

(1979) 08 PAT CK 0005
In the Patna High Court
Case No : Taxation Case No. 134 of 1975

Commissioner of Wealth Tax

APPELLANT

Vs

Nand Lal Jalan

RESPONDENT

Date of Decision : 31-08-1979

Acts Referred:

Wealth Tax Act, 1957 — Section 5(1)
Wealth Tax Rules, 1957 — Rule 2

Citation : (1980) 14 CTR 181 : (1980) 122 ITR 781

Hon'ble Judges : Shiveshwar Prasad Sinha, J; S.K. Jha, J

Bench : Division Bench

Advocate : B.P. Rajgarhia and S.K. Sharan, for the Appellant; Kashi Nath Jain, for the Respondent

Judgement

S.P. Sinha, J.—At the instance of the Commissioner of Wealth-tax, Bihar II, the Patna Bench-B of the Income Tax Appellate Tribunal has made a statement of a case u/s 27(1) of the W. T. Act, 1957, for the opinion of this court on the undermentioned question of law :

" Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that under Rule 2 of the Wealth-tax Rules net wealth of the firm was to be computed after considering all the exemptions under the Wealth-tax Act, 1957 ? "

2. The question of law, as referred, does not bring out the real controversy between the parties and, therefore, it requires to be reframed. Before, however, doing so, the relevant facts may be stated.

3. The assessment year in question is 1969-70, for which the relevant valuation date is 26th March, 1969. The assessee, an individual, is one of the two partners in a firm, M/s. Radha Krishna Sanwar Prasad. For the purpose of determining his net wealth, his interest in the firm requires to be included. Besides other assets, one of the assets owned was a house, which was being used by both the

partners for the purpose of their residence. The assessee claimed exemption of a sum of Rs. 1,00,000 in terms of Section 5(1)(iv) of the W.T. Act, 1957 (Act 27 of 1957), hereinafter referred to as the Act, in respect of the value of the said residential house. The WTO refused the claim on the ground that the house was owned by the firm and not by the assessee.

4. The AAC confirmed the disallowance for the reasons given by the WTO.

5. On further appeal to the Tribunal, submission was made on behalf of the assessee that the assets belonging to the firm should be taken to belong to the partners. Since the partners are residing in the house, it should be held that the house was being used by the firm for residential purpose, to which the exemption, as provided u/s 5(1)(iv) of the Act, was to be extended. The department, however, reiterated the reasons given by the WTO for non-admissibility of the exemption under the said provision of the Act to the assessee.

6. The Tribunal held that since the partners did not own the house, the exemption u/s 5(1)(iv) could not be claimed by him. The Tribunal, however, further held that since the net wealth, for the purpose of assessing the assessee's net wealth, had to be computed in accordance with the provisions of the W.T. Act, whatever inclusions or exclusions applied for its determination in the case of the partners, will also apply for determination of the wealth of the firm. The Tribunal further held that in that sense the firm had to be treated as the assessee and the net wealth in its hands had to be determined in accordance with the provisions of the Act. According to the Tribunal, although the house was owned by the firm, since it was being used by the partners for their residence, it would be deemed to be used by the firm for residential purpose. Therefore, in determining the net wealth of the firm for the purpose of assessing the net wealth of the partners, the exemption allowable u/s 5(1)(iv) of the Act would be admissible. The Tribunal, therefore, directed the WTO to determine the firm's wealth after deducting the value of the part of the house used by the assessee for residential purposes and limiting the exemption to Rs. 1,00,000.

7. It is on these facts that the aforementioned question of law has been referred to this court. While making the reference, a mention has been made of Rule 2 of the W.T. Rules. This rule is specifically meant for the valuation of an assessee's interest in a partnership or in an association of persons. The details of this rule would be required to be given, but I will do so at a later stage.

8. As would be evident from the resume of facts, the real controversy between the parties is not as to whether or not the partners were qualified to get the exemption u/s 5(1)(iv) of the Act in respect of the house in their assessment, rather the real controversy relates to the exemptions that would be admissible in determining the net wealth of the firm for the purpose of determining the net wealth assessable in the hands of the partners. I, accordingly, think that the frame of the question should be as under :

" Whether, on the facts and in the circumstances of the case, in determining the

net wealth of the firm by reference to Rule 2 of the Wealth-tax Rules, the exemption u/s 5(1)(iv) of the Wealth-tax Act, 1957, was admissible for the purpose of determining the net wealth of the assessee ? "

9. Mr. Rajgarhia, learned counsel for the department, has submitted that the exemption u/s 5(1)(iv) of the Act is available only to the owner of the house. Since the assessee is not the owner of the house, the exemption was not available to him. He further submitted that in the case of the firm, which was the owner of the house, exemption would not be permissible, because it was not residing in the house. Unless both the conditions, namely, of ownership and of the owner himself residing in the house, were fulfilled, the exemption admissible u/s 5(1)(iv) of the Act was not allowable. In support of his contention, he has relied on a decision of the Madras High Court in the case of Purushothamdas Gocooldas and Others Vs. Commissioner of Wealth-tax, , based upon a decision of the Supreme Court in the case of Addanki Narayanappa and Another Vs. Bhaskara Krishtappa and Others, .

10. Mr. Rajgarhia has, therefore, submitted that the Tribunal clearly went wrong in its decision. The question referred or as reframed should be answered in the negative and in favour of the department.

11. Mr. Jain, appearing for the assessee, has submitted that in the W.T. Act a firm was not an assessable unit. In fact, Rule 2 of the W.T. Rules was not a rule for the purpose of determining the net wealth of the firm for the purpose of assessing it, rather, it was a rule made for determining the net wealth of an individual, namely, the partner of the firm. Therefore, by necessary intendment, the computation in terms of Rule 2 of the W.T. Rules would require consideration of exemptions available to a partner. He further submitted that the firm as such had no legal entity. It was only a compendious name of the partners constituting the firm. What was deemed to be a property belonging to the firm was in fact the property of the partners constituting the firm. He, therefore, submitted that since the house property in question belongs to the partners and it was they who resided in it, the exemption admissible u/s 5(1)(iv) of the Act is required to be granted in determining the net wealth of the firm under Rule 2 of the Rules for assessing the net wealth of the partners thereof. Learned counsel for the opposite party-assessee, therefore, submitted that the Tribunal's order was legal and valid and it should, therefore, be upheld. The question must, therefore, be answered in the affirmative and in favour of the assessee.

12. In order to deal with the rival contentions, it would be necessary to keep in view some of the relevant provisions of the Act.

13. Section 3 of the Act is the charging section. The chargeable units are : (1) Individual, (2) Hindu undivided family, and (3) company. A firm is not a chargeable unit at all. For the purpose of assessing the net wealth of an individual, who is a partner in a firm, Section 4(1)(b) of the Act lays down that :

"(1) In computing the net wealth of an individual, there shall be included, as

belonging to that individual--.....

(b) where the assessee is a partner in a firm.....the value of his interest in the firm or association determined in the prescribed manner. "

14. Rule 2 of the W.T. Rules, to be quoted later, prescribes the manner.

15. Section 5 of the Act lays down the exemptions allowable in the hands of an assessee. Sub-section (1) with Clause (iv) thereof, reads as under:

" (1) Subject to the provisions of Sub-section (1A), wealth-tax shall not be payable by an assessee in respect of the following assets, and such assets shall not be included in the net wealth of the assessee--.....

(iv) one house or part of a house belonging to the assessee exclusively used by him for residential purposes :

Provided that, where the value of such house or part exceeds one hundred thousand rupees, the amount that shall not be included in the net wealth of the assessee under this clause shall be one hundred thousand rupees. "

(The words "exclusively used by him for residential purpose " in Clause (iv) have been omitted with effect from April 1, 1972. -Since, however, the exemption has been claimed in respect of an assessment year which fell prior to the said amendment, the amendment has to be ignored).

" Net wealth " has been defined under Clause (m) of Section 2 of the Act to mean " the amount by which the aggregate value computed in accordance with the provisions of this Act of all the assets, wherever located belonging to the assessee on the valuation date, including assets required to be included in his net wealth as on that date under this Act, is in excess of the aggregate value of all the debts owed by the assessee on the valuation date ".

(The exceptions referred to under Clause (m) of Section 2 of the Act are not relevant for the purpose of this case and, therefore, they are not quoted).

16. Now, therefore, reading these provisions together, the scheme of the Act is that an assessee has to be assessed on his net wealth, which net wealth, for the purpose of his assessment, has to be computed in accordance with the provisions of the Act. If the assessee is a partner in a firm, the value of his interest in the firm is required to be determined in a prescribed manner. One of the exemptions which the assessee is entitled to, is in respect of the value of one house or part of a house belonging to him and used by him for his residential purposes.

17. Now, therefore, in order to determine the value of his (the partner's) interest in the firm, the relevant portion of Rule 2 of the Rules provides :

" The value of the interest of a person in a firm of which he is a partner or in an association of persons of which he is a member, shall be determined in the manner provided herein. The net wealth of the firm or the association on the

valuation date shall first be determined. That portion of the net wealth of the firm or association as is equal to the amount of its capital shall be allocated among the partners or members in the proportion in which capital has been contributed by them. The residue of the net wealth of the firm or association shall be allocated among the partners or members in accordance with the agreement of partnership or association for the distribution of assets in the event of dissolution of the firm or association, or, in the absence of such agreement, in the proportion in which the partners or members are entitled to share profits. The sum total of the amounts so allocated to a partner or member shall be treated as the value of the interest of that partner or member in the firm or association."

18. This rule envisages the determination of the net wealth of the firm, the purpose being to determine the value of the partner's interest in it. In order, therefore, to understand this part of the rule, it would be necessary to understand the relationship between the partners and the firm, relating to the assets of the firm. " The first thing ", as the Supreme Court observed in the case of Commissioner of Income Tax, Madras Vs. R.M. Chidambaram Pillai and Others, , " that we must grasp is that a firm is not a legal person even though it has some attributes of personality. Partnership is a certain relation between persons, the product of agreement to share the profits of a business. " Firm " is a collective noun, a compendious expression to designate an entity, not a person ". It was further observed quoting from Lindley on Partnership thus (p. 298) :

" The law, ignoring the firm, looks to the partners composing it; any change amongst them destroys the identity of the firm ; what is called the property of the firm is their property, and what are called the debts and liabilities of the firm are their debts and their liabilities. In point of law, a partner may be the debtor or the creditor of his co-partners, but he cannot be either debtor or creditor of the firm of which he is himself a member, nor can he be employed by his firm, for a man cannot be his own employer. "

19. Learned counsel for the revenue has drawn our attention to the decision of the Supreme Court in the case of Addanki Narayanappa and Another Vs. Bhaskara Krishtappa and Others, , particularly to the observations at p. 1304 :

" The whole concept of partnership is to embark upon a joint venture and for that purpose to bring in as capital money or even property including immovable property. Once that is done whatever is brought in would cease to be the exclusive property of the person who brought it in. It would be the trading asset of the partnership in which all the partners would have interest in proportion to their share in the joint venture of the business of partnership. The person who brought it in would, therefore, not be able to claim or exercise any exclusive right over any property which he has brought in, much less over any other partnership property. He would not be able to exercise his right even to the extent of his share in the business of the partnership. As already stated his right during the subsistence of the partnership is to get his share of profits from time

to time as may be agreed upon among the partners and after the dissolution of the partnership or with his retirement from partnership of the value of his share in the net partnership assets as on the date of dissolution or retirement after a deduction of liabilities and prior charges. "

20. The further observations, to which our attention was drawn, are (p. 1303) :

" From a perusal of these provisions it would be abundantly clear that whatever may be the character of the property which is brought in by the partners when the partnership is formed or which may be acquired in the course of the business of the partnership it becomes the property of the firm and what a partner is entitled to is his share of profits, if any, accruing to the partnership from the realisation of this property, and upon dissolution of the partnership to a share in the money representing the value of the property. "

21. On the basis of these observations, it has been submitted that during the subsistence of the partnership the assets belong to the firm and not to the partners.

22. I think the meaning which the learned counsel for the department has assigned to these observations, being shorn of the context, is not the real meaning. This decision was given by the Supreme Court on the question whether a particular document was compulsorily registrable u/s 17(1)(c) of the Registration Act, there being a transfer of the interest of a partner in the firm which held immovable properties also. It was in that context that their Lordships made those observations. Those observations are not to be understood as defining a partner's right over the firm's assets. Had that been so, the Supreme Court would not then have observed in *Commissioner of Income Tax, Madras Vs. R.M. Chidambaram Pillai and Others*, quoting from *Lindley on Partnership* [12th Edn., p. 28] (p. 298) :

" ...What is called the property of the firm is their property and what are called the debts and liabilities of the firm are their debts and their liabilities."

23. It cannot be gainsaid that during the continuance of the partnership, no partner can say that any particular part of the firm's assets were his assets but certainly he can always say that he together with his other partners are the owners of the assets possessed by the firm. He may not be able to say that " a particular asset of the firm belongs to me," but he can always say that " the partnership assets belong to us ".

24. Now, therefore, when the assessment is of the net wealth of a partner, which under the rules framed under the W.T. Act is determined by first determining the net wealth of the firm, in my opinion, it would be wholly unreal to leave out the exemptions to which a partner thereof would be entitled for the purpose of assessment of his net wealth. The Madras High Court in the case of *Purushothamdas Gocooldas and Others Vs. Commissioner of Wealth-tax*, has held that a partner will not be entitled to receive the exemption u/s 5(1)(iv) of

the Act in respect of an asset owned by a firm, but with great respect to their Lordships, I do not agree with that conclusion for the simple reason that the decision of the Supreme Court in the case of Addanki Narayanappa and Another Vs. Bhaskara Krishtappa and Others, , although quoted for arriving at that conclusion, has not been appreciated in its proper context.

25. A similar question arose before the Karnataka High Court in the case of Commissioner of Wealth-Tax, Karnataka-I Vs. Christine Cardoza, . There the exemption claimed was u/s 5(1)(iva) of the W.T. Act relating to the value of the agricultural land, the agricultural land having been thrown in as an asset of the firm, of which the assessee was a partner. On a consideration of the various case law, their Lordships came to the conclusion that the exemption was admissible in determining the net wealth of the partner.

26. Now, therefore, keeping in view the above discussions, it cannot but be said that even though during the subsistence of a partnership, assets thrown into the partnership by the partners get merged together and lose their identity, yet all the same, the assets as a whole do belong to the partners. In computing the net wealth of the firm by reference to Rule 2 of the W.T. Rules, if a partner qualified for any of the exemptions provided under the Act, such exemptions must be taken into consideration for determining the net wealth of the firm in terms of the said rule. Bearing in mind that the assets of the firm belong to the partners, if one looks at the provisions of Clause (iv) of Section 5(1) of the Act, it is clear that the partners do qualify for receiving that exemption. The house in question belongs to them and, therefore, also belongs to " the assessee ", Since they are using it for their residential purposes, the exemption would be admissible to them. It is a simple formula that if a thing would be available to all jointly, the pro rata share of each one, individually, cannot be denied to the individual.

27. I would, accordingly, answer the question, as reframed, in the affirmative and in favour of the assessee. The assessee would be entitled to costs and hearing fee of Rs. 250.

S.K. Jha, J.

28. I agree.