
(2000) 11 MAD CK 0115

In the Madras High Court

Case No : T.C. No"s. 444 to 446 of 1983 (Reference No"s. 226 to 228 of 1983)

Commissioner of Wealth-tax

APPELLANT

Vs

V.T. Somasundaram

RESPONDENT

Date of Decision : 20-11-2000

Acts Referred:

Wealth Tax Act, 1957 — Section 5(1)

Citation : (2002) 255 ITR 652

Hon'ble Judges : R. Jayasimha Babu, J;K. Gnanaprakasam, J

Bench : Division Bench

Advocate : O. Anand Ram, for the Appellant; None, for the Respondent

Judgement

R. Jayasimha Babu, J.—Two questions are before us at the instance of the Revenue. The assessment years are 1968-69 and 1970-71. The first question concerns the extent to which the assessee can claim the benefit of Section 5(1) (iv) of the Wealth-tax Act, 1957, which as it stood during the assessment year provided for exemption of one house or part of a house belonging to the assessee and exclusively used by him for residential purpose.

2. It has been found by the Tribunal that the house property at Sterling Road, Madras, is owned by the assessee along with his three sons, and is occupied by all of them. Thus the finding is that the house was used exclusively for residential purposes.

3. Counsel contended that the term "exclusive" referred to in the provision is applicable to the owner, and that the owner should have the exclusive use of the whole of the property. We do not find any support for that in the provision. The section itself refers to a house or part thereof indicating thereby that even a part of the house can be the subject-matter of exemption, so long as the part which is claimed to be exempt, is used exclusively for residential purpose.

4. A Full Bench of this court in the case of Commissioner of Wealth-tax Vs. Smt. Muthu Zulaikha, has held that what the statutory provision requires is that the

purpose of user should be residential implying thereby that the user should not be commercial, and that what is to be seen is whether the intention of the assessee is to live in the house. It was also held that the requirement of exclusive use of the building for residential purposes must be construed in a practical and pragmatic way rather than in a pedantic sense.

5. The finding of the Tribunal as also the authorities below is that the whole of the house was used for residential purposes, including the share of the assessee therein who himself lived in the house. The exemption sought was not for the value of the whole house, but only for one-fourth share. He was entitled to claim the benefit under the plain terms of the relevant statutory provision. The Tribunal has granted him the relief. We answer the first question referred to us in favour of the assessee and against the Revenue.

6. So far as the second question regarding the assessee's entitlement to deduct the arrears of dividend on cumulative preference shares while working out the value of the shares held by him in Thiru Arooran Sugars Ltd. is concerned, that question is required to be answered in favour of the assessee and against the Revenue in the light of the decision rendered by the Bench of this court in T.C. Nos. 2062-63 of 1984, decided on February 18, 1998-- Commissioner of Wealth Tax Vs. V.T. Ramalingam, , which held that such arrears of dividend are required to be deducted while working out the value of the shares. The second question is, therefore also answered in favour of the assessee and against the Revenue.