

(1996) 01 RAJ CK 0052
In the Rajasthan High Court
Case No : WT Reference No. 33 of 1982

Lalchand Kothari

APPELLANT

Vs

Commissioner of Wealth Tax

RESPONDENT

Date of Decision : 10-01-1996

Acts Referred:

Income Tax Act, 1961 — Section 171
Wealth Tax Act, 1957 — Section 20, 20A, 27(1)

Citation : (1996) 86 TAXMAN 181

Hon'ble Judges : B.R. Arora, J; B.J. Shethna, J

Bench : Division Bench

Advocate : Rajendra Mehta, for the Appellant; Sandeep Bhandawat, for the Respondent

Judgement

B.R. Arora, J.—The Tribunal, Jaipur Bench, at the instance of the assessee, has referred the following question of law for the opinion of the High Court with respect to the assessment years 1975-76 and 1977-78 : Whether, on the facts and in the circumstances of the case, the Tribunal was legally correct in holding that there could not be a partial partition both with regard to an asset of the HUF and its Members and sustaining the inclusion of the jewellery of the value of Rs. 89,892 for the assessment year 1975-76 and Rs. 94,000 for the assessment year 1977-78 in the net wealth of the assessee?

The brief facts of the case are that the assessee is Hindu Undivided Family (HUF) consisting of the coparceners Sarvashri Lalchand - Karta of the HUF and his two sons Jawahar Lal and Lalit Kumar. On Kartik Wadi 3 Samvat Year 2031, a partial partition of the asset relating to jewellery held by the HUF, was effected and 1/3 share, out of the jewellery, was given to Mr. Lalit Kumar. The HUF, in the return of the net wealth filed for the assessment years 1975-76 and 1977-78, did not include in their return the remaining jewellery which was not divided between the remaining two coparceners. While making the assessment for these two years, the WTO, Bikaner Range, Bikaner, included the balance of the jewellery in the net

wealth of the HUF but excluded the jewellery which was given to Lalit Kumar in the partial partition of the jewellery. According to the WTO, the remaining jewellery continued to belonging to the HUF. Dissatisfied with the assessment order passed by the WTO, the assessee-HUF preferred an appeal before the Asstt. Commissioner (Appeals), Bikaner Range, Bikaner, who, by his order dated 30-11-1979, dismissed the appeal filed by the assessee. Aggrieved of the order dated 30-11-1979 passed by the Asstt. Commissioner (Appeals), Bikaner Range, Bikaner, the assessee preferred an appeal before the Tribunal. The Tribunal, by its judgment dated 24-7-1981, dismissed the appeal filed by the assessee by holding that there cannot be a partial partition with respect to the asset of a coparcener. The Tribunal further held that the jewellery in question has rightly been included by the WTO in the net wealth of the assessee. The assessee thereafter moved an application u/s 27(1) of the Wealth-tax Act, 1957 ("the Act") for referring five questions of law, mentioned in the application, for the opinion of the High Court. The Tribunal referred the question mentioned in para No. 1 above and refused to refer the other questions for the opinion of this Court.

2. It is contended by the learned counsel for the assessee that there can be partial partition with respect to the property belonging to the HUF or between the persons constituting the HUF in view of the provisions of section 20 of the Act. He further submitted that the Hindu Law, also, permits such partial partition and, therefore, the Tribunal as well as the wealth-tax authorities committed an error in not recognising the partial partition and assessing the bigger HUF, with respect to this jewellery. According to the learned counsel for the assessee, after the partial partition, a new HUF consisting of Lal Chand and Jawahar Lai came into existence and, therefore, the new HUF can be assessed for the balance of the jewellery and not the bigger HUF. In support of his contention, the learned counsel for the assessee has placed reliance over *Apoorva Shantilal Shah, HUF Vs. Commissioner of Income Tax, Gujarat-I, Ahmedabad*, *Kalloomal Tapeswari Prasad (HUF), Kanpur Vs. Commissioner of Income Tax, Kanpur*, *Commissioner of Income Tax Vs. Gopi Chand B. Tholia*, *Commissioner of Income Tax, Gujarat-II Vs. Vajulal Chunilal (HUF)*, and *Commissioner of Wealth Tax, Karnataka-I Vs. M.L. Ramachandra Setty and Sons*. The learned counsel for the revenue, on the other hand, has supported the order passed by the Tribunal and submitted that section 20 is not attracted in the present case because it applies only where the joint family's property has been partitioned as a whole amongst the various members or the group of members in the definite portions and not in the cases of partial partition with respect to one asset.

3. We have considered the submissions made by the learned counsel for the parties.

4. Section 20, which deals with the assessment after the partition of the HUF, states:

Assessment after partition of a Hindu undivided family. -(1) Where, at the time of making an assessment, it is brought to the notice of the Assessing Officer that

a partition has taken place among the members of a Hindu undivided family, and the Assessing Officer, after inquiry, is satisfied that the joint family property has been partitioned as a whole among the various members or groups of members in definite portions, he shall record an order to that effect and shall make assessments on the net wealth of the undivided family as such for the assessment year or years, including the year relevant to the previous year in which the partition has taken place, if the partition has taken place on the last day of the previous year and each member or group of members shall be liable jointly and severally for the tax assessed on the net wealth of the joint family as such.

(2) Where the Assessing Officer is not so satisfied, he may, by order, declare that such family shall be deemed for the purposes of this Act to continue to be a Hindu undivided family liable to be assessed as such.

Section 20A was added by way of amendment by Finance (No. 2) Act, 1980 with effect from 1-4-1980 and provides that where a partial partition has taken place after 31-12-1978 among the members of the HUF hitherto assessed as undivided, such family shall continue to be liable to be assessed under this Act as if no such partial partition had taken place. The Explanation u/s 20A provides that "partial partition" shall have the meaning assigned to it in clause (b) of the Explanation to section 171 of the income tax Act, 1961.

5. The controversy involved in the present case is : Whether, the partial partition of one of the assets of the HUF, i.e., jewellery in the present case, can be recognised u/s 20? The expression used in section 20 is "joint family property has been partitioned as a whole among the various members or groups of members in definite portion". The words "as a whole" and the words "in definite portion" have been used in the section with definite purpose and the words "partial partition" have been deliberately omitted in this section while the words "partial partition" have been inserted and recognised in section 171 of the income tax Act. The language used in section 20 of the Wealth-tax Act and the scheme of the Act, therefore, clearly show that unless there is a severance of the status of the jointness, the provisions of section 20 are not attracted. Section 20 does not contemplate any partial partition and is alien the Act.

Section 20 does not recognise any partial partition and no partial partition can, therefore, be recorded. After the incorporation of section 20A, partial partition can neither be claimed nor it can be recorded or recognised under the Act and the family continues to be assessed as if no such partial partition has taken place.

6. Now, we take up the judgment on which reliance has been placed by the learned counsel for the assessee. In Apoorva Shantilal Shah's case (supra), the Supreme Court held that:

...The father, undoubtedly, enjoys the right to bring about a complete disruption of the joint family consisting of himself and his minor sons and to effect a complete partition of the joint family property even against the will of the minor

sons, it is also now recognised that partial partition of the joint family property is permissible. When a father can bring about the complete partition of the joint family property between himself and his minor sons even against the will of the minor sons and when partial partition under the Hindu Law is now accepted and recognised as valid by the judicial decisions, we fail to appreciate on what logical ground it can be said that the father, who can bring about the complete partition of the joint family property between himself and his minor sons will not be entitled to effect a partial partition of the joint family properties between himself and his minor sons.... (p. 572)

The Supreme Court, therefore, held that a partial partition of the property brought about by a father between himself and the minor son cannot be said to be invalid under the Hindu Law and must be held as valid and binding.

7. In *Kalloomal Tapeswari Prasad (HUF)* 's case (supra), the Supreme Court held that the partition referred in sub-section (1) of section 171 of the income tax Act, include a "partial partition" also either as regards the persons constituting the undivided family or the property belonging to it or both, in view of the provisions contained in the other sub-sections and in the Explanation. After a partial partition as regards the property, the property divided is held by the members of the undivided family as divided members with all the incidents flowing therefrom and the property not so divided as members of undivided family.

8. In *Gopi Chand B. Tholia*'s case (supra) it has been held that "the partial partition can be recognised u/s 171 of the income tax Act, 1961".

9. In *Vajulal Chunilal (HUF)*'s case (supra), the Division Bench of Gujarat High Court held that "there could always be a partial partition in HUF as regards persons or as regards property or as regards both".

10. The ratio of these cases referred above on which reliance has been placed by the learned counsel for the assessee pertains to the cases decided under the income tax Act and has no application so far as the present controversy is concerned because the words used in section 20 are "the joint family property has been partitioned as a whole among the various members or groups of members in definite portion" while u/s 171 of the income tax Act, prior to the amendment in the year 1980, the partial partition was also accepted and recognised up to 31 -2-1978. The words "partial partition" have been deliberately omitted from section 20 and the words "partition as a whole" and "in definite portion" have been inserted or added, which clearly show that the concept of partial partition is not contemplated by section 20. The partial partition, therefore, cannot be claimed, recorded or recognised u/s 20 even prior to or after the insertion of section 20A which has been added as a separate section in the Act.

11. In *M.L. Ramachandra Setty & Sons*" case (supra), the question which came up for consideration before the Karnataka High Court was : Whether a partial partition among the members of the HUF insofar as the three estates are

concerned, can be recognised u/s 20? The Division Bench of Karnataka High Court held that:

...Section 20 of the Wealth-tax Act, 1957, dealing with partition in HUF applies to a case where "the joint family property has been partitioned as a whole among the various members or groups of members in definite portions". The expression "partition as a whole" means that a partition has taken place in its entirety in respect of all the properties of the family. Section 20 cannot, therefore, be applied to a case of partial partition of the family's assets. ? . 545)

12. The net result of the above discussion, therefore, is that section 20 does not recognise any partial partition. This section applies only to those partitions which have taken place in its entirety in respect of the property of the HUF and there is a complete severance of the status of the HUF. The concept of partial partition is alien to section 20. The Legislature was conscious of the words "partition" and "partial partition" and recognised the partial partition under the income tax Act while the words "partial partition" have been deliberately omitted from section 20. For the applicability of section 20, there must be a severance of the status of the jointness. The provisions of section 20 will apply only in the cases where the joint family's property has been partitioned as a whole among the members or groups of members in the definite portion. In the present case neither jewellery has been partitioned as a whole nor it has been divided among all the members of the HUF in definite portions and, therefore, the Tribunal was right in holding that there could not be a partial partition with regard to the assets of the HUF. The question referred by the Tribunal is, therefore, answered in the affirmative, i.e., in favour of the revenue and against the assessee and it is held that the Tribunal was legally correct in holding that section 20 does not envisage the "partial partition" and, therefore, there could not be a partial partition both with regard to the asset of the HUF and its members and the Tribunal was right in sustaining the inclusion of the balance of the jewellery in the net wealth of the assessee.