

(2001) 01 KAR CK 0043
In the Karnataka High Court
Case No : T.R.C. No's. 9 to 15 of 1989

Commissioner of Wealth-tax

APPELLANT

Vs

D.M. Srinivas

RESPONDENT

Date of Decision : 05-01-2001

Acts Referred:

Wealth Tax Act, 1957 — Section 27 (1)

Citation : (2001) 166 CTR 59 : (2001) ILR (Kar) 504 : (2001) 248 ITR 406 :
(2001) 4 KCCR 419 SN

Hon'ble Judges : P.V. Reddi, C.J;H.L. Dattu, J;A.M. Farooq, J

Bench : Full Bench

Advocate : E.R. Indrakumar, for the Appellant; K.R. Prasad and A.A. Kulkarni,
for the Respondent

Judgement

H.L. Dattu, J.—This is a reference u/s 27(1) of the Wealth-tax Act, 1957 (hereinafter for the sake of brevity, referred to as "the Act, 1957"), at the instance of the Commissioner of Wealth-tax, Karnataka-II, Bangalore. The question of law referred by the Income Tax Appellate Tribunal, Bangalore Bench, to this court for decision is extracted below :

"Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was correct in law in upholding the orders of the Appellate Assistant Commissioner, who held that the assessee is not liable to additional wealth-tax, on the premises leased out for rent to Royal Lodge of which the assessee is a partner on the ground that the business of Royal Lodge is the business of the assessee himself ?"

2. The facts which are necessary for deciding the reference are summarised thus :

The assessee under the wealth-tax provisions was the owner of certain properties situate in the urban area. Royal Lodge was a business establishment controlled and managed by a partnership firm. The assessee had let out the

premises owned by him to the aforesaid partnership firm, in which he was also a partner. The assessee claimed exemption from levy and payment of additional wealth-tax for the assessment years 1970-71 to 1976-77 under the wealth-tax provisions, on the ground that the premises in question are being used by the assessee for his business purpose. The Wealth-tax Officer by his separate orders dated February 26, 1984, rejected the claim of the assessee and levied the additional wealth-tax for the relevant assessment years, on the sole ground that the premises situate in the urban area are not used by the assessee himself for his business or profession. As against the said order passed by the Wealth-tax Officer, the assessee had filed separate appeals before the Appellate Assistant Commissioner, who by his common order dated November 28, 1984, allowed the assessee's appeals, relying on the decision of the Income Tax Appellate Tribunal, Madras Bench, in the case of N. Soorian Pillai reported in [1983] 4 ITD 385. The Revenue aggrieved by the aforesaid order, had filed further appeals before the Income Tax Appellate Tribunal, Bangalore Bench, in Appeals Nos. R. A. 502 to 508 of 1986. The Appellate Tribunal agreeing with the view of the Appellate Assistant Commissioner, dismissed the appeals of the Revenue, primarily relying on the observations made by the apex court in the case of Commissioner of Income Tax, Bihar Vs. Ramniklal Kothari, .

3. The Revenue was before this court in Civil Petitions Nos. 131 to 137 of 1987, inter alia, requesting this court to direct the Appellate Tribunal to draw up the statement of the case and the questions of law and refer the same for a decision of this court as required under the provisions of the Wealth-tax Act. This court, by its order dated April 13, 1988, was pleased to allow the aforesaid civil petitions and was further pleased to direct the Appellate Tribunal to draw up the statement of the case and refer the same for a decision of this court. Pursuant to the orders of this court, the Tribunal has drawn up the statement of the case and the question of law, that requires to be considered and decided by this court by its order dated August 22, 1988. After receipt of the reference, the same is registered as T. R. C. Nos. 9 to 15 of 1989, This court, upon hearing the reference cases, by its order dated June 20, 1991, was pleased to answer the question referred by the Tribunal in the negative and against the assessee, following the observations made by this court in this case of M. S. Vasudeva v. CWT(T. R. C. No. 20 c/w 21 of 1983 disposed of on 18th day of June, 1990). The court was further pleased to clarify that the levy of additional wealth-tax by the Wealth-tax Officer was legal.

4. The assesses, thereafter, had filed a review petition before this court, requesting the court to review its earlier order dated June 20, 1991, by bringing to the notice of this court, two other decisions, governing the identical question, namely, the judgment of this court in the case of Commissioner of Wealth Tax Vs. R. Susheela (Legal Representative of Latem. Kasturi Ranga Setty), and the other unreported decision of this court in the case of CWT v. Mahadevasa (T. R. C. No. 236 of 1985, disposed of on February 18, 1991).

5. This court by its order dated July 27, 1992, allowed the prayer made in the review petition and was further pleased to observe :

"The two decisions of this court one reported in Commissioner of Wealth Tax Vs. R. Susheela (Legal Representative of Latem. Kasturi Ranga Setty), and other unreported in CWT v. Mahadevasa (T. R. C. No. 236 of 1985, dated February 18, 1991) have a direct bearing on the question involved in the present case. These decisions were not brought to the notice of this court while the present references were considered in T. R. C. Nos. 9 to 15 of 1989. The said tax referred cases were considered on June 20, 1991, by a Bench of which one of us was a member. The Bench relied on the decision in T. R. C. No. 20 of 1983 (M. S. Vasudeva v. CWT), However, while deciding M. S. Vasudeva's case also the other two decisions were not considered. In these circumstances, the main case will have to be considered afresh instead of compelling the assessee to go in appeal to the Supreme Court. An authoritative decision by this court on the question is necessary even otherwise. The review petitions are accordingly allowed. The TRCS are restored. In view of this, S. C. L. A. P. Nos. 102 to 108 of 1991, need not be considered, they are accordingly dismissed."

6. When the reference came up for hearing before the learned judges of this court on October 9, 1991, it was pointed out by the assessee's learned counsel that there are two conflicting decisions of this court on an identical legal issue, one in the case of M. S. Vasudeva v. CWT and the other in the case of Commissioner of Wealth Tax Vs. R. Susheela (Legal Representative of Latem. Kasturi Ranga Setty), and, therefore, the matter requires authoritative pronouncement by a Full Bench of this court. The court, after carefully considering the rival contentions canvassed by learned counsel for the parties to the lis, and further being of the view that there is conflicting opinion between two sets of decisions of this court on an identical legal issue, was pleased to refer the question of law raised by the Income Tax Appellate Tribunal, for a decision by a Full Bench of this court. That is how these reference cases under the wealth-tax provisions have come before us for consideration and decision.

7. The question referred to this court for decision basically rests on the findings of the Tribunal, which are extracted below :

"The dispute in these appeals is about the levy of additional wealth-tax. The Wealth-tax Officer passed the assessment orders in accordance with the directions of the Settlement Commission, but held that additional wealth-tax was leviable on the assessee as the premises owned by him could not be treated as business assets. The Appellate Assistant Commissioner, relying on the decision of the Income Tax Appellate Tribunal in the case of N. Soorian Pillai, reported in [1983] 4 ITD 385, held that the premises of the assessee should be treated as business premises and, hence, additional wealth-tax was not leviable. We are in agreement with the Appellate Assistant Commissioner."

8. Within the framework of the above finding of the Tribunal, what is required to

be considered and decided by this court is whether the premises situate in the urban area owned by the assessee could be treated as a business asset and whether the Wealth-tax Officer was justified in levying additional wealth-tax under the Act, merely because the business was carried on in the premises by the partnership firm of which the assessee was one of its partners and not by the assessee himself.

9. To answer the precise question, it would be convenient to notice the relevant statutory provisions in Part I of the Schedule to the Wealth-tax Act. They are :

"(2) In addition, in the case of every individual and Hindu undivided family, where the net wealth of the individual or Hindu undivided family includes the value of any asset, being building or land (other than business premises) or any right in such building or land, situated in an urban area (such asset being hereafter in this Part referred to as urban asset).

Rule 1 : In this Part,--

(i) "business premises" means any building or land or part of such building or land, or any right in building or land or part thereof, owned by the assessee and used throughout the previous year for the purposes of his business or profession, and includes any building used for the purpose of residence of persons employed in the business or any building used for the welfare of such persons as a hospital, creche, school, canteen, library, recreational centre, shelter, rest-room or lunch-room, but does not include any premises in the nature of a guest house ;

(ii) "previous year", in relation to a business or profession, means the period which would be the previous year if an assessment of the profits and gains of such business or profession were to be made under the Income Tax Act for the assessment year ; (iii) "urban area" means,--

(a) any area which is comprised within the jurisdiction of a municipality (whether known as a municipality, municipal corporation, notified area committee, town area committee, town committee or by any other name) or a cantonment board and which has a population of not less than ten thousand according to the last preceding census of which the relevant figures have been published before the valuation date ;

Rule 3 : Where the net wealth of the assessee includes the value of his interest as a partner in a firm or as a member of an association of persons and the assets of such firm or association include any urban assets, then, notwithstanding anything contained in the Indian Partnership Act, 1932 (9 of 1932), or in any other law for the time being in force, the interest of the assessee in such firm or association, to the extent specified in the Explanation below, shall be deemed to be an urban asset and the provisions of item (2) of Paragraph A shall apply accordingly.

Explanation.--The extent of the interest of the assessee in a firm or association deemed to be an urban asset as aforesaid shall be a sum which bears to the

value of the whole of the interest of the assessee in the firm or association the same proportion which the net value of the urban assets of the firm or association (determined under Rule 2 as if they were urban assets belonging to an individual or a Hindu undivided family) bears to the net wealth of the firm or, as the case may be, the association, computed as if such firm or association were an individual."

10. The reading of the material provisions, in our view, would indicate the following. They are :

Item (2) of Part I of the Schedule provides for levy of additional wealth-tax, in the case of every individual and Hindu undivided family on his urban assets being building or land or any right in such building or land situate in an urban area.

11. The "urban area" is defined to mean any area which is comprised within the jurisdiction of the municipality, municipal corporation, etc. The provisions specifically exclude from the levy of additional wealth-tax under the Act, business premises.

12. The meaning of the expression "business premises" is found in Rule 1 of Para. B of the Schedule, which means any building or land or part of such building or land or any right in building or land or part thereof, owned by the assessee and used throughout the previous year for the purposes of his business or profession.

13. Under Rule 3, where the net wealth of the assessee includes the value of his interest as a partner in a firm or as a member of an association of persons and the assets of such firm or association includes any urban assets, then, notwithstanding the provisions of the Indian Partnership Act, the interest of the assessee in such firm or association to the extent specified in the Explanation, shall be deemed to be an urban asset for the purpose of levy of additional wealth-tax and the provisions of item (2) of Paragraph A shall apply accordingly.

14. The expression "used for business purpose" is explained by the apex court in the case of *The Liquidators of Purna Limited Vs. Commissioner of Income Tax, Bihar*, wherein, the court was pleased to observe that it means used for the purpose of enabling the owner to carry on the business and earn profits in the business. In other words, the machinery or plant must be used for the purpose of that business which is actually carried on. Para. A of the Schedule envisages that in determining additional wealth-tax under Part I of the Schedule, while computing the net wealth of an individual or a Hindu undivided family owning the urban asset, business premises shall be excluded. Under Rule 1, business premises means any building or land, owned by the assessee and used throughout the previous year for the purposes of his business or profession. The question would be whether "his business" would include the business of the partnership firm in which he is a partner. However, the expression "his business" is not defined either under the Act or in the Rules and, therefore, it must carry the meaning assigned to it in the Indian Partnership Act, 1932. The Allahabad

High Court in COMMISSIONER OF WEALTH-TAX Vs. RAMA SHANKER GUPTA., , and this court in Commissioner of Wealth Tax Vs. R. Susheela (Legal Representative of Latem. Kasturi Ranga Setty), and this court in Commissioner of Income Tax Vs. Prakash Beedies (P.) Ltd., , in a similar situation adopted the said course.

Section 4 of the Indian Partnership Act reads as under :

""Partnership" is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all.

Persons who have entered into partnership with one another are called individually "partners" and collectively "a firm" and the name under which their business is carried on is called the "firm1 name".

15. In the case of Malabar Fisheries Co. Vs. Commissioner of Income Tax, Kerala, , the Supreme Court had an occasion to consider the status of the firm vis-a-vis its partners. The court was pleased to observe (page 58) :

"The position as regards the nature of a firm and its properly in Indian law under the Indian Partnership Act, 1932, is almost the same as in English law. Here also a partnership firm is not a distinct legal entity and the partnership property in law belongs to all the partners constituting the firm."

16. The Supreme Court in Addanki Narayanappa and Another Vs. Bhaskara Krishtappa and Others, , was pleased to observe (page 1303) :

"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."

17. The apex court in Commissioner of Income Tax, Bihar Vs. Ramniklal Kothari, was pleased to observe (headnote):

"Business carried on by a firm is business carried on by the partners. Profits of the firm are profits earned by all the partners in carrying on the business. The share of the partner is business income in his hands for the purpose of Section 10(1) of the Indian Income Tax Act, 1922."

18. The Gujarat High Court in the case of Commissioner of Income Tax, Gujarat Vs. Rasiklal Balabhai, was pleased to observe :

"That under the general law of partnership, "firm" is a compendious expression for all the partners put together and. therefore, the business carried on by the firm is the business carried on by the partners."

19. Therefore, in view of this well settled position in law, it can safely be said that the business carried on by a firm is business carried on by the partners. Profits of the firm are profits earned by all the partners in carrying on the business.

20. Learned counsel for the Revenue, Sri Indra Kumar, relying on the literal meaning of the word "business premises" submits that in order to claim exemption from levy of additional wealth-tax, the assessee must not only be the owner of the building or land situate in the urban area and must have used it for his business purpose throughout the previous year. The emphasis by learned counsel is more on the expression "his business" and according to him, "his business" will only mean the assessee's own business and not that of the firm or association of persons. Learned counsel further contends that the conditions prescribed by the Legislature for the purposes of granting exemption should be strictly construed and the assessee should comply with those conditions to earn the benefit of exemption. In order to augment his submission, learned counsel relies on the observations made by the Calcutta High Court in the case of L.N. Birla Vs. Commissioner of Wealth Tax, ; Commissioner of Income Tax Vs. C.L. Bajoria, and the decision of this court in the case of Commissioner of Income Tax Vs. Prakash Beedies (P.) Ltd., .

21. Per contra, Sri K. R. Prasad, learned counsel for the assessee, contends that the expression "his business" in the context in which it is used in the rule appended to the Schedule should be understood as the firm's business also. In other words, according to learned counsel, business carried on by the firm is a business carried on by the partners of the firm. In support of his submissions, learned counsel has invited our attention to the observations made by the Allahabad High Court in the case of COMMISSIONER OF WEALTH-TAX Vs. RAMA SHANKER GUPTA., , the decision of the Madras High Court in the case of Commissioner of Income Tax Vs. K.M. Jagannathan, and in the case of Commissioner of Wealth-tax Vs. C.G. Radhakrishnan, .

22. The only question that requires to be considered is whether the business of the firm is the business of the partners of the firm ? If the answer is in the positive, then the reference should be answered in the negative, against the Revenue and in favour of the assessee. To answer this precise question, let us now recapitulate the facts once over again. The assessee under the provisions of the Wealth-tax Act is the owner of the building situate in an urban area. The assessee has let out the building premises to a partnership firm for its business purpose, in which he is also a partner. The firm is doing business of maintaining and running the lodge in the name of Royal Lodge, to earn profits. The assessee's claim for exemption from levy of additional wealth-tax is rejected by the Wealth-tax Officer on the sole ground that the "firm's business" is not his business.

23. In the present case, the ownership of the building by the assessee and its location in the urban area is not in dispute. It is also not in dispute that the business premises is being used throughout the previous year for firm's business. The only dispute seems to be that the business premises is not being used by the assessee for his business but by the firm in which he is also a partner. In our opinion, in view of the meaning of the expression "partnership" in

the Indian Partnership Act, and in view of the authoritative pronouncement of the apex court in Commissioner of Income Tax, Bihar Vs. Ramniklal Kothari, , it can safely be said that the business carried on by the firm is a business carried on by all the partners of the firm. Profits of the firm are profits earned by all the partners in carrying on the business. In view of this settled legal position, the business carried on by the firm in the premises owned by the assessee in an urban area, in which he is a partner is the business of the assessee. Therefore, while computing the net wealth of the assessee owning the urban asset, the business premises in which the business carried on by the firm, of which he is a partner, shall have to be excluded since there is nothing to show in the definition of the word "business premises" in Rule 1 of para. B of the Schedule that the benefit of the provisions would not be available, if the business premises owned by the assessee are utilised by the firm of which the assessee is a partner for its business purposes. Therefore, it can safely be said that the expression "his business" in Rule 1 of Part I of the Schedule would also mean the business of the firm with which the assessee is associated as a partner. In the present case, the assessee was admittedly a managing partner of the firm and not merely a partner. Viewed from any angle, the assessee's claim for exclusion of the business premises owned by him, situate in an urban area from the purview of computing the net wealth of the assessee for the purpose of levy of additional wealth-tax was rightly allowed by the Income Tax Appellate Tribunal.

24. The law applicable in the present set of facts appears to have been correctly laid down by this court in the case of Commissioner of Wealth Tax Vs. R. Susheela (Legal Representative of Latem. Kasturi Ranga Setty), . That was a case, where the assessee was a partner of a firm--Krishna Flour Mills, representing his Hindu undivided family. The firm was the owner of the factory, building and land, which it had leased out to a company incorporated under the provisions of the Companies Act, 1956. The assessee's share of interest in the immovable properties of the firm in which the assessee was a partner was brought to levy of additional wealth-tax. The assessee contested the levy of additional wealth-tax on the properties leased out to the company on the ground that those properties were used for the purpose of the business of the firm of which he was a partner and, therefore, he was not liable. The Revenue's main contention, as in the present case, that the firm was using the assets for its business purpose and not the assessee himself, and, therefore, the firm was not entitled for exclusion from the operation of item (2) of Part I of para. A of the Schedule. The claim had been negated by the Wealth-tax Officer but the assessee had succeeded both before the Appellate Assistant Commissioner and the Income Tax Appellate Tribunal, and on a reference by the Revenue, this court relying on the observations made by the apex court in Commissioner of Income Tax, Bihar Vs. Ramniklal Kothari, and the observations made by the Gujarat High Court in Commissioner of Income Tax, Gujarat Vs. Rasiklal Balabhai, , that the firm is a compendious expression for all the partners put together and, therefore, the business carried on by the firm is the business carried on by the partners

and, therefore, the irresistible conclusion is that the premises were certainly used by the firm and the partner of the firm is entitled to exemption from levy of additional wealth-tax in respect of his share of interest in such premises. The view expressed by the Division Bench in Commissioner of Wealth Tax Vs. R. Susheela (Legal Representative of Latem. Kasturi Ranga Setty), is in consonance with our thinking and conclusion on the construction of the expression "his business" in Rule 1 of Part I of the Schedule.

25. We also find support for our view, from the observations made by a Bench of the Allahabad High Court in the case of COMMISSIONER OF WEALTH-TAX Vs. RAMA SHANKER GUPTA., , the observations made by the Madras High Court in the case of Commissioner of Income Tax Vs. K.M. Jagannathan, and in the case of Commissioner of Wealth-tax Vs. C.G. Radhakrishnan, . Therefore, in our considered opinion, the view expressed by another Division Bench of this court in the case of M. Vasudev v. CWT (T. R. C. No. 20 c/w 21 of 1983, disposed of on June 18, 1990), wherein it is observed that in the context of the provisions of the Wealth-tax Act, unless the assessee is carrying on his own business in a building belonging to him situate in an urban area, he would be liable to pay additional wealth-tax on such building, does not lay down the correct legal position.

26. On behalf of the Revenue, it was contended that for the purpose of the Wealth-tax Act, the status of partnership under the Income Tax Act, is different from that under the Wealth-tax Act. Therefore, the concept of a partnership in the context of the Income Tax Act cannot be imported into the Wealth-tax Act. In support of this contention, learned counsel relies on the observations of the Calcutta High Court in the case of L.N. Birla Vs. Commissioner of Wealth Tax, , wherein the court was pleased to observe that under the Wealth-tax Act, the firm is not an assessee and the properties of the firm are treated as 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 and the assessee 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. The court was further pleased to observe (page 95) :

"The Wealth-tax Act is a separate Act and contains its own scheme for assessment of wealth-tax. 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. In Dulichand Lakshminarayan Vs. The Commissioner of Income Tax, Nagpur, , the Supreme Court has categorically laid down that the name of the firm was a compendious name for all the partners and it was 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. The assessability of a firm to Income Tax under the special provisions of the Income Tax Act, which treats a

firm as a distinct assessable unit, cannot be imported into a proceeding under the Wealth-tax Act."

27. Learned counsel for the Revenue also relies on the observation made by this court in Commissioner of Income Tax Vs. Prakash Beedies (P.) Ltd., , in support of his contention that a partnership firm is not a juristic or legal entity. In the said decision, the court was pleased to observe (page 247) :

"... that there is really no distinction or difference between the partners and the firm, which is only a collection or association of individuals for carrying on business."

28. In our opinion, on an anxious consideration of the decisions, on which reliance was placed by learned counsel for the Revenue, there cannot be any disagreement with the above position of law governing the partnership business and its capital and even in these decisions, the view of the court seems to be that the partnership firm is not an entity or person in law, but merely an association of individuals and a firm's name is only a collective name for those individuals, who constitute the firm. Therefore, the view expressed or principles laid down in those cases on which strong reliance was placed by learned counsel for the Revenue has no conflict with the views expressed by this court in Commissioner of Wealth Tax Vs. R. Susheela (Legal Representative of Latem. Kasturi Ranga Setty), and they are well justified in view of the different factual situations arising in those cases. On the other hand, the fact that the firm is not an assessable entity under the Wealth-tax Act unlike the Income Tax Act lends support to the plea of the assessee that the firm's business shall be deemed to be the business carried on by the partners as well.

29. In view of the above discussion, we answer the question referred to this court in the affirmative and in favour of the assessee. We are further of the view that the legal position explained by the Division Bench of this court in Commissioner of Wealth Tax Vs. R. Susheela (Legal Representative of Latem. Kasturi Ranga Setty), , is the correct law on the point.

30. Reference case is disposed of accordingly. No costs.