

(1998) 07 MAD CK 0005

In the Madras High Court

Case No : Tax Case No's. 1440 of 1986 and 728 to 731 of 1994

COMMISSIONER OF WEALTH TAX

APPELLANT

Vs

P.S. SWAKINATHAN (HUF)

RESPONDENT

Date of Decision : 21-07-1998

Acts Referred:

Citation : (1999) 152 CTR 159

Hon'ble Judges : R. Jayasimhe Babu, J; Mrs. A. Subbulakshmi, J; A. Subbulakshmi, J

Bench : Full Bench

Advocate : C.V. Rajan and P.V. Ramachandran, for the Appellant;

Judgement

R. JA VAM4RA BABU, J.

A demand for additional wealth-tax on extensive urban land owned by HUF was resisted on the ground that the business carried on in that

premises by a firm consisting of partners who are also coparceners in the HUF, should be treated as business carried on by the HUF. That claim

of the assessee was upheld by the Tribunal and the Revenue has come before us in seeking to answer the following questions :

As to whether the Tribunal was right in holding that the urban property used by the firm Soundaraya Nursery in which some of the coparceners of

the assessee-HUF are partners in the property used by the assessee for its business and would be outside the purview of additional wealth-tax

especially when the share income from the firm does not belong to the HUF but to the individual members of the HUF?

2. Additional wealth-tax is payable on urban assets and the owner is relieved from objection for payment of such additional tax, if it is used for the

purpose of his business or profession". It is so provided in cl. "c" of para W of Sch. 1 to the WT Act.

3. That the business of Soundaraya Nursery who was carried on by a firm and not by the HUF which owned the land is undisputed, that the firm is

a separate entity apart from the HUF is indisputable. That the HUF cannot be a partner in the firm also is indisputable having regard to the series of

decision of the apex Court. In the case of Rashiklal and Co. Vs. Commissioner of Income Tax, Orissa, the apex Court observed as under :

An HUF directly or indirectly cannot become a partner of a firm because the firm is an association of individuals. Under Hindu law, not all

members of the joint family, but only such of its members as have, in fact, entered into partnership with the stranger, become partners The HUF or

its representative, does not have any special status in the Partnership Act. Although the partnership firm is-not a legal entity, it has been treated as

an independent unit of assessment under the IT Act

Neither the firm nor its partners can evade the tax law on the pretext that although in law he is a partner, in reality he is not so. He may have to

hand over the money to somebody else. That may be his position qua a third party. But the firm has nothing to do with it.

The HUF not being and also not capable of being a partner in the firm which carried on the business of Soundaraya Nursery on the land owned by

the HUF. The business so carried on by the firm cannot be regarded as business carried on by the HUF.

4. Learned counsel for the assessee, however, contended that the partners in fact, carrying on business on the land owned by the HUF were liable

to account for the income derived from such user and, therefore, the business carried on by the firm should be regarded as business carried on by

the HUF. Counsel relied on the decision of the Supreme Court in the case of G. Narayana Raju Vs. G. Chamaraju and Others, wherein the

Supreme Court has held as under :

"It is well established that there is no presumption under Hindu law that business standing in the name of any member of the joint family is a joint

family business even if that member is the manager of the joint family. Unless it could be shown that the business in the hands of the coparcener

grew up with the assistance of the joint family property or joint family funds or

that the earnings of the business were blended with the joint family estate, the business remains free and separate. The question therefore whether the business was begun or carried on with the assistance of joint family property or joint family funds or as a family business is a question of fact. The submission of the counsel was that though there is no presumption that business carried on by coparcener is business carried on by the joint family, if it is found that the coparcener was utilising the assets of the joint family for the purpose of business carried on by him, the business so carried on must be regarded as business belonging to the joint family. As to whether such claim of the Revenue is to be upheld or rejected will depend upon the facts. There is no material on record to hold that the coparceners who are partners were carrying on business for the benefits of HUF. The fact that they carried on business on the property belonging to the HUF by itself does not establish that the business was carried on by the partners through the firm for the benefit of the joint family and the business constituted part of the holdings of the joint family. Be that as it may, the coparceners had chosen to form a partnership which for the purpose of the IT Act is treated as an individual assessable entity. As already noticed an HUF cannot be a member of a firm and whatever be the obligation of the partners to others including the HUF to which belongs, that is not a matter of any consequence for the purpose of determining the rights and obligations of the firm and its partners for the purpose of the taxing statutes.

5. The exemption granted by the Statute here is limited to the assessee which carries on a business or profession on the urban asset owned by it.

The business through must be a business ""carried on"" by the assessee and not by any one of the members of the assessable entity or by a firm in which they are partners.

6. The Tribunal therefore, was in error in holding that the business carried on by the firm is in fact the business carried on by the HUF which owned the land on which the business was carried on.

7. Our answer to the question set out, is, therefore, in favour of the Revenue and against the assessee. However, in the circumstances of the case there will be no order as to costs.