

---

**(1991) 09 KL CK 0037**

**In the High Court Of Kerala**

**Case No :** Original Petition No's. 36 of 1990-S and 182 and 412 of 1990

Commissioner of Wealth-tax

APPELLANT

Vs

A.S. Guna Shenoy

RESPONDENT

---

**Date of Decision :** 16-09-1991

**Acts Referred:**

Constitution of India, 1950 — Article 227  
Wealth Tax Act, 1957 — Section 27(3)

**Citation :** (1991) 100 CTR 66 : (1992) 197 ITR 325

**Hon'ble Judges :** T.V. Ramakrishnan, J;K.P. Radhakrishna Menon, J

**Bench :** Division Bench

**Advocate :** P.K.R. Menon and N.R.K. Nair, for the Appellant; C.M. Devan and Antony Dominic, for the Respondent

---

## **Judgement**

K.P. Radhakrishna Menon, J.—The Commissioner of Wealth-tax, Cochin, is the petitioner.

2. These are petitions u/s 27(3) of the Wealth-tax Act, 1957. These petitions were necessitated as the Appellate Tribunal rejected the applications u/s 27(2) seeking reference of the questions stated hereunder :

"1. Whether, on the facts and in the circumstances of the case and having agreed with the views of the Judicial Member, the Accountant Member is right and within his jurisdiction in giving a direction that only such of the items of properties as are mentioned in paragraph 6 of his order could be assessed in the hands of the assessee ?

2. Whether, on the facts and in the circumstances of the case, is not the direction by the Accountant Member in paragraph 6 of his order non est in law and could not the officer, while giving effect to the order legally, ignore the same ?"

It can be seen from the order of the Tribunal that both the judicial Member and the Accountant Member have unanimously held that the case set up by the assessee that some of the properties belonged to the Hindu undivided family

and, therefore, they cannot be treated as his individual properties for the purpose of levying wealth-tax is not sustain-able. The Accountant Member, none the less, by a separate order, has apparently departed from the above unanimous decision and that it is so can be seen from his separate findings appended to the order. The concluding portion of the note reads ;

"From the above analysis, it follows that, in the hands of the individual, only the following properties can be included ;

(i) the share of property which devolved on him as the heir to his father which is to be treated as his individual property ; and

(ii) the share which he would have in the totality of the properties held by him as karta of the Hindu undivided family on the date on which the Kerala Joint Hindu Family System (Abolition) Act came into force.

The rest of the properties cannot be included in the hands of the assessee. The appeals are disposed of accordingly."

This conclusion runs counter to the unanimous verdict of the Bench. This certainly would create problems in the disposal of the case finally by the assessing authority.

3. It is in this backdrop that the maintainability of the petition requires to be considered. According to learned counsel for the assessee, the questions, in fact, do not arise out of the order of the Appellate Tribunal because these questions do not pertain to any matters relating to the merits of the case. They, in fact, relate to the jurisdiction of the Accountant Member to give a direction which apparently runs counter to the verdict unanimously arrived at by both himself and the Judicial Member. It is further argued that the remedy that can be thought of by the Revenue to get rid of the effect of this dissenting note of the Accountant Member is to apply for rectification of that order by invoking the jurisdiction of the Tribunal u/s 35(1)(e) of the Wealth-tax Act, 1957. The petition, therefore, is misconceived. On the other hand, counsel for the Revenue argues that the remedy provided for u/s 35(1)(e), in the circumstances, would be ineffective in that the said clause empowers the Appellate Tribunal to rectify the mistake in its order and that too only by amending the said order. The order of the Appellate Tribunal here cannot be said to include the separate note of the Accountant Member because that runs counter to the unanimous verdict of both the Accountant Member and the Judicial Member. It is further argued by counsel for the Revenue that, unless this separate note of the Accountant Member is set aside, it will be difficult for the assessing authority to have the matter finally disposed of keeping in view the decision of the Appellate Tribunal.

4. Two questions thus arising for consideration are : (1) Can it be said that the questions formulated in the petition in fact arise out of the order of the Tribunal ? and (2) can the petitioner invoke the jurisdiction of the Tribunal u/s 35(1)(e) of the Wealth-tax Act, 1957, and get the separate note vacated ?

5. Coming to the first question : The order of the Tribunal is one to which both the Judicial Member and the Accountant Member have subscribed their signatures. It is the common case of the parties that the questions formulated in the petition do not arise out of the said order. May be that these questions can be said to arise out of the order provided the separate note of the Accountant Member is treated as forming part of the said order. The dissenting note, in our view, however, cannot be said to form part of the main order, because it runs counter to the unanimous verdict of both the members as discernible from the said order. The separate note reflects the point on which the Accountant Member has expressed an opinion different from the opinion discernible from the unanimous order. Giving a different opinion in the manner in which the Accountant Member has given it cannot be approved under law. We shall, at this stage, state the law that governs the issue. When the members of a Bench differ in opinion on any point, the point shall be decided only in accordance with the opinion of the majority if there is a majority. But if the members are equally divided, they shall state the point or points on which they differ and the case shall be referred by the President of the Appellate Tribunal for hearing the said point by one or more of the said members of the Appellate Tribunal and such point or points shall be decided according to the opinion of the majority of the members of the Appellate Tribunal who have heard the case, including those who first heard it. A reference in this connection to Sub-section (4) of Section 255 of the Income Tax Act, 1961, is relevant. That this provision is relevant in the context is beyond dispute in view of Section 2(b) of the Wealth-tax Act, 1957, which defines "Appellate Tribunal". The Accountant Member, having agreed with the Judicial Member as regards the point in issue, has no jurisdiction to strike a different view in regard to the same point. In striking the dissenting note, the Accountant Member, in our view, has thrown into thin air the "rule of law" based on which the fundamental principle, namely, that public authorities cannot play fast and loose with the powers vested in them, and persons to whose detriment orders are made are entitled to know with exactness and precision what they are expected to do or forbear from doing and exactly what authority is making the order, is declared. It can, therefore, be opined that the dissenting note of the Accountant Member, under the circumstances, is one made without jurisdiction. That means that the separate note will not form part of the order reflecting the unanimous verdict of both the members of the Tribunal. Only such orders can be rectified by invoking Section 35 of the Wealth-tax Act, 1957. The answer to the above two questions must, therefore, be in the negative.

6. A question, however, would arise as to whether the effect of the dissenting note of the Accountant Member can be set at naught by the High Court by issuing an order in proceedings initiated suo motu. Touching upon this aspect, learned counsel for the assessee submitted that, inasmuch as the High Court is not constituted as a court of appeal u/s 257 but, on the other hand, the High Court is exercising only an advisory or consultative jurisdiction under the section and as such a strictly limited jurisdiction, the High Court cannot interfere with

the dissenting note. There cannot be any dispute in regard to this aspect of the matter. To put it differently, the order the High Court would pass in a referred case cannot be said to be an order passed in the exercise of either original or appellate jurisdiction. It has no original jurisdiction because the proceeding did not commence in the High Court as all original suits and proceedings should commence. But the High Court acquired the jurisdiction to deal with the referred case by virtue of the express provision, namely, Section 257 of the Income Tax Act, 1961. Does this mean that the High Court has no power to set at naught the effect of such orders as the dissenting note of the Accountant Member in this case when the same comes to the notice of the court and the High Court is of the view that, unless such orders are vacated by issuing appropriate orders, justice will be the casualty. We are of the view that the High Court has the power to issue appropriate directions or orders setting aside such void orders by invoking its visitatorial jurisdiction recognised under Article 227 of the Constitution. It should, in this connection, be remembered that the High Court, in exercise of its visitatorial jurisdiction, has the duty to keep all courts and Tribunals within the bounds of their authority and thereby see that they only do what their duty requires and they do it only in a legal manner. Such exercise of jurisdiction is essential to maintain the purity of administration of justice. We shall not, however, be understood as subscribing to the view that the High Court has the responsibility to correct the decisions of the Tribunals either in fact or in law. But, if the error is so manifest or patent and when the said erroneous decision could be said to be the result of an exercise of jurisdiction not vested in them by law or in their having failed to exercise jurisdiction vested in them by law, then that will come within the scope of Article 227. The question whether the High Court, under Article 227, can act even on the information received from any person--say for instance such information is got from the proceedings in the High Court which may not be maintainable--is no more *res Integra* in view of the pronouncements of the Supreme Court (See *Jijabai Vithalrao Gajre Vs. Pathankhan and Others*, and *Shaik Mohammed Umar Saheb Vs. Kaleskar Hasham Karimsab and Others*, ). A reference to the ruling of this court in *State of Kerala v. M.J. Louis* [1989] 2 KLT) 19, is also relevant in the context.

7. If that be the position, the dissenting note, notwithstanding the fact that the Revenue has not filed any separate proceeding in this court to have the same quashed, in our view, can be set aside by issuing appropriate orders or directions in the exercise of jurisdiction under Article 227.

8. We, accordingly, set aside the dissenting note of the Accountant Member.

9. The original petitions are disposed of as above.