

(1978) 06 KAR CK 0006

In the Karnataka High Court

Case No : Tax Referred Case No's. 39 and 40 of 1974

Commissioner of Wealth Tax, Mysore

APPELLANT

Vs

K.M. Eapen

RESPONDENT

Date of Decision : 12-06-1978

Acts Referred:

Wealth Tax Act, 1957 — Section 4 (1) (a), 5 (1) (iv)

Citation : (1979) ILR (Kar) 167 : (1978) 114 ITR 415 : (1978) 2 KarLJ 180

Hon'ble Judges : M.K. Srinivas Iyengar, J; E.S. Venkataramaiah, J

Bench : Division Bench

Advocate : S.R. Rajashekara Murthy, for the Appellant; S.P. Bhat, for the Respondent

Judgement

Srinivasa Iyengar, J.—The Income Tax Appellate Tribunal, Bangalore, Bench, has referred the following question for a decision of this court :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the assessee is entitled to the exemption u/s 5(1)(iv) of the Wealth-tax Act, 1957, in respect of the residential property at 6-A, Rutland Gate, Madras, which was gifted by him to his wife and whose value was included in the net wealth of the assessee u/s 4(1)(a) of the Wealth-tax Act, 1957 ?"

2. The two cases relate to the assessment to wealth-tax for the assessment years 1970-71 and 1971-72. The assessee had gifted the house property to his wife in the year 1962. In terms of section 4(1)(a) of the Wealth-tax Act, 1957, (hereinafter referred to as "the Act"), the Wealth-tax Officer included the value of that house in the computation of the net wealth of the assessee in each of the assessment years. He rejected the plea of the assessee that exemption to the extent mentioned in section 5(1)(iv) of the Act should be given. On appeal by the assessee, the Appellate Assistant Commissioner accepted the plea of the assessee and allowed the exemption. On further appeal by the department, the Tribunal upheld the view of the Appellate Assistant Commissioner. That is how the identical question has been referred for a decision of this court in relation to

each of the years.

3. The Appellate Assistant Commissioner in his order expressed his view on a reading of both section 4(1)(a) and section 5(1)(iv) of the Act as follows :

"When an assets transferred by the appellant to his spouse is considered as belonging to that individual, such a fiction cannot, in my opinion, operate only for the purpose of inclusion of the value of that transferred house in the net wealth of the individual and not for the purpose of allowing the exemption u/s 5(1)(iv) of the Act so long as the other conditions laid down therein are satisfied." The Tribunal accepted this view as correct. In our opinion, the view taken by the Tribunal is sound and must be upheld.

4. In the case of such an assessee, the admitted premise is that the house has been transferred to a spouse. But in terms of section 4(1)(a) of the Act this item of property is included in the computation of the net wealth of the assessee "as belonging" to that individual. Section 5(1)(iv) of the Act provides :

"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 exclusively used by him for residential purposes :

Provided that where the value of such house or part, situate in a place with a population exceeding ten thousand exceeds one lakh of rupees, the amount that shall not be included in the net wealth of an assessee under this section shall be one lakh of rupees." So where the house is situate in a place with a population exceeding ten thousand and the value of the house exceeds one lakh of rupees, the amount to be excluded in the net wealth of the assessee is limited to one lakh of rupees. The section itself contemplates the house "as belonging to" the assessee and the exemption is in respect of a house belonging to the assessee. Therefore, when the value of the house is to be considered for the computation of the net wealth, it has to be assumed even for the purpose of section 5(1)(iv) of the Act that the house in question belongs to the assessee and the exemption that has to be allowed is in the hands of such assessee. This is also the view taken by the High Court of Madras in the case of S. Naganathan Vs. Commissioner of Wealth Tax, . Accordingly we answer the question referred to us in the affirmative and in favour of the assessee.

The assessee is entitled to costs. Advocate's fee Rs. 250 one set.