

(1991) 04 KAR CK 0022

In the Karnataka High Court

Case No : Tax Referred Cases No's. 7 and 8 of 1986

Commissioner of Wealth Tax

APPELLANT

Vs

Bowring Institute

RESPONDENT

Date of Decision : 10-04-1991

Acts Referred:

Gift Tax Act, 1958 — Section 3
Income Tax Act, 1961 — Section 2 (31), 4

Citation : (1991) 100 CTR 83 : (1992) 194 ITR 287

Hon'ble Judges : R. Ramakrishna, J;K. Shivashankar Bhat, J

Bench : Division Bench

Advocate : G. Chanderkumar, for the Appellant; G. Sarangan, for the Respondent

Judgement

K. Shivashankar Bhat, J.—Under the provisions of the Wealth-tax Act, 1957, the following question has been referred for our consideration :

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the CIT (Appeals) was perfectly justified in canceling the assessment made on the assessee under the Wealth-tax Act for the years 1976-77 and 1977-78 by holding that the assessee is not an assessable entity under the Wealth-tax Act ?"

2. The assessee is an association of members running a club; it is registered under the provisions of the Karnataka Societies Registration Act, 1960; the managing committee, for the time being, holds the assets of the assessee under trust; but the assets are not transferable. The question is, whether the assessee is an "individual" falling within the scope of section 3 of the Wealth-tax Act ("the Act" for short).

3. The Appellate Tribunal held that the assessee is not an assessable entity and the Act does not govern it at all. It has found that the assessee is also not a trust and, therefore, the relevant provisions in the Act taxing the trust are also not

attracted.

4. The Revenue contends that the assessee is an "individual" as referred to in section 3; the term "individual" would include plurality of individuals, such as an association of persons and since certain assets belong to this association of persons, it is liable to be assessed, while the assessee contends that, in the sphere of fiscal legislation, various concepts such as "individual", "association of persons", "firm" and other entities are well known and Parliament has deliberately omitted to include association of persons from the purview of section 3 of the Act.

5. The question is not free from difficulty and divergent views are forthcoming amongst various High Courts. Having considered the question deeply, we are of the opinion that the Appellate Tribunal has taken the correct view of the matter.

6. u/s 3 of the Indian Income Tax Act, 1922, Income Tax was charged in respect of the total income of "every individual, Hindu undivided family, company and local authority, and of every firm and other association of persons or the partners of the firm or the members of the association individually". The Act thus clearly and specifically brought under its net every conceivable entity or person. The successor Act is the Income Tax Act, 1961, wherein charge is on the income of "every person" as per section 4 and the word "person" as defined in inclusive terms as per section 2(31), which specifically nets in the various entities such as (i) an individual; (ii) a Hindu undivided family; (iii) a company; (iv) a firm; (v) an association of persons; (vi) a local authority; (vii) every artificial juridical person, not falling within any of the other clauses of this section.

7. The General Clauses Act, 1897, defines "person" in inclusive terms as per its section 3(42).

8. The Gift-tax Act, 1958, is another parliamentary enactment which can be said to be an allied fiscal legislation. "Done" means any person who acquired any property under a gift, as per section 2(viii) and "gift" is defined as from one "person" to another "person" as per clause (xii) thereof. Clause (xviii) defines "person" so as to include a Hindu undivided family or a company or an association or a body of individuals or persons whether incorporated or not. The charge of gift-tax, as per section 3, is in respect of the gifts made by a person. Thus, Parliament has brought out the person liable to tax specifically by referring to a wider concept of "person".

9. Rules of interpretation of statutes permit reference to allied and similar legislations to gather the meaning of the words in a statute. The legislative practice of defining the appropriate word is not an irrelevant factor to be considered. The distinction between the terms "individual" and "body of individuals" or "association of persons" was borne in mind while enacting other fiscal legislations referred to above. Therefore, one irresistible conclusion is to hold that Parliament construed the applicability of the Wealth-tax Act to the three categories referred in section 3, fully aware of the existence of other entities

possession assets and the intention was not to bring those other entities within the net of taxation.

10. The earliest of the judicial pronouncements, interpreting section 3 of the Act, is found in *Orient Club Vs. Wealth-tax Officer, Circle IV, Ward-K, Ahmedabad*, . The Gujarat High Court held that an association of persons is not an assessable entity under the Act. In *Royal Calcutta Turf Club Vs. Wealth Tax Officer, "B" Ward VIII and Others*, , the Calcutta High Court also expressed the same view. A different note was struck for the first time by the Madras High Court in *Coimbatore Club Vs. Wealth-tax Officer*, . The decision of the Gujarat High Court was rendered on July 19, 1979. Thereafter, in another *Orient Club Vs. Commissioner of Wealth-tax, Bombay City-II*, , the Bombay High Court followed the Gujarat High Court's decision *Orient Club Vs. Wealth-tax Officer, Circle IV, Ward-K, Ahmedabad*, Thus, by the time a different view was expressed by the Madras High Court, there were at least three decisions of three High Courts holding that the term "individual" in section 3 of the Act would not bring within its compass an "association of persons" or a "body of individuals" such as a club registered under the provisions of the Societies Registration Act. In the meanwhile, Parliament had occasion to amend the provisions of the Wealth-Tax Act, in some respects, such as excluding agricultural lands from the purview of "assets" (as per the Finance (No. 2) Act of 1980), as to the mode of completing "assessable value" of assets, etc. The Finance Act of every year, inter alia, affects the provisions of the Wealth-Tax Act. If actually, Parliament's intention was to rope in "association of persons" for taxation under the Act, the simplest course would have been to amend section 3 immediately after the decision of the Gujarat and Bombay High Courts.

11. The need to have clarity and uniformity of law in the entire nation should have persuaded the executive to move Parliament to amend the charging provisions, in case the views expressed by the Gujarat and Bombay High Courts did not reflect the correct law. The people who are affected by a legislation should be in a position to know the scope of the law and mould their affairs appropriately and it will be a reasonable assumption on the part of residents of other States if they acted on the basis of the views expressed by the two High Courts. On such an important issue, the law should not be left unsettled and should be settled only by the process of litigation.

12. Another important factor to be considered lies in section 2(h) of the Act wherein the word "company" is defined. Not only an incorporated company formed and registered under the Companies Act, 1956, is brought within the concept, by the definition, but it also provides for bringing within the concept of "company" any institution, association or body, whether incorporated or not and whether Indian or non-Indian, which the Board may, having regard to the nature and objects of such institution, association or body, declare, by general or special order, to be a company. Thus, it is left to the Board to net in these entities for the purposes of taxation u/s 3, by declaring each of them as a company. This is a

clear indication that, but for such a declaration, these institutions, bodies or associations of persons are not to be taxed and, therefore, section 3 does not govern these bodies by its operation straightway.

13. After referring to the general provisions of the Act and the Rules, the Gujarat High Court dealt with the question thus *Orient Club Vs. Wealth-tax Officer, Circle IV, Ward-K, Ahmedabad*, "What is more important for the purposes of our judgment is that by section 2(h)(iii), "company" also includes any institution, association or body, whether incorporated or not and whether Indian or non-Indian, which the Board may, having regard to the nature and objects of such institution, association or body, declare, by general or special order, to be a company. Therefore, it means that qua an association of persons or a body of persons, whether incorporated or not, it is open to the Board of Direct Taxes to declare by special or general order that such an association or body is a company and then by virtue of the inclusive definition in section 2(h)(iii), it will be treated as a company for all purposes of the Wealth-tax Act and will become an assessable entity.

The fact that the words "association of persons" are not unknown to Parliament in the context of the Wealth-tax Act is also borne out by the provisions of section 4 which deals with net wealth of an individual to include certain assets. u/s 4 in computing the net wealth of an individual, there shall be included, as belonging to that individual, under sub-clauses (a) and (b), the value of the assets which on the valuation date are held by a person or an association of persons to whom such assets have been transferred by the individual, etc., etc. So the Legislature did use the words "association of persons" when it wanted to use them in a particular context. Similarly, in section 4(1)(b), in computing the net wealth of an individual, there shall be included as belonging to that individual, where the assessee is a partner in a firm or a member of an association (not being a co-operative housing society), the value of his interest in the firm or association determined in the prescribed manner. Rule 2 of the Wealth Tax Rules, 1957, prescribes the manner in which the interest of an individual member in property held by an association of persons is to be valued and under sub-rule (1) of ruled 2, the value of the interest of a person in an association of persons in which he is a member shall be determined in the manner provided in sub-rule (1). Net wealth of an association on the valuation date shall first be determined. That portion of the net wealth of the association as is equal to the amount of his capital shall be allocated among the members in the proportion in which capital has been contributed by them. The residue of the net wealth of the association shall be allocated among the members in accordance with the agreement of association for the distribution of assets in the event of dissolution of the association or, in the absence of any such agreement, in the proportion in which the members are entitled to share profits. It is, therefore, clear that under rule 2(1) of the Wealth-tax Rules, 1957, read with section 4(1)(b), the Legislature has given clear indication that an association of persons is not an assessable entity covered by the word "individual" in section 3 of the Wealth-tax Act. Just as

sections 5 and 21 give a positive indication that the word "individual" covers trustees of a trust, similarly, section 2(h)(iii) and section 4(1)(b) read with rule 2 of the Wealth-tax Rules, give a negative indication that the word "individual" in section 3 does not cover a body of individuals or an association of persons but that the particular species of association of persons is specifically covered by virtue of the indications given in section 5 and 21 by the word "individual" and that by virtue of the negative indication given by sections 2(h)(iii) and 4(1)(b) read with rule 2, an association of persons or a body of individuals apart from trustees is not covered by the word "individual" in section 3. That is the only possible conclusion that one can reach in the light of the provisions of the Wealth-tax Act and the indications given by the Wealth-tax Act."

14. The Bombay High Court, in *Orient Club Vs. Commissioner of Wealth-tax, Bombay City-II*, referred to the general pattern of the Act and pointed out at p. 706 :

"The provisions of section 4(1)(b) read with rule 2 will indicate that though the Act and the Rules contemplate that the interest of a partner in a partnership firm and of a member of an association of persons is to be included in the net wealth of that "individual", i.e., the partner or the member of the association of persons, as the case may be, an association of persons as such is not treated as a taxable unit under the Act; it is the partner or a member of an association of persons as an individual who alone is treated as a taxable unit. Reading the provisions of section 3 and 4 and the definition of "company" in section 2(h) of the Act, the position which emerges appears to be that while a firm or association of persons is not treated as a taxable unit and the member of an association of persons or a partner in the case of a partnership firm is individually taxable as a taxable unit, some institutions, associations or bodies which may be included within the definition of "company" by virtue of a general or special order to be made by the Central Board of Direct Taxes, could be treated as a taxable unit only when they fall within the extended definition of the word "company". We are not called upon in the present case to decide what would be the nature of the institution, association or body which were contemplated to be included within the definition of company, but it is apparent that if the institution, association or body contemplated by the extended definition of company were to be treated as a taxable unit for the purpose of section 3, then this would be something different from a partnership firm or an association of persons which was contemplated by the provisions of section 4(1) (b)."

15. The nature of an unincorporated club was explained (at p. 706) :

"An unincorporated members" club is a society of persons each of whom contributes to the funds out of which the expenses of conducting the society are paid. The contribution is generally made by means of entrance fees or subscriptions or both. The society is not a partnership because the members are not associated with a view to share the profits. It is not recognised as having any

legal existence apart from the members of which it is composed. Every club is governed by rules which generally specify the purposes for which it is instituted and make provisions as to the admission of members, payment of entrance fees and subscriptions, resignation and expulsion of members, the management of the affairs of the club, ordinary and extraordinary general meetings of members, alteration of the rules and making new rules, etc. The rules of the club form part of the contract among members in the case of a members' club, and the rights and the duties of the members as between themselves and the internal arrangements for carrying it on, depend upon the rules. Members are entitled to enjoy the use of the club premises, if any, and other privileges of the society in accordance with the rules, so long as they duly pay the subscriptions and continue to be members. In an unincorporated members' club, there are usually trustees appointed in pursuance of the provisions in the rules in whom the property and assets of the club are vested in trust for the members for the time being and who are given power to invest the funds of the club, sometimes at their own discretion and sometimes according to the directions of the committee. In a non-proprietary club, the members for the time being are jointly entitled to all the property and funds and it is only on dissolution that the individual interest of the members becomes capable of realisation."

16. It is necessary to note here that the distribution of the assets on dissolution of the society depends on the statutory provisions and, in some of the statutes the profits available on dissolution have to be given to some other society (vide section 14 of the Societies Registration Act, 1860, and section 23 of the Karnataka Societies Registration Act, 1960). The High Court also referred to several decisions wherein the word "individual" was understood as comprising a body of individuals under different contexts and held that it was not possible to extend those decisions to interpret section 3 of the Wealth-tax Act. We, respectfully, agree with the reasoning of the Bombay High Court.

17. The words used in the legislative entries in Schedule VII to the Constitution are indicators of fields of legislation and, therefore, are to be construed widely to enable Parliament or the State Legislatures to legislate in respect of those subject-matters; that is why the word "individual" in entry 86 of List I was interpreted so as to cover the cases of other entities capable of owning assets. The decision of this court in *Sarjerao Appasaheb Shitole Vs. Wealth Tax Officer, A-Ward, Belgaum*, is one such decision, negating the contention that Parliament had no competence to enact a law providing for imposing wealth-tax on Hindu undivided families. It was also held that the word "individuals" included the term "Hindu undivided family" for the purposes of entry 86 of List I. The principle governing the interpretation of a constitutional provision is entirely different from the principle applicable to a statutory provision. In the former case the construction of the words should enable the legislative activity to extend to the widest sphere reasonably possible while, in the latter case, the construction depends upon the context of the law and the expressed intention of the Legislature.

18. Orient Club Vs. Commissioner of Wealth-tax, Bombay City-II, was followed by the same Bench in the case of Willingdon Sports Club Vs. C.B. Patil, 3rd Additional Wealth-tax Officer, "G" Ward, Bombay and another, . The observations at page 87 are apposite as to the nature of the rights of the members of the club and the effect of rule 20.

"The members for the time being are, no doubt, treated as owners of the property but the same time they have no transmissible or assignable interest in the property and their interest ceases when they cease to be members of the club. Therefore, apart from rule 20 indicating that the property does not vest in the trustees in ownership, it further indicates that the beneficial interest of the property vests in the members. If the property does not vest in the trustees as owners, it is not necessary to consider the further argument advanced by Mr. Dastur that even if the property is owned by the trustees, the assessment cannot be made u/s 3 but it will have to be made u/s 21(1) of the Act."

19. This answers a similar contention of Sri Chanderkumar.

20. The decision of the Madras High Court in Coimbatore Club Vs. Wealth-tax Officer, is mainly based on the principle that singular includes plural and, therefore, the word "individual" in section 3 would include "individuals" which, in turn, would net in a group of individuals like an association of persons. For the reasons already stated, we respectfully disagree with this view of the Madras High Court.

21. Our conclusion also derives support from the decision of the Calcutta High Court in Royal Calcutta Turf Club Vs. Wealth Tax Officer, "B" Ward VIII and Others, .

22. Accordingly, the question referred to us is answered in the affirmative and against the Revenue.