(1984) 07 KAR CK 0012

In the Karnataka High Court

Case No : Tax Reference Case No''s. 1 to 4 of 1981

K.S. Muthukali Chettiar — APPELLANT

Vs

Commissioner of Wealth Tax — RESPONDENT

Date of Decision : 05-07-1984

Acts Referred:

Citation : (1984) ILR (Kar) 291 : (1985) 20 TAXMAN 201

Hon'ble Judges : S.A. Hakeem, J;K. Jagannatha Shetty, J

Bench : Division Bench

Advocate : K.R. Prasad, for the Appellant; G. Sarangan and H. Raghavendra Rao, for the Respondent

Judgement

K. Jagannatha Shetty, J.—The question referred in these references u/s 27(1) of the Wealth-tax Act, 1957 (''the Act'') relates to the extent of the interest of the assessee in the converted property for the purpose of inclusion in the net wealth in his wealth-tax return. Since the question raised is common for all the assessment years, viz., 1971-72 to 1974-75, the same will be disposed of by this common order.

2. The assessee was assessed to wealth-tax on the value of his movables and immovables. On 15-3-1971 certain immovable properties owned by the assessee, as separate properties, were thrown into the family hotchpot by means of a declaration. Those properties consisted of buildings, factory, vacant sites and certain agricultural lands. The ''HUF'', of which the assessee was the manager, comprised of his wife and two minor sons.

3. It was contended before the WTO that the value of the properties thrown into the common stock of the joint family should not be assessed in the hands of the assessee. The WTO rejected that contention placing reliance on section 4(1A) of the Act. He held that the entire value of the said properties should be assessable in the hands of the assessee and, accordingly, included the value thereof in the assessee''s net wealth.

4. Being aggrieved by the assessments, the assessee appealed to the AAC and urged to exclude the value of the converted properties from his assessment. But the AAC did not accept that contention. He observed that u/s 64(2) of the income tax Act, 1961, (''the 1961 Act'') the income of the HUF in the converted properties was already included in the net income of the assessee and since section 4(1A) of the 1957 Act is similar to section 64(2), the value of the converted properties should also be included in the wealth-tax assessment of the assessee.

5. The assessee thereupon appealed to the Tribunal. The Tribunal dismissed the appeals by following its earlier judgment in ITO v. Dr. K.V. Subharaj [IT Appeal Nos. 460 to 470 (Bang.) of 1975-76] arising u/s 64(2). The Tribunal, however, at the instance of the assessee has referred the question, the substance of which we have already set out at the beginning and the exact question would be set out at the end of this order.

6. The answer to the question turns upon the scope of section 4(1A). The said provision, so far as material as it then stood, is set out below for immediate reference:

"Where, in the case an individual being a member of a Hindu undivided family, any property having been the separate property of the individual has, at any time after the 31st day of December, 1969, been converted by the individual into property belonging to the family through the act of impressing such separate property with the character of property belonging to the family or throwing it into the common stock of the family (such property being hereinafter referred to as the converted property), then notwithstanding anything contained in any other provision of this Act or in any other law for the time being in force, for the purpose of computing the net wealth of the individual under this Act for any assessment year commencing on or after the 1st day of April, 1972,-

(a) the individual shall be deemed to have transferred the converted property, through the family, to the members of the family for being held by them jointly;

(b) the converted property or any part thereof, insofar as it is attributable to the interest of the individual in the property of the family shall be deemed to be assets belonging to the individual and not to the family;

(c) any part of the converted property insofar as it is attributable to the interest of the spouse or any minor child of the individual in the property of the family and where there is a partition (partial or total) amongst the members of the family, the converted property or any part thereof which is received by the spouse or, minor child on such partition shall be deemed to be assets transferred indirectly by the individual to the spouse or minor child and the provisions of sub-section (1) shall, so far as may be, apply accordingly:

Provided that the property referred to in clause (b) or clause (c) shall, on being included in the net wealth of the individual, be excluded from the net wealth of the family or, as the case may be, the spouse or minor child of the individual."

Explanation (d) to sub-section (7) reads:

"the expressions ''interest of the individual in the property of the family'' and ''interest of the spouse or any minor child of the individual in the property of the family'' mean, respectively, the proportion in which the individual or, as the case may be, the spouse or minor child would be entitled to share the property of the family if there had been a total partition in the family as on the valuation date of the family relevant to the assessment year for which the individual is to be assessed under subsection (1A)."

Sub-sections (1A) and (7) were inserted by the Finance (No. 2) Act, 1971, with effect from 1-4-1972 against the backdrop of the following two decisions of the Supreme Court. In Goli Eswariah Vs. Commissioner of Gift Tax, Andhra Pradesh, the Supreme Court observed that if a member of HUF converts his separate property into joint family property by impressing it with the character of property belonging to the family or throwing it to the common stock of family, then that would not amount to a transfer.

In Commissioner of Income Tax, Gujarat Vs. Keshavlal Lallubhai Patel, the Supreme Court held that the partition of a joint Hindu family property cannot also be termed as a ''transfer'' within the meaning of the Indian income tax Act, 1922. It was to supersede the views taken in these decisions that section 4(1 A) of the 1957 Act and section 64(2) of the 1961 Act were inserted by the Finance (No. 2) Act, 1971, and the Taxation Laws (Amendment) Act, 1970, respectively.

7. The effect of these provisions is that if a coparcener converts at any time after 31-12-1969, his separate property into property belonging to the ''HUF'', he shall be deemed to have transferred the property for the members to hold it jointly. Further, the converted property or any part thereof, insofar as it is attributable to the interest of the individual therein shall be deemed to be assets or the income, as the case may be, of the individual and not of the family. Likewise, the converted property insofar as it is attributable to the interest of the spouse or any minor son of the individual will be deemed to be the assets transferred indirectly by the individual to the spouse or minor son and will be includible in the wealth or income of the individual, as the case may be, in accordance with the provisions of section 4(1) of the 1957 Act or section 64(1) of the 1961 Act. Similar would be the effect in the event of a partition of the converted property amongst the members of the family.

8. Mr. Prasad, the learned counsel for the assessee, however, submitted that this intent of the Parliament has not been achieved by the provisions of section 4(1A) of the 1957 Act or section 64(2) of the 1961 Act and the said provisions are practically unworkable. He urged that by reason of the deeming provisions u/s 4(1A)(a), what has been considered as not a transfer of the converted property has been held to be a transfer to the members of the family and if it is a transfer to the members of the family, then clause (b) of section 4(1A) would be

unworkable since it refers to the interest of the individual in the property of the family.

9. We do not think that we could accept these contentions. No statute, to our know ledge, is free from gibberish. We must first understand the intelligible purpose of the statute and then try to honour the purpose so found. Prof. Reed Dickerson in his book The Interpretation and Application of Statutes, 1975 edn., states:

"Once legislative purpose has been reliably ascertained, the only remaining problem is to determine the extent to which the language used in the statute can sustain a meaning that not only is co-extensive or consistent with that purpose but appears to be the most plausible one under the circumstances."

Clause (a), in our opinion, was not intended to create a fiction of transfer to the members of the family. It, indeed, clearly states that the individual shall be deemed to have transferred the converted property through the family to the members of the family for being held by them jointly. ''Through the family'' in the context in which it is used, means ''by reason of the family'' and not apart from the family. Upon transfer, the members of the family hold the converted property jointly.

Clause (b) would be consistent with this idea when it states that the converted property or any part thereof insofar as it is attributable to the interest of the individual in the property of the family, shall be deemed to be the assets of the individual and not of the family. The method of ascertaining the interest of the individual in the property of the family has been provided under clause (d) to the Explanation. It envisages a notional partition of the converted property for the purpose of ascertaining the respective shares which they are legitimately entitled to.

No doubt the said Explanation refers to a total partition but the total partition need not be a partition of all the ''HUF'' properties of the family as contended by Shri Prasad. The partition referred to in the Explanation having regard to the other provisions of section 4(1A) appears to be a partition contemplated for the purpose of determining only the interest of the individual in the converted property.

That was also the view taken by the Gujarat High Court in Kalyanbhai Trikamlal Shah Vs. Commissioner of Wealth Tax, Gujarat, and the Madras High Court in Commissioner of Income Tax, Tamil Nadu-IV Vs. C.S. Ayyaswamy Iyer, on the analogous provision of section 64(2).

10. As to the next contention of Shri Prasad that the notional share attributable to the individual in the converted property should be clubbed and assessed in the hands of the smaller family consisting of individual and his wife and not in the hands of the individual alone, we may point out that although the individual along with his wife may constitute a smaller family, the wife is not entitled to a

share in the partition. Under the Mitakshara law practised in Southern India, the mother is not entitled to any share upon partition between the sons and the father. In Mulla''s Principles of Hindu Law, 14tb edn., it is stated:

"... Madras State-In Southern India the practice of allotting shares upon partition to females has along since become obsolete...."

This passage has been quoted with approval by the Supreme Court in Lakshmi Chand Khajuria and Others Vs. Ishroo Devi, .

Apart from that, the entire scheme provided u/s 4(1A)(a), (b) and (c) is for computing the interest of the individual in the converted property and that the individual''s interest is required to be determined in the manner provided under the Explanation.

11. The Division Bench decision of this Court in CWT v. G.M. Manjunath [Tax Reference Case No. 28 of 1965 dated 30-9-1966] holding that the status of the assessee was that of a ''HUF'' for the purpose of wealth-tax assessment cannot be relied upon in this case since that was not a case in which the scope of section 4(1A) was considered.

12. Before concluding, it must be pointed out that the question referred makes a reference to the income of the individual in the converted property. The reference to the ''income'' attributable to the converted property is plainly inappropriate since the case arises under the Act. The question, therefore, may be recast as follows:

"On the facts and in the circumstances of the assessee''s case, when the assessee has thrown his self-acquired property into the common hotchpot of the Hindu undivided family consisting of himself, his wife and minor children, whether the Tribunal was right in law in holding that the value of the converted property falling to the share of the assessee on notional partition is assessable in the hands of the assessee in his status as individual and not as Hindu undivided family consisting of the assessee and his wife?"

For the reasons stated, we answer the question in the affirmative and against the assessee in Tax Reference Case Nos. 2, 3 and 4 of 1981.

13. In Tax Reference Case No. 1 of 1981, the said question does not arise for consideration. Both parties did not notice that section 4(1A) was inserted by Finance (No. 2) Act, 1971, which came into force with effect from 1-4-1972 and, therefore, it would be applicable for the assessment years 1972-73 onwards. On this ground alone, we answer the question in Tax Reference Case No. 1 of 1981 in the negative and in favour of the assessee. In the circumstances, we make no order as to costs.

