

(1998) 06 MAD CK 0080

In the Madras High Court

Case No : Tax Case No. 530 of 1991 (Reference No. 223 of 1991)

V.E. Periannan

APPELLANT

Vs

Commissioner of Wealth Tax

RESPONDENT

Date of Decision : 22-06-1998

Acts Referred:

Wealth Tax Act, 1957 — Section 5(1)

Citation : (2001) 167 CTR 163 : (1999) 240 ITR 723

Hon'ble Judges : R. Jayasimha Babu, J;N.V. Balasubramanian, J

Bench : Division Bench

Advocate : P.P.S. Janarthan Raja, for the Appellant; C.V. Rajan, for the Respondent

Judgement

R. Jayasimha Babu, J.—The questions of law referred to us at the instance of the assessee which arose out of the Tribunal's order dated March 24, 1989, for the assessment year 1985-86 are as follows :

"(i) Whether under the facts and circumstances of the case, the Tribunal was right in confirming the denial of the claim of the petitioner for exemption u/s 5(1) (xxxiii) of the Wealth-tax Act ?

(ii) Whether under the facts and circumstances of the case, the Tribunal was right in holding that the requirement of Section 5(1)(xxxiii) of the Wealth-tax Act with Section 6 of the Income Tax Act was not satisfied by the petitioner ?"

2. The assessee is a karta of the Hindu undivided family and a resident of India. For a period of one year the karta of the Hindu undivided family went abroad for the purpose of taking possession of land which had been held by a company on the winding up of which the land was allotted to the Hindu undivided family. After that he sold the land abroad and returned to India after one year. These proceeds were invested in other properties in India.

3. It was claimed by the assessee that he is entitled to the benefit of section 5(1) (xxxiii) of the Wealth-tax Act, 1957, which reads as under :

"5. (1) Subject to the provisions of Sub-section (1A), 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-- . . .

(xxxiii) in the case of an assessee, being a person of Indian origin or a citizen of India (hereafter in this clause referred to as such person) 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 within one year immediately preceding the date of his return and at any time thereafter :

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 grandparents, was born in undivided India."

4. It was claimed by the assessee that, the assessee was residing abroad for a period of one year, during which the karta remained abroad for the purpose of securing possession of, and effecting sale of the land which had been allotted to the Hindu undivided family in the course of winding up of the company. The assessee claimed the benefit of exemption for a period of seven years for the assets acquired in India out of the money realised by the sale of the lands abroad. The assessee's claim was negatived uniformly by all the authorities from the Income Tax Officer to the Tribunal.

5. Learned counsel for the assessee contended that the assessee had resided abroad for a period of one year and, therefore, the residence of the karta abroad should be construed as the residence of the Hindu undivided family and such residence further regarded as "ordinarily resident" in a foreign country. It is also submitted that if so construed, on the return of the karta to India and reinvestment of those funds included, the assessee would be entitled to exemption u/s 5(1)(xxxiii).

6. The contentions so urged for the petitioner do not find any basis in the relevant statutory provision. Section 5(1)(xxxiii) is a provision meant to encourage persons of Indian origin or citizens of India who have lived abroad for a longtime and acquired assets there and who decide ultimately to settle down in India permanently. Such persons have been granted exemption under the Wealth-tax Act in respect of the assets brought by them to India and reinvested in India. Section 5(1)(xxxiii) uses the words "ordinarily resident" in a foreign country with reference to the persons who are eligible to claim the benefit under the section and the further qualification required to be met by them is couched in language which leaves no, doubt about the intention of the Legislature. The second qualification required for such persons is that they should return to India "with the intention of permanently residing therein". Those words employed in the

section clearly indicate that it was not a provision made to benefit persons who ordinarily reside in India who choose to go abroad for a short time and return to their original permanent home. Such persons are not those contemplated by the Legislature when this provision was incorporated.

7. Though the word "ordinarily" is not defined under the section or elsewhere in the Act, the true scope of that word does not pose any major problem of interpretation as that word has to be understood in the light of the other words used in the section. "Ordinarily resident" in a foreign country must be read along with the other words which require an intention to permanently reside in India after return. "Ordinarily" in this context refers to residence of long duration outside the country. The duration being long enough for the person to regard himself as being "ordinarily resident" of the country outside India and not to regard India as his permanent place of residence. A person who normally resides in India and for whom India is a permanent residence cannot claim the benefit of the section merely by travelling abroad and residing abroad for a period of one year and thereafter returning to his own country. The intention of such a person was always to regard India as his permanent home or place of permanent residence while he travels abroad, and when he returns to India.

8. The assessee in this case was not a citizen who was "ordinarily" residing in a foreign country. Even assuming that the Hindu undivided family can be regarded for the purpose of this section as a person though the word "person" used in this section does not admit a Hindu undivided family being regarded as the person, the residence abroad should be that of the person who returned to India with the intention of making India as the permanent residence of the person. That person must be a citizen of India or a person of Indian origin. The Hindu undivided family is not a citizen of India or a person of Indian origin. It has been explained in the Explanation to this provision that "a person shall be deemed to be of Indian origin if he, or either of his parents or any of his grandparents, was born in undivided India". The reference to the place of birth cannot apply to a Hindu undivided family and it is not possible to extend the word "person" as meaning every member of a Hindu undivided family and regard a Hindu undivided family all of whose members are citizens as person or regard a Hindu undivided family the grandparents or parents of whose members had been born in undivided India, as person for the purpose of this section. The Hindu undivided family being outside the scope of the Explanation in the context in which the word "person" is used in the provision, a Hindu undivided family cannot be regarded as a person.

9. The answer to the questions referred to us is, therefore, in favour of the Revenue and against the assessee, the Revenue shall be entitled to costs of a sum of Rs. 1,000.