
(1981) 01 BOM CK 0020
In the Bombay High Court
Case No : W.T. Ref. No. 26 of 1965

Commissioner of Wealth Tax	Vs	APPELLANT
Viaykishore Ballabhdas Rathi and Another		RESPONDENT

Date of Decision : 12-01-1981

Acts Referred:

Wealth Tax Act, 1957 — Section 20

Citation : (1981) 22 CTR 279

Hon'ble Judges : Mehta, J;M.N. Chandurkar, J

Bench : Division Bench

Judgement

Chandurkar, J.—The question which has been referred to this Court u/s 27(1) of the WT Act, 1957, reads as follows :

"Whether on the facts and in the circumstances of the case, the correct status of the assessee was that of HUF or Individual ?"

Admittedly, the two assessees Vijaykishore and Naval Kishore were members of an HUF who partitioned their property in October 1957. Admittedly in the hands of Vijaykishore and Naval Kishore, the property was the joint family property. After partition, each of the assessees held the property allotted at partition as joint family property, the respective families consisting of the wife and daughter of each assessee.

2. In respect of the asst. yrs. 1959-60 to 1962-63 the assessee was assessed as an Individual for the purpose of Wealth-tax, though the contention of the assessee was that the assets on the respective valuation dates were liable to be assessed in the hands of the respective HUFs.

These assessments were confirmed by the AAC, so far as the status was concerned, with which aspect alone, we are concerned in this Reference.

3. When the matter was taken to the Tribunal the Tribunal took the view that the correct status in which the assessment was made was that of HUF. Being

aggrieved by this view, the following question has been referred at the instance of the Revenue.

"Whether on the facts and in the circumstances of the case, the correct status of the assessee was that of HUF or Individual ?"

4. Shri Joshi, appearing on behalf of the Revenue, has very fairly brought to our notice the decision of the Supreme Court in N.V. Narendranath Vs. Commissioner of Wealth-tax, Andhra Pradesh, in which the Supreme Court has pointed out 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 co-parcener, belongs to the HUF of himself, his wife and minor daughters and cannot be assessed as his individual property for the purposes of wealth-tax. It was pointed out by the Supreme Court that there need not be at least two male members to form an HUF as a taxable unit for the purpose of the WT Act and that the expression "Hindu Undivided joint family" is understood in the pointed out that under the Hindu system of law, a joint family may consist of a single male members and his wife and daughters and there is nothing in the scheme of the WT Act to suggest an HUF as an assessable unit must consist of at least two male members. This decision of the Supreme Court, therefore, will clearly govern the question in the present reference. The wealth-tax which is sought to be assessed in the hands of Vijaykishore and Naval Kishore was prior to the partition between them of the joint family property. After partition, that wealth will belong to the HUFs of Vijaykishore and Naval Kishore, one family consisting of Vijaykishore, one family consisting of Vijaykishore his wife and daughter. The Tribunal was, therefore, right in taking the view that the correct status was that of an HUF. The question referred to us will, therefore, have to be answered against the Revenue by holding that on the facts and in the circumstances of the case, the correct status of the assessee was that of an HUF and not of an Individual. There is no appearance on behalf of the assessee, though they have been duly served. Therefore, there will be no order as to costs of this Reference.