

(1989) 07 KL CK 0001

In the High Court Of Kerala

Case No : Income Tax R. No's. 61 to 64 of 1982

C.W.T. Cochin

APPELLANT

Vs

Kunhali Verma

RESPONDENT

Date of Decision : 20-07-1989

Acts Referred:

General Clauses Act, 1897 — Section 3(42)
Income Tax Act, 1961 — Section 45
Partnership Act, 1932 — Section 4
Registration Act, 1908 — Section 17(1)(b)
Wealth Tax Act, 1957 — Section 27(1), 3, 4, 4(1), 4(1)(b)

Citation : (1989) 2 KLJ 284

Hon'ble Judges : T.V. Ramakrishnan, J; T.L. Viswanatha Iyer, J; P.G. Balakrishna Menon, J

Bench : Full Bench

Advocate : P.K. Raveendranatha Menon, for the Appellant; G. Sivarajan, for the Respondent

Judgement

Balakrishna Menon, J.—The income tax Appellate Tribunal, Cochin Bench has, under sec. 27 (1) of the Wealth Tax Act, 1957, referred the following question of law for the opinion of the High Court;

Whether, on the facts and in the circumstances of the case, the assessee partner is entitled to exemption u/s 5 (1) (iva) in respect of the agricultural properties of the firm?

The question referred is covered by the decision of a Division Bench of this court reported in Commissioner of Wealth-tax Vs. Jose Mathew, . But the case has come up before a Full Bench as another Division Bench felt that the decision in Jose Mathew's case requires reconsideration. The assessee is a partner of a firm called M/s. Koliat Estates. The assets of the firm include agricultural lands. In computing the net wealth of the assessee his interest in the firm was taken into account as required by sec. 4(1) (b) of the Wealth Tax Act. The assessee's claim for exemption under sec. 5(I)(iva) of the Act in respect of the value of her share

of the agricultural assets of the "firm was not accepted by the Wealth Tax Officer. In appeal the Appellate Assistant Commissioner allowed exemption under sec. 5 (1) (iva) in computing the net wealth of the firm and directed a fresh assessment "allocating the net wealth of the firm amongst the partners in accordance with the Wealth tax Rules. In further appeal at the instance of the Assessee, the Tribunal has allowed exemption under sec. 5 (1) (iva) in computing the net wealth of the assessee. The above question of law referred to this Court under sec 27 (1) of the Act arises from the common order of the Tribunal passed in respect of the assessment years 1970-71 to 1973-74.

2. As per the charging provisions under Sec. 3 of the Act, wealth tax is to be charged for every assessment year in respect of the net wealth of every individual, Hindu undivided family and company at the rates specified in the schedule. As per sec. (4)(1)(b) the net wealth of an individual includes where the assessee is a "partner in a firm or a member of an association of persons, the value of his interest in the firm or association determined in the prescribed manner. Sec. 5 contains the exemptions and as per clause (iva) of sub-sec. (1) as it stood at the relevant period, agricultural land belonging to the assessee is exempt to the extent of its value upto Rs. 1,50,000/-. Rule 2 of the Wealth Tax Rules provided for the method of computation of the interest of a partner of a partnership firm or of a member in an association of persons.

3. A Division Bench of this Court in Jose Mathew's case (supra), following the decision of the Karnataka High Court in Commissioner of Wealth-Tax, Karnataka-I Vs. Christine Cardoza, , has held that the assessee who is a partner of a firm, is entitled to exemption under sec. 5 (1) (iva) of the Act with respect to the value of his share of agricultural land held by the firm in determining his net wealth. A partnership firm is not an assessee under the Wealth-tax Act. The interest of a partner in the firm is assessable wealth in the hands of the partner as provided for in sec. 4(1)(b) of the Act. The computation of net wealth of the firm is as provided for in Rule 2 of the Wealth Tax Rules. Since the firm is not an assessee, there is no question of exemption under sec. 5(1) of the Act in the matter of computation of the net wealth of the firm. The exemption under sec. 5(1) is applicable only to an assessee and that is clear from the wording of the section itself. In; Dulichand Lakshminarayan Vs. The Commissioner of Income Tax, Nagpur, the Supreme Court stated at page. 541.

It is clear from the foregoing discussion that the law, English as well as Indian, has for some specific purposes, some of which are referred to above, relaxed its rigid notions and extended, a limited personality to a firm. Nevertheless, the general concept of partnership, firmly established in both systems, of law, still is that a firm is not an entity or "person" in law but is merely an association- of individuals and a firm name is. only a collective name of those individuals who constitute the firm. In other words, a firm name is merely an expression, only a compendious mode of designating the persons who have agreed to carry on business in, partnership. According to the principles of English jurisprudence,

which we have adopted for the purposes of determining legal rights "there is no such thing as a firm known to the law" as was said by James, L.J., in *Ex parte Corbett. In re Shand*. In these circumstances to import the definition of the word "person" occurring in section 3 (42) of the General Clauses Act, 1897, into section 4; of the Indian Partnership Act will, according to lawyers, English as Indian, be totally repugnant to the subject of partnership law as. they know and understand it to be. It is in this view of the matter that it has been consistently held in this country that a firm as such is not entitled to enter into partnership with another firm or individuals. It is. not necessary to refer in detail to those decisions many of which will be found cited in *Jabalpur Ice Manufacturing Association v. Commissioner of income tax, Madhya Pradesh*, to which a reference has already been made. We need only refer to the case of *Bhagwanji Morarji Goculdas v. Alembic Chemical Works Co. Ltd. and Others*, where it has been laid down by the Privy Council that Indian law has not given legal personality to a firm apart from the partners. This view finds support from and is implicit in the observations made by this Court in *Commissioner of income tax, West Bengal v. A.W. Figgies & Co. and others*

In *Commissioner of Income Tax, Madras Vs. R.M. Chidambaram Pillai and Others*, the question, for decision before (he Supreme Court was whether the salary received by a partner of a firm from its income from tea is assessable to income tax in the hands of the partner without reference to rule 24 of the Income Tax Rules. The Supreme- Court held that the salary received by the partner forms part of the share of income due to him and since the income itself is subject to rule 24. 40% of such salary alone is exigible to Central income tax. The Supreme Court in that connection observed at page 299:

The necessary inference from the premise that a partnership is only a collective of separate persons and not a legal person in itself leads to the further conclusion that the salary stipulated to be paid to a partner from the firm is in reality a mode of division of the firm's profits, no person being his own servant in law since a contract of service postulates two different persons.

In *Juggi Lal Kamlapat Bankers and Another Vs. Wealth Tax Officer, Special Circle C-Ward, Kanpur and Others*, the question was as to whether the interest of a Hindu undivided family in a firm is exigible to wealth tax and the Supreme Court held that even apart from sec. 4(1) (b) of the Act the interest of a partner in firm belongs to him and is exigible to wealth tax. The Supreme Court observed at page 491:

It cannot be said that the interest of a partner in a firm does not belong to him; it, in fact, belongs to him and no legal fiction is required for treating it as belonging to him; and the proper way to interpret cl.(b) would be that the deeming part of it relates to the quantum of his interest in the firm determined in the prescribed manner which is to be treated as belonging to him and includible in his net wealth. It is impossible to accept the contention that but for cl.(b) of s. 4(1) the interest of a partner (where he happens to be an individual assessee);

in a firm would not have been exigible to wealth-tax under the Act. As we shall presently point out a partner's interest in a firm either in his individual capacity, or in his, capacity as the karta of an HUF is otherwise exigible to wealth-tax under the other provisions of the Act and. the deeming provision contained in s. 4(1)(b) properly understood must be held to be referable to the quantification of his interest in the firm determined in the prescribed manner that is made includible in his net wealth.

4. In *Sunil Siddharthbhai Vs. Commissioner of Income Tax, Ahmedabad, Gujarat*, the question for decision before the Supreme Court was whether the capital contributed by a partner to a firm at an appreciated value will result in capital gains and whether the same is, assessable as income in his hands. In that case it was held that where the partner transfer's certain shares held by him in limited companies as his contribution to the assets of the firm of which he is a partner, there was a transfer of the capital asset within the meaning of sec. 45 of the Income Tax Act; but since, however, the consideration received by the assessee on such transfer does not fall within the contemplation of sac. 48 of the Act, no profit or gain could be said to arise and there was no capital gain exigible to tax under the Income Tax Act. In that case the Supreme Court observed at page 516:

In support of the submission that there is no "transfer" in the general sense of that term when a partner brings hi personal assets into the firm as his contribution towards its capital learned counsel points out that a partnership firm is not a separate legal entity and that the assets owned by the partnership are collectively owned by the partners. We have no hesitation in accepting that proposition, for, in *Malabar Fisheries Co. Vs. Commissioner of Income Tax, Kerala*, , this court observed

it seems to us clear that a partnership firm under the Indian Partnership Act, 1932, is not a distinct legal entity apart from the partners constituting it and equally in law the firm as such has no separate rights of its own in the partnership assets and when one talks of the firm's property or firm's assets all that is meant is property or the assets in which all partners have a joint or common interest.

Commissioner of Wealth Tax Vs. Sri Naurangrai Agarwalla, related to the case of an assessee who was a partner in a partnership firm. The firm owned a house property being used by partners for their residence. In his wealth tax assessment the assessee claimed exemption under sec. 5(1) (iv) of the Wealth Tax Act in respect of his share in the said house. A Division Bench of the Calcutta High Court, after construing the relevant sections of the Act and the Rules, held that the partnership firm was not a legal entity and the property of the firm in law belonged to all the partners constituting the firm. It was further held that it is only after the value of the assessee's interest in the firm had been determined under sec. 4 of the Act, the question of granting exemption in respect of assets included in the valuation would arise. In that view it was held. that the assessee is entitled to exemption under the Act in respect of the assets of the firm which

had been valued and a share of which had been included in the net wealth of the assessee. The same view is expressed by another Division Bench of the same High Court in Commissioner of Wealth Tax Vs. Mira Mehta, In that case it is held that where the interest of an individual partner in the assets of a firm was chargeable to wealth tax, the partner would be entitled to exemption in respect of his share in a house property of the firm under sec. 5(1) (iv) of the Wealth Tax Act in the computation of his net wealth. In Commissioner of Wealth-Tax, Karnataka-I Vs. Christine Cardoza, a Division Bench of the Karnataka High Court held that in the assessment of wealth tax of an assessee who is a partner of a firm owning agricultural land, exemption under sec. 5(1) (iva) of the Wealth Tax, Act had to be allowed to the extent permitted in the computation of net wealth of the assessee. The Karnataka High Court considered and applied the principle laid down by the Supreme Court in Dulichand Lakshminarayan Vs. The Commissioner of Income Tax, Nagpur, . The same view is expressed in a later decision of the Calcutta High Court in L.N. Birla Vs. Commissioner of Wealth Tax, .

5. Learned counsel for the Revenue relies on the decision of the Supreme Court in Addanki Narayanappa and Another Vs. Bhaskara Krishtappa and Others, wherein it is observed at page 1304:

The whole concept of partnership is to embark upon a joint venture and for that purpose to bring in as capital money or even property including immovable property. Once that is done whatever is brought in would cease to be the exclusive property of the person who brought it in. It would be the trading asset of the partnership in which all the partners would have interest in proportion to their share in the joint venture of the business of partnership. The person who brought it in would, therefore, not be able to claim or exercise any exclusive right over any property which he has brought in, much less over any other partnership property. He would not be able to exercise his right even to the extent of his share in the business of the partnership. As already stated his right during the subsistence of the partnership is to get his share of profits from time to time as may be agreed upon among the partners and- after the dissolution of the partnership or with his retirement from partnership of the value of his share in the net partnership assets as on the date of dissolution or retirement after a deduction of liabilities and prior charges.

On the basis of these observations it was submitted that during the subsistence of the partnership the assets belong to the firm and not to the partners. The decision in Addanki Narayanappa's case was on the question whether a document of transfer of the interest of a partner in a firm which held also immovable properties was compulsorily registrable under sec. 17 (1) (b) of the Registration Act. It was in that context that the Supreme Court made the above observations. These observations are not to be understood as defining a partner's rights over the firm's assets. Had that been so, the Supreme Court would not have observed with reference to the rights of the partners. in a firm in Commissioner of Income Tax, Madras Vs. R.M. Chidambaram Pillai and Others, :

What is called the property of the firm is their property and what are called the debts and liabilities of the firm are their debts and their liabilities.

6. For the aforesaid reasons we agree with, the view expressed by the Division Bench of this Court in Commissioner of Wealth-tax Vs. Jose Mathew, and hold that the assessee is entitled to exemption under Sec. 5 (1) (iva) of the Wealth Tax Act as it stood at the relevant period of assessment. This view of ours is in conformity with the decision of the Calcutta High Court in L.N. Birla Vs. Commissioner of Wealth Tax, , of the Karnataka High" Court in Commissioner of Wealth-Tax, Karnataka-I Vs. Christine Cardoza, , of the Patna High Court in Commissioner of Wealth Tax Vs. Nand Lal Jalan, , of the Madhaya Pradesh High Court in Narsibhai Patel Vs. Commissioner of Wealth-tax, and of the Orissa High Court in Commissioner of Wealth-tax Vs. I. Butchi Krishna, . We answer the question referred to us in the affirmative i.e. in favour of the assessee and against the Revenue.

A copy of this judgment under the seal of this court and the signature of the Registrar will be forwarded to the Appellate Tribunal as required by law.