
(1997) 11 MAD CK 0103
In the Madras High Court
Case No : Tax Case No. 1372 of 1985

Commissioner of Wealth Tax

APPELLANT

Vs

N. Thavamani

RESPONDENT

Date of Decision : 04-11-1997

Acts Referred:

Income Tax Act, 1961 — Section 28
Wealth Tax Act, 1957 — Section 27(3), 5(1)

Citation : (1998) 144 CTR 332 : (1999) 237 ITR 152

Hon'ble Judges : P. Thangavel, J; N.V. Balasubramanian, J

Bench : Division Bench

Advocate : Deokinandan, for the Appellant; K.M.L. Majele, for the Respondent

Judgement

N.V. Balasubramanian, J.—In pursuance of the directions of this Court in TCP No. 474 of 1982, the Tribunal has stated a case and

referred the following questions of law under s. 27(3) of the WT Act, 1957 for our opinion :

Whether, on the facts and in the circumstances of the case, the Tribunal had valid materials to hold that the individual partners of the firm (i.e., the

assessee herein) are the real owners of the assets of the firm and hence the exemption under s. 5(1)(iv) of WT Act, 1957 was allowable ?

Whether the Tribunal was right in holding that term "house" in s. 5(1)(iv) of the WT Act, 1957, would refer to any building irrespective of the

purpose for which it was used ?

2. The assessee is a partner in a firm called M/s S. M. K. Nataraja Nadar & Sons, Virudhunagar and the assessee in the course of the assessment

proceedings for the asst. yr. 1974-75 under the WT Act 1957 (hereinafter referred to as the "Act") claimed exemption under s. 5(1)(iv) of the Act

in respect of his one-third share in the value of the workshop building. The WTO, however, held that the immovable properties owned by the

assessee were not transferred in the name of the assessee as there was no registered document effecting the transfer. He further held that the

workshop building was owned by the firm and not by the partner and in any event the workshop building cannot be regarded as a "house".

In this view of the matter, he disallowed the claim of the assessee for exemption under s. 5(1)(iv) of the Act.

3. The assessee filed an appeal before the AAC and contended that there was a valid transfer of the immovable property by the firm to the partner

and the house was used for commercial purpose as well. The assessee also claimed that the house is jointly owned by the assessee along with the

other partners and the proportionate value of each co-owner would be eligible for exemption. The AAC accepted all the contentions of the

assessee and held that the assessee would be entitled to claim exemption under s. 5(1)(iv). Dissatisfied with the order of the AAC, the Revenue

preferred an appeal before the Tribunal. The Tribunal held that the term "house" would include the workshop building as well and the assessee

would be entitled to claim exemption under s. 5(1)(iv) of the Act. The Tribunal also held that, as a partner, the assessee would be entitled to claim

exemption under the said provision. It is against this order of the Tribunal the Department has sought for and obtained a reference on the questions

of law set out earlier.

4. Mr. C. V. Rajan, learned counsel for the Revenue submitted that this Court in the case of Commissioner of Wealth-tax Vs. N. Gnanamani, has

considered the other partners' claim with reference to the same firm and refused the claim for exemption under s. 5(1)(iv) of the Act in respect of

the share owned by the said partner in the firm. He, therefore, submitted that since the assessee is a partner in the same firm and since this Court

has taken the view that the assessee in Gnanamani's case was not entitled to claim exemption, the ratio would apply to the facts of this case

(supra) as well. The view of the Tribunal that the assessee is entitled to claim exemption is not sustainable in law.

5. Mr. C. V. Rajan, learned junior standing counsel for the Revenue also contended that the workshop building cannot be regarded as a house

and, therefore, the assessee in any event, is not entitled to claim exemption under s. 5(1)(iv) of the Act.

6. Mr. A. Moiz, learned counsel for the assessee submitted that subsequent to the decision rendered by this Court in the case of CWT vs. N.

Gnanamani (supra) in R. Venkatavaradha Reddiar Vs. Commissioner of Income Tax, , this Court has taken the view that the partners alone will

have the benefit of exemption under s. 5(1)(iv) of the Act and, therefore, the later decision should be applicable to the facts of the case. He also

submitted that the workshop building is also a house and the assessee is entitled to claim exemption under s. 5(1)(iv) of the Act.

7. We have carefully considered the rival submissions of learned counsel appearing for the parties. It is no doubt true that this Court in

Gnanamani's case cited supra has held that the partners are not the owners of the property and are not entitled to claim exemption under s. 5(1)

(iv) of the Act in respect of the share held by the firm. However, the said decision was considered by a subsequent decision of this Court in R.

Venkatavaradha Reddiar's case (supra) and this Court held that Gnanamani's case (supra) is distinguishable.

This Court after noticing Gnanamani's case (supra) held as under :

... in our view, is not exactly to the point. It has, in fact, considered the case in a different angle altogether, that is when a coparcener claims that a

certain immovable property, owned by the firm, has been transferred to him and the answer that even if the properties of a firm are treated as

properties held in common by all the partners as a firm is not a legal entity and cannot hold properties, there cannot be a division of the properties

purchased in the name of the firm as amongst the partners by making entries in the accounts of the firm without actual dissolution of the firm and

that even assuming that the firm's properties were owned and enjoyed in common by the partners, such common properties cannot be possessed

and enjoyed in severalty unless there is a document in writing and that such a document will require registration if the value of the partner's interest

in the property exceeds Rs. 100 is confined to the facts and the said case has really given out no ratio decidendi, which can restrain us from

accepting the judicial consensus that.

In the subsequent decision of this Court, it was held that there is no ratio

decidendi in Gnanamani's case (supra) with reference to the claim of the assessee under s. 5(1)(iv) of the Act. In view of the later decision, we are of the opinion that the principle laid down in the later decision alone would apply, though this Court in Gnanamani's case (supra) has held in another partner's case of the said firm, that the partner is not entitled to exemption. It is significant to notice that the later decisions noticed the decision in Gnanamani's case (supra) and held that the ratio decidendi in Gnanamani's case (supra) was different and the case is distinguishable. We, therefore, hold that the partners alone will have the benefit of exemption under s. 5(1)(iv) of the Act, when their individual assessments are taken up to the extent of their respective shares in the net wealth of the partnership firm as the firm is not an assessee under the provisions of the WT Act. That apart, this Court in Venkatavaradha Reddiar's case (supra) has followed several decisions of the other High Courts and noticed earlier decision of this Court and then came to a conclusion that the firm has no legal existence and as such, it cannot hold property and the partners alone are entitled to claim exemption under s. 5(1)(iv). In view of the later decision of this Court in R. Venkatavaradha Reddiar's case cited supra, which was followed in other cases, we are of the view that the Tribunal was correct in holding that the assessee as a partner of the firm is the real owner of the assets and is entitled to claim exemption under s. 5(1)(iv) of the WT Act.

8. In so far as the second question is concerned, the issue that arises is whether the workshop building can be regarded as a house within the meaning of s. 5(1)(iv) of the Act. Mr. C. V. Rajan, learned counsel for the Revenue relied upon the decision in R. Venkatavaradha Reddiar's case (supra) and submitted that the house contemplates habitability and the workshop cannot be regarded as house within the meaning of s. 5(1)(iv) of the Act. However, he fairly brought to our notice the subsequent decision of this Court in TC Nos. 763 to 765 of 1982 dt. 25th February, 1997, wherein this Court after considering the decision of Venkatavaradha Reddiar's case (supra) as well as a circular issued by the CBDT, and the decision of the Supreme Court in The Tata Engineering and Locomotive Company Ltd. Vs. Gram Panchayat, Pimpri Waghere, , held that the expression "house" is not limited to a structure designed for human habitation

and it includes any building or shed intended or used as a habitation or shelter for animals of any kind, a building in the ordinary sense or any building, edifice or structure enclosed with walls and covered, regardless of the fact of human habitation. This Court also held that the godown owned by the firm is also "house" within the meaning of s. 5(1)(iv) of the Act.

We are of the view that the later decision of this Court in TC Nos. 762 to 765 of 1982 which considered the case of R. Venkatavaradha Reddiar (supra) would apply to the facts of the case and following the said decision we hold that the workshop building can also be regarded as a house within the meaning of s. 5(1)(iv) of the WT Act. We find no infirmity in the order of the Tribunal in holding that the "house" under s. 5(1)(iv) of the Act would refer to any building irrespective of the purpose for which it is used. In this view of the matter, we answer both the questions of law referred to us in the affirmative and against the Revenue. No costs.