

(1989) 05 GAU CK 0028
In the Gauhati High Court

Case No : Wealth-tax Reference No. 1 of 1981

Commissioner of Wealth-tax

APPELLANT

Vs

Tarachand Agarwalla

RESPONDENT

Date of Decision : 31-05-1989

Acts Referred:

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

Citation : (1990) 81 CTR 79 : (1989) 180 ITR 234

Hon'ble Judges : W.A. Shishak, J; R.K. Manisana, J

Bench : Division Bench

Advocate : D.N. Choudhury, for the Appellant; J.P. Bhattacharjee, D.N. Barua, R.C. Verma, R. Rao and R.L. Jain, for the Respondent

Judgement

Manisana, J.—In compliance with the direction given by this court in Civil Rules Nos. 40(M) and 41(M) of 1979 relating to the wealth-tax assessment of Tarachand Agarwalla for the assessment years 1972-73 and 1973-74, the Tribunal drew up a statement of case for referring the following question as framed by this court:

"(i) Whether, on the facts and in the circumstances of the case and on a proper construction of Section 2(m), Section 4(1)(b), Section 5(1)(iv) of the Wealth-tax Act, 1957, and Rule 2 of the Wealth-tax Rules, 1957, the Tribunal was justified in upholding the direction of the Appellate Assistant Commissioner that exemption of proportionate share of the interest in the building belonging to the firm should be allowed u/s 5(1)(iv) in the hands of the assessee-partner?" (underlining ours)

2. The facts of the case, in brief, are thus. The assessee was a partner in a partnership firm. In computing the net wealth of the assessee, the Wealth-tax Officer included the value of the assessee's interest in the firm of which he was a partner under Rule 2 of the Wealth-tax Rules, 1957. The firm owned certain immovable properties. However, the value of the assessee's interest in the firm was included as movable properties in the assessment of the assessee. On the

appeal filed by the assessee, it was claimed that exemption u/s 5(1)(iv) should have been allowed in respect of the proportionate share of the assessee in the firm's house property. The Appellate Assistant Commissioner accepted the contention and directed the Wealth-tax Officer to allow exemption, as provided u/s 5(1)(iv) of the Wealth-tax Act. On appeal, the Appellate Tribunal dismissed the appeal by confirming the order of the Appellate Assistant Commissioner.

3. Learned counsel for the Revenue contended that the interest of a partner in a partnership asset comprising movable as well as immovable property should be treated as movable property. To support his contention, learned counsel has relied on the decision of the Supreme Court in *Addanki Narayanappa and Another Vs. Bhaskara Krishtappa and Others*, and another decision of the Madras High Court in *Purushothamdas Gocooldas and Others Vs. Commissioner of Wealth-tax*,

4. The question then was whether the interest of a partner in partnership assets comprising movable as well as immovable property should be treated as movable property for the purpose of Section 5(1)(iv) of the Wealth-tax Act.

5. Section 3 of the Wealth-tax Act imposes a tax on the net wealth of every individual, Hindu undivided family or a company. The Wealth-tax Act has not made a partnership firm an assessee. "Net wealth" has been defined in Section 2(m) to mean the aggregate value computed in accordance with the provisions of the Wealth-tax Act of all the assets, wherever located, belonging to the assessee on the valuation date. u/s 4(1)(b) of the Wealth-tax Act, it is provided that, where the individual assessee is a partner in a firm, it is the value of his interest in the firm determined in the prescribed manner, which is to be treated as belonging to him and is to be included in computing his net wealth. "Prescribed manner" means prescribed by the Rules made under the Wealth-tax Act, viz., Wealth-tax Rules, 1957. Rule 2 provides the manner of determination of the value of the interest of a person in a firm of which he is a partner.

6. In *Addanki Narayanappa and Another Vs. Bhaskara Krishtappa and Others*, while considering the character of the property which is brought in by the partners when the partnership is formed or which may be acquired in the course of the business, it was clearly stated by the Supreme Court that since a firm has no legal existence, the "partnership property will vest in all the partners and in that sense every partner has an interest in the property of the partnership.

7. In *Juggi Lal Kamlapat Bankers and Another Vs. Wealth Tax Officer, Special Circle C-Ward, Kanpur and Others*, the Supreme Court has held that the interest of a partner in a partnership firm belongs to him and would be includible in his "assets" and will have to be taken into account while computing his net wealth.

8. On a reading of the decisions of the Supreme Court read with Section 4(1)(b) and Rule 2, it emerges that, where an individual assessee is a partner in a firm, the interest of a partner in the immovable property of the firm is to be included in computing his net wealth. That interest in the immovable property, or benefits arising out of the land ; cannot be said to be movable property. Therefore, the

contention of learned counsel for the Revenue cannot be accepted. In this view of the matter, the assessee was entitled to exemption as provided u/s 5(1)(iv). This view of ours finds support from the decision in Commissioner of Wealth Tax Vs. Sri Naurangrai Agarwalla, and Commissioner of Wealth Tax Vs. Mira Mehta, In the above two cases, the Calcutta High Court has held that the interest in the assets of the firm belongs to the individual partner and is chargeable to wealth-tax and the partner will be entitled to exemption u/s 5(1)(iv) in the computation of such wealth.

9. The next question which arises for consideration is the method of deduction in the computation of the wealth of the firm. As earlier stated, the Wealth-tax Act has not made a partnership firm an assessee. Therefore, the deduction contemplated is in the computation of the net wealth of the assessee and not that of the firm which is not an assessee. In such a situation, the deduction has to be given in the hands of the assessee. In Commissioner of Wealth-Tax, Karnataka-I Vs. Christine Cardoza, the Karnataka High Court held that in computing the net wealth of an assessee who was a partner in a firm which owned agricultural lands, the value of the share of the assessee in the agricultural lands will have to be included in his net wealth and the full deduction u/s 5(1)(iva) has to be given in his hands. We are in respectful agreement with the views expressed by the Karnataka High Court. It also appears that the Supreme Court dismissed SLP (Civil) Nos. 3574 and 3575 of 1981 filed by the Department against the order dated June 9, 1978, of the Karnataka High Court in Tax Referred Cases Nos. 45, 46 and 57 to 66 of 1975, whereby the High Court, following Commissioner of Wealth Tax, Karnataka-I, Bangalore Vs. Purushotham, Pai, answered against the Department the question whether, where property was held jointly by the assessee and his four sons, the deduction of Rs. 1,50,000 was allowable in full in respect of each of the owners or whether the Wealth-tax Officer was entitled to assess the joint properties as a whole and deduct, Rs. 1,50,000 u/s 5(1)(iva) of the Wealth-tax Act and then divide the balance by five to arrive at the net wealth of each owner (see [1984] 147 ITR 2). For these reasons, the net wealth of the firm should be determined including the value of the building and then it should be allocated amongst the partners indicating the nature of assets and liabilities allotted to the share of the partner and the net wealth of the partner is to be determined by including the share so allotted, and only thereafter, the deduction u/s 5(1)(iv) should be allowed, i.e., deduction should be allowed u/s 5(1)(iv) in the hands of assessee-partner and not in the hands of the firm.

10. In Purushothamdas Gocooldas and Others Vs. Commissioner of Wealth-tax, the Madras High Court placed reliance on the decision of the Supreme Court referred to above. In the case before the Madras High Court, one of the assets of the partners was a home in which the partners resided. The question was whether each of the partners was entitled to exemption u/s 5(1)(iv) of the Wealth-tax Act. It was observed by the Madras High Court that the assessee of that case could not claim to be entitled to any portion of that house property as

exclusively belonging to them. However, in view of the above discussions, we are respectfully unable to agree with the findings of the Madras High Court.

11. For the foregoing reasons, we answer the question in this reference in the affirmative and in favour of the assessee. No costs.

W.A. Shishak, J.

12. I agree.