C.I.T., Madras vs K. S. Rathnaswamy on 18 December, 1979

Equivalent citations: 1980 AIR 525, 1980 SCR (2) 519, AIR 1980 SUPREME COURT 525, 1980 TAX. L. R. 291, 1980 UPTC 391, 1980 (1) ITJ 458, 1980 SCC (TAX) 265, (1979) 3 TAXMAN 7, (1980) 2 SCR 519 (SC), (1980) U P T C 891, (1980) 14 CURTAXREP 377, 122 ITR 217, (1980) 2 MAD LJ 9, (1980) 8 TAXMAN 7 (SC), 1980 (2) SCC 548, (1980) 1 SCJ 451

Author: V.D. Tulzapurkar

Bench: V.D. Tulzapurkar, E.S. Venkataramiah

PETITIONER:
C.I.T., MADRAS

Vs.

RESPONDENT:
K. S. RATHNASWAMY

DATE OF JUDGMENT18/12/1979

BENCH:
TULZAPURKAR, V.D.
BENCH:
TULZAPURKAR, V.D.
VENKATARAMIAH, E.S. (J)

CITATION:
1980 AIR 525 1980 SCR (2) 519
1980 SCC (2) 548

ACT:
Indian Income Tax Act, 1922, Section 4A(a)(ii) status of an assessee "as resident in the taxable territories in India" or non-resident-Scope of the section-Meaning of the words "maintains" 'has maintained for him a dwelling place'.

HEADNOTE:
The assessee one of the sons of Subramania was born and brought up in Ceylon and had his own business and properties in Ceylon. After the death of his father and his paternal uncle Arumugha, the assessee's two other brothers Ganapathi and Velayadham and his cousin Ganesa son of Arumugha formed a Hindu Undivided Family. That family owned an ancestral house at Orthanad in Tanjore district, which was used as

dwelling by the step-mother of assessee, his full brothers and his cousin Ganesa. The family also owned shops and agricultural lands. The family properties were managed by Ganesa and were maintained by him out of the agricultural and rental income. The assessee never enjoyed any portion of the family income. In July 1958 the assessee on the one hand and other members of the family on the other executed a mutual deed of release relinquishing each party's rights in favour of the other; inter alia the assessee released all his rights, title and interest in the family properties in favour of his brothers, reciting therein that the family properties were never enjoyed by him but only by others. This deed or release was found to be an instrument bona fide entered into by the parties.

It appears that he started constructing a theatre in Orthanad in 1953 which was completed in 1957 and during the said construction he paid occasional visits and stayed sometime in the family house, sometimes in a chatram in Tanjore and at times in a hotel. Thus from 1-4-52 to 31-3-53 he stayed for 8 days in India, from 1-4-53 to 31-3-54 he did not come to India at all; from 1-4-54 to 31-3-55 he stayed for 28 days in India; from 1-4-55 to 31-3-56 he stayed for 47 days in India and from 1-4-56 to 31-3-57 he stayed for 23 days in India.

In the above circumstances for the assessment years 1952-53, 1953-54, 1956-57 and 1957-58, the assessee filed returns, but for the first two years after proceedings were initiated under section 34(i)(a) of the Act and for the latter two years on his own offering his income in Ceylon for assessment. The status declared in all the returns was "he was a resident and ordinarily resident person". The Income Tax Officer completed the assessment on the basis of the returns filed. He also initiated penalty proceedings against the assessee under section 28(1)(a) for not filing the returns in time and levied penalties against him. In the appeals preferred by the assessee which were principally directed against the rejection of the claim made by him in respect of the double taxation relief, an additional ground was taken that the assessee should have been treated as a 'non-resident' in all the years. The Appellate Assistant Commissioner upheld this additional ground taking the view that since during his sojourn in India.

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the assessee was staying in the family house more as a guest, he neither maintained nor had maintained a dwelling place in the taxable territories and, therefore, section 4A(a)(ii) of the Act was inapplicable. Having lost their appeals before the Tribunal and on references to the High Court, the Revenue came up in appeal by certificates to this Court.

Dismissing the appeals, the Court,

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HELD: 1. Section 4A(a)(ii) of the Income Tax Act, 1922

raises a statutory fiction since it is prefaced by the phrase "for the purposes of this Act". Further the language of the provision makes it clear that it lays down a technical test of territorial connection amounting to residence applicable to all individuals -foreigners as well as Indians, including Hindus, Christians, Muslims, Parsis and others irrespective of the personal law governing them. [524 D-E]

2. Section 4A(a)(ii) makes it clear that before any individual can be said to be a resident in the taxable territories in any previous year two conditions are required to be fulfilled; (a) there must be a dwelling place maintained in the taxable territories either by the assessee himself or by some one else for him for the requisite period and (b) the assessee must live in the taxable territories (though not necessarily therein) for sometime, however short, in the previous years. In the instant case, the second condition was satisfied in regard to the assessee. [524E-G]

3. Section 4(A)(a) uses the expression 'dwelling place' a flexible expression which should be construed according to the object and intent of the particular legislation in which it has been used. Primarily the expression means 'residence', "abode", or "home" where an individual is supposed usually to live and sleep and since the expression has been used in a taxing statute, in the context of a provision which lays down a technical test of territorial connection amounting to residence, the concept of an abode or home would be implicit in it. In other words, it must be a house or a portion thereof which could be regarded as an abode or home of the assessee in taxable territories. In other words, when you go to a house you should be really going home, then you are going to a dwelling house whether maintained by you or by some one else and a house may be your home whether it belongs to you or belongs to some one else. In other words, with regard to the house where he goes and lives, he must be able to say that it is his abode or home. Therefore, there is no error in introducing the concept of home or abode into the section. [526 C-E, 527 E-F]

C.I.T. Bombay North etc. v. Foolabhai Khodabhai Patel 31 I.T.R. 771 (Bombay); approved.

Pickles v. Foulsham, (1925) 9 Tax Cases 261; quoted with approval.

Section 4(A)(a) uses two expressions: "he maintains a dwelling place" and "he has maintained for him a dwelling place". The latter expression, obviously means he causes to be maintained for him a dwelling place. In either of these expressions the volition on the part of the assessee in the maintenance of the dwelling place emerges very clearly: whether he maintains it or he causes it to be maintained; the maintenance of the dwelling place must be at his instance behest or request and when it is maintained by

someone else other than the assessee, it must be for the assessee or for his benefit. [527 G-H, 528 A]
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Mere ownership of a fractional share or interest in the family house with the consequent right to occupy it without anything more would not be sufficient to satisfy the requirements of section 4A(a)(ii), for the requirements thereof are: not only there must be a dwelling place in which the assessee has a right to live but he must maintain it as his home or he must have it maintained for him as his home. [530 A-B; 528 H]

In the instant case, (i) on the material on record, the family house in which the assessee stayed was neither his abode or home nor was it maintained by Ganesa at the instance of the assessee or for his benefit, even though it was true that the assessee as a coparcener had a share and interest in the family house and also a consequent right to occupy it without any let or hindrance. [528 A, 529 A, 530 F]

(ii) his stay in the family house was found to be as a guest enjoying the hospitality of his kith and kin, rather than as an inhabitant of his abode or home; and (iii) therefore, he was rightly regarded as non-resident. [530 F-G]

C.I.T., Madras v. Janab A. P. Mohamed Noohu and Ors., 43 I.T.R. 88 (Mad.); approved.

S. M. Zackariah Sahib v. C.I.T., Madras 22 I.T.R. 359 Mad., Ramjibhai Hansibhai Patel v. Income Tax Officer, Special Circle, Ahmedabad, 53 I.T.R. 547 (Guj.); distinguished.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 2007- 2014 of 1972.

From the Judgment and Order dated 24-4-1970 of the Madras High Court in Tax Case No. 156/67 (Ref. No. 54/67).

S. T. Desai, S. P. Nayar and Miss A. Subhashini for the Appellant.

T. A. Ramachandran (Amicus Curiae) for the Respondent. The Judgment of the Court was delivered by TULZAPURKAR, J.-These appeals by certificates under s. 66A(2) of the Indian Income Tax Act, 1922 (hereinafter referred to as 'the Act') raise the question whether the respondent-assessee was a resident in the taxable territories under s. 4A(a)(ii) of the Act for the concerned assessment years?

The facts giving rise to the aforesaid question are these: Subramania and Arumuga were two brothers; the former had three sons Ratnaswamy, the assessee, Ganpathi and Velayudham while the latter had only one son Ganesa. After the death of Subramania and Arumuga their sons formed a

Hindu Undivided Family; that family owned an ancestral house at Orthanad in Tanjore District, which was used as dwelling by the step-mother of the assessee, his full brother and his cousin Ganesa; the family also owned shops and agricultural lands. The family properties were managed by Ganesa and were maintained by him out of the agricultural and rental income. Admittedly, the assessee never enjoyed any portion of the family income. Born and brought up in Ceylon, the assessee had his own business and properties in Ceylon. He had eight children all born and educated in Ceylon. It appears that he started constructing a theatre in Orthanad in 1953 which was completed in 1957 and during the said construction he paid occasional visits and stayed sometimes in the family house, sometimes in a chatram in Tanjore and at times in a hotel. Thus, from 1-4-1952 to 31-3-1953 he stayed for 8 days in India, from 1-4-1953 to 31-3-1954 he did not come to India at all, from 1-4-1954 to 31-3-1955 he stayed for 28 days in India, from 1-4-1955 to 31-3-1956 he stayed for 47 days in India and from 1-4-1956 to 31-3-1957 he stayed for 23 days in India. In July 1958 the assessee on the one hand and other members of the family on the other executed a mutual deed of release, relinquishing each party's rights in favour of the other; inter alia, the assessee released all his rights, title and interest in the family properties in favour of his brothers, reciting therein that the family properties were never enjoyed by him but only by others. There is no dispute and the Tribunal has also found that the deed of release was an instrument bona fide entered into between the parties.

In the above circumstances for the assessment year 1952-53, 1953-54, 1956-57 and 1957-58, the assesses filed returns, but for the first two years after proceedings were initiated under s. 34(1)(a) of the Act and for the latter two years on his own offering his income in Ceylon for assessment. The status declared in all the returns was that he was 'a resident and ordinarily resident person.' The Income Tax Officer completed the assessments on the basis of the returns filed. He also initiated penalty proceedings against the assessee under s. 28(1)(a) for not filing the returns in time and levied penalties on him. In the appeals preferred by the assessee, which were principally directed against the rejection of the claim made by him in respect of the double taxation relief, an additional ground was taken that the assessee should have been treated as a 'non- resident' in all the years. The Appellate Assistant Commissioner upheld this additional ground taking the view that since during his sojourn in India the assessee was staying in the family house more as a guest, he neither maintained nor had maintained for him a dwelling place in the taxable territories and, therefore, s. 4A (a) (ii) of the Act was inapplicable. The Department carried the matter in further appeals to the Tribunal but the Tribunal called for a remand report from the Appellate Assistant Commissioner after a fuller examination as to the factual position whether the assessee did maintain a dwelling place in India or the same was maintained for him by others inasmuch as the Tribunal felt that the Department did not have an effective opportunity to meet the aspect raised for the first time before the Appellate Assistant Commissioner. In the remand proceedings oral evidence was recorded by examining the assessee and two others and the final report was forwarded to the Tribunal. On the basis of the material collected and forwarded to it, the Tribunal took the view that the assessee was a natural born Ceylon citizen staying in Ceylon most of the time, that his visits to India in the aggregate were for 137 days in the period of 11 years (from 1-4-46 to 31-3-67), that the evidence supported the theory that he was more a guest in family house in India than an inhabitant of his own house or home, that there was nothing to show that the assessee enjoyed any of his family income or had any separate portion of the family house reserved for him during his sojourn to India

and that there were no enough materials to say that there was a residence either run or maintained by the assessee in India. In this view of the matter the Tribunal upheld the Appellate Assistant Commissioner's order cancelling the assessment orders made against the assessee. As a consequence, the Tribunal also cancelled the penalties that were levied on the assessee.

At the instance of the Revenue and on a direction from the High Court the Tribunal referred the following two questions to the High Court for its opinion:

> "1. Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessee was non-resident?
>
> 2. Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that there was no liability to penalty under section 28(1)(a) ?"

The High Court answered both the questions in favour of the assessee and against the Revenue. While dealing with the first question, which was the principal question raised in Reference, the High Court took the view that the answer to that question depended upon a bundle of facts and their cumulative effect and in its view the cumulative effect of the totality of facts found by the Tribunal did not lead to the inference that a dwelling place or dwelling house was maintained by the assessee or the same was maintained by others for him but on the other hand the evidence showed that the assessee was enjoying the hospitality of his kith and kin during his stay in the family house where he was treated as a guest. The High Court further held that the mere fact that the assessee had a right in the family house at Orthanad in Tanjore District and that he was occasionally lodging there did not mean that he was maintaining the same or had it maintained for him and that what the law required was the maintenance of a dwelling place which should be his domus mansionalis; in other words, if the dwelling place was not his second home or the real centre of his life then the assessee would be a non-resident. It is this view of the High Court that is being challenged before us in these appeals by the Revenue.

Since the question raised before us pertains to the proper construction of s. 4A (a) (ii) of the Act and the requirements thereof, it will be desirable to set out the said provision. It runs thus:

> "For the purposes of this Act-
>
> (a) any individual is resident in the taxable territories in any year if he-....
>
> (ii) maintains or has maintained for him a dwelling place in the taxable territories for a period or periods amounting in all to one hundred and eighty-two days or more in that year, is in the taxable territories for any time in that year."

Since the section is prefaced by the phrase "for the purposes of this Act", it is clear that it raises a statutory fiction; further the language of the provision makes it clear that it lays down a technical test of territorial connection amounting to residence applicable to all individuals-foreigners as well as Indians, including Hindus, Christians, Muslims, Parsis and others irrespective of the personal law

governing them. On a reading of the provision it becomes clear that before any individual can be said to be a resident in the taxable territories in any previous year two conditions are required to be fulfilled:

> (a) there must be a dwelling place maintained in the taxable territories either by the assessee himself or by some one else for him for the requisite period and (b) the assessee must live in the taxable territories (though not necessarily therein) for some time, howsoever short, in the previous year. In the instant case it was not disputed before us that the second condition was satisfied in regard to the assessee. The question that we have to consider is whether on the facts found by the Tribunal it could be said that the assessee maintained or had maintained for him a dwelling place in the taxable territories for the requisite period.

It was not disputed that the assessee himself did not maintain the family house but it was maintained by Ganesa as the manager of the Hindu Undivided Family. If the family house, which was maintained by Ganesa as the Karta, in which the assessee had a share or interest and stayed for short periods during the previous years relevant to the assessment years in question could be considered to be a dwelling house or a dwelling place maintained for him or for his benefit, then no difficulty would arise with regard to the requisite period because undoubtedly that dwelling place was there during all the previous years relevant to the assessment years and the assessee will have to be regarded as a resident in the taxable territories for the concerned years.

Counsel for the Revenue contended that the expression "maintains a dwelling place" inter alia connotes the idea that an assessee owns a dwelling house which he can legally and as of right occupy if he is so minded during his visits to India while the expression "has maintained for him a dwelling place" would cover a case where the assessee has a right to occupy or live in a dwelling place during his stay in India though the expenses of maintaining such dwelling place are not met by him wholly or in part and since in the instant case it was a joint family dwelling house maintained by the Manager for the family wherein the assessee had a right of dwelling without any let or hindrance, it must be held that the assessee had maintained for him a dwelling house. In support of these contentions strong reliance was placed by him upon two decisions-one of the Madras High Court in S. M. Zackariah Saheb v. C.I.T. Madras and the other of Gujarat High Court in Ramjibhai Hansjibhai Patel v. Income Tax Officer, Special Circle, Ahmedabad. According to him the section merely speaks of a dwelling place of an assessee and does not require his actual residence in it nor does it require any establishment maintained by him or for him and it would be, therefore erroneous to introduce into the section the concept of 'attachment' or 'permanence' or 'home'.

On the other hand, counsel for the assessee contended that three aspects emerge from the phrase "he maintains or has maintained a dwelling place for him": (i) the volition of the assessee in maintaining the dwelling place or its maintenance being at his instance, behest or request, (ii) the expenses of maintenance must be met by the assessee and

(iii) the house or a portion thereof must be set apart and kept fit for the dwelling of the assessee. According to him what is contemplated by section 4A (a) (ii) is the de facto maintenance of a

dwelling place for the assessee and not maintenance for him as one of a body of individuals; in other words, the section cannot apply to a case where a dwelling place is in possession of other members of the Hindu Undivided Family and the assessee has a right of common enjoyment. Counsel contended that on the facts found in the case the assessee had stayed in the family house as a guest and enjoyed the hospitality of his kith and kin and, therefore, though as a co-parcener he had a right in the family house his occasional lodging there could not mean that he was maintaining the same or had it maintained for him. In other words it was not his home. Strong reliance was placed by him on the Bombay High Court decision in C.I.T. Bombay North, etc. v. Falabhai Khodabhai Patel where the connotation of a "dwelling place" occurring in s.4A (a) (ii) was equated with a house which could be regarded by the assessee as his hime. He urged that both the Tribunal and the High Court were right in coming to the conclusion that the family house had not been maintained for the benefit of the assessee as his abode or home away from Ceylon and, therefore, he was rightly regarded as a non-resident.

At the outset it may be pointed out that the section uses the expression 'dwelling place', a flexible expression, but the expression must be construed according to the object and intent of the particular legislation in which it has been used. Primarily the expression means 'residence', 'abode' or 'home' where an individual is supposed usually to live and sleep and since the expression has been used in a taxing statute in the context of a provision which lays dawn a technical test of territorial connection amounting to residence, the concept of an abode on home would be implicit in it. In other words, it must be a house or a portion thereof which could be regarded as an abode or home of the assessee in the taxable territories. In our view, this aspect of the matter has been rightly emphasized by the Bombay High Court in Phulabhai Khodabhai's case (supra), where Chief Justice Chagla has observed thus:

> "When we look at the language used by the Legislature, it is clear that what is sought to be emphasized is that there must be not only a residence or a house for the assessee in the taxable territories, but there must be a home.
>
> The connotation of a dwelling place is undoubtedly different from a mere residence or a mere house in which one finds oneself for a temporary or short period. A dwelling place connotes a sense of permanency, a sense of attachment, a sense of surroundings, which would permit a person to say that this house is his home. Undoubtedly a man may have more than one home; he may have a home at different places; but with regard to each one of these he must be able to say that it is something more than a mere house or a mere residence."

Similar view was expressed by Mr. Justice Rowlatt in Pickles v. Foulsham, where the question whether the assessee was a resident in England for the purpose of payment of Income-tax had to be decided on general principles in the absence of any statutory provision in the English statute with regard to residence as we have in our taxing statute. At page 275 of the report the learned Judge observed thus:

> "A man, I suppose, may keep a house for his wife and come there merely as a visitor; he may keep a house for his mother, and, when he can get away, always go there to see her; but it may be that it is his mother's house, even if he is paying for it, and he is going there as a visitor. He keeps the house for his wife and children; it may be that he is going there as going home; it may be that that is the centre really of his life, that he keeps many belongings there, and so on, and his time in Africa is really, in truth, a period of enforced absence from what is truly his residence. Now it may be one, or it may be the other."

In other words, the test which the learned Judge laid down was that when you go to a house you should be really going home, then you are going to a dwelling house whether maintained by you or by someone else, a nda house may be your home whether it belongs to you or belongs to someone else. In other words, with regard to the house where he goes and lives, he must be able to say that it is his abode or home. It is, therefore, not possible to accept the contention of learned counsel for the Revenue that it is erroneous to introduce the concept of home or abode into the section.

Secondly, the section uses two expressions: "he maintains a dwelling place" and "he has maintained for him a dwelling place." The latter expression, obviously, means he causes to be maintained for him a dwelling place. This is clear from the fact that the relevant provision in the 1961 Act has now been altered and it says "he causes to be maintained for him" and in the Notes on Clauses to the concerned Bill it has been explained that the words "has maintained" in s. 4A(a)(ii), have been replaced in the draft by the words "causes to be maintained", which express the intention better. Now, in either of these expressions the volition on the part of the assessee in the maintenance of the dwelling place emerges very clearly; whether he maintains it or he causes it to be maintained, the maintenance of the dwelling place must be at his instance, behest or request and when it is maintained by someone else other than the assessee, it must be for the assessee or for his benefit. Therefore, the question that will have to be considered in the instant case is whether on the facts found by the Tribunal the family house which was maintained by Ganesa as the Karta could be regarded as an abode or home of the assessee maintained at the instance of the assessee and for his benefit? The facts found in the instant case are: (1) the assessee, born and brought up in Ceylon, had his own business and properties in Ceylon, (2) he had 8 Children all born and educated in Ceylon, (3) the H.U.F. (of which the assessee was a coparcener at the material time) owned an ancestral house at Orthanad, which had been and was being used as a dwelling by the assessee's step-mother, his full brothers and his cousin Ganesa, and the same was being maintained by Ganesa out of income of family properties, (4) during the previous years relevant to the assessment years in question while the construction of the assessee's theatre in Orthanad was in progress, the assessee paid occasional visits and stayed sometimes in the family house, sometimes in chatram at Tanjore and at times in a hotel, (5) there was positive evidence on record that during his stay in the family house the assessee was considered only as a guest enjoying the hospitality of the family, (6) the assessee admittedly never enjoyed any portion of the family income nor was he connected with the management of the family properties, including the house and (7) in July 1958 by a deed of release the assessee relinquished all his right, title or interest in the family properties in favour of his brothers. On these facts it becomes transparently clear that the assessee whenever he stayed in the family house during the relevant previous years was more a guest therein enjoying the hospitality of

his kith and kin than an inhabitant of his own abode or home and further that the family house was maintained by Ganesa not at the instance of the assessee nor for his benefit but it was maintained by him for the rest of the family. It is true that the house at Orthanad was at the material time a joint family house in which the assessee as a co-parcener had a share and interest; it is also true that as a coparcener he had a right to occupy that house without any let or hindrance, but mere ownership of a fractional share or interest in the family house with the consequent right to occupy it without anything more would not be sufficient to satisfy the requirements of section 4A(a)(ii), for, the requirements thereof are: not only there must be a dwelling place in which the assessee has a right to live but he must maintain it as his home or he must have it maintained for him as his home. The material on record shows that the family house in which he stayed was neither his abode or home nor was it maintained by Ganesa at the instance of the assessee or for his benefit.

Turning to the two decisions-one of the Madras High Court and the other of the Gujarat High Court-on which reliance was placed by counsel for the Revenue, we may at once say that both the decisions are clearly distinguishable. The decision of the Madras High Court in Zackriah Sahib's case (supra) dealt with a case of an assessee who was a Muhammadan merchant. He carried on business in Ceylon and resided there. His parents lived in British India, as it then was, in a house owned by his mother. The assessee's wife also lived in British India- sometimes with his parents and sometimes with her parents. The assessee was remitting monies now and then to his parents for their maintenance. He visited British India during the year of account and stayed in his mother's house with his parents. The Appellate Tribunal held that the assessee was resident in British India within the meaning of s 4A(a)(ii). Reversing this decision, the Madras High Court held that the assessee did not maintain a dwelling place in British India and that his mother's house was maintained for the parents of the assessee and not for the assessee himself. Obviously, the house belonged to the mother of the assessee which he had no legal right to occupy and, therefore, it could not be said that the assessee maintained a dwelling place in British India. Counsel, however, relied upon certain observations made by Vishwanatha Sastri, J., in that Judgment, which run thus:

> "The expression 'maintains a dwelling place' connotes the idea that the assessee owns or has taken on rent or on a mortgage with possession a dwelling house which he can legally and as of right occupy, if he is so minded, during his visit to British India.....In our opinion, the expression 'has maintained for him' would certainly cover a case where the assessee has a right to occupy or live in a dwelling place during his stay in British India though the expenses of maintaining the dwelling place are not met by him in whole or in part. A member of an undivided Hindu family.....has a right to live in the family house when he goes there, though the house is maintained by the manager of the family and not by the assessee from his own funds....In such cases it can be said that the assessee has a dwelling place maintained for him by the manager of the family for he has a right to occupy the house during his visits to British India."

Relying on the aforesaid passage, counsel urged that in the instant case the house at Orthanad was maintained by Ganesa as a Karta of the family and since the assessee as a coparcener had a right to live in it during his visits to India it must be held that the assessee had maintained for him a dwelling place in India. It is not possible to accept this contention, for, in our view, the aforesaid

passage, taken in its content, does not lay down as a proposition of law that mere ownership of a fractional share in a family house with a consequent right to occupy the same with nothing more would constitute it a dwelling house of such owner within the meaning of s. 4A(a)(ii); for, it must further be shown that it was maintained by the manager at the instance of the assessee and for his benefit. That is how the aforesaid passage has been partly explained and, in our view, rightly, by the Madras High Court in a subsequent decision in C.I.T. Madras v. Janab A. P. Mohamed Noohu & Ors. The Gujarat decision in Ramjibhai Hansjibhai's case (supra) was clearly a case where the joint family house was maintained as a dwelling place for the benefit of all members of the joint family, including the assessee. The main contention urged on behalf of the assessee in that case was that the dwelling house was not maintained for the assessee as an individual but it was maintained not only for him but for other members of the joint family as well and, therefore, the requirements of the section were not satisfied. The contention was negatived. In other words, it was not disputed in the Gujarat case that a dwelling house was maintained by the manager of the family for the benefit of the assessee. In the instant case on the facts it has been found that the family house was maintained by Ganesa not for the assessee, nor for his benefit but for the other family members.

Having regard to the above discussion it is clear that though the assessee could be said to have had a share in the joint family house with a consequent right to occupy the same it could not be said that the said family house was maintained by Ganesa as the Karta of the family as a dwelling place for the assessee or for his benefit nor was it maintained by him at the instance of the assessee. Moreover, his stay in the family house has been found to be as a guest enjoying the hospitality of his kith and kin rather than as an inhabitant of his abode or home. In this view of the matter the assessee, in our view, was rightly regarded as a non-resident. The appeals are therefore, dismissed.

S.R. Appeals dismissed.