India and is extended to the assets acquired by the aid of moneys brought into India. Parliament did not clearly intend exempting the interest earned in India after the date of return on the moneys brought into India. The object of granting the exemption is to provide an incentive to persons of Indian origin and citizen of India, who had ordinarily resided in a foreign country, to return to India and to bring with them the moneys or other assets. The moneys and assets so brought or deemed to have been brought in as per the Explanation to the proviso are, therefore, exempted from wealth-tax. Such persons returning to India thus assured that by reason of their bringing moneys into India, those moneys will not suffer wealth-tax.

7.1 Interest realised in India, after the date of return, on the monies brought in however, do not stand in the same footing, after the date of return from the foreign country to India. The assessee must submit himself to the laws which are applicable to others similarly placed. The interest earned on the moneys in India, though the money had been brought into India on return, from foreign country, does not qualify for exemption. It cannot also be said that the interest earned in India, after the date of return is to be notionally treated as money brought into India at some prior point of time. The second question is, therefore, required to be answered in favour of the revenue and against the assessee and we answer the same accordingly. No costs.