
(1991) 12 DEL CK 0019

In the Delhi High Court

Case No : Wealth-tax Reference No. 89 of 1983 with Wealth-tax References No"s. 50 to 52, 90 and 91 and 100 to 102 of 1983, No"s. 18, 19, 26 to 29, 200 to 203, 268 and 269, 271 and 272 and 274 and 275 of 1987, No"s. 193 and 194 of 1988 and No. 30 of 1989

Commissioner of Wealth Tax

APPELLANT

Vs

A.K. Tandon and others

RESPONDENT

Date of Decision : 06-12-1991

Acts Referred:

Citation : (1992) 103 CTR 42 : (1992) ILR Delhi 996 : (1992) 198 ITR 26 : (1992) 64 TAXMAN 284

Hon'ble Judges : B.N. Kirpal, J;Arun Kumar, J

Bench : Division Bench

Advocate : Rajendra, for the Appellant; G.R. Agnihotri, for the Respondent

Judgement

Arun Kumar J.

1. This judgment will dispose of a bunch of references u/s 27 of the Wealth-tax Act, 1957, pending in this court.

2. The assessed are partners in a firm known as Messrs. Wengers and Co., which owns A-15 and A-16, Connaught Place, New Delhi, known as Wengers Building. The Wealth-tax Officer, while making the assessment, accepted the assesses' claim that, in respect of the assesses' share in the said immovable property owned by the firm, they were entitled to exemption u/s 5(1)(iv) of the Wealth-tax Act, 1957 (hereinafter referred to as "the Act"). However, the Commissioner of Wealth-tax was of the opinion that the order of the Wealth-tax Officer allowing the exemption u/s 5(1)(iv) to the extent of rupees one lakh was erroneous and, Therefore, he served a notice on the assesses to show cause why the same should not be cancelled and the assessment be not made afresh by withdrawing the benefit of the exemption u/s 5(1)(iv) of the Act. The Commissioner of Wealth-tax, relying on the judgment of the Madras High Court reported in Purushothamdas Gocooldas and Others Vs. Commissioner of Wealth-tax, , held

that deduction u/s 5(1)(iv) was not allowable to a partner in a firm regarding property owned by the firm. The assessed who are partners in the said firm, Messrs. Wengers and Co., filed appeals before the Tribunal. The Tribunal, relying on the judgments of the Karnataka High Court reported in Commissioner of Wealth-Tax, Karnataka-I Vs. Christine Cardoza, , of the Orissa High Court reported in Commissioner of Wealth-tax Vs. I. Butchi Krishna, and of the Madhya Pradesh High Court reported in Narsibhai Patel Vs. Commissioner of Wealth-tax, , held that the order of the Wealth-tax Officer was correct inasmuch as it allowed the benefit of exemption u/s 5(1)(iv) of the Act to the partners of the firm. Thus, the order of the Commissioner of Wealth-tax was set aside by the Tribunal. With this background, the Revenue has sought the opinion of this court on the following questions :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessed is entitled to exemption u/s 5(1)(iv) of the Wealth-tax Act, 1957, in respect of the property belonging to the firm ?

2. If the answer to question No. 1 is in the negative, was the order of the Wealth-tax Officer erroneous and prejudicial to the interests of the Revenue and was the Commissioner of Wealth-tax justified in setting it aside ?"

3. We may mention here that the Wealth-tax Officer had valued the building in question at Rs. 32,80,000 and the question of valuation is not at all relevant so far as the answer to the aforesaid questions is concerned.

4. In order to appreciate the controversy involved, it may be appropriate to reproduce certain provisions of the Wealth-tax Act as were in force at the relevant time :

"Section 2(c). - "assessed" means a person by whom wealth-tax or any other sum of money is payable under this Act, and includes -

(i) every person in respect of whom any proceeding under this Act has been taken for the determination of wealth-tax payable by him or by any other person or the amount of refund due to him or such other person;

(ii) every person who is deemed to be an assessed under this Act;

(iii) every person who is deemed to be an assessed in default under this Act."

"Section 2(m). - "net wealth" means the amount by which the aggregate value computed in accordance with the provisions of the Act of all the assets, wherever located, belonging to the assessed on the valuation date, including assets required to be included in his net wealth as on that date under this Act, is in excess of the aggregate value of all the debts owed by the assessed on the valuation date other than -

(i) debts which u/s 6 are not to be taken into account;

(ii) debts which are secured on, or which have been incurred in relation to, any

property in respect of which wealth-tax is not chargeable under this Act; and

(iii) the amount of the tax, penalty or interest payable in consequence of any order passed under or in pursuance of this Act or any law relating to taxation of income or profits, or the Estate Duty Act, 1953;..."

"Section 3. - Subject to the other provisions contained in this Act, there shall be charged for every assessment year commencing on and from the first day of April, 1957, a tax (hereinafter referred to as "wealth-tax") in respect of the net wealth on the corresponding valuation date of every individual, Hindu undivided family and company at the rate or rates specified in Schedule I."

"Section 4(1). - In computing the net wealth -

(b)... Where the assessed is a partner in a firm or a member of an association of persons (not being a co-operative housing society), the value of his interest in the firm or association determined in the prescribed manner."

Section 5(1)(iv) -

"(1) Subject to the provisions of sub-section (1A), wealth-tax shall not be payable by an assessed in respect of the following assets, and such assets shall not be included in the net wealth of the assessed - ...

(iv) one house or part of a house belonging to the assessed."

5. Rule 2 of the Wealth-tax Rules, 1957, as it stood at the relevant time, also needs reproduction.

"(1) The value of the interest of a person in a firm of which he is a partner or in an association of persons of which he is a member, shall be determined in the manner provided herein. The net wealth of the firm or the association on the valuation date shall first be determined. That portion of the net wealth of the firm or association as is equal to the amount of its capital shall be allocated among the partners or members in the proportion in which capital has been contributed by them. The residue of the net wealth of the firm or association shall be allocated among the partners or members in accordance with the agreement of partnership or association for the distribution of assets in the even of dissolution of the firm or association, or, in the absence of such agreement, in the proportion in which the partners or members are entitled to share profits. The sum total of the amounts so allocated to a partner or member shall be treated as the value of the interest of that partner or member in the firm or association.

(2) Where the net wealth of a firm or association computed in accordance with sub-rule (1) includes the value of any assets located outside India, the value of the interest of any partner or member in the assets located in India, shall be determined having regard to the proportion which the value of the assets located in India diminished by the debts relating to those assets bears to the net wealth of the firm or association.

(3) Where the net wealth of a firm or association computed in accordance with sub-rule (1) includes the value of any assets referred to in section 5(2) of the Act, the value of the interest of a partner or member shall be deemed to include the value of his proportionate share in the said assets, and the provisions of section 5(2) of the Act shall be applied to him accordingly."

6. As it has been already noticed, the authorities below have placed reliance on certain High Court decisions while reaching their respective conclusions which show that the point in issue has already been the subject-matter of judicial pronouncement. However, since there is divergence of opinion between various High Courts, the matter has come up for consideration before us also. On behalf of the Revenue reliance has been placed on *Purushothamdas Gocooldas and Others Vs. Commissioner of Wealth-tax*, which is a judgment of a Division Bench of the Madras High Court. In the said case, the partnership in which the assesseds were partners, owned a house property as one of its assets and the partners were residing in the said premises. In their return for wealth-tax each of the assesseds value their share in the house property separately and claimed exemption u/s 5(1)(iv) of the Act. This claim was negatived by the officer on the ground that the house property was the asset of the firm and not that of the individual partners. This view was upheld by the Tribunal. On a reference to the High Court at the instance of the assessed, it was held (headnote) :

"(1) That, in the case of a partnership, no partner could claim to have any specific interest in its assets exclusively apart from his interest as a partner in the firm as such;

(2) The partner's interest in the house property could not also be considered as immovable property as his right is only to a share in the division of the partnership assets on dissolution;

(3) As the property was an asset of the firm, the assesseds in the instant case could not claim to be entitled to any portion of the house property as exclusively belonging to them and hence were not entitled to claim exemption u/s 5(1)(iv) of the Act."

In deciding this case, the court mainly relied on a judgment of the Supreme Court in *Addanki Narayanappa and Another Vs. Bhaskara Krishtappa and Others*, . In the said case, the question for consideration before the Supreme Court was whether the interest of a partner in the partnership assets comprising movable as well as immovable property should be treated as movable or immovable property for the purposes of section 17(1) of the Registration Act, 1908. After discussing certain relevant provisions of the Partnership Act and the Registration Act, it was held that the interest of the partners in the partnership assets was movable property and the document evidencing the relinquishment of that interest was not compulsorily registrable u/s 17(1) of the Registration Act. It was also observed in this context that the provisions of sections 14, 15, 29, 32, 37, 38 and 48 of the Partnership Act make it clear that whatever may be the

character of the property which is brought in by the partners when the partnership is formed or which may be acquired in the course of the business of the partnership, it becomes the property of the firm and what a partner is entitled to is his share in the profits, if any, accruing to the partnership from the realisation of this property and upon dissolution of the partnership to a share in the money representing the value of the property. It was further observed, "no doubt, since a firm has no legal existence, the partnership property will vest in all the partners and, in that sense, every partner has an interest in the property of the partnership. During the subsistence of the partnership, however, no partner can deal with any portion of the property as his own. Nor can he assign his interest in a specific item of the partnership property to anyone".

7. Relying on the aforesaid judgment, the Madras High Court held that the assesseds in this case cannot claim to be entitled to any portion of the house property as exclusively belonging to them.

8. Counsel for the Revenue also referred to Commissioner of Wealth Tax Vs. Vasantha, which is again a decision of the Madras High Court. Reliance on the same in the present context we fail to appreciate. The said decision deals with the question as to whether a particular asset should be included in the assets of the firm for purposed of determining its net wealth under rule 2 of the Wealth-tax Rules, 1957. The question was whether agricultural land owned by a partnership firm was liable to be excluded from the assets in view of its express "exclusion" from the definition of assets in section 2(e) of the Act.

9. Next, reliance has been placed by counsel for the Revenue on Commissioner of Wealth-tax, Andhra Pradesh Vs. Narendra Ranjaker, , which is a judgment of the Andhra Pradesh High Court. In this case, it was held that the net wealth of the firm ought to be arrived at in accordance with the provisions of the Wealth-tax Act as if the firm were an assessed. Therefore, it was held that, while computing the interest of a partner in the firm in terms of section 4(1)(b) of the Act, only the interest of the firm arrived at in accordance with the provisions of the Act, as if the firm were an assessed, shall be taken into consideration. Therefore, according to this, judgment, it is the firm which is entitled to deduction on account of the exemptions granted u/s 5 of the Act. The case related to exemption u/s 5(1)(xxvi) read with section 5(1A) of the Act. The firm was held entitled to deduction on account of deposits in a scheduled bank to extent of Rs. 1,50,000 and it was held that the partner will not be entitled to exemption in regard to his share of the bank deposits held by the firm. At the bottom of page 212 of the report of the said judgment it has been noted that though a firm is not an assessed under the Act, still it has been held that, while computing the net wealth, the firm should be deemed to be an assessed, and the provisions of the Act dealing with the computation of the net assets of the assessed should be applied to the firm as if it was an assessed though, in fact, it is not an assessed under the Act.

10. Reliance has also been placed on a later decision of the same High Court

reported as Commissioner of Wealth-tax Vs. B. Chandrasekhara Rao and B. Sadasiva Rao, . This decision merely follows the earlier decision of the same court referred to by us here in before. Counsel for the Revenue also relied on two decisions of the Patna High Court reported in Commissioner of Wealth Tax Vs. Nand Lal Jalan, and Commissioner of Wealth Tax Vs. Radha Krishna Jalan, . Since the later decision merely follows the earlier one, it may be worthwhile to make reference only to the earlier decision. The reasoning given in this decision is more or less on the same lines as contained in the decisions of the Andhra Pradesh High Court referred to here in before, though a slight deviation is made so far as the question of a firm being treated as an assessed is concerned. It is also significant to mention here that this judgment dissents from the judgment of the Madras High Court in Purushothamdas Gocooldas and Others Vs. Commissioner of Wealth-tax, to which a reference has been made by us earlier. The reasoning adopted by the Madras High Court has been countered with the following observations (headnote of 122 ITR 781) :

"A firm is not a legal entity even though it has some attributes of personality. "Firm" is a compendious expression to designate an entity, not a person. What is called property of the firm is the property of the partners and what are called debts and liabilities of the firm are their debts and liabilities. During the subsistence of the partnership, assets thrown into the partnership by the partners get merged together and lose their identity. All the same, the assets as a whole belong to the partners."

11. Thus, in the process, the Patna High Court also distinguished the Supreme Court judgment in Addanki Narayanappa and Another Vs. Bhaskara Krishtappa and Others, , on which strong reliance was placed by the Madras High Court in Purushothamdas Gocooldas and Others Vs. Commissioner of Wealth-tax, . However, after making the aforesaid observations, the Patna High Court has proceeded to hold that, in computing the net wealth of the firm by reference to rule 2 of the Wealth-tax Rules, 1957, if an asset qualifies for exemption provided under the Act, such exemption must be taken into consideration in determining the net wealth of the firm. It follows from this judgment that it has been accepted that a firm as not an assessed under the Act and, Therefore, it need not be treated as such, which is contrary to what was held in the decisions of the Andhra Pradesh High Court noted here in before. It also holds that the property of the firm is really the property of the partners which is contrary to what was held by the Madras High Court in Purushothamdas Gocooldas and Others Vs. Commissioner of Wealth-tax, . However, instead of granting the benefit of exemption u/s 5(1)(iv) to a partner who is really an assessed under the Wealth-tax Act, this judgment holds that the exemption should be taken for consideration in determining the net wealth of the firm.

12. On the other hand, Mr. Agnihotri, learned counsel for the assesseds, laid great stress on the relevant provisions of the Act itself before proceeding to cite various decisions in support of his contention. According to him, the following

words in section 5(1) hold the key to the entire controversy :

"Wealth-tax shall not be payable by an assessed in respect of the following assets, and such assets shall not be included in the net wealth of the assessed."

13. The emphasis is on "assessed" for the purposes of availing the exemption contained in the said provision and firm, not being an assessed is, Therefore, not entitled to any exemption. According to the definition of the word "assessed" in clause (c) of section 2, a firm is not an assessed. It is further submitted that though, under the Income Tax Act, a firm has been made an assessed, the same is not so in the case of the Wealth-tax Act.

14. Section 3, which is the charging section under the Wealth-tax Act, excludes a partnership firm. It levies wealth-tax on the net wealth on the corresponding valuation date of every "individual, Hindu undivided family and company at the rate or rates specified in Schedule I". This being the position emerging from the statutory provisions, it is urged that there is no question of exemption being allowed to a firm or a firm being treated as an assessed for the purposes of computation of its net wealth.

15. Section 4(1) which deals with the computation of the net wealth of an assessed postulates the case of an assessed being a partner in a firm in clause (b). According to clause (b), the value of the interest of such partner in the firm has to be determined in the prescribed manner and the prescribed manner is contained in rule 2 of the Wealth-tax Rules, 1957. Rule 2, sub-rule (1), provides that the net wealth of the firm as is equal to the amount of its capital shall be allocated among the partners or members in the proportion in which capital has been contributed by them. The residue of the net wealth of the firm shall be allocated among the partners or members in accordance with the agreement of partnership for the distribution of assets in the event of dissolution of the firm or, in the absence of such agreement, in the proportion in which the partners in the firm. Thus, sub-rule (1) of rule 2 provides the manner in which the interest of a partner in the net wealth in a firm is to be calculated so far as his interest in the firm is concerned. In the face of these clear provisions, we need not go to the extent to which the Patna High Court or the Andhra Pradesh High Court has gone. If what has been laid down in the said judgments was the intention of the statute, the same could have been achieved by providing for it in the rules. The rules being silent on this aspect, one need not stretch them to take the view taken by the Andhra Pradesh High Court or the Patna High Court.

16. Further, it is urged that the procedure as per rule 2 is to be followed. Section 5 will not come into the picture till the stage of computation of the net wealth of the assessed, who is a partner in a firm, comes. The exemption u/s 5 will not come into play while the net asset of the partnership firm is computed in order to ultimately find out the share of a partner in such asset. Rule 2 appears to be quite exhaustive in this behalf and whatever procedure it to be followed and behalf has to be allowed has been provided for therein. For instance, in sub-rule

(3), the benefit of section 5(2) has been extended to a partner. If the benefit of section 5(1) was also to be extended, the same could have been so stated in rule 2 itself. In view of this, it is submitted by counsel for the assesseds that the benefit of the exemption u/s 5(1)(iv) of the Wealth-tax Act has to be allowed to a partner at the time of his individual assessment and for his share in the house property owned by the partnership firm, he will be entitled to such benefit.

17. Counsel for the assessed has relied on certain rulings in support of his contentions. Reliance has been placed on *Juggi Lal Kamlapat Bankers and Another Vs. Wealth Tax Officer, Special Circle C-Ward, Kanpur and Others*, , which is a judgment of the Supreme Court. It has been held in the said decision that the interest of a partner in a firm cannot be said to be not belonging to him; it, in fact, belongs to him and no legal fiction is required for treating it as belonging to him. The deeming provision in section 4(1)(b) of the Wealth-tax Act is referable only to the "quantification of his interest in the firm". Section 4(1)(b) only relates to the quantum of his interest as determined in the prescribed manner which is includible in the net wealth. In this case, the assessed was the karta of a Hindu undivided family who was assessed in the status of a Hindu undivided family while he was also a partner in a firm as representing his Hindu undivided family. It was held that the assessed's interest in the firm was chargeable to wealth-tax in his hands in the status of a Hindu undivided family. After making a detailed reference to the provisions of sections 4(1)(a) and 4(1)(b) of the Wealth-tax Act, their Lordships observed (at page 491) :

"In other words, clause (b) is not a deeming provision in the sense in which a deeming provision is made in clause (a). It cannot be said that the interest of a partner in a firm does not belong to him; it, in fact, belongs to him and no legal fiction is required for treating it as belonging to him; and the proper way to interpret clause (b) would be that the deeming part of it relates to the quantum of his interest in the firm determined in the prescribed manner which is to be treated as belonging to him and includible in his net wealth. It is impossible to accept the contention that but for clause (b) of section 4(1) the interest of a partner (where he happens to be an individual assessed) in a firm would not been eligible to wealth-tax under the Act. As we shall presently point out, a partner's interest in a firm either in his individual capacity or in his capacity as the karta of an Hindu undivided family is otherwise eligible to wealth-tax under the other provisions of the Act and the deeming provision contained in section 4(1)(b), property understood, must be held to be referable to the quantification of his interest in the firm determined in the prescribed manner that is made includible in his net wealth.

Section 3 of the Act read with the definitions of "net wealth" as given in section 2(m) and "assets" given in section 2(e) clearly brings out the eligibility of a partner's interest in a firm either in his individual capacity or in his capacity as the karta of a Hindu undivided family to wealth-tax under the Act."

18. Again, after referring to the provisions of section 3, section 2(m) and section

2(e), it was observed (at page 492) :

"On reading the aforesaid provisions together, it will appear clear that wealth-tax has been levied on the net wealth of an individual or a Hindu undivided family, meaning thereby the aggregate value of all the assets belonging to such assessed minus all the debts owed by him. Under the definition of "assets" property of every description, movable or immovable, is included, and since it cannot be disputed, and was not disputed before us that a partner's interest in a firm either in his individual capacity or in his capacity as the karta of a Hindu undivided family is property, the same would be includible in the expression "assets" which will have to be taken into account while computing the net wealth of such individual or a Hindu undivided family and on such net wealth, the charge of wealth-tax has been imposed u/s 3. It is thus clear that there is no lacuna in the Act as regards the making of a karta's interest (representing his Hindu undivided family) in the partnership firm eligible to wealth-tax."

19. The next judgment cited by learned counsel for the assesseds is reported in Commissioner of Income Tax Vs. K. Saraswathi Ammal and Others and J.H. Tarapore, . This judgment of the Madras High Court does not refer to Purushothamdas Gocoldas and Others Vs. Commissioner of Wealth-tax, which is also a Madras High Court judgment. In this case, the firm, in which the assesseds were partners, held certain shares in a company. It was an industrial undertaking falling u/s 84 of the Income Tax, 1961. By virtue of section 85, the dividends received by the firm from the company were excluded in computing the total income of the firm. The claim of the partners for exemption of the share of the dividend received by them from the company on the basis that their share of income from the firm contained the income received by the firm by way of dividend from the company was negated by the departmental authorities on the ground that the benefit available to the firm could not be available to the partners of the firm. The Tribunal, however, held that the income received by the distribution of the income of the firm by division of the profits and gains of the firm in accordance with the terms of the partnership deed gave to each of the partners the same type of income which the firm had received and to the extent to which the income of the firm consisted of dividends from the shares held by the firm in the company, the partners were also entitled to the same exemption. On a reference, the High Court held that the firm has no separate legal entity and hence could not hold any property. It could not be treated as the owner of the shares in question. Consequently, the partners were the real owners of the shares and hence they would be entitled to the benefit u/s 85 in respect of their share of income to the extent that it included the dividends received by the firm from the company. While discussing the concept of the property of the firm, reference was made to Addanki Narayanappa and Another Vs. Bhaskara Krishtappa and Others, , which, in fact, had been relied upon by the same High Court in Purushothamdas Gocoldas and Others Vs. Commissioner of Wealth-tax, , to take a somewhat contrary view. Referring to section 14 of the Partnership Act which defines property of the firm, it was observed (at page 407

of 127 ITR) "when one talks of the property of the firm, it has to be remembered that a firm as such is not a legal entity; nor can a firm as such, according to the English concept also, hold property. This is the reason why the Supreme Court in the two decisions held that, when the firm is dissolved and the partnership assets are distributed among the partners, there will be no transfer of the property of the firm in favor of the partners so as to attract the provisions of the Income Tax Act for capital gains". The decisions of the Supreme Court referred to in this behalf are Commissioner of Income Tax, U.P. Vs. Sh. Bankey Lal Vaidya (Dead) by Lawyers, and Commissioner of Income Tax, Madhya Pradesh Vs. Dewas Cine Corporation, . It was further observed "as far as the individuals who make up the partners of the firm are concerned, we have no doubt that the properties, which are called the assets of the firm, really vest in the partners of the firm. This has also been said by the Supreme Court in the decision in Addanki Narayanappa and Another Vs. Bhaskara Krishtappa and Others, . Each of the partners may not hold any specific shares; nor can it be said that each partner holds all the shares in Kalinga Tubes Ltd. But this does not matter. The partners are the owners of the shares and the general principle of law cannot be abrogated and we cannot conceive of a hypothetical ownership of these shares and deny the partners, who, in law, own the property and in whom the property is vested, the benefit of section 85".

20. Counsel for the assessed has also cited Commissioner of Wealth-Tax, Karnataka-I Vs. Christine Cardoza, . This case related to the question of exemption u/s 5(1)(iv) being available to a firm or a partner of the firm at the time of his individual assessment - a situation similar to the one in hand. The partnership held agricultural land. It was held that, in computing the net wealth of the partnership, the method of deducting the sum of Rs. 1,50,000 in the computation of the net wealth of the firm under rule 2 of the Wealth-tax Rules, 1957, is not warranted by the terms of section 5(1)(iva) of the Wealth-tax Act. The deduction contemplated by that provision is in the computation of the net wealth of an assessed-partner and not of the firm which is not an assessed. Hence, it was held that, in computing the net wealth of an assessed, who was a partner in a firm which owned agricultural lands, the value of the share of the assessed in agricultural lands will have to be included in his net wealth and the full deduction u/s 5(1)(iva) has to be given in his hands.

21. The following observations are worth noting, particularly in view of the fact that Addanki Narayanappa and Another Vs. Bhaskara Krishtappa and Others, , has been referred to and also relied upon (at page 538 of 114 ITR) :

"Considerable emphasis has been laid by the learned counsel for the assessed on this sentence and it is contended that in the light of the clear enunciation by the Supreme Court in this case explaining the scope and effect of the decision in Addanki Narayanappa and Another Vs. Bhaskara Krishtappa and Others, , the assessed owned and had interest in the agricultural land and was entitled to the deduction u/s 5(1)(iva) of the Act. This submission for the assessed has

considerable force. In the light of this pronouncement of the Supreme Court in regard to the concept of a firm and the interests that the partners have in what is called property of the firm, on the facts and in the circumstances of the case, it is difficult to hold that the assessed was not the owner of agricultural lands so as to deny the deduction u/s 5(1)(iva). Accordingly, the view taken by the Tribunal must be upheld."

22. The court further observed (at page 538) :

"But it seems to us that the method of deducting a sum of Rs. 1,50,000 in the computation of the net wealth of the firm under tulle 2 is not warranted by the terms of section 5(1)(iva). The deduction contemplated is in the computation of the net wealth of an assessed and not of a firm which is not the assessed. On the principle enunciated by the Supreme Court, the assessed is a person who owns the agricultural land and, Therefore, deduction has to be given in his/her hands. This is what has been directed by the Tribunal."

23. The next judgment in line is reported in Commissioner of Wealth-tax Vs. I. Butchi Krishna, . This judgment of the Orissa High Court fully supports the contention of learned counsel for the assessed .In this case, the Tribunal had taken the view that, on a reading of rule 2(3) of the Wealth-tax Rules, it was not necessary to comply with the provisions of section 5(1A) and the exemption should be available in respect of the value of the assets of the exempted variety in the hands of the assessed. Irrespective of whether the assessed held the deposits in his own name or as his share in a firm, the limit prescribed u/s 5(1A) of the Act was to be applied at that stage and not at the stage of computing the value of the assets in the hands of the firm. The dispute was really as to the stage at which the exemption had to be given effect to. It was held that the deduction on account of the exempted asset held by the firm was to be allowed at the time of computation of the net wealth of the assessed-partner.

24. To the same effect is the Madhya Pradesh High Court decision reported in Narsibhai Patel Vs. Commissioner of Wealth-tax, . Regarding the concept of partnership property, it was observed that, though a partnership or a firm is not a legal person and cannot hold property, yet the property brought in by the partners for the partnership business cannot be without any owner. Such a property really vests in the partners collectively in proportion to their shares in the firm although the right of ownership of each partner in respect of that property is restricted by the contract of partnership and the very nature and character of the collective business called the partnership business for which the property is to be utilised. Therefore, the deposits made by the partnership in a bank are in law held by the partners in proportion to their shares in the partnership and each partner is entitled to the benefit of the exemption contained in section 5(1)(xxvi) of the Wealth-tax Act, 1957, in his individual assessment, to the extent of the maximum prescribed by section 5(1A). For this view, the court found support in rule 2 of the Wealth-tax Rules also.

25. Jagdish Chandra Grover Vs. Commissioner of Wealth-tax, is a later decision of the Madhya Pradesh High Court which totally relies on the aforesaid earlier decision of the same court. It was further noted that Purushothamdas Gocooldas and Others Vs. Commissioner of Wealth-tax, had already been distinguished in the judgments of the Karnataka and Patna High Courts referred to here in before including that of the Madhya Pradesh High Court reported in Narsibhai Patel Vs. Commissioner of Wealth-tax, , and the court was specifically of the view that it was unable to persuade itself to follow the view expressed in Purushothamdas Gocooldas and Others Vs. Commissioner of Wealth-tax, . Counsel for the assessed had also cited Commissioner of Wealth-tax Vs. Jose Mathew, , which is a judgment of the Kerala High Court and it is really based on the Karnataka High Court decision already referred to by us, reported in Commissioner of Wealth-Tax, Karnataka-I Vs. Christine Cardoza, .

26. The judgment of the Calcutta High Court reported in Commissioner of Wealth Tax Vs. Sri Naurangrai Agarwalla, is an elaborate judgment on the point discussing all the earlier cases on the subject and the relevant provisions of the Act and the Rules. It was finally held that a partnership is not a distinct legal entity and the partnership property in law belongs to all the partners Constituting the firm. The Wealth-tax Act, 1957, unlike the Income Tax Act, has not made a partnership an assessed. The properties held under a firm's name will have to be assessed in the hands of the partners of the firm. The Wealth-tax Act imposes a tax on the net wealth of every individual and a Hindu undivided family. "Net wealth" has been defined to mean the aggregate value of all the assets wherever located belonging to the assessed on the valuation date. Therefore, when the total of the assets of an individual is computed under the Wealth-tax Act, his share in the assets of the firm in which he is a partner has to be taken into account.

27. The assessment of the individual partners will have to be made in accordance with the provisions of the Wealth-tax Act, 1957, and the Rules framed for that purpose. Rule 2 of the Wealth-tax Rules, 1957, has laid down the method of ascertaining the value of the share of a partner in a partnership firm. That does not mean and there is no express requirement of law that the firm's wealth has to be assessed in accordance with the provisions of the Act. Section 4(1)(b) requires inclusion of the value of the interest of a partner in a firm determined in the prescribed manner. Prescribed manner means the manner set out in the Wealth-tax Rules. The Rules do not require that the wealth of a firm will be computed after taking into account various allowances and deductions provided in the Act. The Rules have not created any legal fiction treating the firm as an assessed at all. The various exemptions mentioned in section 5 can only be claimed by an assessed and the terms and conditions of claiming those exemptions have been laid down in section 5 itself. Therefore, it is only after the value of the assessed interest in the partnership firm has been determined u/s 4(1)(b) that the question of granting exemption in respect of the assets which have been included in the valuation will arise.

28. Regarding Addanki Narayanappa and Another Vs. Bhaskara Krishtappa and Others, , it was observed (at page 758 of 155 ITR) :

"It was contended on the basis of the judgment of the Supreme Court in the case of Addanki Narayanappa and Another Vs. Bhaskara Krishtappa and Others, , that the interest of the partners in the partnership assets was movable property and the partners individually did not have any interest in the partnership property. The Supreme Court in the case of Addanki Narayanappa was faced with the question whether in a case where the partnership assets included immovable property, a document recording relinquishment by some of the partners of their interest in the firm was compulsorily registrable u/s 17(1)(c) of the Registration Act. It was observed by Mudholkar J., in that case, at page 1304, as follows :

"The whole concept of partnership is to embark upon a joint venture and for that purpose to bring in as capital money or even property including immovable property. Once that is done, whatever is brought in would cease to be the exclusive property of the person who brought it in. It would be the trading asset of the partnership in which all the partners would have interest in proportion to their share in the joint venture of the business of partnership. The person who brought it in would, Therefore, not be able to claim or exercise any exclusive right over any property which he has brought in, much less over any other partnership property."

29. I fail to see how this judgment helps the partner in the case before us. It is well-settled that no partner can claim that any portion of the partnership assets belongs to him exclusively. But can it be denied that the assets belong to the partners jointly and to nobody else ? The firm is not a juristic person. The assets belonged to the partners jointly. It was observed by Mudholkar J. (headnote) :

"No doubt, since a firm has no legal existence, the partnership property will vest in all the partners and in that sense, every partner has an interest in the property of the partnership."

"It has to be noted that in Addanki Narayanappa and Another Vs. Bhaskara Krishtappa and Others, , it was clearly stated by the Supreme Court that "since a firm has no legal existence, the partnership property will vest in all the partners and in that sense, every partner has no interest in the property of the partnerships. The property cannot remain in vacuum. It must belong to somebody. If the partnership has no legal existence, the property must in law belong to the partners. It is true that during the subsistence of the firm, no partner can deal with any of the assets of the partnership as his own. But none the less, in law, all the assets must belong to the partners jointly. The point has been placed beyond any doubt by the judgment of the Supreme Court in the case of Malabar Fisheries Co. Vs. Commissioner of Income Tax, Kerala, , where it was observed at page 57 :

"But, speaking generally, the firm as such has no legal recognition. The law, ignoring the firm, looks to the partners composing it; any change amongst them

destroys the identity of the firm; what is called the property of the firm is their property, and what are called the debts and liabilities of the firm are their debts and liabilities". (At page 760 of 155 ITR).

30. Another judgment Commissioner of Wealth Tax Vs. Mira Mehta, of the same High court but by a different Bench is reported in the same volume which takes a similar view at page 765. Then, there is a Full Bench decision of the Kerala High Court reported in Commissioner of Wealth-tax Vs. Smt. Kaethikamal Kumari Varma, taking the same view.

31. This leads us to L.N. Birla Vs. Commissioner of Wealth Tax, . In this judgment, the Calcutta High Court has emphasised the fact that the Wealth-tax Act is a separate Act and contains its own scheme for assessment. The status of the partnership under the Income Tax Act is different from that under the Wealth-tax Act. The Income Tax Act contains special provisions under which a partnership firm is an assessable entity and further, provisions have been made in the Act for assessment of a partnership firm to Income Tax. So far as the Wealth-tax Act is concerned, a partnership firm is not an assessable entity. Therefore, the concept of a partnership in the context of the Income Tax Act cannot be imported into the Wealth-tax Act. A partnership having been excluded from assessment under the Wealth-tax Act and provision having been made for assessment of the properties standing in the name of the firm in the hands of the partners, according to their respective shares, the general concept of the nature of a partnership has to be taken into account. Under the general principals of law, the name of the firm is a compendious name for all the partners and it is not an entity in law. It is on that basis that the shares of the partners in the assets of the firm have to be considered as assets or wealth in the hands of the partners liable to be assessed to wealth-tax.

32. The assessed was a partner in a firm having one-fifth share therein. The firm owned agricultural lands. In his return of wealth-tax, the assessed claimed exemption u/s 5(1)(iva) of the Wealth-tax Act, 1957, in respect of his share of the agricultural land of the firm. The Wealth-tax Officer disallowed the claim of the assessed. The Tribunal held that the assessed was not entitled to exemption u/s 5(1)(iva) in his personal assessment of wealth in respect of his share as a partner of the firm but the exemption u/s 5(1)(iva) in his personal assessment of wealth in respect of his share as a partner of the firm but the exemption would be taken into account while determining the net wealth of the firm. It was held that, inasmuch as a firm was not as assessed within the meaning of the Wealth-tax Act and inasmuch as the properties of a firm were treated as wealth or assets in the hands of its partners to the extent of their respective shares aggregating to their respective interest therein, in computing the net wealth of the firm under rule 2 of the Wealth-tax Rules, 1957, there was no question of any exemption being allowed to the firm. The assessed was entitled to exemption u/s 5(1)(iva) to the extent of one-fifth of the value of the agricultural land held by the firm in determining his net wealth.

33. The latest judgment in the series is that of the Madhya Pradesh High Court reported in Ravi Mohan Vs. Commissioner of Wealth-tax, . A partner of a firm is entitled to exemption u/s 5(1)(iv) of the Wealth-tax Act, 1957, in respect of the value of his interest in the house property owned by the firm. The exemption would be available even for a house used for commercial purposes. This is clear because the words "and exclusively used by him for residential purposes" have been deleted in section 5(1)(iv) by the Finance (No. 2) Act, 1971, with effect from April 1, 1972. Instructions issued by the Central Board of Direct Taxes, vide letter F. No. 317/23/73-WT dated July 24, 1973, are also to the same effect.

34. Accordingly, it was held that the assessed was entitled to exemption u/s 5(1)(iv) of the Act in respect of his share in the cinema building owned by the firm in which he is a partner.

35. Having carefully considered the rival contentions of the parties and having gone through the various judgments cited before us to which we have made reference here in before, we are of the opinion that the contentions raised on behalf of the assessed are well-founded. A plain reading of the statutory provisions supports this view. Section 5 which grants the exemptions under the Act refers to an assessed and a firm, not being an assessed under the Act, is not covered u/s 5. It is an assessed alone who can avail of the exemption under section. In the face of clear statutory provision, we are unable to subscribe to the view taken by the Andhra Pradesh and the Patna High Courts in the cases cited by the Revenue and referred to by us earlier. Another reason which impels us not to subscribe to the said view is again the statutory provision in section 4(1)(b) and rule 2 of the Wealth-tax Rules. Section 4(1) deals with computation of net wealth of an assessed. Sub-section (b) thereof relates to a firm. The said sub-section makes reference to the prescribed manner. The only prescribed manner is the one contained in rule 2. Rule 2 does not contain any procedure for granting exemption u/s 5(1)(iv) at the time of computation of the net wealth of a firm. Rule 2 appears to be quite exhaustive and whatever procedure is to be followed and wherever exception has to be allowed, has been provided for. In sub-rule (3), the benefit of section 5(2) has been extended to a partner. If the benefit of section 5(1) was also to be extended, the same could have been so stated in rule 2 itself. There is nothing in section 4(1)(b) or rule 2 to suggest that a firm be deemed an assessed so as to allow the benefit of exemption u/s 5(1)(iv) to it. We feel that taking the view as canvassed by the Revenue will be doing violence to the statutory provisions.

36. The concept of a partnership firm and partnership property as contained in the Partnership Act also compels us to take this view. A firm has no legal existence and as such it cannot hold any property. It is the partners who own the partnership property or assets. Therefore, it is only fair that they alone should have the benefit of the exemption u/s 5(1)(iv) when their individual assessments are taken up which will include their respective shares in the net wealth of the partnership firm. We find preponderance of judicial opinion in favor of this view

that we have taken. On behalf of the revenue, reliance has been placed on the decisions of the Madras, Patna and Andhra Pradesh High Courts. We have already noted the said judgments and found that the Andhra Pradesh and the Patna views treat the firm as an assessed. With utmost respect, we feel that this view is not consistent with the plain statutory provisions or the Rules. So far as the Madras High Court's view expressed in *Purushothamdas Gocooldas and Others Vs. Commissioner of Wealth-tax*, is concerned, the same is purportedly based wholly on *Addanki Narayanappa and Another Vs. Bhaskara Krishtappa and Others*, . To us, it appears that reliance placed on *Addanki Narayanappa and Another Vs. Bhaskara Krishtappa and Others*, , by the Madras High Court is not correct. In fact, the Madras High Court has itself not subscribed to this view in a later judgment in *Commissioner of Income Tax Vs. K. Saraswathi Ammal and Others* and *J.H. Tarapore*, . Besides this, various other High Courts including those who have ultimately held in favor of the Revenue on the question of exemption have demonstrated that the reliance placed by the Madras High Court on *Addanki Narayanappa and Another Vs. Bhaskara Krishtappa and Others*, is not correct. Actually, we find that this Supreme Court decision dealing with the concept of partnership property supports the view that we have taken.

37. The Supreme Court was more concerned with the aspect of requirement of registration of documents at the time of distribution of assets on the dissolution of a firm. Moreover, the mere fact that a partner cannot claim to be entitled to any portion of the property owned by a firm as exclusively belonging to him, will not, to our mind, completely disentitle him from seeking benefit of the exemption u/s 5(1)(iv) of the Act so long as he is part-owner of the house property even though as a partner in a firm. This is particularly so in view of the language of the relevant provisions of the statute granting the exemption. For purposes of the exemption provision, it does not appear to be necessary that a partner should be able to say that the property or any specific part thereof exclusively belongs to him.

38. It has been brought to our notice that a SLP filed in the Hon"ble Supreme Court on behalf of the Revenue against one of the decisions of the Madhya Pradesh High Court taking the same view as we have taken in this judgment, has already been dismissed recently. (See [1989] 178 ITR 70.

39. We may note here yet another aspect of the matter urged before us by counsel for the assessed .Although, as per the view we have taken already, it may not be necessary to digress on this aspect, yet since the same was urged before us, we feel it appropriate to notice the same.

40. It has been pointed out that sub-section (4) has been added to section 5 by virtue of an amendment with effect from April 1, 1989. Sub-section (4) runs as under :

"Sub-section (4). - Where the assessed is a partner of a firm or member of an association of persons, and the firm or association owns any one or more of the

assets which are exempt under sub-section (1), then for the purposes of his assessment under this Act, the value of his interest in the firm or association shall be deemed to include the value of a part of each such asset of the firm or association in the same proportion in which he is entitled to share the profits of the firm or association and the assessment shall be made after allowing the exemption under sub-section (1) in respect of those assets on the basis of such proportionate value."

41. The effect of this provision is that the view taken above has found statutory force. The case in hand relates to a period much prior to the said amendment coming into force. The submission on behalf of the assessed is that subsequent legislation may be looked into to see what ought to be the proper interpretation of the relevant provisions prior to the subsequent legislation. Counsel cites Commissioner of Income Tax Vs. Deepchand Kishanlal, which is a judgment of the Karnataka High Court and page 559 of the same volume which is a judgment of the Supreme Court in CIT v. P. Doraiswamy Chetty : [1990]183ITR559(SC) in support of this submission. It was held the Supreme Court judgment that though Explanation 2 was inserted in section 64 of the Income Tax Act with effect from April 1, 1980, and it did not have retrospective effect, it serves as a legislative exposition of the import of section 64(1) and (i).

42. The Karnataka High Court has discussed this in greater detail. In the aforesaid judgments, after making reference to two earlier decisions of the Supreme Court in support of this view, it has been held that subsequent legislation may be looked at in order to see what is the proper interpretation to be put upon the earlier Act where the earlier Act where the earlier Act is obscure or ambiguous or readily capable of more than one interpretation.

43. The result of the above discussion is that question No. 1 is answered in the affirmative and, in view of the said answer to question No. 1, question 2 does not arise and we further add that the Wealth-tax Officer was right in allowing the benefit of exemption to the assessed who are partners in the firm quo their respective shares in the immovable property owned by the firm u/s 5(1)(iv) of the Wealth-tax Act.