
(1998) 08 AP CK 0052

In the Andhra Pradesh High Court

Case No : Case Referred No. 75 of 1990

Kishandas

APPELLANT

Vs

Commissioner of Wealth-tax

RESPONDENT

Date of Decision : 31-08-1998

Acts Referred:

Citation : (2000) 243 ITR 307

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

Bench : Division Bench

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

Judgement

Ms. S.V. 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 in holding that the share of the deceased coparcener, viz., Damodardas Agarwal, in the family properties cannot be excluded from the family's net wealth for the purpose of wealth-tax for the assessment years 1981-82 and 1982-83 ?"

2. The assessee, a Hindu undivided family 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 November 8, 1980. For the assessment years 1981-82 and 1982-83, the assessee family filed wealth-tax returns as on March 31, 1981 and March 31, 1982, claiming deduction of the 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 appeal 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 notwithstanding 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 widow of the deceased, did not take any action either by filing a suit or by demanding partition of the share and did not take away her share and live separately from the remaining members of the family, on the death of Damodar Agarwal, the joint family does not cease to exist and all the members of the family including Smt. Urmila Agarwal continue 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 cannot be excluded from the total wealth of the Hindu undivided family as the entire property 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 this court. Since the Tribunal has followed the judgment of the Supreme Court in Gurupad Khandappa Magdum Vs. Hirabai Khandappa Magdum and Others, , while holding that the widow of the deceased coparcener continues to be a member of the joint family until she files the suit for partition, we do not 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.

ORDER

5. Questions Nos. 1, 2 and 3 are interlinked. After the judgment was delivered, the matter is posted before us as "for being mentioned" on the ground that the Tribunal referred for the opinion of this court three questions while only one question is answered.

6. On a consideration of the questions referred and the facts of the case we are of the view that by answering question No. 1, questions Nos. 2 and 3 are also covered as all the three questions are interlinked. In addition there is overlapping of questions Nos. 2 and 3 in question No. 1. Therefore, it is not necessary to answer questions Nos. 2 and 3 separately. Clarified accordingly.