

(1991) 07 KL CK 0055

In the High Court Of Kerala

Case No : Income-tax Reference No"s. 227 to 232 of 1982

Commissioner of Wealth-tax

APPELLANT

Vs

Susheela P. Thampy

RESPONDENT

Date of Decision : 27-07-1991

Acts Referred:

Citation : (1991) 3 ILR (Ker) 393 : (1992) 196 ITR 442

Hon'ble Judges : K.P. Radhakrishna Menon, J;K.K. Usha, J

Bench : Division Bench

Advocate : P.K.R. Menon, for the Appellant; K.L. Narasimhan, Advocate", for the Respondent

Judgement

K.P. Radhakrishna Menon, J.—The Commissioner of Wealth-tax, Thiruvananthapuram, is before us.

2. The questions referred for our opinion read :

"1. Whether, on the facts and in the circumstances of the case, the assessee is entitled to claim exemption u/s 5(1)(iv) of the Wealth-tax Act ?

2. Whether, on the facts and in the circumstances of the case, if the answer to the above question is in the negative, the direction to the Wealth-tax Officer to grant the exemption is justified ?"

3. The assessee purchased a house property on June 7, 1971, at Bangalore for a total consideration of Rs. 1,12,730. In the declaration dated June 22, 1972, filed before the assessing authority, the assessee had stated that the property was purchased by her for the "thavazhi" consisting of herself, her son, Dr. Mohan P. Thampy, and daughter, Smt. Thara K. Nair, However, by a letter dated January 1, 1973, the assessee had informed the Department that, as on the date of purchase, the assessee had with her a sum of Rs. 31,818 belonging to the "thavazhi" (as per her books of account) and the said amount was made available to purchase the property. That, however, was not sufficient. She,

therefore, had to contribute a sum of Rs. 80,813 from out of her own funds for the purchase of the property. In conclusion, the assessee stated that the above Rs. 80,813 has been converted by her into property belonging to the family. Since the property acquired was a building, the assessee contended that the same shall not be included in her net wealth as she is entitled to the benefit of Section 5(1)(iv) of the Wealth-tax Act.

4. The assessing authority was of the view that the amount contributed by the assessee under the circumstances can be deemed to be converted property within the meaning of Section 4(1A) of the Wealth-tax Act and since the said converted property cannot be said to be a house or a part of the house, the exemption claimed by the assessee u/s 5(1)(iv) cannot be granted. The assessee challenged this order by filing an appeal before the Appellate Assistant Commissioner. The Appellate Assistant Commissioner affirmed the order of the Wealth-tax Officer and, consequently, dismissed the appeal. The second appeal filed by the assessee was allowed by the Appellate Tribunal by order dated May 11, 1981. The questions made mention of hereinbefore arise from out of this order.

5. Learned counsel for the Revenue submitted that the Tribunal having found that the amount contributed by the assessee for the purchase of the house is converted property within the meaning of Section 4(1A) and not house property, should not have allowed the exemption claimed by the assessee u/s 5(1)(iv) of the Act. Expanding this argument, he submitted that the exemption u/s 5(1)(iv) can be granted only in the event of a house being treated as converted property within the meaning of Section 4(1A). Since the assessee has not claimed exemption under any other sub-clauses of Section 5, there is no need to go into the question whether this converted property requires to be excluded while computing the net wealth of the assessee.

6. Counsel for the assessee, on the other hand, contended that since the house was purchased with the funds belonging to the assessee also, the assessee is entitled to get the benefit of Section 5(1)(iv) because the said section provides for the exclusion of one house or part of a house belonging to the assessee from the net wealth. Counsel in his connection made a particular reference to Section 4(3)(b) of the Act.

7. Before we go into the legal aspects of these competing contentions, we would like to reproduce the sections (leaving out parts which are not relevant in the context) of the Wealth-tax Act. They are :

"4. Net wealth to include certain assets.--In computing the net wealth-- . . . ,

(1A) Where, in the case of an individual being a member of a Hindu undivided family, any property having been the separate property of the individual has, at any time after December 31, 1969, been converted by the individual into property belonging to the family through the act of impressing such separate property with the character of property belonging to the family or throwing it into

the common stock of the family or been transferred by the individual, directly or indirectly, to the family otherwise than for adequate consideration (the property so converted or transferred being hereinafter referred to as the converted property), then, notwithstanding anything contained in any other provision of this Act or in any other law for the time being in force, for the purpose of computing the net wealth of the individual under this Act for any assessment year commencing on or after April 1, 1972,--

(a) the individual shall be deemed to have transferred the converted property, through the family, to the members of the family for being held by them jointly ;

(b) the converted property or any part thereof shall be deemed to be assets belonging to the individual and not to the family ; . . .

(3) where the value of any assets is to be included in the net wealth of an assessee in accordance with Clause (a) of Sub-section (1) or Sub-section (1A), - . . .

(b) the provisions of Section 5 shall apply in relation to such assets as if such assets were assets belonging to the assessee."

8. It is clear from the plain and unambiguous language used in Section 4(1A) that the separate property of an individual, being a member of a Hindu undivided family, thrown by him into the hotchpot of the family directly or indirectly and otherwise than for adequate consideration will be called converted property and this converted property, for the purpose of computing the net wealth of the individual for the assessment year commencing on or after April 1, 1972, shall be deemed to be his asset and not the asset of the family. That means, the converted property also will be treated as forming part of the net wealth of the individual. Clause (b) of Sub-section (3) of Section 4 says that where the value of any assets is found includible in the net wealth of an assessee in accordance with Section 4(1A), the provisions of Section 5 will apply in relation to such assets as if such assets were assets belonging to the assessee. Section 5 provides that, subject to the provisions of Sub-section (1A), wealth-tax shall not be payable by an assessee in respect of the assets enumerated thereunder. In other words, such assets which are enumerated u/s 5 shall not be included in the net wealth of an assessee.

9. The cumulative effect of these provisions is that the assessee who is deemed to be the owner of the converted property need not pay wealth-tax in respect of the converted property if the same comes under any of the provisions of Section 5.

10. Similar view has been taken by the Rajasthan High Court in Commissioner of Wealth-tax Vs. B.T. Agrawal, The principles enunciated above have been accepted by this court in Commissioner of Wealth-tax Vs. K.V. Abraham, , by the Karnataka High Court in Commissioner of Wealth Tax, Mysore Vs. K.M. Eapen, and also by the Madras High Court in S. Naganathan Vs. Commissioner of Wealth

Tax, .

11. Having understood the position thus, let us see whether the claim of the assessee for exemption u/s 5(1)(iv) is maintainable. That the converted property cannot be said to be a house property is beyond challenge. That the assessee had contributed only a specified sum towards the consideration for the purchase of the house at Bangalore is beyond dispute. To put it differently, going by the findings, the contributed property cannot be said to be a house property.

12. If that be the position, the claim for exemption u/s 5(1)(iv) is not sustainable. The Tribunal must, therefore, be held to have erred in holding that the assessee was entitled to get the benefit of Section 5(1)(iv) of the Act.

Question No. 1, therefore, is answered in the negative and against the assessee. Consequently, question No. 2 is answered in the negative and in favour of the Department.

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