
(1984) 03 MAD CK 0019
In the Madras High Court
Case No : Tax Case No. 836 of 1979

Commissioner of Wealth-tax

APPELLANT

Vs

N. Gnanamani

RESPONDENT

Date of Decision : 13-03-1984

Acts Referred:

Wealth Tax Act, 1957 — Section 5(1)

Citation : (1985) 45 CTR 157 : (1987) 163 ITR 313

Hon'ble Judges : V. Ratnam, J;G. Ramanujam, J

Bench : Division Bench

Advocate : J. Jayaraman, for the Appellant; T.V. Ramanathan, for the Respondent

Judgement

Ramanujam, J.—At the instance of the Revenue, the following two questions have been referred to this court by the Income Tax Appellate

Tribunal for its opinion :

1. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal had valid materials to hold that the individual partners of the

firm, S. M. K. Nataraja Nadar & Sons, Virudhunagar, are the real owners of the assets of the firm and hence the exemption u/s 5(1)(iv) of the

Wealth-tax Act, 1957, was allowable to the said individual partners ?

2. Whether the Appellate Tribunal was right in holding that the term "house" in section 5(1)(iv) of the Wealth-tax Act, 1957, would refer to any

building irrespective of the purpose for which it was used ?

2. The assessee and his two brothers are three partners in the firm of Messrs. S. M. K. Nataraja Nadar & Sons, Virudhunagar. Before the

Wealth-tax Officer, for the assessment year 1974-75, the valuation date being April 13, 1974, the assessee claimed exemption in respect of 1/3rd

share of the value of the workshop building. The Wealth-tax Officer disallowed the claim by observing that in the Income Tax assessment for

1973-74, he had held that the transfer of the asset from the firm to the partners by mere journal entries was not valid and that the firm's asset

cannot be considered as belonging to the partners while the firm was still continuing. The Wealth-tax Officer, therefore, included the sum of Rs.

71,233 being the 1/3rd share in the value of the workshop building in the net wealth of each of the three partners inclusive of the assessee.

3. The assessee took the matter in appeal contending that he is entitled to claim exemption in respect of his 1/3rd share in the building. The

Appellate Assistant Commissioner held that though originally the building was purchased by the firm, there has been a transfer of the said building

to the three partners by book entries and that after the transfer, the partners are entitled to claim the benefit of section 5(1)(iv) of the Wealth-tax

Act. In that view, he deleted the addition.

4. The Department took the matter in appeal to the Tribunal. The Tribunal, following the decision of the Cochin Bench of the Tribunal that the

transfer of immovable property by a firm to its partners by way of book entries could be treated as a valid transfer, accepted the assessee's claim

for exemption in respect of his 1/3rd share in the workshop building. Aggrieved by the said decision of the Tribunal, the Revenue sought and

obtained a reference of the two questions set out above.

5. In so far as the facts are concerned, there is no dispute. The workshop building was originally purchased in the name of the firm. During the

accounting year relevant to the assessment year 1973-74, entries were made in the books of the firm crediting the value of the vacant site and the

workshop building in the firm's account and debiting 1/3rd share thereof to the accounts of each of the three partners of the firm. Thereafter, the

assessee claimed for the assessment year 1973-74 on the basis of the said book entries that the building was transferred by the firm to the partners

and, therefore, each of the partners is taken to own 1/3rd share in the building. The Wealth-tax Officer did not accept the above claim for the year

1973-74. Subsequently, for the year 1974-75 also, similar claim was made by the assessee. When that claim was dismissed, the assessee took the

matter in appeal to the Appellate Assistant Commissioner where he succeeded.

Thereafter, the Department went in appeal before the Tribunal.

The Tribunal has sustained the view taken by the Appellate Assistant Commissioner that the buigs to the partners and, therefore, the partners are

entitled to claim the benefit of section 5(1)(iv) of the Wealth-tax Act. In taking that view, the Tribunal followed, as already stated, the decision of

the Cochin Bench of the Tribunal. It is seen that the decision taken by the Cochin Bench of the Tribunal which has been followed by the Tribunal in

this case was the subject matter of T.C. Nos. 731 to 733 of 1979 and this court by its decision on February 7, 1984, rejected the view taken by

the Cochin Bench of the Tribunal and has held that the immovable property owned by a firm cannot be transferred to the partners by mere book

entries and that the transfer of the immovable property to the partners can only be by a registered instrument either in the form of a partition deed

or in the form of a release deed. In this case, as already stated, the Tribunal has followed the decision of the Cochin Bench of the Tribunal which

has not been accepted by this court as correct. As a matter of fact, in Commissioner of Income Tax Vs. Dadha and Company, , this court has

categorically ruled that even if the properties of a firm are treated as properties held in common by all the partners, as a firm is not a legal entity and

cannot hold properties, there could not be a division of the properties purchased in the name of the firm as amongst the partners by making entries

in the accounts of the firm without actual dissolution of the firm, that even assuming that the firm's properties were owned and enjoyed in common

by the partners, such common properties cannot be possessed and enjoyed in severalty unless there is a document in writing and that such a

document will require registration if the value of the partner's interest in the properties exceeds Rs. 100. This court has taken the view that by

virtue of mere book entries, the immovable property of the firm cannot be transferred to the partners.

6. In this case, as already stated, originally the property belonged to the firm and before the partners claimed that property as belonging to them,

there should be a document duly stamped and registered and by mere book entries, there cannot be a valid transfer of the property from the firm

to the partners. In view of the said decision of this court in Commissioner of Income Tax Vs. Dadha and Company, and the decision of this court

in T.C. Nos. 731 to 733 of 1979 (CIT v. Nataraja Nadar and Sons, Virudhunagar), which arose out of the assessments made under the Income

Tax Act on the firm wherein the question of ownership of the property came up for consideration, question No. 1 has to be answered in the

negative and in favour of the Revenue.

7. In view of our answer to the first question, we are not inclined to answer the second question, because it is only academic. We, therefore, return

the second question unanswered. There will be no order as to costs.