(1989) 02 KL CK 0036

In the High Court Of Kerala

Case No : Income-tax Reference No''s. 257 to 261 of 1982

Commissioner of Wealth-tax APPELLANT

Vs

K.V. Abraham RESPONDENT

Date of Decision : 09-02-1989

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

Citation : (1990) 87 CTR 159 : (1989) 177 ITR 13

Hon'ble Judges : K.S. Paripoornan, J;K.A. Nayar, J

Bench : Division Bench

Advocate : P.K.R. Menon, for the Appellant; P. Radhakrishnan, for the Respondent

Judgement

Paripoornan, J.—In this batch of five referred cases, the Revenue is the applicant. The common assessee is the respondent. The matter arises under the Wealth-tax Act (in short, "the Act") for the assessment years 1967-68, 1968-69, 1969-70, 1970-71 and 1971-72. The following common question of law has been referred for the decision of this court by the Income Tax Appellate Tribunal in R. A. Nos. 856 to 860 of 1981 in W. T. A. Nos. 137 to 141/Coch. Of 1980 relating to the above assessment years 1967-68 to 1971-72. The question of law runs as follows :

"Whether, on the facts and in the circumstances of the case, the assessee is entitled to claim exemption in respect of the residential house belonging to the minor and included as belonging to the assessee ?"

2. The Income Tax Officer, as also the Appellate Assistant Commissioner, included in the net wealth of the assessee the value of the residential building standing in the name of the assessee''s minor son. This was so done u/s 4(1)(a)(ii) of the Wealth-tax Act. The assessee claimed exemption u/s 5(1)(iv) for the residential building. Section 4(1)(a)(ii) which enabled the Revenue to include the value of the residential building standing in the name of the assessee''s minor son in the net wealth of the assessee, as also Section 5(1)(iv) of the Act under which the

assessee claimed exemption for the residential house, are as follows :

"4. Net wealth to include certain assets :--(1) In computing the net wealth of an individual, there shall be included, as belonging to that individual--

(a) the value of assets which on the valuation date are held-- ...

(ii) by a minor child, not being a married daughter, of such individual, to whom such assets have been transferred by the individual, directly or indirectly, otherwise than for adequate consideration, or"

"5. Exemption 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 :

Provided that, where the value of such house or part exceeds one hundred thousand rupees, the amount that shall not be included in the net wealth of the assessee under this clause shall be one hundred thousand rupees :"

3. The inclusion of the value of the residential building standing in the name of the assessee''s minor son in the assessee''s net wealth was not and cannot be questioned. The only question that arises for consideration is whether the Assessee (respondent) is entitled to exemption in respect of the said asset u/s 5(1)(iv) of the Act. The Wealth-tax Officer, as well as the Appellate Assistant Commissioner, held that in order to claim the exemption u/s 5(1)(iv) of the Act, the house must belong to the assessee (respondent). It is not so in this case. So, the exemption cannot be allowed. However, the Appellate Tribunal upheld the claim of the assessee. The Appellate Tribunal referred to the decisions of the Madras and Karnataka High Courts and held that the property included in the net wealth of the assessee by the fiction created by Section 4(1)(a) of the Act has to be assumed even for the purpose of Section 5(1)(iv) of the Act as belonging to the assessee and the exemption should be allowed in the hands of the assessee. The law so laid down by the Appellate Tribunal is assailed by the Revenue in these referred cases.

4. We heard counsel for the Revenue, Mr. P. K. R. Menon as also counsel for the respondent-assessee. In S. Naganathan Vs. Commissioner of Wealth Tax, , a Division Bench of the Madras High Court held that the husband will be entitled to the exemption of Rs. 1 lakh u/s 5(1)(iv) of the Act for the property transferred by him to his wife and which is included in his net wealth u/s 4(1)(a) of the Act. At pages 290 and 291 of the report, the court held as follows :

"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 to exclude the application of Section 5(1)(iv) to a case where the transfer related to a house belonging to the assessee ... 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."

5. Similarly, in Commissioner of Wealth Tax, Mysore Vs. K.M. Eapen, , a Division Bench of the Karnataka High Court held that when the value of the house is to be considered for the computation of the net wealth of an assessee, it has to be assumed even for the purpose of Section 5(1)(iv) of the Act that the house in question belongs to the assessee and that the exemption has to be allowed in the hands of such assessee. In so stating the law, the Karnataka High Court cited with approval the decision of the Madras High Court in S. Naganathan Vs. Commissioner of Wealth Tax, . The Orissa High Court in Damji Jairam Vs. Commissioner of Wealth-tax, , held that the property gifted by an assessee to his wife and included in his net wealth should be treated as held by the assesses for the purpose of exemption u/s 5(1)(iv) of the Act. The Orissa High Court also cited with approval the decision of the Madras High Court in S. Naganathan Vs. Commissioner of Wealth Tax, . In the light of the above Division Bench decisions of the Madras, Karnataka and Orissa High Courts, we are of the view that the respondent-assessee is entitled to claim exemption in respect of the residential house belonging to his minor son and included as belonging to the respondent-assessee. The Appellate Tribunal was justified in holding so.

6. We answer the question referred to us in the affirmative, against the Revenue and in favour of the assessee.

7. A copy of this judgment under the seal of this court and the signature of the Registrar will be forwarded to the Income Tax Appellate Tribunal, Cochin Bench.

