
(1992) 04 MAD CK 0049

In the Madras High Court

Case No : T.C. No's. 932, 933 and 946 to 960 of 1980 (References No's. 312, 13, 326 to 330 and 331 to 340 of 1980)

Commissioner of Wealth-tax

APPELLANT

Vs

V.T. Ramalingam and others

RESPONDENT

Date of Decision : 22-04-1992

Acts Referred:

Income Tax Act, 1961 — Section 119, 52(2)

Wealth Tax Act, 1957 — Section 10(22), 13, 25(2), 27(1), 5(1)

Citation : (1993) 115 CTR 225 : (1993) 201 ITR 839

Hon'ble Judges : V. Ratnam, J;K.A. Thanikkachalam, J

Bench : Division Bench

Advocate : N.V. Balasubramaniam, for the Appellant; T.V. Balakrishnan, for the Respondent

Judgement

Ratnam, J.—In these tax case reference u/s 27(1) of the Wealth-tax Act, 1957 (hereinafter referred to as "the Act"), at the instance of the

Revenue, the following common question of law has been referred to this court, for its opinion, in respect of the assessment years 1971-72, 1966-

67 to 1970-71, 1966-67 to 1970-71 and 1966-67 to 1970-71, respectively, with reference to three assessees :

Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was correct in law in holding that the benefit of exemption u/s

5(1)(iv) of the Wealth-tax Act, 1957, has to be granted to the assessees for the assessment year 1971-72/1966-67 to 1970-71/1966-67 to

1970-71/1966-67 to 1970-71 ?

2. The assessees are three brothers and they, along with their father, owned and enjoyed a house property. In the course of the proceedings for

assessment to wealth-tax, in respect of the assessment years set out earlier, each one of the assesseees claimed exemption u/s 5(1)(iv) of the Act.

This claim for exemption was allowed in the original assessment, but an objection was raised subsequently by the Revenue audit, which led to the

reopening of the assessments and the withdrawal of the exemption granted earlier to the assesseees. On appeal by the assesseees, the Appellate

Assistant Commissioner held that each one of the assesseees was entitled to the benefit of exemption u/s 5(1)(iv) of the Act. On further appeal

before the Tribunal by the Revenue, the Tribunal, purporting to follow the decision of a Special Bench of the Tribunal in W. T. A. Nos. 447 to

449/MDS/1974-75 in the case of one Sri V. N. Nichani, held that the test of exclusiveness of the user of the house must be determined with

reference to the question whether the assesseees user of the house was as of right and since the assesseees, as co-owners, had a right to reside in the

property, u/s 5(1)(iv) of the Act the benefit of exemption was available to the assesseees. That is how the common question of law set out earlier

has arisen, though the assesseees as well as the assessment years, in respect of those assesseees, are also different.

3. Learned counsel for the Revenue contended that the Tribunal had not found that the assesseees had fulfilled the requirements of section 5(1)(iv)

of the Act in order to be eligible for the exemption granted thereunder and though parts of the house might have belonged to the assesseees, it had

not been established by the assesseees that those parts were exclusively used by the assesseees for residential purposes and, therefore, the Tribunal

was not justified in granting the benefit of exemption to the assesseees u/s 5(1)(iv) of the Act. Reference in this connection was also made by

learned counsel to the decisions in Controller of Estate Duty Vs. K. Hilal, and R. Janardhanan and Another Vs. Commissioner of Wealth-tax, . On

the other hand, learned counsel for the assesseees submitted that as owners of parts of the property, the assesseees were, as a matter of right,

entitled to reside therein and that would be sufficient to enable the assesseees to claim the benefit of exemption u/s 5(1)(iv) of the Act. Strong

reliance in this connection was placed upon the decisions in Commissioner of Wealth Tax Vs. B.M. Bhandari (Executor of the Estate of the Late

R.S. Pannalal Heralal Lahoti), , Commissioner of Wealth-tax Vs. Smt. Vimlabai Kantilal Porwal, and Commissioner of Wealth-tax, Tamil Nadu-V

Vs. K. Ramachandra Chettiar, . In addition, learned counsel for the assessee also relied on a circular of the Board, in F. No. 10/69 of 1969

Wealth-tax, dated August 26, 1969, to the effect that, having regard to the difficulties that may arise with regard to the grant of relief u/s 5(1)(iv) of

the Act in cases of property wherein two or more co-owners reside jointly, the exemption u/s 5(1)(iv) of the Act should be allowed in the

individual assessment of the co-owners separately so long as the property is not used for any purpose other than residence of the co-owners.

Referring to and relying upon the decisions in Rajan Ramkrishna Vs. Commissioner of Wealth-tax, Gujarat-I, and K.P. Varghese Vs. Income Tax

Officer, Ernakulam and Another, , learned counsel for the assessee submitted that even if the circular departed from what otherwise would be a

correct or proper interpretation of the provisions of section 5(1)(iv) of the Act, such a circular, being contemporanea expositio, would be legally

binding on the Revenue which would justify the exemption granted to the assessee u/s 5(1)(iv) of the Act. In answer to this, learned counsel for the

Revenue, maintained that the circulars issued u/s 13 of the Act may control the exercise of the power of the Officers of the Department in

administrative, but not in quasi-judicial matters, and section 13 of the Act did not imply that any direction or instruction could be given to the

officers in the exercise of their quasi-judicial functions. It was also further contended, relying upon the decisions in A.L.A. Firm Vs. Commissioner

of Income Tax, ; Shri Shubhlaxmi Mills Limited Vs. Additional Commissioner of Income Tax, Gujarat, ; Keshavji Ravji and Co. v. CIT :

[1990]183ITR1(SC) and A.L.A. Firm Vs. Commissioner of Income Tax, Madras, , that there cannot be pre-emption of a judicial interpretation

by a circular by which neither the Tribunal nor the High Court would be bound and the circular cannot detract from the provisions of the Act.

4. Before proceeding to examine the contentions thus raised, it would be necessary to set out the relevant provision of the act under which the

assessee had claimed exemption as they stood in the assessment years in question. u/s 5(1)(iv) of the Act, 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 and exclusively used by him for residential purposes". It would be

unnecessary to refer to the proviso, as it was not disputed that it would not be relevant for our present purposes. From section 5(1)(iv) of the Act, extracted above, it is manifest that the availability of the exemption thereunder is inextricably linked to and bound up with ownership of the assesseees to part of a house and the user of what is owned by them for residential purposes only. Regarding the ownership of the assesseees to parts of the house, there cannot be, and indeed there was not, any controversy. Therefore, one of the requirements u/s 5(1)(iv) of the Act to claim the benefit of exemption had been fulfilled by the assesseees. However, the circumstance that parts of the house belonged to the assesseees would not by itself enable the assesseees to claim the benefit of exemption u/s 5(1)(iv) of the Act unless the assesseees also establish that part of the house so owned by the were exclusively used by them for residential purposes. The use of the word "and" between the words "one house or part of a house belonging to the assessee," and "exclusively used by him for residential purposes", would clearly establish that only on a cumulative fulfilment of ownership by the assessee of a part of the house and the exclusive user of what is owned, by the assessee, for residential purposes, would enable the assessee to claim the benefit of exemption. The provisions granting exemption has to be read thus : If a house belongs to the assessee and that house is exclusively used by the assessee for residential purposes then he would be entitled to the benefit of exemption u/s 5(1)(iv) of the Act. Likewise, if a part of the house belongs to the assessee, then that part of the house belonging to the assessee must have been exclusively used by the assessee for residential purposes. Thus looked at, before the benefit of exemption u/s 5(1)(iv) of the Act could be claimed the twin requirements of ownership of the part of the house and the user by the assessee of the part so owned, exclusively for residential purposes have to be satisfied. It may also be pointed out that the exclusive user by the assessee for residential purposes contemplated u/s 5(1)(iv) of the Act cannot be so construed as to postulate the user by the assessee only, for residential purposes, for, when the purpose is stated to be residential, the assessee could use the house or the part of the house owned of his family. It could not have been contemplated that, in order to get the benefit of exemption, the assessee was expected to lead alone the life of an ascetic or recluse, away from all the members of his family. Implicit in the use of

the expression ""residential purposes"" is the idea that the assessee could live with the members of his family, but such user should be personal user

for residence and not a commercial or non-residential user. Merely because the assessee uses the house or part thereof with the members of his

own family for residential purposes, such user is not any the less exclusive, so far as the assessee is concerned. Thus, the availability of exemption

u/s 5(1)(iv) of the Act is related to the ownership of a part of the house in this case, and also the user of what is so owned by the respective

assessee, in the particular manner indicated by section 5(1)(iv) of the Act. We find from the orders of the Tribunal in T. C. Nos. 932 and 933 of

1980, that it had purported to follow the order of the Special Bench of the Tribunal in W. T. A. Nos. 447 to 449/MDS/1/(MDS) of 1974-75

dated March 23, 1978. In T. C. Nos. 946 to 950 of 1980, the Tribunal had followed its order which is the subject-matter of reference in T. C.

Nos. 932 and 933 of 1980. In regard to T. C. Nos. 951 to 955 of 1980 and 956 to 960 of 1980, the Tribunal had purported to follow its earlier

orders, forming the subject-matter of reference in T. C. Nos. 932 and 933 of 1980 and also the decision of the Special Bench in W. T. A. Nos.

447 to 449/(MDS) of 1974-75, dated March 23, 1978. It, therefore becomes necessary to examine in some detail the basis of the decision of the

Special Bench of the Tribunal in W. T. A. Nos. 447 to 449/(MDS) of 1974-75. In that case, a testator bequeathed a house property in favour of

his two sons in moieties. One of the sons claimed the benefit of exemption in respect of his half share u/s 5(1)(iv) of the act and that was granted

and the Commissioner of Wealth-tax, realising that the assessee was only a co-owner and that it was difficult to specify which part of the house

belonged to him and it was also more difficult to establish which particular portion of the house was used by him, exclusively for residential

purposes, came to the conclusion that the order of the Wealth-tax Officer was erroneous and prejudicial to the interests of the Revenue and u/s

25(2) of the Act, deleted the exemption granted u/s 5(1)(iv) of the Act. On appeal by the assessee before the Tribunal, the Tribunal, referring to

CWT v. Mrs. Avtar Mohan Singh [1972] 83 ITR 52, took the view that the exclusive user contemplated should be construed with reference to

the purpose and not the person and if the exclusive user should be construed with reference to the person, the members of the family of the

assessee cannot reside with him and it was not the intention of the Act that the benefit of exemption should be lost and, therefore, the test of exclusiveness of the user must be determined with reference to the question whether the user of the house was as of right and since the assessee, as a co-owner, had a right to reside in the property, the benefit of exemption had been rightly granted to him. The Tribunal also took note of the omission of the words "exclusively used by him for residential purposes" occurring in section 5(1)(iv) of the act by the Finance (No. 2) Act, 1971, with effect from April 1, 1972, to infer that the legislative intent was that exclusive user contemplated in section 5(1)(iv) of the Act should be construed with reference to the purpose. We have carefully perused the order of the Tribunal looking for the reasons in support of the conclusions arrived at by it. We find that the Tribunal had equated the right to use the house or a part of the house as one of actual user thereof by the assessee. Though 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(1)(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 as, otherwise, one of the requirements u/s 5(1)(iv) of the Act would remain unfulfilled. Ownership of a house or part of a house, in the sense of its belonging to an assessee, is different from the user thereof. The reasoning of the Tribunal would appear to indicate that mere ownership, without user, of the house or part of the house would suffice to satisfy the requirements of section 5(1)(iv) of the Act. We are unable to agree with this line of reasoning. The right to live in a house or a part of the house is not the same as living in it, as and by way of actual residence. It is not difficult to conceive of cases where even with a right to live, such a right may not be exercised and in such a case, it cannot be said that the requirements regarding user of the house or part thereof owned by the assessee for residential purposes had been made out. The omission of words in section 5(1)(iv) of the Act, by the finance (No. 2) Act, 1971, with effect from April 1, 1972, cannot also, in our view, be construed as throwing any light upon the exclusive user by the assessee for residential purposes provided for in section 5(1)(iv) of the Act till March 31, 1972. Even on the footing that the exclusive user contemplated in section 5(1)(iv) of the act related to the purpose, as the Tribunal construed, then, that had also to be

satisfied before the benefit of exemption could be claimed. We have earlier pointed out that merely because the assessee resides in the house or part thereof with the members of his family, that would not deprive the assessee of the benefit of exemption and the reasoning of the Tribunal that, if the exclusive user is to be constituted with reference to a person, the benefit of exemption will be lost to the assessee cannot, therefore, be regarded as correct. The circumstance that the assessee and his brothers would be deprived of the benefit exemption u/s 5(1)(iv) of the Act would certainly not be a ground for granting exemption, even if the requirements of section 5(1)(iv) of the act are not satisfied and we are unable to accept that as a reason which would justify the conclusion of the Tribunal. We are, therefore, unable to subscribe to the view taken by the Tribunal that if the right to reside is established, that would suffice to claim the benefit of exemption without the need to satisfy the exclusive user by the assessee for residential purposes. When we turn to the facts in these references, we find that the assessees 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 assessees 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 assessees, were in their use, as and for their use, as and for their residence with the members of their families. When it is not disputed that the assessees were all in the position of co-owners, it is difficult to accept that they could have asserted exclusive user over a part of the house for residential purposes. We are unable to accept that a house property portions of which had been owned by the assessees, in an undivided state, could have been exclusively used by the assessees for residential purposes, as contemplated under the latter part of section 5(1)(iv) of the Act. We, therefore, hold that the view taken by the Tribunal in W. T. A. Nos. 447 to 449/(MAD) of 1974-75 by its order, dated March 23, 1978, is not correct and cannot be applied to the case of the assessees.

5. We may now refer to the decisions relied on by learned counsel for the Revenue and the assessees regarding the manner in which section 5(1)(iv) of the Act should be interpreted. In Controller of Estate Duty Vs. K. Hilal, , examining the availability of the benefit of exemption u/s 33(1)(n)

of the Estate Duty Act, 1953, wherein the expression ""exclusively used by the deceased for his residence"" occurs, it was pointed out that those words would postulate the existence of a right of user and not a mere permissive user or user otherwise than under a right and that, on the facts of that case, user by the deceased as residence was not exclusive, but only permissive or by sufferance. This decision, in our view, does not at all in any manner assist the Revenue. In *R. Janardhanan and Another Vs. Commissioner of Wealth-tax*, , though section 5(1)(iv) of the Act arose for consideration, the main question was whether a right of residence conferred on a widow in respect of a house with vested remainder in favour of her sons would preclude the sons from claiming the benefit of exemption u/s 5(1)(iv) of the Act. In that context, it was laid down by this court that the vested remaindermen were owners of part of the property and in view of the admitted factual residence of the sons in those premises, the benefit of exemption u/s 5(1)(iv) of the Act was made available to the remaindermen. Such is not the case here, where, as already pointed out, there was neither a claim by the assesseees that they were using portions of the house property for their residence nor a finding to that effect rendered by the Tribunal. This decision cannot also in any manner support the case of the Revenue.

6. *Commissioner of Wealth Tax Vs. B.M. Bhandari (Executor of the Estate of the Late R.S. Pannalal Heralal Lahoti)*, , relied on by learned counsel for the assesseees, dealt with the question whether an executor, who had not completed the administration of the estate, living in the house of the testator along with the beneficiaries, would not be entitled to the benefit of section 5(1)(iv) of the Act. The Andhra Pradesh High Court held that the executor would fall within the definition of ""assessee"" under the Act and that he, along with the members of the family, had been living in the house and was, therefore, entitled to the benefit of exemption on a practical and pragmatic construction of section 5(1)(iv) of the Act. This decision does not support the case of the assessee for claiming the benefit of exemption u/s 5(1)(iv) of the Act on the facts of these references. In *Commissioner of Wealth-tax Vs. Smt. Vimlabai Kantilal Porwal*, , the assessee had purchased a house jointly with two others and one of them claimed the benefit of section 5(1)(iv) of the Act with reference to one-third of the interest. The Wealth-tax Officer, after taking into account the

total value of the house and giving statutory deduction admissible u/s 5(1)(iv) of the Act, brought to tax the assessee's one-third share, though the assessee claimed that full exemption u/s 5(1)(iv) of the Act should be allowed on the one-third of the total value of the property. On appeal, the appellate Assistant Commissioner held that the value of the property should be first determined and divided amongst the joint owners and from the value of such divided shares, the statutory deduction u/s 5(1)(iv) of the Act should be given to each joint owner. The Tribunal upheld the interpretation of the Appellate Assistant Commissioner and on further reference, the view of the Tribunal was also upheld. It is seen that the decision dealt with section 5(1)(iv) of the Act which stood as follows : ""One house or part of a house belonging to the assessee"". In view of the aforesaid provision interpreted by the court, as it then stood, no exception could be taken to the correctness of the decision rendered, but that decision would be wholly inapplicable with reference to the interpretation of section 5(1)(iv) of the Act as it stood at the time of relevant assessment years in question in these references. The other decision in Commissioner of Wealth-tax, Tamil Nadu-V Vs. K. Ramachandra Chettiar, related to the assessment year 1973-74 when section 5(1)(iv) of the Act had undergone a change and it was in that context that the question whether the assessee who owned a life interest in a house would be entitled to the benefit of exemption u/s 5(1)(iv) of the Act arose. The Appellate Assistant Commissioner and the Tribunal upheld the claim of the assessee that even a mere life interest of the assessee in the house would be sufficient to secure the benefit of exemption u/s 5(1)(iv) of the Act. This decision also does not assist the assessee. Thus, on a consideration of the cases to which our attention has been drawn, we find that those decision are not helpful in advancing either the case of the Revenue or that of the assessee.

7. That leaves for consideration the argument regarding the availability of the benefit of the circular, referred to earlier, to the assessee. There was a lot of debate about the effect of the circular issued u/s 13 of the Act. We find that, before the Tribunal, there was no attempt made by the assessee to rely upon the circular. Even so, the common question referred to us could be regarded as comprehensive enough even to take in that

aspect relating to the claim for exemption based on the circular. The circular issued u/s 13 of the Act could at best be regarded as an administrative

instruction issued by the Board of the Wealth-tax Officers and our attention has not been drawn to any provision either in the Act or else where to

show that the issue of such administrative instructions would be binding upon the Tribunal or even us. We may, in this connection, refer to the

decision to which our attention has been drawn by counsel on both sides.

8. A.L.A. Firm Vs. Commissioner of Income Tax, , relied on by learned counsel for the Revenue, points out that judicial powers cannot be

controlled by circulars issued u/s 119 of the Income Tax Act, 1961, and those circulars could be regarded as pertaining to administrative aspects

and not judicial aspects of the administration of the Act and that the circulars of the Central Board had no binding force with reference to the

assessment in question. In A.L.A. Firm Vs. Commissioner of Income Tax, Madras, , on appeal from A.L.A. Firm Vs. Commissioner of Income

Tax, , the Supreme Court, while confirming the decision of this court in A.L.A. Firm Vs. Commissioner of Income Tax, , took the view that the

terms of the circular cannot be of any assistance to the assessee in answering the issues and in that view, the Supreme Court refrained from

answering the third question posed by the Tribunal. It is thus seen that the Supreme Court had not pronounced about the binding nature of the

circular in the decision referred to by learned counsel for the Revenue. In Shri Shubhlaxmi Mills Limited Vs. Additional Commissioner of Income

Tax, Gujarat, , relied on by learned counsel for the Revenue, it was laid down by the Supreme Court that a condition to be satisfied for securing

the benefit of development rebate must be satisfied and, if that had not been so specified, relief by way of development rebate cannot at all be

claimed. It had also been pointed out that the circulars issued by the Central Board of direct Taxes do not affect the true position of law. From this

decision, it would appear that, if the availability of a benefit is conditional upon the fulfilment of certain requirements and those requirements had not

been satisfied, then, the benefit cannot be had by resorting to a circular. Earlier, we had pointed out that the latter part of the requirement of section

5(1)(iv) of the Act had not been fulfilled by the assessees in these references and merely by placing reliance upon a circular that cannot be

regarded as having been fulfilled in order to enable the assesseees to claim the benefit of exemption. In yet another decision of the Supreme Court in

Keshavji Ravji and Co. v. CIT : [1990]183ITR1(SC) , it had been pointed out that the Board, by its circulars, cannot pre-empt a judicial

interpretation of the provisions of the Act and the Tribunal, much less the High Court, is not bound by the circulars and that though such circulars

might have departed from the tenor of the statutory provision and give benefit to assesseees, that is not the same as saying that such circulars either

have a binding effect on the interpretation of the provisions of the Act or that the Tribunal and the High Court are supposed to interpret the law in

the light of the circulars. Ultimately, the Supreme Court pointed out that the circular broadly accorded with the view taken by the court on the

interpretation of the true scope of the provision which fell for consideration and in that view, the Supreme Court felt it unnecessary to examine

whether or not such circulars could be recognised as legitimate aids to statutory construction. In Rajan Ramkrishna Vs. Commissioner of Wealth-

tax, Gujarat-I, , the Gujarat High Court laid down that, in the matter of valuing the unquoted equity shares of investment companies, the benevolent

circulars issued by the Board were binding on the Wealth-tax Officer and the Commissioner and it was not open to them to disregard the circular

and proceed to exercise revisional jurisdiction u/s 25(2) of the Act on the basis that a different principle should be adopted in the valuation of the

shares. This decision also does not lay down that circulars would be binding either on the Tribunal or even this court. In K.P. Varghese Vs.

Income Tax Officer, Ernakulam and Another, , with reference to the scope of the circulars issued by the Central Board in regard to the

administration or implementation of section 52(2) of the Income Tax Act, 1961, the Supreme Court pointed out that the circulars would be binding

on the Department in the administration or implementation of section 52(2) of the Income Tax Act, 1961. Though this decision had proceeded on

the footing that circulars would be binding on the Department in so far as the administration and implementation of section 52(2) of the Income Tax

Act, 1961, are concerned, it could not be understood as laying down that such a circular would be binding on the Tribunal or the High Court and

at best, it could be treated as containing merely administrative direction, not in any manner affecting the judicial interpretation of the relevant

provisions of the Act on the facts and the circumstances of a particular case. On a due consideration of the several decision referred to by counsel

on both sides, we are of the opinion that the reliance placed by the assessee on the circular cannot pre-empt a judicial interpretation of section 5(1)

(iv) of the Act with reference to its constituent requisite and, in any event, such circulars, being purely administrative in nature, cannot bind either

the Tribunal or this court in the matter of interpretation of the provision of section 5(1)(iv) of the Act. We, therefore, answer the common question

referred to us in the negative and in favour of the Revenue. The Revenue will be entitled to its costs in these references. Counsel's fee Rs. 1,000.

(one set).