
(1981) 04 OHC CK 0024

In the Orissa High Court

Case No : Special Jurisdiction Case No's. 180 and 181 of 1976

Commissioner of Wealth Tax

APPELLANT

Vs

K.B. Pradhan

RESPONDENT

Date of Decision : 20-04-1981

Acts Referred:

Wealth Tax Act, 1957 — Section 5(1)

Citation : (1981) 51 CLT 535 : (1981) 130 ITR 393

Hon'ble Judges : R.N. Misra, C.J.;J.K. Mohanty, J

Bench : Division Bench

Advocate : B.K. Mohanty, for the Respondent

Judgement

R.N. Misra, C.J.—These references u/s 27(1) of the W.T. Act of 1957 (hereinafter referred to as " the Act"), have been made by the Wealth-tax Appellate Tribunal, Cuttack Bench, at the instance of the revenue and the question referred is :

"Whether the benefit of exemption u/s 5(1)(iv) of the Wealth-tax Act can be extended to an incomplete house or house which is under process of construction ? "

2. The assessee is an individual. The assessment years involved are 1973-74 and 1974-75, with the relevant valuation dates being March 31, 1973, and March 31, 1974, respectively. The assessee started construction of a house in the assessment year 1972-73, and the same was completed in the assessment year 1975-76. Up to the valuation date, March 31, 1973, the assessee had invested about Rs. 59,000 inclusive of cost of land at Rs. 7,000 and up to March 31, 1974, the investment was to the tune of Rs. 79,690. Assessee claimed exemption in respect of the house u/s 5(1)(iv) of the Act, but the claim for exemption was rejected by the WTO on the footing that the house was incomplete and the work being in progress it could not be considered to be a " house " within the meaning of Section 5(1)(iv) of the Act so as to entitle its value to be deducted as exemption under the relevant provision.

3. The assessee appealed and the AAC, while agreeing with the assessee that "house" included an incomplete house, rejected the claim on the ground that the incomplete house was not fit for human habitation. The assessee further appealed to the Tribunal and urged that the word "house" in Section 5 should be given a liberal construction and as the provision covered part of a house even a house under construction should be considered to be a part of a house and exemption should, therefore, have been extended. The test of habitation, it was contended, was no more applicable in view of the change in the provision by dropping out the reference to "residence". The Tribunal examined the provision of Section 5(1)(iv) of the Act, referred to the common parlance meaning of "house" and held that the exemption provided for a pattern of investment including the provision for one house for every assessee. With a view to giving effect to the statutory purpose, the construction of a house cannot be discouraged by denying exemption in the course of such construction and, therefore, the Tribunal accepted the assessee's claim for exemption.

4. Section 5 of the Act provides for exemption in respect of certain assets. The relevant provision reads thus :

"(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....."

5. The original provision of exemption read thus :

" One house belonging to the assessee exclusively used by him for residential purposes and situate in any place with a population not exceeding ten thousand and which is more than five miles distant from any area for which there is a municipality the population whereof exceeds ten thousand. "

6. The above provision was for the first time amended by the Finance Act of 1964, with effect from April 1, 1964, and after the amendment the provision reads thus :

" One house or part of a house belonging to the assessee exclusively used by him for residential purposes : "

7. The material amendment to the aforesaid provision came by the Finance (No. 2) Act of 1971, with effect from April, 1, 1972, when the words, "and exclusively used by him for residential purposes" were omitted.

8. The word "house" has no statutory definition and, therefore, it has to be given the common parlance meaning. The dictionary meaning for the words seems to be "building for dwelling in, a building in general, a dwelling place". It also conveys the meaning of "abode, habitation, etc." Though the concept of residence has been omitted from the provision by amendment, we are not prepared to accept the submission of the assessee's counsel that "house" or "a

part of a house " can cover a situation where the house is not habitable. We are prepared to go to the extent that if the house was once habitable and became uninhabitable on account of want of repairs, the exemption provision may yet operate. Where, however, the house is in the process of construction and, on account of the fact that it is not complete, has not reached a habitable stage, we do not think the concept of a house can be extended to cover such an incomplete construction. The submission of counsel for the assessee that the use of the words " a part of the house " has the meaning of an incomplete house is of no importance. Obviously, Parliament has intended to exempt a part of the house where the assessee's interest extends to a part of it. The concept of habit-ability is inherent in the word "house" and unless it is habitable, the abode would not answer the commonsense meaning of a house. In the instant case, there is no clear finding by the Tribunal as to whether with the investment made during the two relevant years, the construction had reached a habitable stage. Merely from the fact that something more remained to be done in the year beyond the two years in review, it may not be presumed that the house had not come to a habitable condition on the valuation dates. While we do not agree with the assessee's counsel that habitability is not the test, we are of the view that the Tribunal would do well in recording a finding as to the substantial position of the construction on the two relevant dates. If it reaches the conclusion that the construction had reached a habitable stage, that would amount to a house and the exemption would be available. If, however, it is found that the incomplete house was not in a habitable condition during either of the years, it would follow that the exemption would not be extended and the assessee's claim would not be admissible. Since the matter has not been examined from the proper perspective, the finding is not clear. The question as referred on the footing that an incomplete house has the meaning of a house not fit for habitation should ordinarily be answered against the assessee, but as in our opinion such an answer in the facts of the case would prejudice the assessee, we think it appropriate to suggest to the Appellate Tribunal while giving effect to our opinion to hear the parties and come to a definite conclusion as to whether, on the relevant dates, the construction had reached a stage of habitability and if it finds that it was habitable, it should be taken as a house and the exemption should be extended ; otherwise, the view taken by the WTO should be sustained and exemption would not be admissible.

9. We make no order for costs.

J.K. Mohanty, J.

10. I agree.