

Bench: H Hardy, V Deshpande

Commissioner Of Wealth-Tax vs Mrs. Avtar Mohan Singh on 19/4/1971

JUDGMENT

Deshpande, J.

1. Under Section 5(1)(iv) of the Wealth-tax Act, 1957 (hereinafter called " the Act), "wealth-tax shall not be payable by an assessed in respect of the following assets, and such assets shall not be included in the net wealth of the assessed (iv) one house or part of a house belonging to the assessed exclusively used by him for residential purposes ". (Proviso not reproduced as not relevant).

2. The assessed owns a house at 15A, Aurangzeb Road, New Delhi, and has been occupying it for her own residence from 1959 onwards. Her husband, Bhai Mohan Singh, has also been residing with the assessed as a member of her family from 1959. Bhai Mohan Singh, as the working director in Messrs. Lepetti Rambaxy Laboratories (Private) Ltd., was entitled to rent free accommodation from the company. As the company could not provide him with rent-free accommodation, it paid him Rs. 1,875 per month as compensation for its inability to provide him with a rent-free house. As Bhai Mohan Singh lived with his wife in 15A, Aurangzeb Road, he passed on this amount of Rs. 1,875 per month to her. In the assessment year 1963-64, this was treated as the income of the assessed from her house property, namely, 15A, Aurangzeb Road, and was added to the income accruing to the assessed from the said house calculated on the basis of annual value under Section 23(2) of the Income-tax Act, 1961. In the assessment year 1964-65, the assessed claimed exemption from the payment of wealth-tax on her house property called 15A, Aurangzeb Road, New Delhi, under Section 5(1)(iv) of the Act. The Wealth-tax Officer, however, rejected her claim on the following grounds, namely :

(1) The assessed has already been found to have earned this income-of Rs. 1,875 per month from her house property at 15A, Aurangzeb Road, in the income-tax assessment proceeding for the year 1963-64.

(2) The assessed was sharing the house with her husband, Bhai Mohan Singh, who was her tenant, or alternatively, the assessed was living with her husband in a rented house, the concessional rent of Rs. 1,875 for which was being paid by the husband.

3. The Appellate Assistant Commissioner dismissed the assessed's appeal by observing that her husband was paying to her a sum of Rs. 15,000 per year as rent for occupying the house.

4. The Income-tax Appellate Tribunal summed up the objections of the revenue to the claim of the assessed to exemption under Section 5(1)(iv) as follows, namely :

(1) The assessed's husband paid Rs. 1,875 per month to the assessed for the occupation of the house as a tenant and not as a member of the family of the assessed.

(2) Even if the husband of the assessed was a member of her family, the use of the house by the assessed was not exclusive.

5. The Tribunal, however, rejected the second contention of the revenue on the ground that the use of the house by the assessed did not cease to be exclusive merely because her husband and the family lived in it with her. As regards the first contention, the Tribunal found that whatever might have been the arrangement and agreement between Bhai Mohan Singh and the company and whatever might have been the reasons for the payment of Rs. 1,875 per month by Bhai Mohan Singh to the assessed, Bhai Mohan Singh occupied the house since 1959 and continued to occupy the same even during the year in which the appeal was heard by the

Tribunal, i.e., 1967-68, only as a member of the assessed's family. If the property had been taken by the company on lease from the assessed for the occupation of Bhai Mohan Singh, the amount of Rs. 1,875 per month would have been paid by the company to the assessee directly. Further, it was improbable that such a valuable house property could have been taken on lease for such a small amount of Rs. 1,875 per month. The amount of Rs. 1,875 per month was not paid by Bhai Mohan Singh to the assessed as rent or even as license fee. The assessed, therefore, used the house exclusively for the purpose of residence and was entitled to the exemption of Rs. 1,00,000 under Section 5(1)(iv) of the Act.

6. The question referred to us by the Tribunal for opinion at the instance of the revenue is as follows :

" Whether, on the facts and in the circumstances of the case, the assessed is entitled to exemption of rupees one lakh under Section 5(1)(iv) of the Wealth-tax Act, 1957? "

7. The assessed has to satisfy the following requirements before her claim to exemption under Section 5(1)(iv) of the Act can be sustained. Firstly, the house must be used by the assessed. Secondly, it must be used exclusively by her and, thirdly, it must be used exclusively for residential purposes.

8. The fact that the assessed is living in the house with her husband and family is sufficient to show that the house is used by the assessed. The members of the family of the assessed are bound to live with her. If the ownership of the house belongs to the assessed, then it is primarily the assessed as the owner who is using the house. The members of her family living with her only in their capacity as members of the family are not using the house in their own right. Their residence with the assessed, therefore, by itself does not mean that the house is not being used by the assessed herself. The first requirement may, therefore, be said to have been satisfied in the present case.

9. The use of the house by the assessed has to be " exclusive ", Exclusiveness in this context does not mean loneliness. It does not require that the assessed should live alone in the house. The physical residence of her family with her without any legal right to share the use of the house with her does not come in the way of the exclusiveness of the use of the house by the assessed. But the " use " of the house has, like possession of the house, two aspects, namely, the actual use without claim to any right and use with the claim to a right to do so. According to Savigny, the concept of possession has two elements, namely: (1) corpus possessionis, and (2) animus possidendi. It is the combination of the two which completes the concept of possession as the word is used for legal purposes. The same analysis can be applied to the concept of " use ". The user is to be determined not merely by the actual use, but also by the nature of the capacity or right in which the house is used, as a residence. The Roman Law maxim " possession borrows a great deal from the right " is significant in this context.

10. The test of the exclusiveness of the use of the house is, therefore, whether she alone is living there as of right. So long as her husband and the family did not have any other capacity or right to live with her except as members of the family, it could be said that the use of the house by the assessed was exclusively by her. But when Rs. 1,875 began to be paid to the assessed by Bhai Mohan Singh, it could no longer be said that Bhai Mohan Singh used the house with the assessed merely as a member of her family and without any right in himself to do so. Rs. 1,875 were received by Bhai Mohan Singh from the company only because the company was unable to provide a residence to him. This money was, therefore, in the nature of a house-rent allowance or compensation in lieu of a rent-free house paid by the company to Bhai Mohan Singh. The money was impressed with this character when it passed from the company to Bhai Mohan Singh. As it was Bhai Mohan Singh's income, he was free to spend it or do with it what he liked. If he had done so, the capacity in which he resided in the house would have continued to be the same, namely, as a member of the assessed's family. If he had paid any other amount of money to his wife for any other purpose then also the explanation for such payment would have to be considered and the mere fact of such payment by itself would not have changed the capacity or the right of Bhai Mohan Singh to live in the house. But, what Bhai Mohan Singh has done is to systematically pass on the amount of Rs. 1,875 received by him from the company to his wife every month.

The result is that the character impressed on this payment made by the company to Bhai Mohan Singh continued to attach to it even when Bhai Mohan Singh paid it to the assessed. If Bhai Mohan Singh paid Rs. 1,875 to the assessed as the money which was meant to cover the expenses of his own use of a residence then it could no longer be said that the use of the house by Bhai Mohan Singh was without any right and merely as a member of the family. By virtue of this payment, Bhai Mohan Singh used the house in the right of a person who was paying the assessed for his residence in the house.

11. It may be that Bhai Mohan Singh did not become a tenant of the assessed as such. He may not have paid the amount of Rs. 1,875 even as a license fee. But, even an invitee who systematically pays to the assessed the amount of money which was impressed with the character of a house rent-allowance or a compensation in lieu of residence cannot be said to be using the house without any right and merely in the capacity of a member of the family.

12. As has been observed by R. W. M. Dias in his Jurisprudence (1964) at p. 326, " in English law, as in the Roman law, possession is no more than a device of convenience and policy. " This has been appreciated by a few writers and most clearly by Shartel, who said :

" I want to make the point that there are many meanings of the word ' possession ' ; that possession can only be usefully defined with reference to the purpose in hand ; and that possession may have one meaning in one connection and another meaning in another. "

13. In the context of Section 5(1)(iv), the use of the house and its exclusiveness have relevance not merely to the physical fact of residence but also to the capacity or the right in which a person uses the house as a residence. While the fullest right of ownership of the house was in the assessed, a smaller right of an invitee paying consideration for his residence inhered in Bhai Mohan Singh. The user of the house by the assessed was, therefore, shared by her with Bhai Mohan Singh from the moment the regular and systematic payment started being made by Bhai Mohan Singh to cover his residence in the house along with his wife. The assessed has, therefore, failed to satisfy the second requirement.

14. The significance of the words " for residential purposes " is two-fold. Firstly, these words are contrasted with non-residential purposes such as commercial purposes which are not present in this case. Secondly, "residential purposes " have to be construed in the context of the exclusive use of the house by the assessed. In this context, it means that the house is used by the assessed solely as a residence and not with a view to make any income or profit from it. The various clauses of Section 5(1) of the Act enumerate the types of occupation which are non-profit making and, therefore, merely residential. Under Section 5(1)(i) the property held by a trustee or a person under some other legal obligation for a public purpose of a charitable or religious nature is exempted because the holder does not have a beneficial right to the enjoyment of the property. Under Section 5(1)(ii) the interest of the assessed in the coparcenary property of any Hindu undivided family of which he is a member is also exempted because the unit of assessment would be the Hindu undivided family. Under Section 5(1)(iii) the official residence of a Ruler is exempted primarily because it is the residence and not used for profit making. Under Section 5(1)(iv)(a) agricultural land subject to a maximum is exempted because agricultural income is not taxable under the Income-tax Act or the Wealth-tax Act. Under Section 5(1)(v) the rights under any patent or copyright not held as assets of a business and not yielding any income or benefit are exempted.

15. Under Section 5(1)(iv) the right or interest of the assessed in a policy of insurance, the money covered by which has not become due and payable to the assesses, is exempted. Similar reasons explain the exemption of the assets covered by the rest of the clauses of Section 5(1). What is signified by the words " residential purposes " is not merely the living of the assessed in the house but also the necessary implication that the house is not used otherwise than as a mere residence. Everything that is not included in " residential purposes " is, therefore, excluded from Section 5(1)(iv). Any use of the house to earn an income would, therefore, be outside the "residential purposes " of the assessed. The income earning purpose would be other than a "

residential purpose ". As the house is used by the assessed not only for the residence of herself and her family but also to earn an income in the nature of the payment made by Bhai Mohan Singh to her, it cannot be said that it is used by the assessed for residential purposes only. This conclusion is further supported by the admitted fact that the income of Rs. 1,875 per month earned by the assessed from this house property at 15A, Aurangzeb Road, is also assessed to income-tax as such. After earning income from the use of the property, the assessed can never claim that the house property is used by her only for residential purposes.

16. For the above reasons, we answer the reference in the negative.