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Court : Chennai

Decided On : Oct-17-2001

Reported in : [2002]253ITR575(Mad)

Appeal No. : T. C. No. 1179 of 1988 17 October 2001 Wealth-Tax Act, 1957, S. 7

Appellant : A. Sivasailam

Respondent : Cwt

Advocate for Pet/Ap. : P.P.S, Janarthana Raja, *for the assessee* Mrs. Chitra Venkatraman, *for the Commissioner*

Judgement :

R. Jayasimha Babu, J.

The assessee is the administrator of the assets of his late father. The point in dispute before the Tribunal for the assessment year 1977-78 was, as to whether the assessee as administrator was entitled to the benefit of section 7(4) of the Wealth Tax Act, 1957, for the purpose of valuing the property known as 'Kalyani Mahal' which belongs to the estate of the assessee's late father, A. Anantharamakrishnan. The assessee had valued the property at Rs. 1,49,500 as on 31-3-1971, and claimed that, that value should be adopted as on the valuation date by relying on section 7(4) of the Wealth Tax Act.

The Wealth Tax Officer rejected the claim. He valued the building at Rs. 3,28,000 as on 31-3-1977. The assessee's appeals proved unsuccessful. The Tribunal held that the assessee could not be said to have used 'Kalyani Mahal' exclusively throughout the period of 12 months immediately preceding the valuation date, as the assessee during that period lived elsewhere. The assessment order shows that it was the plea of the assessee, that there were five legal heirs to his late father and that though the assessee who was the administrator did not himself live in that house, the other legal representatives did and that no part of the house was at any time let out during this period. This aspect was completely omitted from consideration by the Tribunal while deciding as to whether the house could be regarded as exclusively used for the residential purpose during the period of 12 months in that year.

An assessment against the administrator is made under section 19A of the Wealth Tax Act which provides for treating the executor as an individual and taxing in his hands the estate of the deceased person. Separate assessment has to be made in respect of the net wealth of the estate on any valuation date and any assets of the estate distributed to, or applied to the benefit of, any specific legatee of the estate prior to that valuation date shall be excluded from the assessment in the hands of the executor. The assessment to be made on the executor under section 19A is to be made separately from any assessment that may be made on him in respect of his own net wealth.

Though, the father of the assessee had expired long prior to 1971, in the year, 1964, the asset not having been fully distributed among the heirs, the administrator continued to represent the estate as on 1-4-1971, as also during the assessment years in question 1977-78. It is not disputed by the revenue that the assessee as administrator of the asset is entitled to claim the benefit of section 7(4) even though the person whose estate was being administered was not available for residing in the premises in respect of which the option under section 7(4) had been exercised by the administrator. What is submitted by the revenue is that the administrator himself not having resided in the house, the benefit of that provision cannot be claimed by the administrator. The administrator of the estate is bound to distribute the assets of the estate to the heirs of the legatees, and till

such distribution is done to administer it, the heirs of the deceased continue to have an interest in that estate even though the administration is in the hands of one among them or in the hands of the executor. The option provided under section 7(4) in respect of the house used 'by him', for residential purposes must in such cases be regarded as having been satisfied, if the house is used for residential purposes by those entitled to a share in the estate, as what is being taxed is the estate of the deceased and not the personal asset of the administrator or the executor.

In this case, it is the finding of the Tribunal that the property had not been let out and that it was used for residential purposes. The only reason for not allowing the administrator to adopt the valuation as on 1-4-1971, for this house is, that the administrator did not reside there. It has been set out in the order of assessment that the other heirs of the late A. Anantharamakrishnan did reside in the premises. The others who were residing therein were persons entitled to a share in the estate. Their residence, in the circumstances, must be regarded as sufficient for the purpose of section 7(4).

We answer the question referred to us, viz.,

'Whether, on the facts and circumstances of the case, the assessee is entitled to the benefit of valuation of the property known as 'Kalyani Mahal', under section 7(4) of the Wealth Tax Act, 1957, for the assessment year 1977-78 ?'

in favour of the assessee and against the revenue.

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