(1994) 04 MAD CK 0052

In the Madras High Court

Case No : Tax Case No. 1336 of 1981 (Reference No. 682 of 1981)

Commissioner of Wealth-tax APPELLANT

Vs

V.T. Venkateswaran RESPONDENT

Date of Decision : 29-04-1994

Acts Referred:
Wealth Tax Act, 1957 — Section 27(1), 5(1)

Citation : (1995) 212 ITR 289

Hon'ble Judges : Janarthanam, J;Gulab C. Gupta, J

Bench : Division Bench

Advocate : N.V. Balasubramaniam, for the Appellant; R. Meenakshisundaram, for the Respondent

Judgement

Gulab C. Gupta, J.—This is a reference u/s 27(1) of the Wealth-tax Act, 1957 ("the Act", for short), requesting this court to decide the following question of law :

"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 assessee for the assessment year 1971-72 ?"

2. The respondent/assessee alongwith his two brothers and father jointly enjoyed the house property bearing No. 14, Sterling Road, Madras, and claimed exemption u/s 5(i)(iv) of the Act. It appears that one of his brothers also claimed this exemption; which was allowed to him in the original assessment. The said assessment was, however, reopened and the exemption granted was withdrawn by the Income Tax Officer. Thereafter, an appeal was filed before the Appellate Assistant Commissioner, who held that each of the three brothers was entitled to exemption u/s 5(1)(iv) of the Act, since each owned part of the house and each one of them had used the house property for residential purposes. The Department appealed against the aforesaid judgment. The Appellate Tribunal, however, held that the test of exclusiveness of the use of the house has to be

determined with reference to the question, whether the assessee is user of the house as of right, and hence held that since the assessee was a co-owner and has a right to reside in the property, the benefit of exemption was available to the assessee and the appeal of the Department was dismissed. Thereafter, the Department requested for a reference and the same has been made as aforesaid.

3. It appears that Sri V. T. Ramalingam, a brother of the respondent, had claimed and was granted a similar exemption. The Department had similarly prayed for a reference; which had been made and decided by this court in Commissioner of Wealth-tax Vs. V.T. Ramalingam and others, . This court has, in the said reference, held that since it was not disputed that the assessees were all in the position of co-owners, it was not possible 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. This court, therefore; held that the assessees were not entitled to the exemption u/s 5(1)(iv) of the said Act. This decision relates to this very property, though at the instance of a brother of the respondent. All the facts and circumstances of the case are identical and, hence, there is every justification for applying the ratio of this decision to the facts of this case :

4. In view of the aforesaid decision, it is held that in view of the facts and circumstances of this case, the Appellate Tribunal was not correct in law in holding that the benefit of exemption u/s 5(1)(iv) of the Wealth-tax Act has to be granted to the assessee for the assessment year 1971-72. In other words, the assessee is not entitled to the said exemption. The reference is answered accordingly. There will be no order as to costs.

