
(1981) 07 MAD CK 0052

In the Madras High Court

Case No : Tax Case No. 37 of 1977 (Reference No. 32 of 1977)

R. Natarajan

APPELLANT

Vs

Controller of Estate Duty

RESPONDENT

Date of Decision : 27-07-1981

Acts Referred:

Estate Duty Act, 1953 — Section 33(1)

Citation : (1982) 31 CTR 360 : (1982) 138 ITR 178

Hon'ble Judges : Sethuraman, J; Balasubrahmanyam, J

Bench : Division Bench

Advocate : R. Natarajan, for the Appellant; J. Jayaraman and Mrs. Nalini Chidambaram, for the Respondent

Judgement

Sethuraman, J.—This reference has been made by the Tribunal u/s 64(1) of the E.D. Act, raising the following question :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the relief u/s 33(1)(n) of the Estate Duty Act should be restricted to the value of the portion of the property used by the deceased for her residence ?"

2. The deceased, Ranganayaki Ammal, was the owner of a building at Jeremiah Road, Madras. She occupied 2/3rds portion thereof for her residence and the remaining 1/3rds of the property was let out. The contention raised before the Asst. Controller was that the exemption u/s 33(1)(n) of the Act was allowable to the full extent of Rs. 1,00,000. The Asst. Controller took the view that the relief was restricted to the proportionate value of the portion under the occupation of the deceased. This view of the Asst. Controller was confirmed by the Appellate Controller. The executor appointed under the will left by the said Ranganayaki Ammal took the matter in appeal to the Tribunal. The Tribunal was of the view that the exemption u/s 33(1)(n) of the Act was only in respect of a proportionate part of the portion under the occupation of the deceased. Thus, the order of the Asst. Controller, as confirmed by the Appellate Controller, was upheld. The

present reference has been made at the instance of the accountable person (the executor), who challenges the aforesaid conclusion of the Tribunal.

3. It may be mentioned at this stage that the value of the entire property has been estimated to be Rs. 1,13,600. The building was valued at Rs. 33,600 and the vacant site of five grounds at Rs. 90,000. There is no dispute about this valuation. The exemption granted comes to Rs. 75,735. The claim of the accountable person was that the exemption should comprehend the whole of Rs. 1,00,000 and not to Rs. 75,735 merely.

4. Mr. R. Natarajan, who is the executor appointed under the will and who is also an advocate of this court, contended that on the language of Section 33(1)(n) of the Act, the exemption would be available to the entire extent of rupees one lakh. The learned standing counsel for the department disputed this proposition and submitted that the relief or exemption was available only to the proportionate part of the value of the property occupied by the deceased for her residence.

5. Section 33(1)(n) of the Act, runs as follows:

"33. (1) To the extent specified against each of the clauses in this sub-section, no estate duty shall be payable in respect of property of any of the following kinds belonging to the deceased which passes on his death-

(n) one house or part thereof exclusively used by the deceased for his residence, to the extent the principal value thereof does not exceed rupees one lakh if such house is situate in a place with a population exceeding ten thousand, and the full principal value thereof in any other case."

6. The effect of the argument of Mr. Natarajan would involve the reading of the provision in the following manner :

"One house or part of the house exclusively used by the deceased for his residence, to the extent the principal value of the house (and not part of it) does not exceed rupees one lakh, if such house is situate in a place with a population exceeding ten thousand ; and the full principal value of the house in any other case."

7. The result of reading this provision in this manner would be to justify me claim of exemption even to the extent of more than rupees one lakh, so long as the deceased was in occupation of only a portion of the house. In other words, the result will be startling. If the deceased had occupied the whole of the house, then the provision would require exemption being granted only to the extent of rupees one lakh. If the deceased occupied only a part of the house, then the exemption would have to be with reference to the entire value of the property, as there is nothing to restrict it to any proportionate part of the house. The case would fall within the closing portion of the provision. Even though the learned counsel submitted that he did not want the exemption to cover more than rupees one lakh, still the effect of his argument would be to claim exemption for the entire

value of the house. In our opinion, the provision requires to be read in two parts. The first part is :

"One house exclusively used by the deceased for his residence, to the extent the principal value thereof does not exceed rupees one lakh if such house is situate in a place with a population exceeding ten thousand; and the full principal value thereof in any other case."

8. There is no ceiling for the value if the house is in a place with a population not exceeding 10,000. The full value of the house would be exempt. The other part of the provision would have to be read as follows :

"Part of the house exclusively used by the deceased for his residence, to the extent the principal value thereof does not exceed rupees one lakh if such house is situate in a place with a population exceeding ten thousand."

9. If it is read in the above manner, it would be clear that the exemption is available only to the proportionate part and not to the whole of rupees one lakh. It is settled that an exemption provision requires to be strictly construed. In our opinion, there is some inelegance in the drafting by the use of the expression "thereof" in more than one place in the provision with different meanings. But the words "such house" used in, the said provision makes it clear that the exemption is only with reference to the house as such and, if it is partly occupied, the exemption available is only with reference to the proportionate part. We are, therefore, unable to accept the contention that the exemption available u/s 33(1)(n) of the Act would comprehend the whole of rupees one lakh in the present case. On the facts here, the exemption granted by the Asst. Controller and sustained by the appellate authorities is proper. The learned counsel wanted to rely on the provision of the W.T. Act in this connection. It is trite law that the provision of one statute cannot be construed with reference to the provision of another. The question referred is answered in the affirmative and in favour of the Revenue, In the circumstances, there will be no order as to costs.