

Income Tax Appellate Tribunal - Bangalore

Dr. Ram A. Joshi vs Third Wealth-Tax Officer on 21 July, 1982

Equivalent citations: 1983 3 ITD 14 Bang

Bench: T Venkatappa, S Rajaratnam

ORDER S. Rajaratnam, Accountant Member

1. These two appeals have been filed by Shri Ram A. Joshi against the orders of the Commissioner, Karnataka-II, setting aside the wealth-tax assessments made on the assessee for the assessment years 1978-79 and 1979-80.

2. The assessee is an individual and a citizen of India. He had come to India in June 1972 from abroad with the intention of permanently residing in India thereafter. This fact is not in dispute. He had claimed exemption in respect of his assets which were all purchased out of moneys brought from abroad under Section 5(1)(xxxiii) of the Wealth-tax Act, 1957 ('the Act'). This was also allowed. The Commissioner, however, felt that the exemption under Section 5(1)(xxxiii) is available only for persons who came to India after 1-4-1977 because the exemption was introduced by the Finance Act, 1976, with effect from 1-4-1977. According to him, the proviso which reckons the period of exemption for seven years from the assessment year following the date of arrival implies that such arrival should have been only after the provision was put in the statute book. It is in this view that he has overruled the assessee's objection and has set aside the assessments, with a direction to re-do the same, apparently in the view which he had mentioned in his orders. The assessee in his appeal claims that he satisfies squarely the conditions stipulated for exemption under Section 5(1)(xxxiii) and that the Commissioner is not justified in withdrawing such exemption. He also contended that for the immediately preceding year, i.e., the assessment year 1977-78, the assessee had succeeded in establishing his right to exemption before the then Commissioner and filed a copy of his order in support of his claim. The learned departmental representative contended that the order of the Commissioner for an earlier year cannot act as an estoppel, if the conclusion in the present orders is the only right conclusion. He argued that the intention of the exemption was to enable the Indians abroad to bring the moneys and hence, the operation could only be prospective. He contended that the proviso, as claimed by the Commissioner, implies such an intention.

3. We have carefully considered the records as well as the arguments. Clause (xxxiii) of Sub-section (1) of Section 5 reads as under:

in the case of an assessee, being a person of Indian origin 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:

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.

This clause, no doubt, was introduced by the Finance Act, 1976, with effect from 1-4-1977 and has only prospective operation. But that does not mean that the arrival of the person of Indian origin should also be after the enactment. No such condition is either explicit or implied in the clause which has been reproduced above. When there is no ambiguity in the clause, it is not necessary for us to go into the question of intention. Even as regards intention, we are not convinced that the objection of this exemption is to benefit only the future entrants and not those who had already brought their moneys and had suffered wealth-tax liability, which they would not have otherwise suffered, if they had not brought the funds to India. In other words, the benefit of exemption might have well been intended as a relief to all persons of Indian origin irrespective of the date of arrival. No doubt, the persons who had arrived before 1-4-1977 would not be entitled to the full benefit of exemption for seven successive assessments. It is because the benefit is available from the assessment year 1977-78. In the assessee's own case, though the first assessment was for the assessment year 1973-74 after arrival in India, seven years would start running from the assessment year 1973-74 and would end in the assessment year 1979-80 which is the seventh year. The assessee will, however, be eligible for exemption only for the assessment years 1977-78 to 1979-80. This also would show that the provision has been given effect prospectively and not retrospectively as wrongly assumed by the Commissioner who passed the impugned orders. It is in this view, the Commissioner for the assessment year 1977-78 allowed the assessee's revision petition. We are of the view that this Commissioner was right and the view expressed by the Commissioner for the assessment years 1978-79 and 1979-80 is wrong. We will, therefore, cancel his orders and restore the assessments.

4. In the result, appeals are allowed and the orders under Section 25(2) of the Act passed by the Commissioner, cancelled.