
(1982) 11 DEL CK 0006
In the Delhi High Court
Case No : WT Reference No. 5 of 1974

Mohd. Ali Khan

APPELLANT

Vs

Commissioner of Wealth Tax

RESPONDENT

Date of Decision : 16-11-1982

Acts Referred:

Income Tax Act, 1922 — Section 2(1)(c)
Wealth Tax Act, 1957 — Section 5(1)(iii)

Citation : (1983) 12 TAXMAN 330

Hon'ble Judges : S. Ranganathan, J; D.K. Kapur, J

Bench : Division Bench

Advocate : B.D. Sharma, for the Appellant; G.C. Lalwani and P.N. Misra, for the Respondent

Judgement

S. Ranganathan, J.—This reference arises out of the wealth-tax assessment of the former ruler of Rampur. The proceedings relate to the assessment year 1961-62. On the relevant valuation date Nawab Sir Syed Raza Ali Khan was the ruler. He died subsequently and is represented in these proceedings by the legal heirs. The short question raised in this reference is whether the assessee is entitled to the exemption u/s 5(1)(iii) of the Wealth-tax Act, 1957 ("the Act") in respect of his entire palace at Rampur known as Khas Bagh Palace. It is common ground that the Khas Bagh Palace consisted of a number of buildings. Some of these buildings were actually occupied by the ruler but quite a few of them were not so occupied and were let out to various tenants. A list of fourteen such buildings which were let out to various officers, departments and other tenants has been set out in the order of the Tribunal. The assessee claimed that he was entitled to the exemption of the value of the entire Khas Bagh Palace including the above fourteen buildings under the provisions of section 5(1)(iii) referred to above. That provision, at the relevant date, read as follows:

5(1)...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-

(i) & (ii) ****

(iii) any one building in the occupation of a Ruler declared by the Central Government as his official residence under paragraph 13 of the Merged States (Taxation Concessions) Order 1949, or Paragraph 15 of the Part B States (Taxation Concessions) Order 1950;

2. The WTO allowed the assessee exemption in respect of those portions of the Khas Bagh Palace which were in the occupation of the assessee. But he estimated the market value of those buildings which had been let out at Rs. 3,55,000 on the basis of the rental income derived by the assessee and held that the value of those buildings would be liable to be included in the taxable wealth of the assessee and was not exempt u/s 5(1)(iii). This conclusion of the WTO having been confirmed by the AAC and the Tribunal, the assessee has obtained a reference to this Court on the following question:

Whether, on the facts and in the circumstances of the case the Tribunal was justified in holding that the building of the Khas Bagh Palace which were let out to different persons from whom rental income was received by the assessee were not in the occupation of the assessee within the meaning of section 5(1)(iii) of the Wealth-tax Act, 1957 and hence, the value thereof was includible in the net wealth of the assessee?

3. The question which falls for our consideration is a very narrow one regarding the interpretation of section 5(1)(iii). It is admitted that under paragraph 13 of the Merged States (Taxation Concessions) Order, 1949 the Central Government declared the Khas Bagh Palace, Rampur as the official residence of the ruler of Rampur. Learned counsel for the applicant submits that since the Tribunal has accepted his contention that the entire palace should be treated as "one building" for the purposes of the Wealth-tax Act, the assessee is entitled to exemption in respect of the value of that building so long as it is substantially in the occupation of the ruler. Learned counsel submits that the exemption granted to a ruler in respect of his official residence cannot be denied merely because a small, or insignificant portion of the palace might be not in the occupation of the ruler but might even have been let out to outsiders on rent. It is contended that once the entire palace is treated as one building which has been declared as the official residence and once it is conceded that the palace is occupied by the ruler to a substantial extent. It is not open to the department to go further and to hold that exemption should be restricted only to those portions of the property which are in the occupation of the ruler. It is contended that the statutory provision is not so worded as to warrant dissection of the portions of the official residence actually in the occupation of the ruler and the portions which are not. In support of his contentions, the learned counsel for the applicant relies on the general principle of strict construction of taxing statutes as well as the principle that where an exemption is granted by the statute, it should be given full effect to and should not be whittled down by importing limitations inserted by the Legislature vide Commissioner of Income- tax Vs. K.E. Sundara Mudaliar and

Others, . He also sought to derive assistance from the decisions reported as Raja Rajendra Narayan Bhanja Deo v. CIT [1929] 4 ITC 15 and P. Vs. G. RAJU, RAJAH OF VIZIANAGARAM v. COMMISSIONER OF Income Tax, A. P., decided under the provisions section 2 (1)(c) of the Indian income tax Act, 1922. Learned counsel also referred to a decision of the Punjab High Court in Agha Jafar Ali Khan v. Radha Kiah AIR 1951 P&H 433, a case decided under the Rent Control Act.

4. Though the question raised in this reference is somewhat ticklish, we are of opinion that the Tribunal arrived at the correct conclusion on this issue. The difficulty has arisen because the notification under paragraph 13 of the Merged States (Taxation Concessions) Order, 1949 relates not to buildings but to palaces as such. Apparently the reasons for section 5(1)(iii) using the words "any one building" is only to ensure that the exemption is confined to one palace only. For in the case of certain rulers more than one palace was notified as the official residence under the said order, for example, in the case of ruler of Rampur himself not only the Khas Bagh Palace but also the Shahbad Castle was notified as the official residence (vide the notification extracted at pages 1201 to 1206 of the Law & Practice of income tax by Kanga and Palkhivala, 3rd Edition). The Tribunal therefore was correct in coming to the conclusion that section 5(1)(iii) does not restrict the assessee's claim of exemption to only one of the buildings, comprised in the Khas Bagh Palace but that, for the purpose of the exemption, the entire Khas Bagh Palace should be treated as one building. But we do not think that from this conclusion, it can follow that the assessee would be entitled to exemption in respect of those buildings, comprised in the palace, which have been let out to outsiders and which are not in the occupation of the ruler. Section 5(1)(iii) stipulates two conditions which have to be fulfilled before an assessee can be entitled to exemption in respect of a building u/s 5(1)(iii). The first condition is that it should be notified as the official residence of the ruler under the Merged States (Taxation Concessions) Order. This condition is fulfilled in the present case. The second condition, however, is that the building should be in the occupation of the ruler. The idea is to grant an exemption to the former rulers in respect of one of their palaces where they continue to reside or which they continue to occupy. In the present case, where a number of buildings belonging to the palace have been let out to outsiders and are not in the occupation of the ruler; this condition cannot clearly be said to be fulfilled. The insistence of the assessee's counsel that the entire palace should be treated as one building does not really help him. For, strictly speaking, it could be said that since the entire palace, which constitutes the building for our present purpose, is not in the occupation of the ruler, he is not at all entitled to exemption in respect of the palace. This would be a very extreme position. Neither the officer nor the appellate authorities have taken this view. The Tribunal has placed a liberal construction on the provisions of the statute, consistent with its objects and intendment, and it has held that the assessee would be entitled to exemption in respect of the palace to the extent it is occupied by the ruler but will not be entitled to such exemption to the extent does not so occupied. We see no error

or inequity in this construction of the statute by the Tribunal.

5. We do not think that the cases relied on for the applicant are of any help in the present context. Section 2(1)(c) of the 1922 Act, spoke of a building which was required for certain purposes and the decisions held that once the revenue came to the conclusion that a building was so required it was not open to allow exemption only to the extent to which the building was used in connection with agricultural purposes. The decisions turned on the language of section 2(1)(c). Both under the said provision as well as under the Rent Control Act, the emphasis is on the nature of the building and it was in that context that the Courts held that one should judge the nature of the building as such and not the extent to which it was used for particular purpose. In our opinion those considerations are not relevant in the present context, Section 5(1)(iii) correlates the exemption to the occupation by the ruler. In view of this, the principle of substantial occupation put forward by the learned counsel does not appear to be relevant. Indeed, there is also no material before us to ascertain whether the buildings let out by the assessee formed a substantial part of the palace or not. But, in our opinion, this examination is irrelevant for the purposes of section 5(1)(iii). As we have already mentioned that section can be interpreted either as completely denying any exemption to the assessee or as conferring on him a benefit of exemption to the extent of occupation of the building by the ruler. In our opinion, the Tribunal, in adopting the second of these interpretations, has construed the provision in a liberal manner, consistent with the objects of the statute and its intendment, and also given effect to its language in such a way as to benefit the assessee. We are, therefore, of opinion that the conclusion arrived at by the Tribunal was correct. We, therefore, answer the question referred to us in the affirmative and in favour of the revenue. However, we think that this is a case in which the parties should be directed to bear their own costs.