
(1985) 10 KAR CK 0038
In the Karnataka High Court
Case No : T.R.C. No's. 36 to 3/9 of 1979

M.A. Sreenivasan

APPELLANT

Vs

Commissioner of Wealth Tax

RESPONDENT

Date of Decision : 07-10-1985

Acts Referred:

Wealth Tax Act, 1957 — Section 2, 3, 4, 5 (1) (ivb)

Citation : (1986) 51 CTR 115 : (1986) 162 ITR 106 : (1986) 24 TAXMAN 543

Hon'ble Judges : S.A. Hakeem, J;K.S. Puttaswamy, J

Bench : Division Bench

Advocate : K.P. Kumar, for the Appellant; K. Srinivasan, for the Respondent

Judgement

K.S. Puttaswamy, J.—In conformity with the directions of this court in C.P. Nos. 32 to 35 of 1979, the Income Tax Appellate Tribunal, Bangalore Bench, Bangalore ("the Tribunal"), at the instance of the assessee, has referred the following question of law for the opinion of this court :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessee was not entitled to exemption in respect of the value of the building in question u/s 5(1)(ivb) of the Wealth-tax Act ?"

2. In order to appreciate the question referred to us, it is necessary to notice the facts that are not in dispute and as found by the Tribunal also.

3. Some time in 1953-54, the assessee purchased an extent of 10 acres 31 guntas of land situated at Rajmahal Village, Bangalore North Taluk, now part of a posh residential locality called Rajmahalvilas extension of the City of Bangalore, from the Maharajah of Mysore, who was its owner. Even since he purchased the land, the assessee has been exclusively using the same for agricultural purposes. Some time in 1968-69, the assessee built a residential building on the said land at a cost of about Rs. 2,50,000.

4. For the assessment years 1971-72 to 1974-75, relevant to the corresponding

valuation dates, the assessee filed his returns under the Wealth-tax Act, 1957 ("the Act"), before the Wealth-tax Officer, Assessment-2, Circle-II, Bangalore, inter alia, claiming exemption of the value of the said residential building u/s 5(1)(ivb) of the Act. On April 22, 1975, the Wealth-tax Officer by separate but identical orders completed the assessments for the said years and rejected the assessee's said claim for exemption. Aggrieved by the said orders of the Wealth-tax Officer, the assessee filed appeals before the Appellate Assistant Commissioner, Bangalore Range-II, who by his common order dated June 24, 1976, dismissed them. Aggrieved by the said orders of the Appellate Assistant Commissioner and the Wealth-tax Officer, the assessee filed second appeals before the Tribunal which by its common order dated May 27, 1977, dismissed them. Hence, these references.

5. Sri K. P. Kumar, learned advocate, appeared for the assessee. Sir K. Srinivasan, learned senior standing counsel, assisted by Sri H. Raghavendra Rao, learned junior standing counsel, appeared for the Revenue. Both the sides have relied on a number of rulings in support of their respective contentions. Sri Kumar has contended that on the facts that are not in dispute and found by the Tribunal, the claim made by the assessee for exemption of the value of the residential building u/s 5(1)(ivb) of the Act was well-founded and the question, therefore, requires to be answered in favour of the assessee.

6. Sri Srinivasan has urged that the decision rendered by the authorities for the assessment year 1969-70 that had become final governs the assessments for the later years and, therefore, our answer to the question must be in favour of the Revenue.

7. For the assessment years in issue, that the land on which a residential building had been constructed, had been used for agricultural purposes and the assessee was residing and carrying on his agricultural operations or at any rate had been using the same as his dwelling house for receiving or collecting rents, is not in dispute. With these facts that are not in dispute and found in favour of the assessee, it is necessary to examine whether his claim u/s 5(1)(ivb) of the Act is well-founded or not. But before that, it is necessary to deal with two grounds on which the claim of the assessee had been rejected by the Wealth-tax Officer, the Appellate Assistant Commissioner and the Tribunal.

8. That for the assessment year 1969-70, the assessee's claim for exemption of the very building as a "farm houses" attached to the agricultural land was rejected by the authorities under the Act and that had not been challenged by him and that section 5(1)(ivb) of the Act introduced from April 1, 1970, by the Finance Act of 1970, was not in force for that year, are not in dispute at all.

9. Every assessment year under the Act, as in the Income Tax and other Acts, is a separate and distinct entity by itself and a claim made for a prior or a subsequent year cannot be rejected solely on the rejection of a similar claim for another year, is the well-settled position in law and does not require a reference

to decided cases at all. But, unfortunately, all the authorities including the Tribunal have rejected the claim of the assessee solely or principally on the basis of their rejection for the year 1969-70 and in doing so they were clearly in error. Even otherwise, the claim of the assessee is founded on section 5(1)(ivb) of the Act placed on the statute book from April 1, 1970, by section 26 of the Finance Act, 1970, which was in operation for the assessment years in question. In this view also, the claim of the assessee requires to be examined on merits without reference to the assessment completed for the year 1969-70.

10. Another reason given by the authorities including the Tribunal was that the building was a palatial building and it had been constructed in 1969. We do not see as to how these can be rejecting or sustaining the claim of the assessee. We are of the view that the Tribunal was in error in relying on these irrelevant reasons.

11. We now pass on to examine the claim of the assessee without reference to the said irrelevant reasons.

12. The Act has been enacted to levy on the net wealth of those who fall within the provisions of the Act. The Act came into force from April 1, 1957. Section 2 of the Act defines certain terms occurring in the Act. Section 2(e) defines the term "assets" as including property of every description, movable or immovable, but does not include those excepted therein from time to time. Section 3 of the Act which is the charging section provides for levy of wealth-tax on the net wealth on the corresponding valuation date at the rates specified in the Schedule. Section 4 of the Act makes detailed provision for determining the net wealth of different classes of assesseees for computation of net wealth.

13. Section 5 of the Act provides for certain exemptions in determining the net wealth of an assessee and the consequent levy of wealth-tax under the Act. Section 5(1)(ivb) of the Act, that is material and that was in force, reads thus :

"5. Exemption in respect of certain assets. -(1) Subject to the provision of sub-section(1A), wealth-tax shall not be payable by an assessee in respect of the following assets, and such assets not be included in the net wealth of the assessee -.....

(ivb) one building or one group of building owned by a cultivator of, or receiver of rent or revenue out of, agricultural land :

Provided that such building or group of buildings is on or in the immediate vicinity of the land and is required by the cultivator or the receiver of rent or revenue, by reason of his connection with the land, as dwelling house, store-house or outhouse;"

14. This section exempts one building or one group of building owned by a cultivator or receiver of rent or revenue from out of the agricultural land. But the proviso subjects in to three conditions. Firstly, the building or group of buildings must be on the immediate vicinity of the agricultural lands. Secondly, the

building or group of buildings must be used or required for carrying on agriculture on the agricultural lands or for collecting rents or revenue from those agricultural lands. Lastly, there should be connection or nexus between such building and the lands which itself can be used as a dwelling house, store-houses or as an outhouse. If these conditions are satisfied, then the cost of construction of the buildings or the group of buildings or the facilities or comforts provided therein, has no relevance to the claim for exemption. All these are matters for the assessee to decide and modulate.

15. We have earlier found that the building was situated on the land itself where the assessee also lives and cultivates his land or at any rate receives rents from the agricultural lands. When that is so, the claim of the assessee that the value of that dwelling house should be exempted in computing his net wealth and the consequent levy of wealth-tax thereto is well founded and cannot be denied at all.

16. In *Maharajadhiraj of Darbhanga Vs. The Commissioner of Income Tax*, a Division Bench of Patna High Court had occasion to construe the true scope and ambit of the proviso to section 2(1)(a) of the Indian Income Tax Act, 1922 (old I.T. Act), vis-a-vis the claim of the Zamindary of Dharbhanga who had built palace on the vast Zamindary of Dharbhanga, for exemption of the entire value of that building as referable to agricultural income exempted from Income Tax under that Act. In upholding that claim, the Division Bench, speaking through Dawson-Miller C.J., expressed thus (p. 470) :

"Once it is shown that by reason of the assessee's connection with the land he requires a dwelling-house in that vicinity, then we are not concerned to enquire whether the dwelling-house is more commodious than other persons in the same position would consider sufficient for their actual needs, a matter about which opinion might widely differ. The intention of the Act seems to me to have been that if by reason of his connection with the land the assessee does require a dwelling-houses and it is admitted in this case, at all events no argument has been adduced to the contrary, that he does require a dwelling-house in Dharbhanga, then the section is complied with in so far as the question of his requirements is concerned, and it is not open to the Commissioner to consider whether the particular class of house is more or less than the actual requirements of a Zamindar in his position according to some standard which may vary from time to time in the opinion of different Income Tax Commissioners. For these reasons, I think that upon the facts found, it must be held that a dwelling-house being required in this place, and the house in question being regarded as part and parcel of such a dwelling-house, and it being also admitted that the dwelling-house is required by reason of the connection of the assessee with the land, then the provisions of the section are complied with and the assessee, in my opinion, is exempt from tax."

17. In *Rajendra Narayan Bhanja Deo v. CIT* AIR 1929 Pat 449 , a Full Bench of the Patna High Court consisting of five learned judges was called upon to reconsider the statement of law made in *Maharajadhiraj of Darbhanga Vs. The*

Commissioner of Income Tax, The majority of that Full Bench consisting of four learned judges that learned chief Justice in their separate but concurring opinions approved the principles stated in the earlier case. Courtney-Terrell C.J., with whom Ross, Worth and Kulwant Sahay JJ., in their separate opinions concurred, expressed thus (p. 449) :

"According to the case stated by the Commissioner :

"It contains the usual rooms to be found in such a place including drawing room, dining room, billiard-room and bed rooms while there is a small detached guest house containing one public hall and two bed rooms. The Income Tax Officer in making this assessment has taken Rs. 3,000 as the proportionate valuation of the portion of this palace, which is not required for agricultural purpose."

The cost of the palace was about four lakhs of rupees. The proviso to section 2, sub-section(1)(c) of the Act exempts from taxation as agricultural revenue the notional income of a building :

"which the receiver of the rent or revenue or the cultivator or the receiver of the rent in kind by reason of his connection with the land, requires as a dwelling house or as a store-house, or other out-building."

The department contends that the words :

"by reason of his connection with the land requires as a dwelling house" mean that the proviso is only to apply to such portion, if any, of the building as should be needed as a dwelling house, store-house or outbuilding for the purpose of receiving of rents or cultivation of rent in kind, as the case may be. The argument more shortly put is that the word "requires" is used in the sense if "needs" and that the words "by reason of of his connection with the land" mean as applied to this case :

"for the purpose of collecting the rent or revenue."

18. This interpretation, if correct, would leave the taxable proportion of the notional income from the building to be assessed by the Income Tax Officer as a matter of fact and without appeal. Now, I can see no indication in the Act of any circumstances which are to guide the officer in assessing the taxable proportion. There is for instance no indication whether the dwelling house is to be of such a kind as to enable the owner to reside in it for such time as may be necessary for the collection by him of his rents, or whether his family may properly be expected to accompany him, or whether the distance from such other dwelling as he may own ought to be considered or whether his social prestige or the need of displaying it to his tenants is to be taken into account. All these considerations and many others are according to the department to be left to the officer as matters of fact within his sole direction. Had this been the real intention of the Legislature, one would have expected to find in the Act a set of guiding principles. On the other hand, for assessing the revenue of a business, the Act provides elaborate guides. For this reason alone I am of opinion that the

Legislature had no such intention as suggested by the Department.

19. But apart from this consideration, the words of the proviso are not capable of the construction suggested. The word "requires" means that the assessee demands to appropriate the building for the purpose of a dwelling house or as a store-house or other out-building and the words by reason of his connection with the land" mean that only the fact of his being a receiver of rent or revenue or the fact of his being a cultivator or the fact that he is a receiver of rent in kind entitled him to claim any building as a dwelling house, a store house or an out building. If he should not occupy any of these positions in connection with the land, he is not entitled to claim, as tax free, accommodation of the kind specified. In other words the expression "by reason of his connection with the land" is merely used in construing his status other than as a mere "temporanea expositis" and for this limited purpose it may be noticed that the words are not separated by a comma or otherwise from the words :

"the receiver of the rent or revenue or the cultivator or the receiver of the rent in kind. Whereas the verb "requires" is separated by a comma from the grammatical subject and the phrase "by reason of his connection with the land".

20. My conclusion is that the phrase has a qualitative and not a quantitative significance. Of course, there must be a bona fide use of the building as a dwelling house, store house or out building and the assessee is not at liberty to claim arbitrarily the exception of any building which he may at his own choice describe as a dwelling house, store house or a out building without regard to the actual facts. For these reasons, I am in agreement with the decision arrived at in the case of Maharajadhiraj of Darbhanga Vs. The Commissioner of Income Tax,

21. Macpherson J. dissented.

22. We have carefully read the proviso to section 2(1)(c) of the old Income Tax Act, which is somewhat analogous to section 5(1)(ivb) of the Act, the dicta in Maharajadhiraj of Darbhanga Vs. The Commissioner of Income Tax, and the opinion of the majority in Rajendra's case AIR 1929 Pat 449. We are of the view that the principles stated in these cases with respect are correct and we are in respectful arrangement with those views. For these reasons, with respect, we regret our inability to subscribe to the views expressed by Macpherson J.

23. In Kanan Devan Hills Produce Co. Ltd. Vs. Commissioner of Wealth Tax, Calcutta, , the High Court of Calcutta did not dissent from the views expressed by the Patna High Court and only distinguished and held that they had no application to a building owned by a company which has no residence. What emerges from these principles also is that the claim of the assessee for exemption u/s 5(1)(ivb) of the Act for the assessment years is well founded.

24. In the light of our above discussion, we answer the question referred to us as negative, in favor of the assessee and against the Revenue. But in the circumstances of the case, we direct the parties to bear their own costs.