
(1989) 09 AP CK 0019

In the Andhra Pradesh High Court

Case No : Wealth-tax Case No. 37 of 1989

Commissioner of Wealth-tax

APPELLANT

Vs

George Club

RESPONDENT

Date of Decision : 11-09-1989

Acts Referred:

Income Tax Act, 1961 — Section 167A, 256(2)
Wealth Tax Act, 1957 — Section 21AA, 21AA(1)

Citation : (1991) 191 ITR 368

Hon'ble Judges : Upendralal Waghray, J; B.P. Jeevan Reddy, J

Bench : Division Bench

Judgement

B.P. Jeevan Reddy, J.—The only question which the Revenue wants us to direct the Tribunal to refer u/s 256(2) of the Income Tax Act, 1961 ("the Act") is :

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is correct in law in holding that the assessee is not liable to wealth-tax after the introduction of section 21AA in the Wealth-tax Act, 1957 ?"

2. The assessment year is 1981-82. The assessee is George Club. Section 21AA of the Wealth-tax Act, 1957 ("the Act"), was introduced by the Finance Act, 1981, with effect from April 1, 1981. At the relevant time, sub-section (1) of section 21AA read as follows :

"Assessment when assets are held by certain associations of persons. - Where assets chargeable to tax under this Act are held by an association of persons, other than a company or co-operative society and the individual shares of the members of the said association in the income or assets or both the said association on the date of its formation or at any time thereafter are indeterminate or unknown, the wealth-tax shall be levied upon and recovered from such association in the like manner and to the same extent as it would be leviable upon and recoverable from an individual who is a citizen of India and resident in India for the purposes of this Act...."

3. The club is registered under the Societies Registration Act, 1860.

4. We shall assume, for the sake of argument, that a club is an association of persons within the meaning of section 21AA(1). The further question, however, is whether it can be said that "the individual shares of the members of the said association in the income or assets or both of the said association on the date of its formation or at any time thereafter are indeterminate or unknown "within the meaning of the said section. In short, the question is whether it can be said that, in the case of a club registered under the Societies Registration Act, the members can be said to be holding shares either in the income or in the assets or in both of the club. We do not think so. No individual member holds a share in the case of such a club. Neither does he have a share in the income, nor in the assets. Section 14 of the Societies Registration Act says that, upon the dissolution of a society registered under the said Act, if any assets remain after satisfying all its debts and liabilities, the same shall not be paid to or distributed among the members of the society or any of them, but shall be given to some other society. In this view of the matter, it is difficult to say that a member of a club has a share either in the income or assets of the club.

5. We may also refer in this behalf to the decision of this court in *Deccan Wine and General Stores Vs. Commissioner of Income Tax*, where this court set out the distinguishing features of an association of persons vis-a-vis a body of individuals. It was held that, for constituting an association of person, the association must be engaged in an income-producing activity. It is difficult to say that a club is engaged in an income-producing activity. In this behalf, the Tribunal referred to the Board's Circular No. 320 dated January 11, 1982 [See [1982] 134 ITR 166], no doubt issued u/s 167A of the 1961 Act, clarifying that members of such clubs do not have any share in the income or assets of such association. Since there is no definition of association of person under the 1957 Act, we must understand the said expression in the same sense in which it is used in the 1961 Act. If so, the principle of the Board's circular applies with equal force in the case of an association of persons under this Act.

6. We may also say that sub-section (4) of section 21AA appears to lend support of our conclusion. It says that, upon discontinuation or dissolution of an association of persons, every person who was a member of such association on such date shall be jointly and severally liable for the amount of tax, penalty or other sum payable by the association. We do not think that such an action is contemplated in the case of a club whose members do not have a share in its income or in its assets.

7. The wealth-tax case is, accordingly, dismissed.