

(1975) 02 MAD CK 0016

In the Madras High Court

Case No : Tax Case No. 118 of 1969 (Reference No. 31 of 1969)

S. Naganathan

APPELLANT

Vs

Commissioner of Wealth Tax

RESPONDENT

Date of Decision : 11-02-1975

Acts Referred:

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

Citation : (1975) 101 ITR 287 : (1975) 88 LW 567

Hon'ble Judges : V. Sethuraman, J; V. Ramaswami, J

Bench : Division Bench

Advocate : S.V. Subramaniam, for Subbaraya Aiyar and Padmanabhan, for the Appellant; V. Balasubramanyan and J. Jayaraman, for the Respondent

Judgement

Ramaswami, J.—For the assessment years 1964-65 and 1965-66 the assessee submitted wealth-tax returns declaring a net wealth of Rs. 92,958 and Rs. 99,908 and claimed that this being less than rupees one lakh no wealth-tax was payable by him. The assessee claimed that the house and ground bearing No. 17, Lakshmi Colony, North Crescent Road, T. Nagar, Madras, which stood in the name of his wife in which he and his wife were living was not liable to be included in determining the net wealth of the assessee on the ground that; the value of the house was less than Rs. 1,00,000 and the assessee was entitled to the exemption u/s 5(1)(iv) of the Wealth-tax Act. Though the facts are not very clear as to how exactly the said house was treated as falling u/s 4(1)(a) of the Wealth-tax Act, it is agreed in this reference by the learned counsel for both the parties that it will have to be treated as one falling u/s 4(1)(a). The Wealth-tax Officer was of the view that, though the value of the house is to be included in the net wealth of the assessee under the provisions of Section 4(1)(a), since the transfer in favour of the wife itself is not invalidated and the wife still holds the property as belonging to her, the provisions of Section 5(1)(iv) is not applicable. In this view, he valued the house at Rs. 64,000 and included the same in the net wealth of the assessee. The Appellate Assistant Commissioner, however, took a different view and held that, though the house belonged to the assessee's wife,

by reason of a fiction created u/s 4(1) it is included in the net wealth of the assessee and under the scheme of the Act the fiction is to be extended even for the purpose of determining the exemption u/s 5(1)(iv). Any other construction, according to the Appellate Assistant Commissioner, will lead to an anomalous position of the asset not getting the benefit of Section 5(1)(iv) either in the hands of the assessee or in the hands of the transferee, viz., the wife of the assessee. On appeal preferred by the department, the Tribunal held that in spite of the fiction created u/s 4(1)(a) the house still belonged to the wife of the assessee and Section 5(1)(iv) would only apply to a case where the assessee is the owner of the asset and not to a case where it is treated as belonging to him only by the fiction created u/s 4(1)(a).

2. At the instance of the assessee the following question has been referred u/s 27(1) of the Wealth-tax Act, 1957.

"Whether, on the facts and in the circumstances of the case, the inclusion of the value of the house belonging to the assessee's wife in the hands of the assessee for the assessment years 1964-65 and 1965-66 is justified in law ?"

3. Learned counsel for the assessee referred to the provisions of Section 4(1)(a) and in particular the use of the words "as belonging to that individual" in that section as clearly indicating that Parliament intended to treat the property as that of the transferor for the purpose of the Wealth-tax Act and that, therefore, all the consequences of such treatment of the asset as belonging to the transferor would have to be given effect to. He also referred to the language used in Section 5(1)(iv) and pointed out that even in that provision the same words "belonging to the assessee" are used. The learned counsel also drew our attention to the provisions of Section 4 as it stood in the Bill stage and the amendment suggested by the Select Committee. It may be noted that the Wealth-tax Bill did not include the words "as belonging to that individual" and they were included only by the Select Committee. It was the contention of the learned counsel that the words were included by the Select Committee only for the purpose of bringing Section 4(1)(a) in line with the other provisions contained in Sections 2(m), 3, 5(1)(iv) and 33 of the Act. Therefore, the learned counsel submitted that the exemption provided u/s 5(1)(iv) was also available to the assessee. On the other hand, the learned counsel for the revenue contended that while Section 5(1)(iv) takes note of actual ownership of the house being vested in the assessee in order to get the benefit, Section 4(1), on the other hand, does not make the property as that of the transferor, but only for the purposes of assessment the value of the same will have to be included in the net wealth of the assessee. Thus, while taking note of the transfer, it does not create any fiction as the transferor being still the owner of the property itself, the transfer is not invalidated and the transferee is still the owner of the property. It was his further submission that the words "as belonging to that individual" has been used only for the purpose of avoiding any doubt and excluding the same asset being assessed in the hands of the transferee as well. The fiction created

thus u/s 4(1)(a) will have to be limited only for the purpose of including the value of the asset transferred in the net wealth of the transferor and cannot be extended further. He also argued that in interpreting the provisions of Section 4(1)(a) we will have to keep in mind the scope and object of the provision itself as an anti-avoidance of tax measure and having regard to that object no exemption u/s 5(1)(iv) would have been intended by Parliament to be extended to such transactions. He also pointed out that if Parliament had really intended that the benefit of Section 5(1)(iv) should also be applicable to the transferor it would have provided that the property, in spite of the transfer, shall be deemed to be the property of the transferor in which case the provisions of sections 3 and 5(1)(iv) would directly be attracted and no further provisions are necessary.

4. Before we deal with these rival contentions, it is necessary to note certain provisions in the Wealth-tax Act, 1957. Asset is defined in Section 2(e) as including property of every description, movable and immovable, but excluding certain items which are not necessary to be set out here.

5. Section 2(m) defines net wealth as meaning the amount by which the aggregate value computed in accordance with the provisions of the Act of all the assets, wherever located, belonging to the assessee on the valuation date including assets required to be included in his net wealth under the provisions of the Act which is in excess of the aggregate value of all the debts owed by the assessee except certain debts which are specified in that provision. The charging provisions in Section 3 enact that wealth-tax shall be charged for every assessment year in respect of the net wealth of the individual at the rate or rates specified in the Schedule. Section 4 deals with assets which are required to be included in the net wealth of the assessee and Section 5 sets out the assets which shall not be included in the net wealth of the assessee. It may be seen from the scheme of the Act that what is sought to be subjected to wealth-tax is the aggregate value of all the assets belonging to the assessee. Section 4 is thus intended only to prevent any evasion or avoidance of tax by resorting to transfers and taking the properties out of the provisions of the Act. If the intended purpose of Section 4(1) is to be achieved, the transferor shall not be allowed to be in a better position than what he would have been if he had not resorted to such a fraudulent transfer. We have used the expression "fraudulent transfer" not with the intention of restricting the scope of Section 4(1) to only such fraudulent transfers, but in order to emphasize the need for a provision like Section 4(1)(a). But we are not persuaded to hold that by this provision Parliament intended that the transferor should be put under a worse position or shall be subjected to more liability than what he would have been if the transfer had not taken place. There is nothing either in Section 4 or in Section 5(1), in our view, which shows an intention of Parliament either to limit the fiction created u/s 4(1) only for the purpose of including the value of the asset transferred in the net wealth of the transferor or exclude the application of Section 5(1)(iv) to a case where the transfer related to a house belonging to the assessee. While we agree with the learned counsel for the revenue that the

assessee shall not be permitted to be in a better position by resorting to such transfers without consideration, we are unable to agree with him that he shall be penalised by reason of such transaction. Unless there is the clear indication in the provisions of the Act itself, we cannot assume that Parliament intended to impose more onerous obligation on the assessee than he would have been but for the transfer. We may also in this connection point out that Parliament has also provided for the recovery of the tax due even from the property transferred u/s 33 of the Act. Thus, the position prior to the transfer is retained for all purposes except that the transfer itself is not voided. A reference was made to Section 4(3) wherein in valuing the asset to be included u/s 4(1)(a) any debts of the transferee which are referable to the assets transferred will also have to be deducted. Parliament in providing for a deduction of these debts only has extended the scope of the fiction created u/s 4(1) but has not restricted its application or has not made it inapplicable for applying Section 5(1)(iv). We are also unable to accept the argument of the learned counsel for the revenue that the words "as belonging to that individual" in Section 4(1)(a) were used only for the purpose of avoiding any doubt or making it clear that the assets transferred are to be included only in the hands of the transferor and not in the hands of the transferee. We express no opinion as to whether the assets are liable to be included in the net wealth of the transferee as well. Suffice it for the purpose of this case to say that the words "as belonging to that individual " in Section 4 appears to have been included, in our view, for the purpose of uniformity of expression which we find in the other provisions like sections 2(m) and 5(1)(iv) and not for any other specific purpose. We may even go to the extent of stating that these words have been used only with the intention of giving the benefit of Section 5(1)(iv) to those cases where Section 4(1)(a) is applicable. It might be, as contended by the learned counsel for the revenue, that it would have been easier to refer in such cases of transfer that "the property shall be deemed to be the property of the transferor in respect of the transfer" rather than using the expression like "as belonging to that individual". But the form and style are the exclusive jurisdiction of Parliament itself. So long as there is no indication that the benefit u/s 5(1)(iv) shall not be available to a case falling u/s 4(1)(a), we cannot give any restricted interpretation and deny the benefit to the assessee. It is not necessary for us to refer to those decisions where the well-settled principle is that a fiction shall not be extended for more than the purpose for which it is created because in this case we are not extending the fiction beyond the purpose for which it was created, but in effect we give only effect to the fiction created and are not extending the same. We, therefore, answer the reference in the negative and in favour of the assessee. The assessee will be entitled to his costs. Counsel's fee Rs. 250.