

(1971) 11 SC CK 0023

In the Supreme Court Of India

Case No : Civil Appeals Nos. 1691-1692 Of 1968 And Civil Appeal No. 1075 Of 1971

Commissioner of Wealth Tax, West Bengal

APPELLANT

Vs

Gauri Shankar Bhar

RESPONDENT

Date of Decision : 08-11-1971

Acts Referred:

Wealth Tax Act, 1957 — Section 3

Citation : (1972) 84 ITR 699 : (1972) 4 UJ 197

Hon'ble Judges : K. S. Hegde, J;H. R. Khanna, J;A. N. Grover, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

1. The valuation date is the 31st March, 1959 and the corresponding year of assessment is 1959-60.

2. The material facts are that one Prafulla Chandra Bhar died on the 27th April, 1956, leaving behind him, house properties and certain other movable properties. The family of the deceased, consisted of six members, who are :

1. Smt. Nayantra Bhar, mother of the deceased. 2. Smt. Radharani Bhar, widow of the deceased. 3. Shri Gouri Shankar Bhar. son of the 4. Shri Uma Shankar Bhar I deceased. 5. Shri Durga Shankar Bhar daughter of the 6. Smt. Sova Rani Bhar. deceased. 3. Smt. Radharani Bhar, Shri Uma Shankar Bhar, Shri Gouri Shankar Bhar and Shri Ourga Shankar Bhar have equal shares in the properties left over by the assessee and each one of them was entitled to one forth share in the estate of the deceased. Admittedly, the family is governed by the Dayabhaga School of Hindu Law. The deceased's son, Gouri Shankar Bhar, was granted Letters of Administration by the court in respect of the properties left over by the deceased. He filed the Wealth-tax return in his capacity as the Administrator of Estate of the deceased, declaring the status as a Hindu undivided family. The Wealth-tax Officer, accordingly, completed the assessment in the same status. At that stage no objection appears to have been raised against the status. A copy of

the order of the Wealth-tax Officer is Annexure 'A' hereto forming part of the case.

4. An appeal was, however, filed by the Administrator before the Appellate Assistant Commissioner in which the main contention was that the Wealth tax Officer was wrong in adopting the status of the appellant as that of an HUF and in charging the tax on that basis. It was contended that the family being governed by the Dayabhaga School of Hindu Law and the share in the property left over by the deceased belonging to the coparceners being definite and ascertained the assessment ought not to have been made in the status of a Hindu undivided family, each member of the family should have been assessed separately upon the value of his or her respective share in the property. It was further submitted that under the provisions of Section 21 of the Wealth-tax Act, the assessment should have been on the individual members and not on the H.U.F. because some of the members of the H.U.F. were not at all the owners of the property. The Appellate Assistant Commissioner dismissed the appellant's contention on the ground that even in Dayabhaga Families, though the 198 Commr. of Wealth Tax, Bengal, Calcutta v. Gaurishankar Bhar U.J. (S.C.) 1972 shares of the coparceners be definite and ascertained, the income from the property of the family did not belong to several members in the specified shares but continues to belong to the Hindu undivided family as a whole. He further observed that although the unit of ownership of properties was not present in the case of Dayabhaga families, there was unit of possession in respect of the said properties. The Appellate Assistant Commissioner, therefore, held that unless and until there was a partition in the family, the property and the assets of the family belonged to the Hindu undivided family as a whole. A copy of the order of the Appellate Assistant Commissioner is Annexure 'C' hereto forming part of the case.

5. A second appeal was taken to the Appellate Tribunal which reversed the decision of the Appellate Assistant Commissioner and held, for the detailed reasons given in its order, that under the Dayabhaga School of Hindu Law, each coparcener had a definite share in the properties left by the deceased and he was legally the owner thereof. The owners in the instance case were determinate and their shares were also definite. Since Wealth tax was a levy on the basis of ownership the assessment should be made on the individual coparceners on their respective shares. A copy of the order of the Appellate Tribunal is Annexure 'C' hereto forming part of the case

6. On the above facts, the question of law that arises is as follows :

Whether on the facts and in the circumstances of the case, the Tribunal was justified in cancelling the assessment made in the status of a Hindu undivided family ?

Hegde, J.

7. The learned Solicitor-General appearing for the Commissioner, Wealth-tax, very appropriately conceded that the property with which we are concerned in

this case was the individual property of the deceased Prafulla Chandra Bhar. He also conceded that on the death of the said Prafulla Chandra Bhar the property developed on his heirs in severality. Each one of the heirs took a definite share in the property left by the deceased. In view of these concessions it is not necessary for us to decide in the case whether a Dayabhaga Hindu family can be considered as a Hindu undivided family within the meaning of Section 3 of the Wealth Tax Act, 1957.

8. Quite clearly on the facts of this case the heirs of the deceased took the property of the deceased in separate shares. Therefore, in law each one of them is liable to pay wealth-tax as individual. It cannot be said that an individual who inherits some property from someone becomes a Hindu undivided family merely because he is a member of the Hindu undivided family.

9. In this view of the matter we find no substance in this appeal and the appeal is accordingly dismissed. The respondent has not appeared in this case. Hence there will be no order as to costs. We are thankful to Mr. T.A. Ramchandran for appearing as amicus curae in this case at our request.