

(1998) 07 MAD CK 0046

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. Swaminathan (HUF)

RESPONDENT

Date of Decision : 21-07-1998

Acts Referred:

Citation : (1999) 240 ITR 163

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

Bench : Division Bench

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

Judgement

R. Jayasimha Babu, J.—A demand for additional wealth-tax on extensive urban land owned by a Hindu undivided family 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 Hindu undivided family, should

be treated as business carried on by the Hindu undivided family. That claim of the assessee was upheld by the Tribunal and the Revenue has come

before us in seeking to answer the following question :

As to whether the Tribunal was right in holding that the urban property used by the firm, Soundarya Nursery, in which sons of the coparceners of

the assessee-Hindu undivided family are partners, is 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 Hindu undivided family but to the individual members

of the Hindu undivided family ?

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

the purpose of "his business or profession". It is so provided in Clause (c) of Paragraph A of Schedule I to the Wealth-tax Act.

2. That the business of Soundarya Nursery was carried on by a firm and not by the Hindu undivided family which owned the land is undisputed,

that the firm is a separate entity apart from the Hindu undivided family is indisputable. That the Hindu undivided family 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 (headnote) :

A Hindu undivided family 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 Hindu undivided family 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 Income Tax 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 Hindu undivided family not being, and also not capable of being a partner in the firm which carried on the business of Soundarya Nursery on

the land owned by the Hindu undivided family, the business so carried on by the firm cannot be regarded as business carried on by the Hindu

undivided family.

3. Learned counsel for the assessee, however, contended that the partners in fact, carrying on business on the land owned by the Hindu undivided

family 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 Hindu undivided family. 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 the 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 counsel was that though there is no presumption that business carried on by a 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 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 benefit of the Hindu undivided family. The fact that they carried on business on the property belonging to the Hindu undivided family 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 Income Tax Act is treated as an assessable entity. As already noticed Hindu undivided family cannot be a member of a firm and whatever be the obligation of the partners to others including the Hindu undivided family to which they belong, 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.

4. 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 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.

5. 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 Hindu undivided family which owned the land on which the business was carried on.

6. 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.