(1998) 08 AP CK 0095

In the Andhra Pradesh High Court

Case No : Case Referred No. 75 of 1990 31 August 1998

KISHANDAS APPELLANT

Vs

COMMISSIONER OF WEALTH-TAX RESPONDENT

Date of Decision : 31-08-1998

Acts Referred:

Citation : (1999) 107 TAXMAN 4

Hon'ble Judges : T. Ranga Rao, J;S.V. Maruthi, J;MS. S.V. Maruthi, J

Bench : Full Bench

Advocate : A. Satyanarayana, S.R. Ashok, for the Appellant;

Judgement

Maruthi, J.

The Tribunal referred the following question for the opinion of this Court:

"Whether, on the facts and in the circumstances of the case, the Tribunal was correct in law ill holding that the share of the deceased coparcener, viz., Damodardas Agarwal, in the family properties cannot be excluded from family''s net wealth for the purpose of wealth-tax for the assessment years 1981-82 arid 1982-83 ?"

2. The assessee, a HUF consisting of the karta, his wife and their two sons, was assessed to wealth-tax. One of the two major sons, viz, Damodardas Agarwal died on 8-11-1980. For the assessment year 1981-82 and 1982-83, the assessee-family filed wealth-tax returns as on 31-3-1981 and 31-3-1982 claiming deduction of 1/4th share of the deceased in the family properties which was due to the share of Smt. Urmila Agarwal, the widow of the deceased and his children in the computation of the net wealth of the family. The Wealth Tax Officer rejected the plea on the ground that no partition suit was filed by the widow of the deceased. On appeal, the Appellate Assistant Commissioner accepted the assessee''s plea. Aggrieved by the said order, the revenue preferred an apeal to the Tribunal. The Tribunal following the decision of the Supreme Court in Gurupad Khandappa Magdum Vs. Hirabai Khandappa Magdum and Others, ,

wherein it was held that no withstanding the death of one of the coparceners, the remaining members of the family continue to hold the family properties together, though the individual interest of the female members thereof in the family properties had become fixed, held that since "Smt. Urmila Agarwal, the window of the deceased did not take away her share and lived separately from the remaining members of the family, on the death of Demodar Agarwal, the joint family did not cease to exist and all the members of the family including Smt. Urmila Agarwal continued to hold the family properties together though her individual interest in the family property had become fixed." The Tribunal also held that Smt. Urmila Agarwal continued to be a member of the family and the entire property was with the joint family only including her share. Therefore, the share of Smt. Urmila Agarwal and her two sons could not be excluded from the total wealth of the HUF as the entire properpty was with the joint family only.

3. At the instance of the assessee, the question set out in the earlier paragraph was referred for the opinion of the Court. Since the Tribunal has followed the judgment of the Supreme Court. Since the Tribunal has followed the judgment of the Supreme Court in Gurupad Khandappa Magdum''s case (supra), while holding that the widow of the deceased coparcener continues to be a member of the joint family until she filed a suit for petition, we do no see any infirmity in the order of the Tribunal.

4. Hence, we answer the question referred by the Tribunal in the affirmative and against the assessee. The reference is answered accordingly.