

(1985) 07 MP CK 0034

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 300 of 1981

Jagdish Chandra Grover

APPELLANT

Vs

Commissioner of Wealth-tax

RESPONDENT

Date of Decision : 31-07-1985

Acts Referred:

Wealth Tax Rules, 1957 — Rule 2

Citation : (1986) 50 CTR 23 : (1985) 156 ITR 560 : (1985) JLJ 758 : (1985) 30 MPLJ 717 : (1985) MPLJ 717

Hon'ble Judges : K.K. Adhikari, J;J.S. Verma, J

Bench : Division Bench

Advocate : B.L. Nema, for the Appellant; B.K. Rawat, for the Respondent

Judgement

K.K. Adhikari, J.

This reference, u/s 27(1) of the Wealth- tax Act, 1957, at the instance of the assessee/applicant is on the following question of law:

"Whether the Appellate Tribunal was correct in law in holding that the assessee was not entitled to have a deduction of Rs. 44,000 representing the value of his interest in the house property owned by the firm in accordance with rule 2 of the Wealth-tax Rules read with Section 2(m) of the Wealth-tax Act?"

The material facts are these. The assessee, as an individual, declared his taxable wealth at Rs. 64,245 and claimed exemption in respect of a house valued at Rs. 44,000, for the assessment year 1976-77. The Wealth-tax Officer rejected the claim for exemption on the ground that the house did not belong to the assessee but to a partnership firm, M/s. National Soap Industries, Jabalpur, of which the assessee was a partner and thus added Rs. 44,000 to the net wealth of the assessee. In the appeal preferred by the assessee before the Appellate Assistant Commissioner, his contention with regard to the aforesaid exemption was negatived. Further appeal to the Income Tax Appellate Tribunal by the assessee also failed. The Tribunal held that the assessee was not entitled to claim

exemption of the house property belonging to a partnership firm as it did not represent wealth of the assessee in the firm. The Tribunal, however, accepted the plea of the assessee that the house, which is not residential, but is used as a factory, could be given exemption u/s 5(1)(iv) of the Wealth-tax Act and that such exemption is not restricted to a house used for residential purposes.

The learned counsel for the assessee contended that although the house in question belongs to the partnership firm in computing the net wealth, the value of the interest of a partner of the firm, has to be determined in accordance with the provisions of rule 2 of the Wealth-tax Rules read with Section 2(m) of the Wealth-tax Act and thus exemption could be granted u/s 5(1)(iv) of the aforesaid Act. In support of his contention, the learned counsel for the assessee placed reliance on Commissioner of Wealth Tax Vs. Radha Krishna Jalan, ; Commissioner of Wealth Tax Vs. Nand Lal Jalan, ; Commissioner of Wealth-Tax, Karnataka-I Vs. Christine Cardoza, ; Narsibhai Patel Vs. Commissioner of Wealth-tax, and Commissioner of Wealth-tax Vs. I. Butchi Krishna, . The learned counsel for the Revenue, however, submitted that in the case of a partnership, none of the partners can claim to have any specific interest exclusively apart from his interest as a partner of the firm and his right is restricted only to his individual share on the dissolution of the firm. It was further submitted that the house in question undisputedly belonged to the partnership firm and, as such, the assessee in the instant case could not claim exemption u/s 5(1)(iv) of the Wealth-tax Act. Reliance was placed on Purushothamdas Gocooldas and Others Vs. Commissioner of Wealth-tax, .

Having heard the arguments advanced on behalf of the parties on either side and perused the material on record, in our opinion, the question referred to us for our decision has to be answered in favour of the assessee and against the Department. A similar question, as has been referred to us in this reference, came up for decision in this court in Narsibhai Patel Vs. Commissioner of Wealth-tax, with, respect to exemption claimed by a partner of a firm u/s 5(1)(xxvi) of the Wealth-tax Act and after taking into consideration the cases of Commissioner of Wealth-Tax, Karnataka-I Vs. Christine Cardoza, ; Commissioner of Wealth Tax Vs. Nand Lal Jalan, ; Commissioner of Wealth-tax Vs. I. Butchi Krishna, and Purushothamdas Gocooldas and Others Vs. Commissioner of Wealth-tax, this court observed (at pp. 638 to 640 of 127 ITR):

"A perusal of Section 3 and other provisions of the Act clearly goes to show that unlike the I.T. Act, the W.T. Act does not recognise a partnership firm as an assessable entity. Individual, HUF and company are three assessable entities recognised by the Act. However, while assessing an individual who is a partner in a firm, the value of his interest in the firm is includible in his net wealth u/s 4(1) (b) and the determination of this value has to be made in the manner prescribed, i.e., in accordance with Rule 2. This rule provides that for determining the value of the interest of a person in the firm, the net wealth of the firm on the valuation date has to be first determined. The rule then provides that that portion of the

net wealth of the firm as is equal to the amount of its capital shall be allocated among the partners in the proportion in which capital has been contributed by them and that the residue of the net wealth of the firm shall be allocated among the partners in accordance with the agreement of partnership for the distribution of assets in the event of dissolution of the firm or, in the absence of such agreement, in the proportion in which the partners are entitled to share profits. The sum total of the amounts so allocated to a partner is to be treated as the value of the interest of that, partner in the firm. The question before us is whether in calculating the net wealth of the firm under Rule 2, the exemption allowable u/s 5(1)(xxvi) should be deducted treating the firm as an assessee or whether this exemption cannot be allowed at this stage and has to be allowed at a later stage, when the net wealth of each individual partner is determined.

Rule 2 directs the determination of the net wealth of the firm and then allocation of that net wealth to the individual partners. The expression "net wealth" as used in Rule 2 has to be understood in the sense as denned in Section 2(m). Rule 1A(m) expressly provides that expressions not denned in the Rules have the same meaning as assigned to them in the Act. There is no definition of the expression "net wealth" in the Rules and, therefore, the definition contained in Section 2(m) has to be applied. A perusal of the definition in Section 2(m) will go to show that it does not bring in the exemption contained in Section 5. The determination of the net wealth of the firm for purposes of Rule 2 will, therefore, not take into account the exemptions contained in Section 5. It has to be noticed that Section 5 in terms applies to an assessee. A firm is not an assessee and, in the absence of a provision in Rule 2 that in calculating the net wealth of a firm, exemptions u/s 5 have to be granted treating it as an assessee, these exemptions cannot be taken notice of in determining the net wealth of a firm. Thus, at the stage when the net wealth of a firm is determined for being allocated to the partners constituting it, exemptions contained in Section 5(1) do not enter into the computation.

After the net wealth of a firm is proportionately allocated to its partners and the net wealth of each partner is determined in accordance with Section 4(1)(b), there seems no valid reason why each partner cannot claim the benefit of the exemption contained in Section 5(1)(xxvi) when, as earlier seen, deposits made by a firm in the bank are not to be excluded at the time of calculating the net wealth of the firm and in allocating that net wealth to each partner. Under the Indian law, a partnership is not a legal entity. The firm name is only a compendious way of describing the partners collectively. Although we generally speak of the property of a firm, the property is really the property of its partners... As already stated, a partnership or firm is not a legal person and so it cannot hold property. But the property brought in by the partners for the partnership business cannot be without any owner. Such a property really vests in the partners collectively in proportion to their share although the right of ownership of each partner in respect of that property is restricted by the contract of partnership and the very nature and character of the collective business called

the partnership business for which the property is to be utilised. We, therefore, find no difficulty in holding that deposits made by a partnership in a bank are in law held by the partners in proportion to their shares in the partnership and that the partners are entitled to the benefit of the exemption contained in Section 5(1)(xxvi) in their individual assessments to the extent of the maximum prescribed by Section 5(1A),

The conclusions reached by us as to the computation of the net wealth and the availability of the benefit of the exemption contained in Section 5(1)(xxvi) to individual partners is supported by Clauses (2) and (3) of Rule 2. Clause (2) indicates that while calculating the net wealth of a firm for purposes of Rule 2(1), the exemption contained in Section 6 in respect of assets and debts outside India is not to be taken into account but this exemption is made available to individual partners in their assessments. Similarly, Clause (3) of Rule 2 which refers to the exemption contained in Section 5(2) in relation to deposits made by the assessee with the Government provides that the value of the interest of a partner shall be deemed to include the value of his proportionate share in the deposits. The principle behind Clauses (2) and (3) of Rule 2 is in line with our conclusion that the benefit of Section 5(1)(xxvi) should be given to each partner by treating the bank deposits of the firm as belonging to the partners in proportion to their shares in the partnership. "

The view expressed herein is equally applicable with full force for the purposes of exemption u/s 5(1)(iv) of the Wealth-tax Act and any further discussion would be a mere repetition. In coming to the conclusion, this court followed the decisions of the Karnataka High Court in *Commissioner of Wealth-Tax, Karnataka-I Vs. Christine Cardoza*, and of the Patna High Court in *Commissioner of Wealth Tax Vs. Nand Lal Jalan*, and distinguished the view taken by the Madras High Court in the case of *Purushothamdas Gocooldas and Others Vs. Commissioner of Wealth-tax*, which has been relied on by the learned standing counsel for the Revenue. We see no reason to take any contrary view than the one taken by this court in *Narsibhai Patel Vs. Commissioner of Wealth-tax*, and, with respect, we may add that we are unable to persuade ourselves to follow, the view expressed by the Madras High Court in *Purushothamdas Gocooldas and Others Vs. Commissioner of Wealth-tax*. Consequently, the question referred is answered in favour of the assessee and against the Revenue as under :

The Appellate Tribunal was not correct in law in holding that the assessee was not entitled to have a deduction of Rs. 44,000 representing the value of his interest in the house property owned by the firm in accordance with rule 2 of the Wealth-tax Rules read with Section 2(m) of the Wealth-tax Act.

There shall be no order as to costs.