

(2003) 11 MP CK 0046

In the Madhya Pradesh High Court

Case No : S.S. Jha and S. Samvatsar, JJ. Miscellaneous Civil Case No. 22 of 1987 21 November 2003

CWT . Anuradha Nagory

Date of Decision : 21-11-2003

Acts Referred:

Wealth Tax Act, 1957 — Section 27(1), 7(4)

Citation : (2004) 136 TAXMAN 637

Hon'ble Judges : S.S. Jha, J;S. Samvatsar, J

Bench : Full Bench

Advocate : R.D. Jain and D.P.S. Bhadoriya, for the Petitioner, for the Appellant;

Judgement

S. Samvatsar, J.

This reference application is filed u/s 27(1) of the Wealth Tax Act at the instance of Commissioner, Bhopal. Commissioner has asked the opinion of this court on following questions of law :

"1. Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that section 7(4) of the Wealth Tax Act, 1957 which came on the statute book with effect from 1-4-1976 could be applied in assessment years 1974-75 and 1975-76?

2. Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessee's half share in house No. 7/197, Swarup Nagar, Kanpur was exclusively used by her for residential purposes ?

2. The facts of the case are that the assessee had a half share in the house No. 7/197, Swarup Nagar, Kanpur. Other half share of the house belong to her husband. Husband and wife lived jointly in the house. The assessee has declared the value of her half share at Rs. 1,11,000, Rs. 1,11,000 and Rs. 1,25,400 in three assessment years respectively. The Wealth Tax Officer referred the matter to the Valuation Officer who determined the assessee's share at Rs. 2,11,000, Rs. 2,14,500 and 2,18,000 respectively for the three years respectively. After the assessment the assessee preferred an appeal before the appellate authority

claiming benefit of section 7(4) of the Wealth Tax Act which has come into force with effect from 1-4-1976. The appellate authority rejected the assessee's claim observing that since the appellant is living with her husband it cannot be said that she is using the property exclusively for her own residence.

3. This order was challenged by the assessee before the Tribunal. Appeal was allowed by the Tribunal holding that section 7(4) of the Wealth Tax Act is procedural in nature and has a retrospective operation. The assessee is therefore, entitled to the benefit of section 7(4) of the Wealth Tax Act.

4. Section 7(4) of the Act provides that a house includes part of the house and the co-owner is entitled to say that he is using the property exclusively for his residence and in the event the assessee is using the premises exclusively for his residence then the valuation put by the assessee should be accepted. Thus, the Appellate Tribunal accepted the contention of the assessee and set aside the assessment order of the appellate court. Thereafter, the revenue filed an application for referring the aforesaid two questions of law for the opinion of this court.

5. As regards the question of retrospective operation of section 7(4) of the Wealth Tax Act, the Apex Court in the case of Commissioner of Wealth Tax, Meerut Vs. Sharvan Kumar Swarup and Sons, has laid down that the procedural law is applicable to the pending cases and has, therefore, a retrospective effect. In the aforesaid case the Apex Court was examining the applicability of sections 3, 7(1) and 46 of the Act. In view of the said judgment question No. 1 is answered in favour of the assessee and it is held that section 7(4) of Wealth Tax Act has a retrospective operation. The said section provides that co-owner of house is entitled to claim that the whole house which is used for residential purpose is exclusively used by him.

6. In the present case the house is jointly owned by the husband and wife. Hence, it cannot be said that the house is not exclusively used by the assessee for her residential purpose. The fact that her husband has also claimed the said benefit is no ground for rejecting her claim. Thus, question No. 2 is also answered in favour of the assessee.

7. In the result both the questions are answered in favour of the assessee and against the revenue. Reference application stands disposed of.

Reference answered in favour of assessee.