
(1992) 08 P&H CK 0053

In the Punjab And Haryana At Chandigarh

Case No : Wealth-tax Reference No's. 19 to 21 of 1980

Commissioner of Wealth-tax

APPELLANT

Vs

Vipin Kumar

RESPONDENT

Date of Decision : 31-08-1992

Acts Referred:

Wealth Tax Act, 1957 — Section 5(1)

Citation : (1993) 111 CTR 52 : (1993) 203 ITR 941

Hon'ble Judges : N.K. Sodhi, J;A.P. Chowdhri, J

Bench : Division Bench

Advocate : R.P. Sawhney, for the Appellant; None, for the Respondent

Judgement

N.K. Sodhi, J.—These are five wealth-tax references made to this court u/s 27 of the Wealth-tax Act, 1957 (hereinafter called "the Act"). Three of these relate to Shri Vipin Kumar, the assessee for the consecutive assessment years 1974-75 to 1976-77, whereas the other two pertain to Shri Satish Kumar, Hindu undivided family, Batala, in regard to the assessment years 1974-75 and 1975-76.

2. Shri Vipin Kumar, in his individual capacity, was a partner in a firm which was working under the name and style of Gurdaspur Roller Flour Mills, Gurdaspur, during the assessment years in question and he had an 11 per cent. share in it. He claimed for all these three years exemption u/s 5(1)(iv) of the Act in respect of an amount of Rs. 74,140 being the value of his share in the immovable property belonging to the firm, namely, the factory land and building. Similarly, Shri Satish Kumar, Hindu undivided family, was also a partner in the same firm during the relevant assessment years. The Hindu undivided family which is the assessee claimed exemption u/s 5(1)(iv) of the Act in respect of an amount of Rs. 80,880 which represented its share in the factory land and building belonging to the firm. The Wealth-tax Officer, while finalising the assessment, negated the claim of both the assesseees in this regard, being of the view that, since the assesseees did not own the house property, the deduction claimed was not admissible. In the appeal filed by the assesseees, the appellate authority, while

relying on the decision of the Madras High Court in the case of Purushothamdas Gocooldas and Others Vs. Commissioner of Wealth-tax, , also did not agree with the assesseees and dismissed the appeals. In second appeals filed by the assesseees, the Tribunal noticed a conflict of opinion between the Karnataka High Court and the Madras High Court and, relying on the observations of the apex court in the case of The Commissioner of Income Tax, West Bengal II, Calcutta Vs. Naga Hills Tea Co. Ltd., , and on the reasoning of the Karnataka High Court in Commissioner of Wealth-Tax, Karnataka-I Vs. Christine Cardoza, , upheld the claim of the assesseees herein and granted them the exemption as claimed u/s 5(1)(iv) of the Act. Thereafter, at the instance of the Commissioner of Wealth-tax, the Tribunal referred u/s 27 of the Act, the following two similar questions of law in the case of both the assesseees for the opinion of this court :

" 1. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is right in law in holding that the assessee is entitled to the exemption u/s 5(1)(iv) of the Wealth-tax Act, 1957, in respect of the factory land and building belonging to the firm in which he is a partner ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal is right in law in holding that the assessee-Hindu undivided family is entitled to the exemption u/s 5(1)(iv) of the Wealth- tax Act in respect of the factory land and building belonging to the firm from which it derived a share of profit ?"

3. Section 5(1)(iv) of the Act, as it stood during the relevant assessment years, reads as under :

"Section 5(1).--Subject to the provisions of Sub-section (1A), wealth-tax shall not be payable by an assessee in respect of the following assets and such assets shall not be included in the net wealth of the assessee--

(iv) one house or part of a house belonging to the assessee :

vided that, where the value of such house or part exceeds one hundred thousand rupees, the amount that shall not be included in the net wealth of the assessee under this clause shall be one hundred thousand rupees."

4. The words "and exclusively used by him for residential purposes" were omitted from Clause (iv) above by the Finance (No. 2) Act of 1971, with effect from April 1, 1972. Rule 2 of the Wealth-tax Rules, 1957, which have been framed by the Central Board of Revenue u/s 46 of the Act provides the mode of determining the value of the interest of a person in a firm of which he is a partner or an association of persons of which he is a member. As already stated, both the assesseees are partners having definite shares in the firm and are claiming exemption under the aforesaid provisions of the Act in regard to the value of their share in the factory land and building belonging to the firm, Messrs. Gurdaspur Roller Flour Mills, Gurdaspur.

5. Learned counsel for the Revenue, while assailing the order of the Tribunal granting relief to the assesseees, has strenuously contended before us that, in the

case of a partnership, no partner, during the subsistence of the partnership, could claim to have any specific interest in its assets exclusively apart from his interest as a partner in the firm and since the factory land and building was an asset of the firm, the assessee in the instant case could not be said to be entitled to any portion of the house property as exclusively belonging to them and were, thus, not entitled to claim the exemption u/s 5(1)(iv) of the Act. We find no substance in this contention. It is by now well-settled that a firm as such is not a legal entity and any property owned by it is really the property of the partners and the use of the expression "firm" is only a compendious mode to designate the persons who have agreed to a joint venture and what is called the property of the firm is really the property of the partners.

6. The firm is not recognised as a distinct entity from the members constituting it. It is true that the law has for some specific purposes relaxed its rigid notions and extended a limited personality to a firm, for instance, the law of procedure while giving way to considerations of commercial convenience has permitted a firm to sue or to be sued in the firm name as if it were a corporate body (Order 30 of the Code of Civil Procedure, 1908). The law of procedure has gone to the extent of allowing a firm to sue or be sued by another firm having some common partners or even to sue or be sued by one or more of its own partners but the general concept of partnership firmly established under the English as well as Indian systems of law still is that a firm is not an entity or a "person" in law but merely an association of individuals and a firm name is only a collective name of these individuals who constitute the firm. According to the principles of English jurisprudence which we have adopted in India for the purpose of determining legal rights, there is no such thing as a firm known to the law. In *Addanki Narayanappa and Another Vs. Bhaskara Krishtappa and Others*, it was clearly held by their Lordships of 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. In *Juggi Lal Kamlapat Bankers and Another Vs. Wealth Tax Officer, Special Circle C-Ward, Kanpur and Others*, the apex court held that the interest of a partner in a partnership firm belonged to him and would be includible in his "assets" and will have to be taken into account while computing his net wealth. In this view of the matter, the assessee in the present case could be said to be having specific interest in the factory land and the building belonging to the firm and, as such, were entitled to the exemption granted to them by the Tribunal. Moreover, Rule 2 of the Wealth-tax Rules providing for the detailed method of determining the value of the interest of a person in a firm of which he is a partner is a pointer to the fact that in the context of wealth-tax, a partner can claim to have a specific interest in its assets exclusively apart from his interest as a partner in the firm. We have already observed that the property of the firm is, in fact, the property of its partners and, consequently, we cannot accept the contention of the Revenue that since the factory land and the building in the present case belong to the firm, the two assessee who were partners therein were not entitled to claim any

deduction u/s 5(1)(iv) of the Act. The view that we have taken finds support from Commissioner of Wealth Tax Vs. Vasantha, ; Commissioner of Wealth-Tax, Karnataka-I Vs. Christine Cardoza, ; Commissioner of Wealth Tax Vs. Mira Mehta, and Commissioner of Wealth-tax Vs. Tarachand Agarwalla, .

7. Now, let us consider the judgment of the Madras High Court in Purushothamdas Gocooldas and Others Vs. Commissioner of Wealth-tax, on which reliance was placed by the Wealth-tax Officer and the appellate authority for denying to the assessee the benefit of Section 5(1)(iv) of the Act. The learned judges placed reliance on the observations of the Supreme Court in Addanki Narayanappa and Another Vs. Bhaskara Krishtappa and Others, . In the case before the Madras High Court, the partnership in which the assessee therein were partners owned a house property as one of its assets and the partners were residing in the said premises. In their return for wealth-tax, each of the assessee valued his share in the house property separately and claimed exemption u/s 5(1)(iv) of the Act. The claim was negated by the Wealth-tax Officer on the ground that the house property was the property of the firm and not that of any individual partner. This view was upheld by the Tribunal and, on a reference made to the High Court at the instance of the assessee, the question was decided in favour of the Department and against the assessee holding that they could not claim to be entitled to any portion of that house property as exclusively belonging to them. We are afraid that, with all respect to the learned judges, we have not been able to persuade ourselves to agree to their view. It is relevant to point out here that the earlier decision of the same court in Commissioner of Wealth Tax Vs. Vasantha, , wherein a different view similar to the one taken by us had been taken, does not appear to have been brought to the notice of the learned judges. In Addanki Narayanappa and Another Vs. Bhaskara Krishtappa and Others, , the question for decision was whether a particular document by which the interest of a partner in partnership assets comprising immovable properties also had been relinquished, was compulsorily registrable u/s 17(1)(c) of the Registration Act. It was in this context that the apex court held that an interest of a partner was not immovable property as such and was movable property and, accordingly, Section 17(1)(c) of the Registration Act was not attracted. The ratio of this case hardly justifies the conclusion arrived at by the Madras High Court in Purushothamdas Gocooldas and Others Vs. Commissioner of Wealth-tax, .

8. For the reasons recorded above, we answer the questions of law referred to us in the affirmative and in favour of the assessee. The references are disposed of accordingly with no order as to costs.