(1996) 01 RAJ CK 0003

In the Rajasthan High Court

Case No : .W.T.R. 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

Citation : (1997) 225 ITR 142 : (1996) 2 RLW 586 : (1996) 3 WLC 373 : (1996) 1 WLN 36

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 Income Tax Appellate Tribunal, Jaipur Bench, Jaipur, 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 Hindu undivided family 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 ?"

2. The brief facts of the case are that the assessee is a Hindu undivided family consisting of the coparceners Sarvashri Lalchand -- karta of the Hindu undivided family -- 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 Hindu undivided family was effected and 1/3rd share, out of the jewellery, was given to Mr. Lalit Kumar. The Hindu undivided family, 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 Wealth-tax Officer, Bikaner Range, Bikaner, included the balance of the jewellery in the net wealth of the Hindu undivided family but excluded the jewellery which was given to Lalit Kumar in the partial partition of the jewellery. According to the Wealth-tax Officer, the remaining jewellery continued to belong to the Hindu undivided family. Dissatisfied with the assessment order passed by the Wealth-tax Officer, the assessee-Hindu undivided family preferred an appeal before the Assistant Commissioner of Wealth-tax (Appeals), Bikaner Range, Bikaner, who, by his order dated November 30, 1979, dismissed the appeal filed by the assessee. Aggrieved by the order dated November 30, 1979, passed by the Assistant Commissioner of Wealth-tax (Appeals), Bikaner Range, Bikaner, the assessee preferred an appeal before the Tribunal. The Tribunal, by its judgment dated July 24, 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 Wealth-tax Officer in the net wealth of the assessee. The assessee thereafter moved an application u/s 27(1) of the Wealth-tax Act, 1957 (for short, "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 paragraph No. 1 above and refused to refer the other questions for the opinion of this court.

3. It is contended by learned counsel for the assessee that there can be a partial partition with respect to the property belonging to the Hindu undivided family or between the persons constituting the Hindu undivided family in view of the provisions of Section 20 of the Wealth-tax 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 Hindu undivided family with respect to this jewellery. According to learned counsel for the assessee, after the partial partition, a new Hindu undivided family consisting of Lal Chand and Jawahar Lal came into existence and, therefore, the new Hindu undivided family can be assessed for the balance of the jewellery and not the bigger Hindu undivided family. In support of his contention, learned counsel for the assessee has placed reliance on : 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, . Learned counsel for the Revenue, on the other hand, has supported the order passed by the Tribunal and submitted that Section 20 of the Wealth-tax Act 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 groups of members in definite portions and not in cases of partial partition with respect to one asset.

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

5. Section 20 of the Wealth-tax Act, which deals with the assessment after partition of a Hindu undivided family states :

" Section 20. 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 assessment 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. "

6. Section 20A was added by way of amendment by the Finance (No. 2) Act, 1980 (Act No. 44 of 1980), with effect from April 1, 1980, and provides that where a partial partition has taken place after the 31st day of December, 1978, among the members of the Hindu undivided family 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 of the Act 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.

7. The controversy involved in the present case is : whether the partial partition of one of the assets of the Hindu undivided family, i.e., jewellery, in the present case, can be recognised u/s 20 of the Wealth-tax Act ? The expression used in Section 20 of the Wealth-tax Act is "joint family property has been partitioned as a whole among the various members or groups of members in definite portions". The words "as a whole" and the words "in definite portions" have been used in the section with a 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 jointness, the provisions of Section 20 of the Wealth-tax Act are not attracted. Section 20 does not contemplate any partial partition and is alien to the Wealth-tax Act. Section 20 of the Act does not recognise any partial partition and no partial partition can,

therefore, be recorded. After the incorporation of Section 20A of the Act, partial partition can neither be claimed nor can it be recorded or recognised under the Wealth-tax Act and the family continues to be assessed as if no such partial partition has taken place.

8. Now, we take up the judgments on which reliance has been placed by learned counsel for the assessee. In Apoorva Shantilal Shah v. CIT [1985] 141 ITR 558, the Supreme Court, at page 572 of the judgment, 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 properties even against the will of the minor sons. It is also now recognised that a partial partition of joint family properties is permissible. When a father can bring about the complete partition of the joint family properties 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 judicial decisions, we fail to appreciate on what logical grounds it can be said that the father who can bring about the complete partition of the joint family properties 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. ..."

9. 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.

10. In Kalloomal Tapeswari Prasad (HUF), Kanpur Vs. Commissioner of Income Tax, Kanpur, the Supreme Court held that : "the partition referred to in Sub-section (1) of Section 171 of the Income Tax Act, 1961, includes a ''partial partition'' also either as regards the persons constituting the undivided family or the properties 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 an undivided family. "

11. In Commissioner of Income Tax Vs. Gopi Chand B. Tholia, it has been held that "the partial partition can be recognised u/s 171 of the Income Tax Act, 1961".

12. In Commissioner of Income Tax, Gujarat-II Vs. Vajulal Chunilal (HUF), the Division Bench of the Gujarat High Court held that : "there could always be a partial partition in a Hindu undivided family as regards persons or as regards property or as regards both".

13. The ratio of these cases referred to above on which reliance has been placed by 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 of the Wealth-tax Act are "the joint family property has been partitioned as a whole among the various members or groups of members in definite portions" 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 December 31, 1978. The words "partial partition" have been deliberately omitted from Section 20 of the Wealth-tax Act and the words "partition as a whole" and "in definite portions" have been inserted or added, which clearly show that the concept of partial partition is not contemplated by Section 20 of the Wealth-tax Act. The partial partition, therefore, cannot be claimed, recorded or recognised u/s 20 of the Wealth-tax Act even prior to or after the insertion of Section 20A of the Act which has been added as a separate section in the Wealth-tax Act.

14. In Commissioner of Wealth Tax, Karnataka-I Vs. M.L. Ramachandra Setty and Sons, the question which came up for consideration before the Karnataka High Court was : whether a partial partition among the members of the Hindu undivided family in so far as the three estates are concerned, can be recognised u/s 20 of the Act ? The Division Bench of the Karnataka High Court held that "section 20 of the Wealth-tax Act, 1957, dealing with the partition in Hindu undivided family 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 property of the family. Section 20 cannot, therefore, be applied to a case of partial partition of the family''s assets."

15. The net result of the above discussions, therefore, is that Section 20 of the Wealth-tax Act does not recognise any partial partition. This Section applies only to those partitions which have taken place in their entirety in respect of the property of the Hindu undivided family and there is a complete severance of the status of the Hindu undivided family. The concept of partial partition is alien to Section 20 of the Wealth-tax Act. 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 the Section of the Wealth-tax Act. For the applicability of Section 20 of the Wealth-tax Act, there must be a severance of the status of jointness. The provisions of Section 20 of the Act 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 definite portions. In the present case, neither has jewellery been partitioned as a whole nor has it been divided among all the members of the Hindu undivided family 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 Hindu undivided family.

16. 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 of the Wealth-tax Act does not envisage "partial partition" and, therefore, there could not be a partial partition both with regard to the asset of the Hindu undivided family 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.

