
(1981) 02 MP CK 0028
In the Madhya Pradesh High Court
Case No : M.C.C. No. 75 of 1979

Jeetmal Nagri

APPELLANT

Vs

Commissioner of Wealth-tax

RESPONDENT

Date of Decision : 05-02-1981

Acts Referred:

Wealth Tax Act, 1957 — Section 27(1)

Citation : (1984) 148 ITR 139

Hon'ble Judges : R.K. Vijayvargiya, J;G.G. Sohani, J

Bench : Division Bench

Advocate : K.B. Joshi, for the Appellant; S.C. Bagdia, for the Respondent

Judgement

Sohani, J.—By this reference u/s 27(1) of the Wealth-tax Act, 1957 (hereinafter referred to as " the Act"), the Income Tax Appellate Tribunal, Indore Bench, has referred the following question of law to this court for its opinion :

" Whether, on the facts and in the circumstances of the case, the assessee was rightly assessed in the status of an individual for the assessment year 1975-76 ?
"

2. The material facts giving rise to this reference as set out in the statement of the case, briefly, are as follows : For the assessment year 1975-76, the assessee filed his return of net wealth in the status of HUF and the assessment was completed u/s 16(1) of the Act on September 9, 1975. The Commissioner, on scrutiny of the assessment record of the assessee, noticed that the assessee was the karta of an HUF, M/s. Nathmal Jeetmal, till Diwali 1965, when partition was effected amongst the assessee, his wife and two sons and that after the partition the assessee continued to carry on business in his individual capacity. The Commissioner was, therefore, of the opinion that the assessment of the assessee in the status of an HUF was erroneous in so far as it was prejudicial to the interest of the Revenue. He, accordingly, issued a show-cause notice u/s 25(2) of the Act to the assessee. In reply to the show-cause notice, the assessee

contended that the status of the assessee continued to be that of a HUF even after partition. The Commissioner, however, held that after the partition the assessee was holding the property in his individual capacity and hence his claim that he should be continued to be assessed in the status of an HUF was not tenable. Aggrieved by the order passed by the Commissioner the assessee preferred an appeal before the Tribunal. The Tribunal held that in view of the fact that there had been a partition between the assessee, his sons and the wife, the Commissioner was justified in holding that the status of the assessee was that of an individual. Aggrieved by the order passed by the Tribunal, the assessee submitted an application for making a reference to this court and it is at the instance of the assessee that the aforesaid question of law has been referred to this court for its opinion.

3. Having heard learned counsel for the parties we have come to the conclusion that this reference deserves to be answered in the affirmative and against the assessee. Learned counsel for the assessee referred to a decision of the Supreme Court in N.V. Narendranath Vs. Commissioner of Wealth-tax, Andhra Pradesh, . The Supreme Court has held in that case that under the Hindu system of law a joint family may consist of a single male member, his wife and daughter, and there is nothing in the W.T. Act to suggest that an HUF as an assessable unit must consist of at least two male members. This decision has no application in the instant case. In view of the finding that there has been a partition between the assessee, his wife and the sons, the Tribunal was justified in holding that the assessee was rightly assessed in the status of an individual.

4. For all these reasons, our answer to the question referred to us is in the affirmative and against the assessee. The parties are directed to bear their own costs in this reference.