
(1991) 01 KL CK 0033

In the High Court Of Kerala

Case No : Income-tax Reference No"s. 147 to 150 of 1988

Commissioner of Wealth-tax

APPELLANT

Vs

Valia Aryan Bhattathiripad

RESPONDENT

Date of Decision : 25-01-1991

Acts Referred:

Citation : (1991) 188 ITR 665

Hon'ble Judges : K.S. Paripoornan, J;K.P. Balanarayana Marar, J

Bench : Division Bench

Advocate : P.K.R. Menon and N.R.K. Nair, for the Appellant; C. Sankunny, for the Respondent

Judgement

K. S. Paripoornan, J.—At the instance of the Revenue, the Income Tax Appellate Tribunal has referred the following two questions of law for the decision of this court :

"1. Whether, on the facts and in the circumstances of the case, was the Tribunal right in law and in fact in holding that there is no joint family system in existence on the passing of the Kerala Joint Hindu Family (Abolition) Act, 1975, since the family was defunct on the date of the assessment order ?

2. Whether, on the facts and in the circumstances of the case, was the Tribunal right in law and in facts in holding that the assessments are null and void ?"

2. The matter arises under the Wealth-tax Act for the assessment years 1970-71 to 1973-74. The respondent, as the karta of the Hindu undivided family, filed returns for the above four years. The return for the year 1970-71 was filed on October 5, 1970, and, thereafter, the returns for the other three assessment years were filed. Subsequently, on January 12, 1978, a revised statement of wealth was filed by the assessee for all the assessment years. The assessments were completed on January 3, 1983. After the filing of the original returns and before the assessments were completed, the Kerala Joint Hindu Family (Abolition) Act, 1975, came into force with effect from December 1, 1976. The

assessment orders were passed on January 3, 1983, and the appeals were disposed of by the first appellate authority on December 31, 1983. Both proceedings were concluded after the Kerala Joint Hindu Family (Abolition) Act, 1975, came into force. Even then, the assessee did not take up a plea, in those proceedings, that the assessments are in any way unsustainable or otherwise infirm. In the appeals filed before the Appellate Tribunal, the assessee took up the plea, that, since the assessment orders were passed on January 3, 1983, u/s 16(3) of the Wealth-tax Act, after the coming into force of the Kerala Joint Hindu Family (Abolition) Act, 1975, the assessments were illegal and without jurisdiction, Relying upon the Bench decision of this court in W. A. No. 159 of 1981 (Wealth Tax Officer, C-Ward Vs. K. Madhavan Nambiar,), the Appellate Tribunal held that since the family was defunct on the date of passing of the assessment orders, the Wealth-tax Officer could not have made the assessments on the assessee which was not in existence. The assessments were held to be null and void. It is thereafter, at the instance of the Revenue, that the questions of law formulated hereinabove have been referred for the decision of this court.

3. We heard counsel for the Revenue, Mr. P. K. R. Menon, as also counsel for the respondent/assessee, Mr. C. Sankunny. On a fair reading of the order of the Appellate Tribunal, we are of the view that the Appellate Tribunal acted in undue haste in disposing of the appeals, by holding that in view of Wealth Tax Officer, C-Ward Vs. K. Madhavan Nambiar, , the assessments could not have been made on the assessee (HUF) and so they are null and void. It is settled law that assessment proceedings start either by the filing of a return by the assessee or by the issue of a notice by the assessing authority. It will be pending till a final order of assessment is made in regard to the return filed--See Ghanshyam Das Vs. Regional Assistant Commissioner of Sales Tax, Nagpur, . In this case, the assessments were pending on the day when the Kerala Legislature passed the Kerala Joint Hindu Family (Abolition) Act, 1975, with effect from December 1, 1976. The only question that arises for consideration is how the pending proceedings should be finalised and whether the Wealth-tax Officer was justified in passing the assessment orders assigning the status of "Hindu undivided family" in the manner he did.

4. The assessment proceedings were admittedly pending when the Kerala Joint Hindu Family (Abolition) Act, 1975, came into force. It was the respondent/assessee who filed the returns. He did not plead, either before the assessing authority or before the first appellate authority, that the joint Hindu family had become extinct and so the assessments could not be made. In Wealth Tax Officer, C-Ward Vs. K. Madhavan Nambiar, , proceedings u/s 17 of the Wealth-tax Act (escaped assessment) were initiated after the Kerala Joint Hindu Family (Abolition) Act, 1975 (Act 30 of 1976), came into force. Proceedings were initiated for the first time. On the date when the Act had come into force, no proceeding was pending against "the assessee" (whose income was sought to be taxed) in the said case. The "assessee", as such, had become extinct. When the proceeding was initiated under the taxing statute, the joint family having become

extinct, the question mooted was as to how or in what manner, if at all, the income of the defunct or erstwhile joint Hindu family could be brought to tax and not whether the income of the "defunct entity" could be taxed at all. The procedure to be adopted was in issue. Whether the proceeding initiated was proper or valid alone arose for consideration. Notice was issued to a person who was only a junior member when the family existed. The question arose as to whether the service of notice on such a person was valid or sufficient to effect the assessment. It is in that context that this court quashed exhibit P-1 notice by holding that, on the day when the notice was issued, there was no Hindu undivided family in existence and service of notice on a junior member of the erstwhile Hindu undivided family is not valid in law. On the date of such notice, the said person was only a tenant-in-common with no representative capacity. The case on hand is different. On the day when the Act came into force, assessment proceedings were pending. The respondent, while he was the karta, had filed the returns. The only question is, on whom the further notices should be served before the assessments are finalised. Is it enough if the notice is served on the erstwhile karta or should it be served on all sharers (tenants-in-common) in whom the property devolved by operation of law? The further question is, is there any provision in law (including the Wealth-tax Act) which enables the assessing authority to pass an assessment order once the "assessee" has ceased to exist. So far as this case is concerned, do the filing of the returns by the assessee himself in the status of Hindu undivided family and the omission to raise the extinction of the family at the time of assessment proceedings have any impact. These and other aspects are relevant. They were never raised nor adjudicated upon by the Appellate Tribunal. The ratio of the decision in *Wealth Tax Officer, C-Ward Vs. K. Madhavan Nambiar*, cannot apply to a case where, on the date of the coming into force of the Kerala Joint Hindu Family (Abolition) Act, 1975, assessment proceedings were admittedly pending against the Hindu undivided family, on the basis of a valid return filed by the karta for the period prior to the coming into force of the Act.

5. The Appellate Tribunal has disposed of the appeals without addressing itself to the proper question that arose for consideration in this case. The peculiar facts in this case were not borne in mind in blindly applying the decision in *Wealth Tax Officer, C-Ward Vs. K. Madhavan Nambiar*, . We hold that the Appellate Tribunal was in error in setting aside the assessment orders on the basis of *Wealth Tax Officer, C-Ward Vs. K. Madhavan Nambiar*, .

6. We decline to answer the questions in the form referred to us, since other aspects relevant to the issue have not been adverted to and adjudicated upon but at the same time, we direct the Income Tax Appellate Tribunal to restore the appeals to file and pose the question that arose for consideration, on the facts of this case, from a correct perspective and dispose of the appeals in accordance with law.

The references are disposed of as above.

7. A copy of this judgment, under the seal of this court and the signature of the Registrar, shall be forwarded to the Income Tax Appellate Tribunal, Cochin Bench.