
(1996) 02 KL CK 0007

In the High Court Of Kerala

Case No : IT Reference No's. 15 to 17 of 1991 and R.A. No's. 112 to 114 of 1988 & Income-tax Reference No's. 15 to 17 of 1991

Dr. V.P. Gopinathan

APPELLANT

Vs

Commissioner of Wealth Tax

RESPONDENT

Date of Decision : 23-02-1996

Acts Referred:

Income Tax Act, 1961 — Section 10

Kerala Municipalities Act, 1994 — Section 101

Wealth Tax Act, 1957 — Section 27(1), 5, 5(1), 5(1)(xxxiii)

Citation : (1996) 87 TAXMAN 74

Hon'ble Judges : V.V. Kamat, J;G. Sivarajan, J

Bench : Division Bench

Advocate : M. Subramanian and M.S. Narayanan, for the Appellant; P.K.R. Menon and N.R.K. Nair, for the Respondent

Judgement

V.V. Kamat, J.—u/s 27(1) of the Wealth-tax Act, 1957 ("the Act") the petitioner moved the Tribunal for reference of the question in pursuance of which the following question has been referred as common question in all these references:

Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the value of the assets acquired by the assessee prior to his return to India out of moneys brought by him into India, is not exempt from wealth-tax u/s 5(1)(xxxiii) of the Wealth-tax Act, 1957 for the assessment years 1979-80, 1980-81 and 1981-82?

The question is a pure question of interpretation of the statutory provision of section 5(1)(xxxiii) of the Act.

2. Even then inevitable factual matrix would be necessary. The original applicant is a doctor of medicine. As a non-resident he returned to India in May 1979 and, therefore, for the purposes of the assessment years 1980-81 and 1981-82 he became a resident Indian. As he returned with the intention of settling for good naturally the moneys and the value of assets brought by him in India together

with the value of assets acquired out of such moneys were sought to be claimed by way of exemption under the above statutory provision. In other words, the assessee's claim that the entire wealth in India as on the date of his arrival for good was entitled to be considered for exemption.

3. He thus filed initially a nil return for the assessment years 1979-80 to 1981-82.

4. It is pleaded that as regards the assessment year 1979-80 the provision of section 5(1)(xxxiii) would justify a claim for exemption regarding the assets acquired prior to the return of the assessee if they are out of the amounts brought into India prior to his return and this claim was rejected by the WTO on the construction of the said statutory provision that the exemption was not justifiable as the assets were not acquired with the funds brought to India at the time of his return.

5. However, as regards the assessment years 1980-81 and 1981-82, the WTO allowed the claim for exemption under the above statutory provision only as regards Rs. 11,95,642 which was the amount brought by the assessee to India along with him at the time of his final return.

6. Therefore, with regard to these years the claim of the assessee both with regard to the assets acquired by him prior to his return but out of the funds remitted to India prior to his return and also with regard to the amounts brought to India in the same position prior to his return when the said amounts were lying to his credit at the time of his return for good.

7. The appellate authority [Commissioner (Appeals)] emphasising the return of the assessee to India only in May 1979 and consequently on the valuation date 31-3-1979, the benefit of exemption under the above statutory provision could not be made available to the applicant. Thus, the claim with regard to the assessment year 1979-80 came to be rejected. With regard to the assessment years 1980-81 and 1981-82 the contention was partly accepted. With regard to the money brought by the assessee with him at the time of his arrival to India the exemption was made available. The exemption was also extended as a corollary to the assets acquired from such amount. It was further extended also the moneys remitted earlier than his arrival, but to such amounts lying in the nonresidents N.R.I. Account and denied the claim of exemption with regard to the assets acquired from the said amounts remitted earlier than his actual arrival in May 1979.

8. The matter came up before the Tribunal (Annexure-C) to consider the only ground. It needs to be mentioned that even the department had appealed with regard to the part of the order of the appellate authority extending but we are not at all concerned with the same.

9. The Tribunal has observed that with effect from 1-4-1977 clause (xxxiii) of section 5(1) is on the statute. The Tribunal also considered Circular No. 411, dated 25-2-1985 - [1985] 152 ITR 227 (St.), all with reference to the contention

that on a true and correct interpretation and language of section 5(1)(xxxiii) remittances and assets having their origin with reference to the working of the foreigner with an Indian origin are required to be exempted from the rigour of the Act.

10. The Tribunal considered the position with reference to the provisions of Circular No. 411 and the text of section 5(1)(xxxiii) especially along with Explanation 2 to the said section. The Tribunal did not find any difficulty in endorsing the order of the Appellate Commissioner.

11. The provision for exemption in the taxation laws would have to be seen as a regular feature. It appears in the relevant taxation statutes both of the Central Government as well as of the State. Apart from clause (xxxiii) of section 5 which we are required to consider on interpretation, illustratively even the income tax Act, 1961 (section 10) considers items of income not to be included in the computation of the income with regard to the assessment year. Even reference to the State taxation laws, illustratively section 101 of the Kerala Municipalities Act, section 72 of the Panchayats Act as well as section 3 of the Kerala Building Tax Act, 1975. Illustratively these provisions speak of exemption from taxation with regard to places of public worship, buildings attached thereto, choultries for which no rent is charged, buildings used for educational purposes including hostels, buildings and places used for charitable purposes, ancient monuments, charitable hospitals and dispensaries and burial and burning grounds in regard to which statutory exemptions are provided for. Even a cursory perusal to understand and appreciate and consequently guide the approach in regard thereto would show that the exemptions introduced are with reference to various objects of laudible character, purposes that are desired to be taken out of the clutches of the taxation legislation concerned. A resume of these aspects giving rise to statutory provisions relating to exemptions would not be without any profit. These facets statutorily recognised being the aspects introducing exemption provisions are multifarious on their representation of perspectives. The educational purpose, religious purpose, charitable purpose have everywhere been the content of exemption provision. Added thereto it would also be found that the buildings in regard to which rent is not charged or the activity relating thereto has no concern with the ordinary profit motive have also been exempted from the rigour of taxation. These provisions of exemption have a direct connection in terms of the relief from the rigour of taxation available otherwise.

12. The approach in understanding the spirit of exemptions has to be meaningful in the context of the situation. If it is an exemption for educational purpose, the provision has to be understood by knowing as to what the education is. If the exemption is on the ground of charitable purpose, it must take within itself all the facets of human conduct, which could be reasonably understood as based on charitable considerations. The taxation provision in regard to this aspect would be difficult for an approach in a restricted way. Such a provision has to be understood in the meaningful context, not on the basis of a situation of

preponderance, but in the other way in which the taxation or the levy of tax would get amply justified. The legislative intent is required to be understood and consequently interpreted with the approach of a conscious contact with the realities of the situation that are intended from the language of the provision to reasonably cover the situation under consideration. This Court has attempted to appreciate the situation in this meaningful manner in the context of the staring realities, keeping intact the well-known canons of interpretation in regard thereto.

In the context the terms such as "educational purpose" and "charitable purpose" have been attempted to be understood not in the restricted manner, but with an approach to know really what education means and charity is understood. The approach is illustratively seen in the decision rendered by one of us (Kamat, J.) in relation to the provision of exemption on the ground of educational purposes.

13. We are required to consider the statutory provision of section 5(1)(xxxiii). It is more convenient to reproduce the text of the said provision, that much part thereof which is applicable to the factual matrix and the time governing the situation. It is as follows:

(xxxiii) in the case of an assessee, being a person of Indian origin who was ordinarily residing in a foreign country and who, on leaving such country, has returned to India with the intention of permanently residing therein, moneys and the value of assets brought by him into India and the value of the assets acquired by him out of such moneys:

Provided that this exemption shall apply only for a period of seven successive assessment years commencing with the assessment year next following the date on which such person returned to India.

Explanation: A person shall be deemed to be of Indian origin if he, or either of his parents or any of his grand parents, was born in undivided India;

It would appear that even the plain reading of clause (xxxiii) without any reference either to the proviso or to the two Explanations thereof, no difficulty would occur in regard to the analysis thereof. The provision of section 5 relates to exemptions in respect of certain assets from the clutches of the rigour of the Act. According to the clause under consideration, as the plain language would convey, it is an assessee who would be entitled to the exemption with regard to the monies and the value of assets. The assessee is required to be a person of Indian origin or a citizen of India who was ordinarily residing in a foreign country and has returned to India with the intention of permanently residing in India. It is only such an assessee who would entitle himself to claim the exemption under consideration. If these conditions are satisfied, such an assessee would be entitled to claim exemption with regard to the monies and the value of assets brought by him into India and the value of assets acquired by him out of such monies. Therefore, even on further reading, such an assessee would be entitled to claim exemption with regard to the monies and the value of assets brought by him into India, the condition being with regard to the value of assets, it is the

language of the section that the assets are required to be acquired by him out of such monies.

14. These provisions, on a plain language, speak of the assessee on the one hand and his monies and the value of assets. The value of the assets, again on the plain language, must have relation of his acquisition with regard to monies that are brought by him. It is necessary to emphasise and understand that the plain language does not speak of the necessity of the monies and the assets to be brought by him along with him on his permanent return. The provision tells us the requirements of an assessee. The provision further tells us about the monies and the value of assets, the assets being required to be acquired necessarily out of such monies. To understand the provision on plain language, the assessee would have to be understood to be entitled to claim exemption on the basis of the provisions under consideration. If he qualifies himself to be an assessee and if he is able to establish that the monies and the assets in regard to which the claim is lodged have necessary inter-connection with each other and these aspects would" legitimately entitle him to claim exemption in regard thereto.

15. Even though there is no difficulty to understand, it is necessary to consider and understand the meaning of the phrase "monies and the value of assets brought by him" as well as the phrase "the value of the assets acquired by him out of such monies".

16. With regard to these two phrases there are rival submissions with regard to the proper interpretation of the provision under consideration. The learned senior counsel strenuously submitted that the word "brought" will have to be understood to mean brought by the assessee along with him and to include the value of the assets acquired by him out of the money brought by him. It is not possible to consider the language of the section in this way. An assessee who is to be understood in the context is a person who was ordinarily residing in a foreign country. This must be for over a period which has to be understood as a period of ordinary residence and not a flying visit. During the period of residence in the sense there are remittances and it is possible that out of them there are acquisitions of assets and they are before the final arrival of such an assessee into India. Along with these in the second category there are monies and assets acquired out of such monies that are brought by such assessee along with him into India. The question is whether the provision gets restricted with regard to the claim of exemption, not with regard to the remittances and the assets acquired therefrom, but only with regard to monies and the assets acquired by him out of such monies that accompany him on his return to India for good. The question also is whether it also includes the assets acquired by him after his return, out of such monies.

17. The plain language of the section, in our judgment, cannot permit such a restricted approach based on dissection, firstly, with regard to the remittances, secondly, with regard to the monies and the assets brought by such an assessee along with him and again thirdly, with regard to the acquisition of assets out of

such monies after the arrival of such an assessee.

18. Apart from the plain language of the provision, Explanation 2 is added and the very language of the said Explanation 2 starts giving us reasons for its addition in the text of the statute. It is for the removal of doubts and it is stated by way of a deeming provision relating to the monies standing to the credit of such assessee in a non-resident (external) account in any bank in India in accordance with the Foreign Exchange Regulation Act, 1973 and any rules made thereunder, lying to such credit of such assessee on the date of his return to India, has to be deemed to be monies brought by him into India on that date.

19. In our judgment the plain language affords no difficulty and when Explanation 2, which is on the statute, for the removal of doubts is perused, it is crystal clear that the remittances standing to the credit of such person in the accounts stated have to be deemed to be the monies brought by him into India on that date. In other words, the word "brought" has been properly understood in the proper spirit to include remittances prior to the arrival of such an assessee in India for good. If this is the position, reading the statutory provision of the clause under consideration in the light of the deeming provision, any kind of difficulties sought to be urged strenuously would immediately get dissolved and evaporated. If the second phrase posed for consideration above "the value of the assets acquired by him out of such monies", such monies, if understood by the removal of doubts, by the deeming provision referred to above in Explanation 2, the exemption sought for would also apply to the value of the assets acquired by such an assessee out of the monies remitted by him during his ordinary residence in a foreign country.

20. The section can be considered from yet another angle. The words are "such monies". We have to appreciate the plural sense of the word "monies" as referring to occasions more than one, when monies are brought to India. This plural use of the word "money" also goes a long way to refer to the amounts that would have to be understood as having been brought to India in the nature of remittances from time to time. Had it been the legislative intent to consider exemption with regard to the money and the value of assets out of the said money, referable only to a single occasion and that too at the time when the assessee leaves such foreign country with the intention of permanently residing, the use of this plural would not have come on the statute.

21. The statutory provision of exemption is justifiably and meaningfully required to be understood, firstly, on the basis of the plain reading of the language thereof and secondly, avoiding to understand the language in a truncated form.

22. Although it is not really necessary reference to Circular No. 411, dated 25-2-1985 of the CBDT would show that this exemption is understood to be applicable even by the department with regard to the monies deposited by such an assessee in a non-resident (external) account during the course of his residence in the foreign country. On reading the said circular, it appears to have

been required to be issued in pursuance of a question that arose in regard to the monies deposited in a non-resident (external) account coverable for deduction under the clause under consideration. The plain reading of the circular shows that it has answered the question posed, although floating on the surface on a plain reading of the section. The question with regard to the assets was not posed and we have no doubt that in the light of the circular and in the process of logical extension of the contents thereof, the claim with regard to the assets acquired out of such monies would also have been answered in the similar way. The learned senior tax counsel urged, firstly on the basis of the following words, "within one year immediately preceding the date of his return and at any time thereafter" introduced by the Finance Act, 1986 with effect from 1-4-1987, wanted us to appreciate the legislative intent of the clause under consideration as it is. It is not possible when the plain language does not afford any difficulty.

23. The learned senior counsel also brought to our notice that the clause under consideration, reproduced above, is now renumbered as clause (v) by the Finance Act, 1992 with effect from 1-4-1993 and this renumbering also includes the phrase referred to hereinbefore which was inserted by the Finance Act, 1986 with effect from 1-4-1987. The submissions based on the subsequent change of law even though by a process of substitution of the original clause would be of no help as there is no dispute that the assessee was governed by the statutory provision relating to exemption on the basis of what we have reproduced ad verbatim hereinbefore.

24. The result of the above discussion would necessarily conclude that the assessee satisfied the requirements with regard to him, would be entitled to claim exemption with regard to the monies and the assets acquired from such monies and for that purpose his return to India with the intention of permanently residing therein having its relation to the monies and assets would be of no consequence if the monies and assets are interrelated with each other by a process of acquisition in regard thereto and consequently have origin in connection with the ordinary residence of such assessee in a foreign country. Equally well, whether the assets are acquired in India or in foreign country also would have no importance in the context provided the assets are acquired out of such monies which are either brought by him or which are deemed to have been brought by him by virtue of the addition of Explanation 2. For the above reasons the questions referred is answered in the negative - against the revenue and in favour of the assessee. Ordered accordingly.