(1983) 03 MAD CK 0029

In the Madras High Court

Case No : Tax Case Petition No''s. 508 to 510 of 1982 (R.A. No''s. 1092 to 1094/ MDS of 1981)

A. Viswanatha Thevar — APPELLANT

Vs

Commissioner of Wealth-tax — RESPONDENT

Date of Decision : 24-03-1983

Acts Referred:

Citation : (1986) 157 ITR 819

Hon'ble Judges : P. Shanmugam, J;G. Ramanujam, J

Bench : Division Bench

Advocate : S.V. Subramaniam, for the Appellant; J. Jayaraman and N.V. Balasubramaniam, for the Respondent

Judgement

1. The question sought to be raised before this court is as to whether, on the facts and in the circumstances of the case, the Tribunal was right in

holding that the applicant-Hindu undivided family has to be assessed at a higher rate as a specified Hindu undivided family under the Wealth-tax

Act.

2. The Tribunal has held that the applicant-Hindu undivided family has to be assessed at a higher rate as it comes under sub-paragraph (1A) of

para. A of part I of the Schedule to the Wealth-tax Act and since the wife''s wealth has been found to exceed Rs. 1 lakh. The contention urged on

behalf of the assessee is that though the wife is loosely called a member of a Hindu undivided family, she is not a coparcener and, therefore, her

wealth cannot be taken into the purpose of determining whether the applicant Hindu undivided family could be taken to fall under sub-paragraph

(1A) of para. A part I of the Schedule. The Schedule. The submission made by the learned counsel for the assessee is that sub-paragraph (1A) of para. A of part I of the Schedule will apply only to a Hindu undivided family where there are at least two coparceners, of whom one has got wealth

exceeding Rs. 1 lakh. The learned counsel, however, does not dispute the fact that for the purpose of tax laws, a sole surviving coparcener with

female members can constitute a Hindu undivided family. If the contention of the learned counsel for the assessee is to be accepted, then the Hindu

undivided family contemplated under sub-paragraph (1A) of para. A of part I of the Schedule can only be a Hindu undivided family with at least

two coparceners as members. But we do not see any justification for restricting the operation of sub-paragraph (1A) of para. A of Part I of the

Schedule to a Hindu undivided family which has at least two coparceners as members. It is by now established that it is not a prerequisite for the

coming into existence of a Hindu undivided family that there should be at least two coparceners as members. Thus, a Hindu a undivided family can

consist of a sole surviving coparcener and his wife, even if there are no other male or female members.

3. In Kalyanji Vithaldas v. CIT [1937] 5 ITR 90, Privy Council has made a distinction between a coparcenary and a Hindu undivided family and

pointed out that a coparcenary should not be confused with a Hindu undivided family. In that case, it has been clearly ruled that a female can be

member of a Hindu undivided family. In N.V. Narendranath Vs. Commissioner of Wealth-tax, Andhra Pradesh, , the Supreme Court has laid

down that under the Hindu system of law, a joint family can consist of a single male member and his wife and daughters and there is nothing in the

scheme of the Wealth-tax Act to suggest that a Hindu undivided family as an assessable unit must consist of at least two male members. Again the

Supreme Court in Surjit Lal Chhabda Vs. The Commissioner of Income Tax, Bombay, , considered the position of the Hindu law on this aspect

and laid down that the wife and unmarried daughters of a sole male member can be members of a joint Hindu family. In the light of these decisions,

we are not prepared to accept the contention advanced on behalf of the assessee that unless there are two coparceners of whom one has a net

wealth exceeding rupees one lakh, sub-paragraph (1A) of para. A of part I of the Schedule to the Wealth-tax Act cannot be applied. We do not

also see any force in the contention of the learned counsel for the assessee that the wife whose net wealth is found to exceed rupees one lakh should not be regarded as a member of a Hindu undivided family for the purpose of wealth-tax. We, therefore, see no merit in the contention of the

assessee that sub-paragraph (1A) of para. A of Part I of the Schedule to the Wealth-tax Act will apply only to a Hindu undivided family which has

at least two male members and that it will not apply to a Hindu undivided family consisting of one male member and other female members. It is

significant to note that the word used in sub-paragraph (1A) of para. A of part I of the Schedule is ""member"" and not ""male member"" or

coparcener"". It is, therefore, not possible to give a restricted meaning to the word ""member"" occurring in sub-paragraph (1A) of para. A of Part I

of the Schedule to the Wealth-tax Act. Sub-paragraph (1A) of para. A of Part I of the Schedule nowhere makes any reference to a coparcener

and, therefore, we cannot bring in the notion of coparcener or coparcenary while construing the provisions of the Schedule to the Wealth-tax Act.

4. In this view, we are inclined to agree with the decision arrived at by the Tribunal in this case and we do not see any justification to direct a

reference of this case. The petitions are dismissed. There will be no order as to costs.

