

(1999) 12 KL CK 0028

In the High Court Of Kerala

Case No : Income Tax R.C. No. 143 of 1996

Commissioner of Wealth-tax

APPELLANT

Vs

M.K. Abdul Khader Haji (Decd.)

RESPONDENT

Date of Decision : 18-12-1999

Acts Referred:

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

Citation : (2000) 1 ILR (Ker) 563 : (2000) 242 ITR 728

Hon'ble Judges : Arijit Pasayat, C.J.;K.S. Radhakrishnan, J;K.K. Usha, J

Bench : Full Bench

Advocate : P.K.R. Menon and N.R.K. Nair, for the Appellant; P. Balachandran, for the Respondent

Judgement

Arijit Pasayat, C.J.—Doubting the correctness of the judgment rendered by this court in Dr. V.P. Gopinathan Vs. Commissioner of Wealth Tax, , reference was made to a Full Bench. The order for reference was made by the Division Bench while considering a reference u/s 27(1) of the Wealth-tax Act, 1957 (in short "the Act"). The following question was referred by the Income Tax Appellate Tribunal, Cochin Bench (in short "the Tribunal") ;

"Whether, on the facts and in the circumstances of the case, and in view of the Tribunal's own decision in the case of Dr. V. P. Gopinathan (WTA Nos. 58, 59 and 60 (Coch) of 1985 dated June 11, 1988), the assessee is entitled to exemption u/s 5(I)(xxxiii) of the Wealth-tax Act, 1957

2. The factual position is as follows : The assessee, an individual, though a citizen of India, was a resident of Kuwait for a long time. He is a partner in Haji M. K. Abdul Khader and Co., a partnership firm, which runs a hotel called "Paramount Tower" in Calicut. The Valuation Officer determined the fair market value of the hotel building at Rs. 86,28,000 as on March 31, 1984, and that of plant and machinery including electrical installations at Rs. 13,66,200. The assessee, being a partner in the said partnership firm, the Assessing Officer computed the value of the assessee's share in the interest of the firm and

consequently enhanced the returned figure of wealth by Rs. 20,87,448. The assessee claimed that the entire wealth was exempt u/s 5(l)(xxxiii) of the Act as investments made in India were out of remittances made by him from abroad. The Assessing Officer refused the claim on the ground that the exemption would not be available in respect of the amounts brought prior to his return to India. The matter was challenged before the Commissioner of Wealth-tax (Appeals), Calicut (in short "the CWT (A)"), who held that the assessee would be entitled to exemption under the aforesaid provision. The Revenue carried the matter in appeal before the Tribunal which affirmed the view of the CWT (A). It was noticed by the Tribunal that in some of the cases a different view had been taken by it and, therefore, made a reference. When the matter was heard by a Division Bench, reliance was made by learned counsel on Dr. V.P. Gopinathan Vs. Commissioner of Wealth Tax, , which supports the view taken by the Tribunal. Learned counsel for the Revenue, with reference to the provision itself, submitted that the position is clear that it is only money and the value of assets brought by the assessee into India at the time of his return with the intention of permanently residing in India which qualifies for exemption and not any other amount. Learned counsel for the respondent-assessee, however, submitted that such a narrow interpretation is not in line with the legislative intent and in any event the decision of this court has correctly taken note of the position.

3. The provision at the relevant time relating to the assessment year reads as follows :

"5. Exemptions 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--

(xxxiii) in the case of an assessee, being a person of Indian origin 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 :

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 . . ."

4. Learned counsel for the assessee submitted that the amendment brought in by the Finance Bill of 1986 (see Commissioner of Income Tax Vs. Ram Saran Chopra,), which operates with effect from April 1, 1987, throws considerable light on the controversy. By the amendment, in the opening paragraph, after the words "out of such moneys", the words "within one year immediately preceding the date of his return and at any time thereafter" has been inserted along with two Explanations, Clarificatory notes on clauses show that under the pre-existing provisions, in the case of an assessee being a permanent person of Indian origin

or a citizen of India who has returned to India with the intention of permanently residing in India, the moneys and the value of assets acquired by him out of such moneys within one year immediately preceding the date of his return and at any time thereafter will qualify for exemption and will not be included in the net wealth of such person. The exemption will, however, be limited to a period of seven successive assessment years commencing with the assessment year next following the date on which such person returned to India. Item (B) in respect of clause 40, sub-clause (a)(ii) of the notes sought to clarify that the moneys outstanding in the credit of the person to whom the clause in the Act is applicable in a non-resident (external) account in any bank in India in accordance with the Foreign Exchange Regulation Act, 1973, and any rules made thereunder on the date of his return shall be deemed to be moneys brought by him into India on that date. This amendment was operative retrospectively from April 1, 1977 and relatable to the assessment year 1977-78 and subsequent years.

5. The assets, etc., brought into India, by persons of Indian origin or by citizens of India--Section 5(l)(xxxiii). Section 5(l)(xxxiii), newly inserted by the Finance Act, 1976, with effect from April 1, 1977, grants exemption, for and from the assessment year 1977-78, to an assessee, being a person of Indian origin {as defined in Explanation 1} or a citizen of India, who was ordinarily residing in a foreign country and who, leaving such country, has returned to India with the intention of permanently residing in India. The exemption to an eligible assessee is, for the assessment years 1977-78 to 1986-87, in respect of moneys and the value of the assets brought by him in India and the value of the assets acquired by him out of such moneys. However, for and from the assessment year 1987-88, the scope of such exemption has been broadened also in respect of moneys and the value of assets brought by the eligible assessee in India and the value of assets acquired by him out of such moneys within one year immediately preceding the date of his return. Explanation 2 to Section 5(l){xxxiii} {which has been inserted by the Finance Act, 1986, with retrospective effect from April 1, 1977) clarifies that moneys standing to the credit of an eligible assessee in a non-resident {external} account in any bank in India in accordance with the Foreign Exchange Regulation Act, 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. Earlier, Department Circular No. 411 dated February 25, 1985 {see [1985] 152 ITR 227), has clarified the same position in the absence of a statutory provision in that regard. Such exemption is available only for a period of seven successive assessment years commencing with the assessment year next following the date on which such eligible assessee returned to India. Thus, where an eligible assessee has returned to India on January 1, 1978, and brought eligible assets into India, he will be entitled for exemption for the assessment years 1978-79 to 1984-85 in respect of the eligible assets.

6. According to Mr. P. Balachandran, learned counsel for assessee, three categories of assets are covered by the provisions. They are : (1) remittances

made earlier to return of the assessee, {2} money and value of assets brought by him into India, and {3} investments after arrival by way of acquisition and all the three categories are eligible for exemption. According to learned counsel for the Revenue, on the other hand, only the second and third categories are exempted. Before the addition of the expression "within one year immediately preceding the date of his return and at any time thereafter" and Explanation 2 which were simultaneously inserted - by the Finance Act, 1986 (Act 23 of 1986 (see [1986] 159 ITR 17), with effect from April 1, 1987, and April 1, 1977, respectively, the position appears to be in line with the stand taken by the Revenue. A bare reading of the provision would make it apparent that what was exempted in respect of an assessee was moneys and the value of assets brought by him into India and the value of assets acquired by him out of such moneys. "Such moneys" obviously relates to moneys and the value of assets brought by him into India. The expression "moneys and the value of assets brought by him" precedes the expression "out of such moneys". It is relat-able to moneys brought by him into India when he returns from a foreign country with the intention of staying permanently. The requirement seems to be that (a) a person of Indian origin as defined in Explanation 1 or a citizen of India, who was ordinarily residing in a foreign country ; (b) who, on leaving such country, has returned to India with the intention of permanently residing here ; (c) moneys had been brought by him into India ; and (d) assets have been acquired out of such moneys. There is another significant expression used, i.e., "on leaving such country has returned to India". Therefore, the expression "moneys and the value of assets brought by him into India" is also relatable to the factum of the assessee leaving the foreign country and returning to India. The inevitable conclusion is that only moneys brought by the assessee at the time of leaving the foreign country and the value of the assets acquired by him out of such money qualifies for exemption.

7. It is stated that from the subsequent addition with effect from April 1, 1987, a different intention is inferable. As observed by the apex court in Hariprasad Shivshanker Shukla v. A D. Divelkar [1956-57] 11 FJR 317 ; AIR 957 SC 121 and Nalnikant Ambalal Mody Vs. Commissioner of Income Tax, Bombay, , legislation founded on a mistaken or erroneous assumption has not the effect of making that law which the Legislature had erroneously assumed to be so. The court will disregard such a belief or assumption and also the provision inserted on that belief or assumption. A later statute, therefore, is normally not used as an aid to construction of an earlier one. (see : Dharangadhra Chemical Works Vs. Dharangadhra Municipality and Another,). However, when an earlier Act is truly ambiguous, a later Act may in certain circumstances serve as a parliamentary exposition of the former. The position was succinctly stated in Cape Brandy Syndicate v. IRC [1921] 2 KB 403, 414 (CA) quoted in Yogendra Nath Naskar Vs. Commissioner of Income Tax, Calcutta, , by Lord Sterndale as follows :

"I think, it is clearly established . . . that subsequent legislation, on the same subject may be looked to in order to see what is the proper construction to be

put upon an earlier Act where that earlier Act is ambiguous. I quite agree that subsequent legislation, if it proceed upon an erroneous construction of previous legislation, cannot alter that previous legislation ; but if there be any ambiguity in the earlier legislation, then the subsequent legislation may fix the proper interpretation which is to be put upon the earlier."

8. There is no necessity to deal with that question in view of the clear and unambiguous language used in the statute for the assessment year with which we are concerned.

9. The decision in Dr. V.P. Gopinathan Vs. Commissioner of Wealth Tax, , does not state the position in law correctly and is accordingly overruled.

10. The question referred to is to be answered in the negative, in favour of the Revenue and against the assessee.