
(1997) 12 MAD CK 0117

In the Madras High Court

Case No : Tax Case No. 1113 of 1985 (Reference No. 620 of 1985)

Commissioner of Wealth-tax

APPELLANT

Vs

P.S. Sridharan

RESPONDENT

Date of Decision : 19-12-1997

Acts Referred:

Income Tax Act, 1961 — Section 171, 28
Wealth Tax Act, 1957 — Section 20, 20A

Citation : (2000) 241 ITR 835

Hon'ble Judges : P. Thangavel, J; N.V. Balasubramanian, J

Bench : Division Bench

Advocate : Deokinandan, for the Appellant; K.M.L. Majele, for the Respondent

Judgement

N.V. Balasubramanian, J.—The assessment year involved is 1974-75 and the matter arises under the provisions of the Wealth-tax Act, 1957.

2. We have set out the facts of the assessee's case in a tax case which arose under the provisions of the Income Tax Act for the assessment years

1965-66 to 1969-70 which came up for consideration before us in T.C. No. 890 to 894 of 1983, wherein the judgment was delivered in the said

tax cases of even date. We also noticed that there was a claim for partial partition but there was no order recognising the partial partition passed

either u/s 171 of the Income Tax Act or under order 20 of the Wealth-tax Act. The assessee filed a return in the status of a Hindu undivided family

disclosing a net wealth of Rs. 10,64,034 which was later revised and the assessment was completed including certain amounts. This original

assessment made by the Wealth-tax Officer was reopened and according to the Wealth-tax Officer a sum of Rs. 4,36,558 was due to the

assessee, but the assessee has shown only half thereof in the return filed. According to the assessee, there was a partial partition between the karta of the family and P. S. Sridharan and only half of the amount was assessed in the hands of the joint family. The Wealth-tax Officer, however, did not accept the contention urged by the assessee and brought to tax the entire sum of Rs. 4,36,558 and completed the reassessment. There were also disputes with reference to the inclusion of the additional compensation amount received by the assessee by virtue of the order of the City Civil Court dated April 20, 1996. The Wealth-tax Officer in the reassessment made included the other sum of Rs. 1,18,137 in the hands of the assessee. The assessee preferred an appeal before the Appellate Assistant Commissioner and the Appellate Assistant Commissioner following his order rendered in the Income Tax assessment proceedings held that only half of the amount was assessable in the hands of the assessee notwithstanding the fact that there was no order passed u/s 20 of the Wealth-tax Act recognising the partial partition. On further appeal by the Revenue before the Income Tax Appellate Tribunal, the Appellate Tribunal held notwithstanding the fact that there was no order passed u/s 20 of the Wealth-tax Act, only half of the share amount should be assessed in the hands of the assessee, as there was a partial partition on March 31, 1962. The Tribunal also held that the provisions of section 20 of the Wealth-tax Act are not applicable to a case for partial partition and, therefore, even without an order passed u/s 20 of the Wealth-tax Act recognising the partial partition, the properties described in the partial partition cannot be assessed in the hands of the joint family. The Tribunal also recorded the finding that from the date of the partial partition, the assessee's family did not own half share in the compensation amount which went out of the family and, therefore, the said amount cannot be included in the hands of the joint family u/s 20 of the Wealth-tax Act. Section 20 of the Wealth-tax Act deals with recognition of the claim for total partition of the properties belonging to the Hindu undivided family and section 20 of the Wealth-tax Act reads thus :

(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 assessments 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.

3. A fair reading of section 20 of the Wealth-tax Act shows that the said provisions would apply to a case of total partition of joint family

properties taking place amongst the members of the Hindu joint family. The expression ""Partition"" has not been defined and the said section read as

a whole indicates that the provisions of section 20 of, the Wealth-tax Act apply to a case of a total partition or complete partition of the assets of

the joint family and they are not applicable to a case of partial partition. It is only with a view to remove the lacuna found in the Act, that Parliament

has introduced section 20A of the Wealth-tax Act by the Finance (No. 2) Act, 1980, with effect from April 1, 1980, which deals with the claims

of partial partition of the assets of the Hindu joint family taking place after December 31, 1978.

4. The Karnataka High Court in Commissioner of Wealth Tax Vs. N.A. Mayanna (by Legal Representatives), , held that the provisions of section

20 of the Wealth-tax Act have no application to a case dealing with the quantification of the net wealth of the Hindu undivided family on the death

of a member of a Hindu undivided family leaving behind other members in the family including female members attracting the provisions of section 6

of the Hindu Succession Act. The decision of the Karnataka High Court makes it clear that the provisions of section 20 of the Act are not

applicable to all cases of devolution of properties and it will apply to a case of complete partition of the Hindu undivided family. A more or less

similar view was taken in the case of Commissioner of Wealth-tax Vs. Harbhagwan and Sons, , wherein the court held that the provisions of

section 20 of the Wealth-tax Act would apply only in the case of complete partition and not to a case of a partial partition. Therefore, we are of the view that the Tribunal is correct in noting that the provisions of section 20 of the Wealth-tax Act have no application to a case of the claim for partial partition of the assets of a Hindu undivided family.

5. The other reasoning given by the Appellate Tribunal is that on the respective valuation date the assessee family did not own half share of the compensation as the said amount went out of the family and so the entire compensation amount was not includible in the hands of the assessee. We are of the view that it is not necessary to decide the controversy in the facts of the case, in the view we have taken that the provisions of section 20 of the Act are not attracted to a case of partial partition by the Hindu undivided family and hence we are not expressing any opinion on the correctness of the view expressed by the Appellate Tribunal that since the family did not own the assets on the valuation date, it cannot be included in the hands of the joint family. Therefore, we hold that the Tribunal was correct in its ultimate conclusion that only the half share allotted to Sridharan was not liable to be included in the taxable wealth of the assessee and accordingly we answer the question of law referred to us in the affirmative and against the Revenue.

6. There will be no order as to costs.