
(1996) 10 MAD CK 0002

In the Madras High Court

Case No : Tax Case No's. 1090 to 1094 of 1983

COMMISSIONER OF WEALTH TAX

APPELLANT

Vs

M. KUMARAN and Others

RESPONDENT

Date of Decision : 30-10-1996

Acts Referred:

Income Tax Act, 1961 — Section 22
Partnership Act, 1932 — Section 4
Wealth Tax Act, 1957 — Section 27(1)

Citation : (1998) 145 CTR 322

Hon'ble Judges : Thanikkachalam, J

Bench : Division Bench

Judgement

THANIKKACHALAM, J. :

At the instance of the Department, the Tribunal referred the following common question of law for the opinion of this Court relating to the asst. yrs.

1973-74 and 1974-75 under s. 27(1) of the WT Act :

Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the CWT was not justified in holding that

additional wealth-tax is leviable on the assessee-partner in a firm, in regard to the value of assets consisting of lands and buildings used by the firm

for its business, to the extent to which the assessee has interest in them ?

2. The assessees were partners in certain firms viz. AVM studies and Saraswathy Publications. There were certain immovable properties owned

by these firms which were used for its business purposes as business premises. The CWT considered the omission of the WTO to levy additional

wealth tax in respect of the assessees share as a partner in the urban assets used by the firm to be not legally correct and therefore after issuing

show cause notice and after considering the assessee's objection held that the omission to levy additional wealth tax was not correct in law.

Accordingly CWT directed the WTO to revise the assessment with a view to charge additional wealth tax on the value of the urban assets which

were used for the business to the extent to which the assessee has interest in them. Aggrieved, the assessee filed appeals before the Tribunal.

The claim of the assessee was that the assets concerned were being used for the purpose of the firm and as such constituted business premises

required to be excluded from the purview of the expression urban assets on which additional tax is leviable.

According to the Department's stand, the business is carried on by the individual partners and since the assessee does not use the assets for any

business carried on by him individually, it has to be considered as urban assets liable to be charged to wealth-tax. The Tribunal upheld the

assessee's contention in view of the decision of the Supreme Court in Commissioner of Income Tax, Bihar Vs. Ramniklal Kothari, The Tribunal

held that the direction of CWT to charge additional wealth-tax is not justified, and accordingly the order passed by the CWT was set aside.

3. Before us, the learned standing counsel for the Department, making reference to rr. 2 and 3 of Para A of the Schedule to the Act and r. 3 of

para B in the Schedule, submitted that the business carried on by the firms cannot be equated to the business carried on by the individual partners

and since the assessee does not use the assets for any business carried on by them individually it has to be considered as urban assets liable to be

taxed to wealth-tax.

4. Heard the learned standing counsel for the Department and perused the records carefully.

5. The case of the assessee before the Tribunal was that the assets concerned were being used for the purpose of business of the firm and as such

constituted business premises required to be excluded from the purview of the expression urban assets on which additional wealth-tax cannot be

levied. In Commissioner of Income Tax, Bihar Vs. Ramniklal Kothari, it was held that there cannot be any doubt that under the general law of

partnership and even for the purpose of Income Tax, the business carried on by the partnership is really a business carried on by the individual

partners constituting it.

6. Under r. 2 of paragraph A of the Schedule to the Act, specifying the rates for wealth-tax for the year 1974-75, the rate of tax is prescribed and

it is levied where the net wealth of an assessee being individual or HUF includes the value of any asset being building or land (other than business

premises) etc. situate in an urban area, shortly referred to as "urban assets". The expression urban area was found defined in Paragraph B as also

the expression business premises. On facts, the Tribunal found that the land and building concerned owned by the partnership firms were being

used by the partnership firms for the purpose of their business and as such would constitute their business premises which is excluded from the

purview of urban assets. The Tribunal on considering the decision of the Supreme Court in Commissioner of Income Tax, Bihar Vs. Ramniklal

Kothari, held that the assets used by the firm in its business would necessarily have to be held as the assets used by the individual partners in their

business and the assets consisting of land and buildings used by the firm for business cannot therefore fall within the purview of urban assets when

considered in the hands of the firm, the same finding could also be applicable when they considered in the hands of the individual partners to the

extent of their interest therein.

7. Rule 3 in Paragraph B does not authorise levy of additional tax on the individual partner in regard to his share of interest in the assets of the firm.

In Commissioner of Income Tax Vs. K.M. Jagannathan, this Court while considering the provisions of s. 22 of the IT Act, 1961 and s. 4 of the

Indian Partnership Act, 1932 held "that for the purpose of s. 22 of the Act, a business carried on by the firm should be regarded as being carried

on by all the partners and therefore no income from the property should be computed in respect of the portion of the property occupied by the

firm, of which the assessee is a partner".

8. So also in Commissioner of Income Tax Vs. K.G. Sadagopan, this Court, while considering the provisions of s. 32 of the IT Act, held that, "in

the case of a partnership the business was not carried on by the partnership as such by the partners. Therefore, the assessee had used the assets

for the purpose of its business and as he was a partner of the firm he was entitled to depreciation thereon".

9. In *Additional Commissioner of Income Tax Vs. N. Vaidyanathan*, wherein this Court held that both in legal theory and in fiscal theory, partner

may be truly regarded as carrying on business even if he is a sleeping partner and other partners looking after the business of the firm. Sec. 67(2)

of the IT Act also recognises the basic principles of partnership law according to which partnership business is nothing but the business carried on

by every partner and for all the partners.

10. Considering the facts on record in the light of the decisions cited *supra*, the conclusion is that the assets concerned which are being used for the

business of the firm and as such constitute business premises required to be excluded from the purview of the expression urban asset on which no

additional tax is leviable. Accordingly, we answer the question referred to us in the affirmative and against the Department. No costs.