

KALPESH CLASSES

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MEANING OF ASSET

[2003] 262 ITR 0403- CIT VS. SMT. BADHURANI DEEPINDER KAUR (P&H)

In Nawab Sir Mir Osman Ali Khan (Late) v. CWT [1986] 162 ITR 888, the Supreme Court stated that the liability to wealth-tax arises because of the belonging of the assessee and not otherwise. Mere possession or joint possession unaccompanied by the right to be in possession or ownership of property would therefore not bring the property within the definition of net wealth for it would not have been an asset belonging to the assessee. The Supreme Court observed that it had to be borne in mind that unlike the provisions of the Income-tax Act section 2(m) of the Wealth-tax Act, 1957, used the expression “belonging” to and as such indicates something over which a person has dominion and lawful dominion. Held accordingly, that in respect of the Riviera Apartments flat no registered sale deed had been executed in favour of the assessee, that no conveyance had been executed in favour of the assessee and the Okhla plot had not been handed over to him by the DDA, and that for similar reason the hotel site at Chandigarh also did not belong to the assessee. The findings recorded by the Tribunal that the flat in Riviera Apartments, the plot in Okhla estate and the hotel site at Chandigarh did not belong to the assessee were based on correct appreciation of evidence. The value of these properties was not liable to be included in the net wealth of the assessee.

EXEMPT ASSETS

[2001] 247 ITR 0586 GAJ SINGH VS. SETTLEMENT COMMISSION (SC)

Where the assessee, an ex-Ruler of an Indian State, had opted to adopt the one Palace as his house for the purposes of exemption under section 5(1)(iii) of the Wealth-tax Act, 1957, that he could not seek exemption for another house, under clause (vi).

QUESTION THAT CAN BE SET IN AN EXAMINATION CONDITION

The assessee opted to adopt the Umed Bhavan Palace as his house for the purposes of exemption under section 5(1)(iii) of wealth tax, which is specific for the purpose. It was also allowed as exempt by the assessing officer. For the same assessment year assessee also seek exemption for another house, namely, the Sardar Samad Palace under clause 5(1)(vi). You are required to answer whether the Sardar Samad Palace could be regarded as exempt under section 5(1)(vi).

ANSWER

Where the assessee, an ex-Ruler of an Indian State, had opted to adopt the one Palace as his house for the purposes of exemption under section 5(1)(iii) of the Wealth-tax Act, 1957, that he could not seek exemption for another house, under clause (vi). Thus the Sardar Samad Palace cannot be allowed as exempt under clause 5(1)(vi). [2001] 247 ITR 0586 GAJ SINGH VS. SETTLEMENT COMMISSION (SC).

[2003] 261 ITR 0741- H.H. MAHARAO BRIJRAJ SINGH VS. UNION OF INDIA (RAJ)

For an ex-ruler of Indian state any one building in the occupation of a ruler declared as his official residence qualifies for exemption under section 5 of wealth tax.. Appurtenant land of palace was requisitioned for defence purpose by central government, this is not voluntary act

on part of assessee to earn income. Entire palace with its appurtenant land exempt from wealth-tax--wealth-tax act, 1957, s. 5(1)(iii).

[2001] 249 ITR 0671- COMMISSIONER OF WEALTH-TAX VS. LOKENDRA SINGH (SC)

It was held in case of Commissioner of Income-tax Vs. Lokendra Singh (MP), that In the case of a building in the occupation of an ex-Ruler the expression "any one building" has been used only to indicate that not more than one building can be exempt. Assessee, an ex-Ruler, was entitled to exemption in respect of the entire property, namely, the official residence, although part of it was let out. This judgment is over ruled by supreme court.

QUESTION THAT CAN BE SET IN AN EXAMINATION CONDITION

You are required to discuss the treatment for the part of the official residence of the ex-Ruler of Ratlam, that stood let out. The officer is whether justified in law in holding that the assessee is entitled to exemption of the value of the said property in its entirety under section 5(1)(iii).

ANSWER

It was held in case of Commissioner of Income-tax Vs. Lokendra Singh (MP), that In the case of a building in the occupation of an ex-Ruler the expression "any one building" has been used only to indicate that not more than one building can be exempt. Assessee, an ex-Ruler, was entitled to exemption in respect of the entire property, namely, the official residence, although part of it was let out. This judgment is over ruled by supreme court. Thus let out property do not qualify for the purpose of exemption u/s 5(1)(iii) of the wealth tax act. (KALPESH CLASSES TEL. 23801121, 23820676)

[2001] 250 ITR 0666- GANGABAI CHARITIES VS. COMMISSIONER OF WEALTH-TAX (SC)

Where purpose of charitable trust was not confined to religious or charitable use and property could be used for social, cultural and allied purposes at sole discretion of trustee. The trust will not be entitled to exemption under wealth-tax act u/s. 5(1)(i).

QUESTION THAT CAN BE SET IN AN EXAMINATION CONDITION

Purpose of charitable trust was not confined to religious or charitable use and property could be used for social, cultural and allied purposes at sole discretion of trustee. You are required answer whether the property would qualify for the exemption under the wealth tax or not.

ANSWER

Where under a trust deed the purposes for which the trust property could be put to were not confined to religious or charitable use. The property could be used for social, cultural and other allied purposes at the sole discretion of the trustee. The trust is not entitled to exemption under section 5(1)(i) of the Wealth-tax Act. [2001] 250 ITR 0666 GANGABAI CHARITIES VS. COMMISSIONER OF WEALTH-TAX (SC)

[2002] 257 ITR 0718- M.K. KUPPURAJ (HUF) VS. COMMISSIONER OF WEALTH-TAX (MAD)

Section 7(2) of wealth tax provides for valuation of a house belonging to the assessee and exclusively used by him for residential purposes throughout the period of twelve months immediately preceding the valuation date does not set out a definition of the term "house" nor does it lay down any ceiling regarding the extent of open space which can be regarded as part of the house. Once it is found that the house is in fact a residential house and that the land is being used as the ground attached to the house for the benefit of the residents of the house, it remains a part of the house for the purpose of the section 7(2). It is not for the authorities to decide for the assessee as to what the size of his house should be or the extent of the garden or

other area which the assessee should have for the house in which he lives. Such enquiry is outside the scope of the Wealth-tax Act. If a person had acquired a house for being used as a residential house and that house happened to have a large open space around it for use as garden or a play area or other purposes, as long as the house is used solely for residence and the benefit of those grounds is confined to the residents of the house and their visitors, such a house with its grounds would qualify for benefit under section 7(2). Importing individual notions as to what should be the reasonable size of a house or what should be the reasonable extent of the open space around it is not a permissible exercise in making the assessment under the Wealth-tax Act.

The Town Planning Rules do not impose a limit on the maximum open space that can be left around the house. The Assessing Officer cannot take a rule under a different enactment specifying a minimum and convert that into a maximum for the purpose of the Wealth-tax Act and thereafter bring to tax a part of the house which should have been excluded from valuation under section 7(2). When the statute provides an benefit it is not to be whittled down arbitrarily by the Assessing Officers by importing their private notions of reasonableness into the provision which grants exemption.

Question

The assessee owns a house property called “Hawarden” at Coimbatore. The house property consists of large open land. This is the only property belonging to assessee. The assessee claimed the benefit of the section 5(vi) of the Wealth-tax Act. The assessing authority while granting benefit under 5(vi), limited it to an 600 sq. Meters of land after expressing the view that that extent was the reasonable extent which could be regarded as the land appurtenant to the house as per Town Planning Act. Thus officer consider 200 sq. Meters of land as assessable to wealth tax. You are required to answer whether the action of the officer is justified or not.

	As per Town Planning Act	Actual
Construction	300	100
Land kept open	600	800

Answer

A residential house may have appurtenant land with a large open space. Merely because the open space is large, it does not cease to be appurtenant. In the context of exemption for one residential house, the High Court in *M. K. Kuppuraj (HUF) v. CWT* [2002] 257 ITR 718 (Mad) held that there was no justification for the restriction by the Assessing Officer of the exemption by denying exemption for part of the open space appurtenant to it. According to the Assessing Officer, one-third of the appurtenant land required to be open according to the Town Planning Rules alone could be treated as part of the house, and any excess land could not be treated as part of the residential house. The High Court found that the rule does not prescribe maximum as wrongly assumed by the Assessing Officer. A person may like to have open space for garden, way area and other purposes associated with a residence, so that the partial exemption is not consistent with law. Thus the action of the officer is not justified and the entire house with land shall qualify for the purpose of exemption. (KALPESH CLASSES TEL. 23801121, 23820676)

[2003] 262 ITR 0319- CWT VS. VALLABH DAS (RAJ)

In valuing a house property for the purposes of wealth-tax by the rent capitalisation method, it is proper to take ten times the net annual rent of the property for determining its market value. *CIT v. Smt. Vimlaben Bhagwandas Patel* [1979] 118 ITR 134 (Guj) and *Aditya Narain Roy v. CWT* [1990] 183 ITR 175 (Cal) followed.

CLUBBING OF INCOME / ASSETS

[1999] 238 ITR 1044 COMMISSIONER OF INCOME-TAX VS. SHRI OM PRAKASH (SC)

Assessee was partner in representative capacity in the partnership firm. The firm paid some remuneration to spouse of the that partner in representative capacity. Held that since he was a partner in representative capacity the clubbing provisions of section 64 were not attracted. That is to say that clubbing provision of section 64 will be attracted only when an assessee's own income is being assessed and not that of a Hindu undivided family. If a karta is brought within the ambit of "individual" in section 64(1), the share income of the spouse of the karta and his minor children will, in effect, be included in the income of the Hindu undivided family which is not what is contemplated by section 64(1)(i) and (ii) which is impermissible.

QUESTION THAT CAN BE SET IN AN EXAMINATION CONDITION

A (HUF) is partner in partnership firm M/s ABC. Wife of Mr. A is employed by that firm. She draws the salary of Rs. 35000 per annum which is considered excessive and unreasonable to the tune of Rs. 10000. You are required to explain the tax treatment of the said salary in the hands of Mrs. A.

ANSWER

When the karta of a Hindu undivided family is a partner in a partnership firm, he has a dual capacity; qua the partnership, he functions in his personal capacity and qua third parties, in his representative capacity. When he is assessed in respect of the income derived by him from the partnership firm as a partner, it is in his representative capacity as karta of the Hindu undivided family and not as an individual as such. That is because his capacity vis-a-vis his spouse/minor children who are members of the Hindu undivided family is that of karta and not as individual though vis-a-vis other partners of the partnership firm he functions in his personal capacity. This being the position, the income of a karta's spouse/minor child cannot be included in the computation of his total income for that is the income of the Hindu undivided family and, not his individual income. Section 64 of the Income-tax Act, 1961, will be attracted only when an assessee's own income is being assessed and not that of a Hindu undivided family. If a karta is brought within the ambit of "individual" in section 64(1), the share income of the spouse of the karta and his minor children will, in effect, be included in the income of the Hindu undivided family which is not what is contemplated by section 64(1)(i) and (ii) which is impermissible.

Under section 4, the charging section, the total income of the previous year or years of every person is charged for any assessment year at the rate or rates prescribed by the Finance Act. A plain reading of the definition of "person" in section 2(31) shows that both "an individual" and a "Hindu undivided family" are, inter alia, constituents of the meaning of the term "person". The expression "any individual" is narrower than the terms "person" and "assessee" defined in section 2(7); an individual is a person but every person need not be an individual. So also an individual may be an assessee but every assessee need not be an "individual". Had Parliament intended to give a wider meaning to the word "individual" in section 64(1)(i) and (ii) so as to include the karta of a Hindu undivided family it would have drafted the provision differently. It is thus clear that "individual" in section 64(1) does not take in karta of the Hindu undivided family within its import.

[1999] 239 ITR 0263 SYED SADIQUE VS. COMMISSIONER OF INCOME-TAX (SC)

A gift had been made by an individual who was a Muslim to his wife. It was not the case of the assessee that the transfer was for adequate consideration. There was no finding to show that the transfer was in connection with an agreement to live apart. Therefore, the provisions of section

64 were clearly attracted in the facts of these cases. In that view of the matter, it was not necessary to go into any further question about the validity of the gift in accordance with the personal law of the donor.

Section 64 of the Income-tax Act, 1961 was inserted to prevent evasion of tax. It must be construed in a way to achieve its object and not to frustrate it.

QUESTION THAT CAN BE SET IN AN EXAMINATION CONDITION

Mr. A Muslim by religion as per the personal law affecting him made gift of house property to his wife. The property income during the year is Rs. 2 lacs. He is of the opinion that since gift is valid as per the personal law affecting him the amount of income out of the property transferred to his wife is not subject to any clubbing provision under the income tax act. You are required to explain him the correct position of law of income tax.

ANSWER

Provision of section 64(1)(iv) provides that In computing the total income of any individual, there shall be included all such income as arises directly or indirectly, to the spouse of such individual from assets transferred directly or indirectly to the spouse by such individual otherwise than for adequate consideration or in connection with an agreement to live apart. Thus income out of the asset transferred is subject to the clubbing provision. A gift had been made by an individual who was a Muslim to his wife. It was not the case of the assessee that the transfer was for adequate consideration. There was no finding to show that the transfer was in connection with an agreement to live apart. Therefore, the provisions of section 64 were clearly attracted in the facts of these cases. In that view of the matter, it was not necessary to go into any further question about the validity of the gift in accordance with the personal law of the donor. Section 64 of the Income-tax Act, 1961 was inserted to prevent evasion of tax. It must be construed in a way to achieve its object and not to frustrate it. Thus in the given case the clubbing provisions of section 64 will be attracted and the income out of the property shall be included in hands of Mr. A. (KALPESH CLASSES TEL. 23801121, 23820676)

[2004] 265 ITR 0345- COMMISSIONER OF INCOME-TAX VS. MAJOR B.K. KAUL (ALL)

It was held that a wife, who was a post graduate in economics attending solely to a business in an agency for sale of scooters helping her husband, a war hero, who lost both his hands in war, can certainly be treated as a person professionally qualified, so that the salary paid to her cannot be clubbed with that of her husband under section 64(1) of the Act.

[2003] 264 ITR 0107- NIZAMUDDIN VS. CIT (RAJ)

A gift of property by a father to minor children by declaration (Hiba) under the Islamic law does not require registration but all the same it is effective. Consequently section 64 is attracted in respect of income from such gifts to minor children. The reasoning of the assessee was that the gift being for ensuring education of minor children. It is for consideration, so that the clubbing provisions could have no application. The High Court in Nizamuddin v. CIT [2003] 264 ITR 107 (Raj) found that in view of the plain language of section 64 (1A), clubbing cannot be avoided and that non-inclusion would frustrate the intent of the provision. Section 64(1A) provides for automatic aggregation of the minor's income in the hands of the parent with higher income.