(1970) 09 AHC CK 0014

In the Allahabad High Court

Case No : Wealth-tax Reference No. 193 of 1965

Commissioner of Wealth Tax — APPELLANT

Vs

Seth Vijai Kumar Estate — RESPONDENT

Date of Decision : 08-09-1970

Acts Referred:

Citation : (1971) 79 ITR 371

Hon'ble Judges : V.G. Oak, C.J;H.N. Seth, J

Bench : Division Bench

Advocate : B.L. Gupta and R.R. Misra, for the Appellant; P.N. Pachauri, G.N. Verma and B.D. Agarwal, for the Respondent

Judgement

V.G. Oak, C.J.—This is a reference under the Wealth-tax Act. Vijai Kumar is the assessee. The assessment years are 1957-58 and 1958-59.

2. Vijai Kumar''s father was Seth Bhagwan Das, who was the adopted son of Gopal Das. Bhagwan Das had one son(Vijay Kumar), two daughters, his first wife and mother. Bhagwan Das married for the second time ; and there was trouble in the family. In the year 1952, a release deed was executed whereby certain properties were given to Vijai Kumar under the guardianship of his mother. Vijai Kumar claimed the status of Hindu undivided family for purposes of assessment under the Wealth-tax Act. The claim was overruled by the Wealth-tax Officer, who held that Vijai Kumar must be assessed as an individual. This view was upheld in appeal by the Appellate Assistant Commissioner. But upon further appeal by the assessee, the Appellate Tribunal held that there was a Hindu undivided family with Vijai Kumar as the sole surviving coparcener. Under these circumstances, the status of Vijai Kumar was that of a karta of a Hindu undivided family.

3. At the instance of the Commissioner of Wealth-tax, Lucknow, the Appellate Tribunal, Delhi Bench "A", has referred to this court the following question of law :

" Whether, on the facts and in the circumstances of the case, the status of the assessee was Hindu undivided family or individual ?"

4. A similar case came before the Supreme Court in N.V. Narendranath Vs. Commissioner of Wealth-tax, Andhra Pradesh, .. In that case it was held by the Supreme Court that when a coparcener having a wife and two minor daughters and no son receives his share of joint family properties on partition, such property in the hands of the coparcener belongs to the Hindu undivided family of himself, his wife, and minor daughters, and cannot be assessed as individual property for the purpose of wealth-tax.

5. In the present case the Tribunal has found that there are other members in the family of Vijai Kumar. Those members are his mother, Bimla Devi and minor sisters. The property in question was received by Vijai Kumar from the joint family property. The case is, therefore, governed by the principle laid down by the Supreme Court in Narendranath v. Commissioner of Wealth-tax. The Tribunal was right in taking the view that the status of Vijai Kumar was that of Hindu undivided family, and not just an individual.

6. Our answer to the question referred to the court is that, on the facts and in the circumstances of the case, the status of the assessee was Hindu undivided family. We answer the question in favour of the assessee. The Commissioner of Wealth-tax, Lucknow, shall pay the assessee Rs. 100 as costs of the reference.