
(1992) 09 P&H CK 0034

In the Punjab And Haryana At Chandigarh

Case No : Wealth-tax Reference No's. 13 to 15 of 1981

Commissioner of Wealth-tax

APPELLANT

Vs

Harbhagwan and Sons

RESPONDENT

Date of Decision : 25-09-1992

Acts Referred:

Income Tax Act, 1922 — Section 25A

Income Tax Act, 1961 — Section 171

Wealth Tax Act, 1957 — Section 20

Citation : (1993) 109 CTR 124 : (1993) 203 ITR 240

Hon'ble Judges : Ashok Bhan, J;A.L. Bahri, J

Bench : Division Bench

Advocate : R.P. Sawhney, for the Appellant; Hemant Kumar Gupta and Rajesh Garg, for the Respondent

Judgement

Ashok Bhan, J.—This judgment shall dispose of Wealth-tax References Nos. 13 to 15 of 1981. The Income Tax Appellate Tribunal, Chandigarh, at the instance of the Commissioner of Wealth-tax, Ludhiana, has referred the following questions of law to this court for its opinion, which is the subject-matter of Wealth-tax References Nos. 13 to 15 of 1981, relating to the assessment years 1972-73, 1973-74 and 1974-75. The questions of law in all the three references are the same :

"Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal erred in law in holding that the value of the plot of land at Railway Road, Karnal, could not be included and assessed in the net wealth of the assessee-Hindu undivided family for each of the assessment years under appeal ?"

2. Harbhagwan, karta of a Hindu undivided family known as Messrs. Harbhagwan and Sons, Chandigarh, purchased two plots bearing Nos. 7 and 8 situated at Mall Road, Karnal, measuring 5,616 sq. ft. and 6,251 sq. ft. for Rs. 6,000 and Rs. 10,000, respectively, on August 4, 1962, with funds belonging to him as

individual. He also purchased a plot of land at Railway Road, Karnal. These three plots were impressed with the character of Hindu undivided family property by throwing them into the common hotchpotch of the joint family consisting of himself, his wife and three sons with effect from October 10, 1968, and October 6: 1968, as recorded by the Income Tax Officer in his order dated September 25, 1975, made u/s 171 of the Income Tax Act, 1961 (hereinafter referred to as "the Act"). The plots at Mall Road, Karnal, were sold on August 13, 1971, for a consideration of Rs. 94,050. After deducting a sum of Rs. 18,065 being the cost of the plots, the balance of the amount of Rs. 75,965 was divided amongst the members and credited to their accounts in the books of the firm of Messrs. Harbhagwan Harbhajan Lal at Chandigarh, in which the family had a share. When the cases were taken up for assessment, the Income Tax Officer considered the sale of the above plots and in the process was required to consider the claim of partial partition and the date of its effect with respect to the plots u/s 171 of the Act. The Income Tax Officer in his order held that the assessee-Hindu undivided family admits that the plot at Railway Road admits of physical division but the plots at Mall Road were indivisible. It was held that the plot at Mall Road was also capable of physical division and in fact it consisted of two pieces purchased from two different parties and it could be converted easily into smaller pieces. Since this had not been done in the process of partition, he held that partial partition, qua this plot, had not taken place. With regard to the plots at Mall Road, he considered the claim of the assessee as to the date from which the partial partition with respect to that could be accepted. In his opinion, the partial partition could be considered either from the date of oral partition made on October 22, 1970, or with effect from November 16, 1970, when this oral partition was confirmed by the memorandum of partial partition or from the date when actually the sale proceeds of the plots were credited to the respective accounts of the coparceners or actually divided amongst the members of the family. According to the Income Tax Officer, the case of partial partition as per oral agreement on October 22, 1987, could not be accepted as there was no physical division of the property. On the same grounds, the partition could not be accepted with effect from November 16, 1970, when the memorandum of partial partition was executed. He however, held that partial partition with respect to the plots at Mall Road, Karnal, took place on August 13, 1971, when the sale proceeds were credited in the accounts of the members of the family in the books of Messrs. Harbhagwan Harbhajan Lal, a firm at Chandigarh. Accordingly, he made an order u/s 171 of the Act recognising partial partition with respect to the two plots situated at Mall Road with effect from August 13, 1971, but partial partition with regard to the plot at Railway Road, Karnal, was not accepted.

3. An appeal was carried to the Appellate Assistant Commissioner against the order of the Income Tax Officer. In appeal, the order of the Income Tax Officer was reversed and the Department carried a second appeal before the Tribunal. In appeal, the Tribunal set aside the order of the Appellate Assistant Commissioner and restored the order of the Income Tax Officer and it was held that there was

no partial partition with regard to the plot at Railway Road, Karnal, and further that partial partition regarding the plot situated at Mall Road took place on August 13, 1971, when the sale proceeds were credited in the accounts of the members of the family in the books of account of Messrs. Harbhagwan Harbhajan Lal and Sons, a firm at Chandigarh, and not from the date of the oral agreement dated October 22, 1970, or from the date of the memorandum of partial partition accepted on November 16, 1970. The assessee being aggrieved, claimed the following two questions of law, which were answered by this court in the judgment reported as Harbhagwan and Sons Vs. Commissioner of Income Tax, :

"(i) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that there was partial partition, qua the plots of land at Mall Road, Karnal, and the plot of land at Railway Road, Karnal, owned by the assessee-Hindu undivided family only on August 13, 1971 ?

(ii) Whether, on the facts and in the circumstances of the case, the Tribunal erred in holding that the immovable property (plots) in question admitted of physical division as contemplated by Explanation (a)(i) to Section 171 of the Income Tax Act, 1961, by an apportionment and equalisation by payment ?"

4. On the specific request of counsel for the assessee, question No. (ii) was returned unanswered. Further, against the request of counsel for the assessee, the words "and the plot of land at Railway Road, Karnal" were deleted from question No. (i). With regard to the two plots situated at the Mall Road, Karnal, the order of the Tribunal was upheld and the question of law was answered in the affirmative, in favour of the Revenue and against the assessee holding that the partial partition with regard to the plot at Mall Road took place on August 13, 1971, the date on which the sale proceeds of the sale of plots were distributed amongst the members of the Hindu undivided family.

5. The present reference relates to the plot situated at Railway Road, Karnal, only and the proceedings were before the Wealth-tax Officer. The assessee claimed that the value of the plot of land at Railway Road, Karnal, could not be included in the net wealth of the assessee (Hindu undivided family), as the assessee had not declared the value thereof on the ground that partial partition had been effected with respect to this plot as well. The Wealth-tax Officer observed that partial partition of this plot had not been accepted because it was not registered in the individual names of the members and, therefore, the value thereof is assessable in the hands of the Hindu undivided family. Since in the case of an individual member of the Hindu undivided family, one-fifth share of the plot had been shown as Rs. 40,000, the Wealth-tax Officer took the value of the entire plot at five times and included in the net wealth a sum of Rs. 2,00,000 (Rs. 40,000 x 5). This sum of Rs. 2 lakhs added in the assessment year 1972-73 was increased to Rs. 2,05,000 and to Rs. 2,25,000 for the assessment years 1973-74 and 1974-75, respectively. The inclusion of the sum in the respective assessment years, as noted above, was challenged before the Appellate Assistant Commissioner, who dismissed the appeal. The matter came up before the

Tribunal. The Tribunal accepted the appeal and held that under Hindu law the status of the joint Hindu family or its property can be disrupted by an oral partial or total partition of the property. Since the plot at Railway Road, Karnal, was orally partitioned on October 22, 1970, regarding which a memorandum of partial partition was written on November 16, 1970, such a disruption had taken place and from that date, the members would be deemed to hold this property as tenants-in-common and not as joint tenants with the result that the property ceased to belong to the joint Hindu family. It was held that the entire value of the plot of land at Railway Road, Karnal, could not be included in the net wealth of the assessee and accordingly it was ordered that it be excluded from the net wealth of the assessee for the assessment year under appeal.

6. Under these circumstances, we come to the point in controversy in the present references.

7. What is "partition" under Hindu law ? Under Hindu law, property can be partitioned orally as well as by writing a memorandum of partition. Further, the partition can either be a complete partition of all the properties of the Hindu undivided family qua all the persons entitled to get a share in these properties or it may be partial; Partial partition can either be of a particular property belonging to the Hindu undivided family as it is open to members of the Hindu undivided family to enter into a partial partition and to hold the properties so partitioned as tenants-in-common while continuing to be joint in respect of other properties of the family. Further, a partial partition can be that when one of the members of the Hindu undivided family becomes separate from the other members who continue to be joint in status. With the coming into force of the Income Tax Act, 1961, by a fiction of law, it was provided u/s 171 of the Act that even if there was a notional partition or disruption of the Hindu undivided family under the Hindu law, a partition whether complete or partial was not to be recognised for the purpose of Income Tax until and unless the assessing authority passed an order u/s 171 of the Act declaring the partition. The word "partition" and "partial partition" have been defined in the Explanation to Section 171 of the Act. "Partition" has been defined to mean, (i) where the property admits of a physical division, a physical division of the property, but a physical division of the income without a physical division of the property producing the income shall not be deemed to be a partition ; or (ii) where the property does not admit of a physical division, then such division as the property admits of, but a mere severance of status shall not be deemed to be a partition, and "partial partition" means a partition which is partial as regards the persons constituting the Hindu undivided family, or the properties belonging to the Hindu undivided family, or both. Sub-section (9) of Section 171 of the Act was inserted by the Finance (No. 2) Act, 1980, to incorporate that notwithstanding anything contained in the earlier provisions of Section 171 of the Act where a partial partition has taken place after December 31, 1978, amongst the members of the Hindu undivided family, the same shall not be recognised for the purpose of the Income Tax Act and the family shall continue to be liable to be assessed under the Act as if no such

partial partition has taken place. In the instant case, qua the Railway Road plot, the Income Tax Officer, under the Income Tax Act, did not accept the partial partition on the plea that this plot admittedly was capable of physical partition but the same was not divided amongst the members of the joint Hindu family by metes and bounds and hence there was no partition of the said plot. This order of the Income Tax Officer was confirmed by the Income Tax Appellate Tribunal. The question to be considered is as to what is the effect of such an order of the authorities under the Act. For the purpose of the Wealth-tax Act, is the Wealth-tax Officer required to come to an independent finding or follow the finding recorded by the Income Tax authorities under the Income Tax Act, with regard to that ? The Supreme Court in *Narendrakumar J. Modi Vs. Commissioner of Income Tax, Gujarat II, Ahmedabad*, , while considering the effect of a civil court decree recognising partition under the Hindu law upon the assessment proceedings under the Income Tax Act, held that the Income Tax authorities had their own view to take and were not bound by the partition decree granted by the civil court under the Hindu law. If this principle is accepted, then the authorities under the Wealth-tax Act have also to come to their own independent finding regarding partition which has to be reached keeping in view the provisions of the Wealth-tax Act. The provisions of the Income Tax Act regarding declaration of partition u/s 171 of the Act are different from the provisions of the Wealth-tax Act regarding partition of property. Section 20 of the Wealth-tax Act reads as under:

"Section 20. Assessment after partition of a Hindu undivided family.--(1) Where, at the time of making an assessment, it is brought to the notice of the Assessing Officer that a partition has taken place among the members of a Hindu undivided family, and the Assessing Officer, after inquiry, is satisfied that the joint family property has been partitioned as a whole among the various members or groups of members in definite portions, he shall record an order to that effect and shall make assessment on the net wealth of the undivided family as such for the assessment year or years, including the year relevant to the previous year in which the partition has taken place, if the partition has taken place on the last day of the previous year and each member or group of members shall be liable jointly and severally for the tax assessed on the net wealth of the joint family as such.

(2) Where the Assessing Officer is not so satisfied, he may, by order, declare that such family shall be deemed for the purposes of this Act to continue to be a Hindu undivided family liable to be assessed as such."

8. Section 20 of the Wealth-tax Act dealing with partition in a Hindu undivided family applies to a case where "the joint property has been partitioned as a whole amongst the members or group of members in definite portions". It means, it applies to partitions which have taken place in its entirety in respect of the properties of the Hindu undivided family. It cannot be applied in the case of a partial partition. Moreover, the Explanation which has been added to Section 171

of the Act has not been added to Section 20 of the Wealth-tax Act. Section 20A of the Wealth-tax Act has been inserted by the Finance (No. 2) Act of 1980 in the Wealth-tax Act, with effect from April 1, 1980. Section 20A is similar in content to Sub-section (9) of Section 171 of the Act which provides that after December 31, 1978, a partial partition effected between the members of the Hindu undivided family shall not be accepted and such family shall continue to be liable to be assessed under the Act as if no such partial partition has taken place. An Explanation to Section 20A of the Wealth-tax Act shows that for the purposes of this section, "partial partition" shall have the same meaning as assigned to it in Section 171 of the Income Tax Act. The contention of counsel for the Department that until and unless an order u/s 20(2) of the Wealth-tax Act is passed, the plot at Railway Road, Karnal, should continue to be treated as property of the Hindu undivided family notwithstanding that the same is the subject-matter of partial partition and the coparceners agreed to hold the same as tenants-in-common, cannot be accepted. The import of Section 171 of the Act cannot be imported for the purpose of the Wealth-tax Act as the provisions of the Income Tax Act and the Wealth-tax Act are different in nature and content. In Commissioner of Wealth Tax, Karnataka-I Vs. M.L. Ramachandra Setty and Sons, , the Karnataka High Court considered the scope of Section 20 of the Wealth-tax Act and held as under (at page 549) :

"It is relevant to mention here that the language of Section 20 of the Act is more or less similar to the language of Section 25A of the Indian Income Tax Act, 1922, which did not specifically deal with cases of partial partition as it has been done u/s 171 of the Income Tax Act, 1961. In a case which arose under the Indian Income Tax Act, 1922, in Sir Sunder Singh Majithia v. CIT [1942] 10 ITR 457, the Judicial Committee of the Privy Council, while construing Section 25A of that Act, held that Section 25A did not prohibit members of a Hindu undivided family from entering into a partnership in respect of a portion of the joint property if they had partitioned amongst themselves and that that section had no reference at all to a case of a Hindu undivided family which had parted with an item of property to its individual member taking proper steps and continued in existence at the time of assessment, never having been disrupted. Where some of the members of the Hindu undivided family had agreed to hold a property which belonged to the joint Hindu family as tenants-in-common with effect from any particular date, it was held that such a case fell outside the scope of Sub-section (3) of Section 25A of the Indian Income Tax Act, 1922.

In the cases before us, the members of the Hindu undivided family, while they continued to be undivided in respect of the rest of their estate, agreed to hold the three estates in question as tenants-in-common with effect from March 17, 1968. The agreement dated March 17, 1968, had the effect of bringing about a partial partition amongst the members of the Hindu undivided family in so far as the three estates were concerned. Because the family continued to be joint for other purposes, in view of the decision of the Privy Council referred to above, no order u/s 20 of the Act was necessary and in fact Section 20 was not attracted at

all. Section 20 applies to a case where the "joint family property has been partitioned as a whole among the various members or groups of members in definite portions". The expression "partitioned as a whole" means that a partition has taken place in its entirety in respect of all the property of the family. Section 20 cannot, therefore, apply to a case of partial partition as to property. The High Court of Allahabad has also taken the same view in *DWARKA NATH Vs. COMMISSIONER OF WEALTH-TAX, U. P.,* . The authorities under the Wealth-tax Act had, therefore, to decide these cases without any regard to Section 20 of the Act, but with due regard to the Mitakshara law. It is well-settled that it is open to the members of a Hindu undivided family to agree to enter into a partial partition and to hold the properties which were the subject-matter of such partial partition, as tenants-in-common, while continuing to be joint in respect of other properties of the family. The Tribunal was, therefore, right in holding that Section 20 of the Act did not apply to cases of partial partition as to property, that the properties in question did not belong to the Hindu undivided family on the valuation dates and further that it was not necessary to divide the estates by metes and bounds. The three questions referred to us in T. R. C. Nos. 158 to 160 of 1977 are answered in the affirmative and in favour of the assessee-Hindu undivided family."

9. Concurring with the observations of their Lordships, it is held that with regard to the plot of land at Railway Road, Karnal, a disruption of the joint Hindu family property qua this plot had taken place on October 22, 1970, when this property was divided amongst the coparceners and from that date onwards the members of the Hindu undivided family would be deemed to hold this property as tenants-in-common and not as joint tenants with the result that the property ceased to belong to the joint Hindu family. It is, therefore, held that the entire value of the plot of land at Railway Road, Karnal, could not be included in the net wealth of the assessee. The Tribunal was right in excluding the same from the net wealth of the assessee for the assessment year under appeal.

10. For the reasons recorded above, the question of law referred to this court is answered in the affirmative against the Department and in favour of the assessee. No costs.