

(1990) 10 SHI CK 0021

In the High Court Of Himachal Pradesh

Case No : Income-tax Reference No"s. 3 and 4 of 1979

Commissioner of Wealth-tax

APPELLANT

Vs

Subhash Chand Sud and Another

RESPONDENT

Date of Decision : 24-10-1990

Acts Referred:

Wealth Tax Act, 1957 — Section 3, 4, 4(1), 5(1)
Wealth Tax Rules, 1957 — Rule 2

Citation : (1991) 191 ITR 64 : (1991) 2 ShimLC 206

Hon'ble Judges : P.C. Balakrishna Menon, C.J.;Devinder Gupta, J

Bench : Division Bench

Advocate : Inder Singh, for the Appellant; K.D. Sood, for the Respondent

Judgement

P.C. Balakrishna Menon C.J.

1. The Income Tax Appellate Tribunal, Chandigarh Bench, has, u/s 27(1) of the Wealth-tax Act, 1957, referred the following question of law in both the above references for the opinion of the High Court:

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the assessee is entitled to the benefit of the exemptions under Sections 5(1)(xvi) and 5(1)(xxvi) of the Wealth-tax Act, 1957, as regards his proportionate share of the fixed deposits and National Savings Certificates held by the two firms in which he is a partner ?"

2. Both these references are made at the instance of the Commissioner of Wealth-tax, Patiala-1, and the question of law arises out of the orders of the Income Tax Appellate Tribunal, Patiala Bench, relating to the assessment of two individuals who are partners in two firms, namely, M/s. Sunder Lal Choudhry Mal, Shimla, and M/s. Shimla Roller Flour Mills, Shimla. The assessments related to the year 1971-72. Both the firms had fixed deposits in a banking company governed by the Banking Regulation Act, 1949. The firms' assets included also Post Office National Savings Certificates. The assessee claimed exemption in

respect of their respective shares in the Post Office National Savings Certificates u/s 5(1)(xvi) and in respect of the bank deposits u/s 5(1)(xxvi) of the Act. The Wealth-tax Officer rejected the plea for exemption on the ground that the investments in the shape of fixed deposits and National Savings Certificates were not made by the respective assessees and the net wealth of the firms was assessed under Rule 2 of the Wealth-tax Rules taking into account also the bank deposits and the National Savings Certificates. The orders of the Wealth-tax Officer were affirmed in appeal by the Appellate Assistant Commissioner. In further appeal at the instance of the respective assessees, the Tribunal has allowed the above exemption claimed in computing the net wealth of the respective assessees.

3. As per Section 3 of the Act, wealth-tax is to be charged for every assessment year in respect of the net wealth of every individual, Hindu undivided family and company at the rate(s) specified in Schedule 1. As per Section 4(1)(b), the net wealth of an individual includes, where the assessee is a partner of a firm, the value of his interest in the firm determined in the prescribed manner. Section 5 contains the exemptions and Clauses (xvi) and (xxvi) of Sub-section (1) provide for exemptions relating to Post Office National Savings Certificates and bank deposits.

4. A partnership firm is not an assessee under the Act. The interest of a partner in the firm is assessable wealth in the hands of the partner as provided for in Section 4(1)(b) of the Act. The computation of the net wealth of the firm and its allocation to the individual partners are as provided for in Rule 2 of the Wealth-tax Rules. The expression "net wealth" is denned in Section 2(m) of the Act. Since the firm is not an assessee, there is no question of exemption u/s 5 of the Act in the matter of computation of the net wealth of the firm. The expression "net wealth" as used in Rule 2 is to be understood in the sense as defined in Section 2(m) of the Act. Rule 1A(m) expressly provides that expressions not defined in the rules have the same meaning as assigned to them in the Act. A perusal of the definition of the expression "net wealth" in Section 2(m) shows that it does not bring in the exemption contained in Section 5 of the Act. The determination of the net wealth of the firm for the purpose of Rule 2 will not, therefore, take into account the exemption contained in Section 5. Section 5 applies only to an assessee. A firm not being an assessee, the exemption u/s 5 cannot be taken into account in determining the net wealth of the firm for the purpose of allocation to its different partners, and the exemptions contained in Section 5(1) do not enter into the computation. After the net wealth of the firm is proportionately allocated to its partners in accordance with Rule 2, the net wealth of each partner is determined taking into account also the value of his interest in the firm as provided for in Section 4(1)(b) of the Act. There is no valid reason to preclude each partner from claiming the exemptions contained in Clauses (xvi) and (xxvi) of Sub-section (1) of Section 5 of the Act, since the deposits made by the firm in banks and by way of Post Office National Savings Certificates are not to be excluded in calculating the net wealth of the firm and

allocating the same to each partner. The firm as such is not a legal person and its assets belong to the partners constituting the firm.

5. In *Dulichand Lakshminarayan Vs. The Commissioner of Income Tax, Nagpur*, , the Supreme Court stated at page 541 :

"According to the principles of English jurisprudence which we have adopted for the purposes of determining legal rights, "there is no such thing as, a firm known to the law" as was said by James L. J., in *Ex parte Corbett : In re Shand* ILR 1880] Ch 122 . In these circumstances to import the definition of the word "person" occurring in Section 3(42) of the General Clauses Act, 1897, into Section 4 of the Indian Partnership Act will, according to lawyers, English or Indian, be totally repugnant to the subject of partnership law as they know and understand it to be. It is in this view of the matter that it has been consistently held in this country that a firm as such is not entitled to enter into partnership with another firm or individuals. It is not necessary to refer in detail to those decisions many of which will be found cited in (1955) 27 ITR 88 to which a reference has already been made. We need only refer to the case of AIR 1948 100 (Privy Council) where it has been laid down by the Privy Council that Indian law has not given legal personality to a firm apart from its partners. This view finds support from and is implicit in the observations made by this court in *Commissioner of Income Tax, West Bengal Vs. A.W. Figgies and Co. and Others*, ."

6. The salary received by a partner of a firm from its income from tea was held to form part of the share of income due to him and since the income itself is subject to Rule 24 of the Income Tax Rules, the Supreme Court, in *Commissioner of Income Tax, Madras Vs. R.M. Chidambaram Pillai and Others*, , held that only 40 % of such salary is exigible to central Income Tax.

7. In *Juggi Lal Kamlapat Bankers and Another Vs. Wealth Tax Officer, Special Circle C-Ward, Kanpur and Others*, , the Supreme Court held that even apart from Section 4(1)(b), the interest of a partner in a firm belongs to him and is exigible to wealth-tax. It is observed (at page 491) :

"It cannot be said that the interest of a partner in a firm does not. belong to him ; it, in fact, belongs to him and no legal fiction is required for treating it as belonging to him ; and the proper way to interpret Clause (b) would be that the deeming part of it relates to the quantum of his interest in the firm determined in the prescribed manner which is to be treated as belonging to him and includible in his net wealth. It is impossible to accept the contention that but for Clause (b) of Section 4(1), the interest of a partner (where he happens to be an individual assessee) in a firm would not have been exigible to wealth-tax under the Act. As we shall presently point out, a partner's interest in a firm either in his individual capacity or in his capacity as the karta of an Hindu undivided family is otherwise exigible to wealth-tax under the other provisions of the Act and the deeming provision contained in Section 4(1)(b), properly understood, must be held to be referable to the quantification of his interest in the firm determined in the

prescribed manner that is made includible in his net wealth."

8. In *Malabar Fisheries Co. Vs. Commissioner of Income Tax, Kerala*, , the Supreme Court observed (at page 59) :

"...it seems to us clear that a partnership firm under the Indian Partnership Act, 1932, is not a distinct legal entity apart from the partners constituting it and equally in law the firm as such has no separate rights of its own in the partnership assets and when one talks of the firm's property or firm's assets all that is meant is property or assets in which all partners have a joint or common interest."

9. The decision of a Division Bench of the Calcutta High Court in *Commissioner of Wealth Tax Vs. Sri Naurangrai Agarwalla*, , related to the claim for exemption by a partner of the value of his share of the house that belonged to the firm u/s 5(1)(iv) of the Act. The Division Bench, after construing the relevant sections of the Act and the Rules, held that the firm was not a legal entity and the property of the firm in law belonged to all its partners. It was further held that it is only after the value of the assessee's interest in the firm had been determined u/s 4 of the Act, that the question of granting exemption in respect of the assets included in the valuation would arise. It was, accordingly, held that the assessee is entitled to exemption under the Act in respect of the assets of the firm which had been valued and a share of which had been included in the net wealth of the assessee.

10. The same view was expressed by another Division Bench of the same High Court in *Commissioner of Wealth Tax Vs. Mira Mehta*, . In this case, it was held that where the interest of an individual partner in the assets of a firm was chargeable to wealth-tax, the partner would be entitled to exemption in respect of his share in the house property of the firm u/s 5(1)(iv) of the Act in the matter of computation of his net wealth.

11. The Karnataka High Court in *Commissioner of Wealth-Tax, Karnataka-I Vs. Christine Cardoza*, , held that, in the assessment of wealth-tax of an assessee who is a partner of a firm owning agricultural land, exemption u/s 5(1)(iva) of the Act is admissible to the extent permitted in the computation of the net wealth of the assessee.

12. One of us (Balakrishna Menon J., as he then was) who wrote the Full Bench judgment of the Kerala High Court in *Commissioner of Wealth-tax Vs. Smt. Kaethikamal Kumari Varma*, ; [1989] 2 KLT 251, on the same principle, held that the exemption u/s 5(1)(iva) of the Act is admissible in the matter of assessment of net wealth of an assessee who is a partner of a firm and his share in the net wealth of the firm had been taken into account in the computation of his net wealth.

13. A similar view is expressed by the Madhya Pradesh, Orissa, Gauhati and Patna High Courts in the following decisions :

(1) *Commissioner of Wealth Tax Vs. Nand Lal Jalan*, ,

(2) Jagdish Chandra Grover Vs. Commissioner of Wealth-tax, ,

(3) Commissioner of Wealth-tax Vs. I. Butchi Krishna, , (4) Commissioner of Wealth-tax Vs. Tarachand Agarwalla, and (5) Commissioner of Wealth Tax Vs. Radha Krishna Jalan, .

14. Learned counsel for the Revenue placed considerable reliance on the decision of a Division Bench of the Andhra Pradesh High Court in Commissioner of Wealth-tax, Andhra Pradesh Vs. Narendra Ranjalkar, , wherein it is stated at page 210:

"It is no doubt true that the expression "net wealth" is used only with reference to the assets of an assessee and a firm is not an assessee under the Act, but when the same expression is used in the Rules and the net wealth of a firm has to be ascertained, there cannot be any doubt that the net wealth of a firm has to be ascertained as if the firm is an assessee."

15. We find it difficult to accept the above view of the Andhra Pradesh High Court. Wealth-tax is charged u/s 3 on the net wealth of every individual, Hindu undivided family and company who alone are the assessees. As was held by the Supreme Court in Juggi Lal Kamlapat Bankers and Another Vs. Wealth Tax Officer, Special Circle C-Ward, Kanpur and Others, , the interest of a partner in a firm belongs to him even apart from Section 4(1)(b) of the Act and is exigible to wealth-tax.

16. It is clear that the provision contained in Section 4(1)(b) of the Act relates only to the quantification of the assessee's interest in the firm and Rule 2 prescribes the manner of determining such interest. The exemptions u/s 5(1) of the Act are applicable only with respect to an assessee under the Act and that is clear from the wording of the section itself. A firm not being an assessee and there being no charge of wealth-tax against the firm, it cannot be deemed to be an assessee for the purpose of computation of its net wealth. The net wealth of the firm is computed under Rule 2 only for the purpose of allocation among its partners who alone are assessees entitled to exemption u/s 5(1) of the Act.

17. For the aforesaid reasons, we answer the question referred to us in the affirmative, that is, in favour of the assessee and against the Revenue. A copy of this judgment under the signature of the Registrar and seal of the High Court will be forwarded to the Tribunal.