
(2000) 07 MAD CK 0064

In the Madras High Court

Case No : Tax Case No's. 400 of 1986 and 686 and 687 of 1988

Commissioner of Wealth-tax

APPELLANT

Vs

Smt. Muthu Zulaikha

RESPONDENT

Date of Decision : 21-07-2000

Acts Referred:

Citation : (2000) 245 ITR 800

Hon'ble Judges : N.K. Jain, Acting C.J.; N.V. Balasubramanian, J; K. Raviraja Pandian, J

Bench : Full Bench

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

Judgement

N.K. Jain, Actg. C.J.

1. The matter has been referred to us by a Division Bench of this, court, before which the tax reference came up for hearing, as it was not inclined to agree with the decision rendered by an earlier Division Bench of this court in the case of Commissioner of Wealth-tax Vs. V.T. Ramalingam and others, , and felt that the matter requires reconsideration by the Full Bench. Accordingly, to have an authoritative view of law, the following question of law has been referred for our consideration :

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the assessee is entitled to the benefit of the provision of Section 7(4) of the Wealth-tax Act even though the assessee was not the owner of an independent residential unit exclusively used by her for residential purposes ?"

2. The necessary facts in brief which give rise to the question are as under:

The assessee, an individual, filed the returns for the assessment years 1979-80 and 1980-81 claiming that she is entitled for the benefit of 1/3rd share in accordance with the provisions contained in Section 7(4) of the Wealth-tax Act,

1957 (hereinafter referred to as the "Act"). The Wealth-tax Officer rejected the claim and found that though the assessee is a co-owner, since the house which she had exclusively used for residential purposes throughout the period of 12 months preceding the valuation date, was not an independent residential unit, she is not entitled for the benefit of the provisions of Section 7(4) of the Act. On appeal, the Commissioner of Income Tax (Appeals) allowed the appeal holding that the test of exclusiveness of the user of the house must be determined with reference to the question as to what was the assessee's user of the house where she was a co-owner and, therefore, exemption under that section was admissible. Aggrieved by this, the Revenue preferred an appeal before the Income Tax Appellate Tribunal (hereinafter referred to as the "the Tribunal") and the Tribunal, on consideration, held that the assessee will be entitled for the privilege of having the market value of that portion u/s 7(4) of the Act since exemption u/s 7(4) of the Act was admissible, following the decision in the case of V.N. Nichani v. WTO (W.T. A. Nos. 447, 448 and 449 (Mad) of 1974-75, dated March 23, 1978).

3. The matter came up before a Division Bench of this court and the Division Bench found it difficult to agree with the view expressed by this court in the case of Commissioner of Wealth-tax Vs. V.T. Ramalingam and others, wherein Section 5(I)(iv) of the Act, which is similar to Section 7(4) of the Act, in the language used therein, was interpreted by this court to mean that in order to claim the benefit of that provision, the person should be residing exclusively in an ascertained part of the house, in case he is a co-owner and that it would not suffice that he resides along with other co-owners in the building, which clearly answers the description of the house and held that the word "exclusively used" refers to the purpose of the user and not the quality of the ownership. The Division Bench further observed that :

"In principle we find it difficult to subscribe to the view that a co-owner who resides in the house along with other co-owners should by reason of his being a co-owner be denied the benefit of Section 7 of the Act which requires that the person claiming the benefits thereunder should be the owner of the house, and should be residing therein. All these requirements are satisfied in the case of a co-owner".

4. Therefore, in view of this conflicting view, the Division Bench referred the matter on the question of law referred to above.

5. The assessee is not present, and we have taken the assistance of Mr. P.P.S. Janarfhana Raja, learned counsel, to decide the controversy.

6. Mr. C.V. Rajan, learned senior standing counsel for the Revenue, submits that one of the conditions that is necessary to be fulfilled is that the house or a part of the house belongs to the assessee and it should have been exclusively used by him for residential purposes. In this case, though she is a co-owner, the house or a part of the house was not used exclusively by her for residential use. He

further submits that the right to use cannot ipso facto satisfy the condition, and mere right to use is not sufficient to hold the field. He relied upon the decision of this court in Commissioner of Wealth-tax Vs. V.T. Ramalingam and others, and submitted that though the ownership of a house or part of a house might include the right to use the house or part thereof, in order to avail of the benefit of exemption u/s 5(I)(iv) of the Act, the mere existence of the right would not suffice but the actual exercise of the right of user must also be made out.

7. On the other hand, Mr. P.P.S. Janarthana Raja, submits that the meaning of the word, "exclusive" is to be seen, i.e., the intention to live in the house is important and necessary, and the house should have been used for residential purposes throughout the period of 12 months preceding the valuation date. He relied on the decision of the Allahabad High Court in CIT v. Rani Kaniz Abid [1972] Tax LR 587. In that case, Section 23(2) of the Income Tax Act, 1961, was considered. In that case, the assessee owned a house in Karachi and used to go there very often and even though the assessee's daughter and son-in-law resided in that place, it was held that it cannot be said that the assessee was not in occupation of the house as owner in her residence. So also, the Andhra Pradesh High Court in Commissioner of Wealth Tax Vs. B.M. Bhandari (Executor of the Estate of the Late R.S. Pannalal Heralal Lahoti), , has considered the expression found in Section 5(I)(iv) of the Wealth-tax Act, viz., "exclusively used by him for residential purposes" and observed as follows (page 557) :

"The requirement of exclusive use by the assessee of the house property for residential purposes must be construed pragmatically, fairly and reasonably. But it cannot be construed in a pedantic sense or impracticable method. An assessee may himself live or use the building" for residential purpose. He may allow any member of his family to live or use the same for residential purpose. The assessee need not also or is not expected to use his building, throughout the year or without any interruption. He may not actually use the house by himself. He may go out for some time and some of his relatives or friends may be there for a few months with his permission. Unless he has let out the same for rent or has allowed it to be used for any commercial purpose, it cannot be said that he has not exclusively used it for residential purpose. The requirement of exclusive use of the building for residential purpose must, therefore, be construed in a practical and pragmatic way rather than in a pedantic sense. The trend of law also is in favour of such a construction."

8. Learned counsel also relied on the decision of the Andhra Pradesh High Court which referred to a judgment of the Delhi High Court in CWT v. Mrs. Avtar Mohan Singh [1972] 83 ITR 52. In that case, it was held that the physical residence of the family of the assessee without any legal right to share the use of the house by the assessee does not come in the way of exclusiveness of the use of the house by the assessee. Mr. P. P. S. Janarthana Raja also relied on the decision of this court in Commissioner of Wealth Tax Vs. W. Doraisamy, and pointed out that the legislative intent in the use of the words, "the exclusive use for residential

purposes by the assessee throughout the period of 12 months immediately preceding the valuation date" does not appear to permit a wider meaning of residence being imported to understand the expression, "residential purposes" and the expression, "exclusively used by him" should be taken to exclude altogether occupation of the house by any other person and the absence of the assessee in a period of 12 months immediately preceding the valuation date. It was submitted that the expression, "house belonging to the assessee" is referable to the ownership of the house. It was also submitted that in the case of a lease, there is an element of transfer of property and in the case of licence, there is a withdrawal by the owner on conditions of payment of a fee, from occupation and the use is not exclusively by him.

9. In Commissioner of Wealth-tax Vs. V.T. Ramalingam and others, , the Division Bench held that the assessee had not even put forward any claim that at least a portion of the house, referable to their shares, were in the occupation of the assessee and the members of their families for residential purposes. The Tribunal had also not found that some portions referable to the shares owned by the assessee were in their use, as and for their residence, with the members of their families. He has not been able to show that he is the owner of the house. Under the circumstances, the interpretation given in that case cannot be applicable to the facts of the case on hand. Admittedly, in this case, the house of the co-owner/assessee was not given for rent or used for commercial purposes. As such, applying the interpretation given in that case is not correct.

10. We have heard learned counsel on both sides and perused the materials on record.

11. The cardinal law of interpretation is that if the language is simple and unambiguous, it is to be read with the clear intention of the legislation. Otherwise also, any addition or subtraction of words is not permissible. It is also not proper to use a sense which is different from what it ordinarily conveys. However, each case depends upon the facts of its own. It is settled that a person who is having a right over the property may himself live or use the property exclusively.

12. The only short point which arises for consideration is whether the expression, "exclusively used by him for residential purposes throughout the period of 12 months immediately preceding the valuation date" in Section 7(4) of the Act can mean nothing but that the intention or animus manendi of the assessee was to live in the house whenever she returned and that she had not created any interest in respect of the said property in favour of any other person, that is to say, there is no element of right in favour of any other person in the house. As culled out from the facts and circumstances of the case, while it was not disputed that the assessee was occupying the house in the position of a co-owner, it is difficult to accept that a house property, portions of which had been owned by the co-owners, in an undivided state, could not have been used by the assessee for residential purpose as contemplated u/s 7(4) and the assessee is not entitled

to the benefit u/s 7(4) of the Act.

13. Learned senior standing counsel for the Revenue relied on the decision of this court in Commissioner of Wealth Tax Vs. W. Doraisamy, , wherein it was brought to the attention of the court that the requirement of exclusive use by the assessee of the house property for residential purposes must be construed fairly and reasonably and the requirement of exclusive use of the building for residential purpose must, therefore, be construed in a practical and pragmatic way rather than in a pedantic sense. On the other hand, learned standing counsel submitted that the legislative intent in "the exclusive use for residential purposes by the assessee throughout the period of 12 months immediately preceding the valuation date" does not appear to permit a wider meaning of residence being imported to understand the expression, "exclusively used by him" should be taken to exclude altogether occupation of the house by any other person and in the absence of the assessee, in any period of 12 months immediately preceding the valuation date.

14. A mere perusal of Section 5(1)(iv) of the Act clearly shows that it will apply only in the case of individual assessments of co-owners and not to the total value of the property jointly owned by the co-owners. Section 5(1)(iv) reads thus :

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

15. The purpose should be residential, meaning thereby it should not be used for commercial or non-residential, and it should be used exclusively for residential purposes. So, the argument of learned senior standing counsel for the Revenue that it should be read as "solely for residential purposes by the assessee" is not acceptable. What is required is that the house should have been exclusively used by him for residential purposes throughout the period of 12 months immediately preceding the valuation date meaning thereby it should not have been let out for rent or for the use of commercial purposes. In the instant case, the assessee is the co-owner and the right of the property was not at all disputed. The finding of the Tribunal that mere right to use will not satisfy the condition. As stated, the interpretation given by the Revenue that the words "exclusive use" should be read as "solely for residential purposes by the assessee" is not acceptable. In our view, the right of the property alone will play a prominent role and not the exclusive use. What is to be seen is whether the intention of the assessee is to live in the house. We are of the view that the expression "exclusive use" should be read to mean that the house should be used for residential purposes meaning thereby it should not be let out for rent or given on licence or used for commercial purposes. We are in full agreement with the decision of the Andhra Pradesh High Court in Commissioner of Wealth Tax Vs. B.M. Bhandari (Executor of the Estate of the Late R.S. Pannalal Heralal Lahoti), , that the requirement of exclusive use of the building for residential purpose must, therefore, be construed in a practical and pragmatic way rather than in a pedantic sense.

16. Further, we also hold that the decision in Commissioner of Wealth-tax Vs. V.T. Ramalingam and others, , was based on the facts of the case, as it was found that the assessee had not even put forward any claim that at least a portion of the property referable to his share was in the occupation of the family members. In Commissioner of Wealth-tax Vs. V.T. Ramalingam and others, , it was also not found that some portion referable to the share owned by the assessee was used as residence by the assessee and the members of his family. Hence, the decision in Commissioner of Wealth-tax Vs. V.T. Ramalingam and others, , was based on the facts of the case. We also clarify that the observation made by this court in Commissioner of Wealth-tax Vs. V.T. Ramalingam and others, , that in order to avail of the benefit of Section 5(1)(iv) of the Act, the mere existence of right would not be sufficient but the actual user must also be made out means that the court has not ruled out the possibility that the intention of the assessee to live in the house is not sufficient. As already observed, if there was any intention on the part of the assessee to live in the house or in any part thereof whenever she returned and she had riot created any interest in the said property in favour of any other person, that is to say, there is no element of right in the property of any other person in the house, and so long as the property is not used for non-residential purposes, we hold that the assessee has satisfied the ingredient, viz., "exclusively used by her for residential purposes throughout the period of twelve months immediately preceding the valuation date" u/s 7(4) of the Act. We hold that the assessee, on the facts of the case, has satisfied all the conditions prescribed in Section 7(4) of the Act to get the benefit of the said sub-section.

17. As discussed above, the decision of this court in the case of Commissioner of Wealth-tax Vs. V.T. Ramalingam and others, , is not applicable to the facts of this case and we are answering the question referred to us in the affirmative and in favour of the assessee.

18. We are thankful for the assistance rendered by Mr. P.P.S. Janarthana Raja who acted as amicus curiae.