

(1986) 08 CAL CK 0030
In the Calcutta High Court
Case No : Matter No. 610 of 1982

L.N. Birla

APPELLANT

Vs

Commissioner of Wealth Tax

RESPONDENT

Date of Decision : 22-08-1986

Acts Referred:

Wealth Tax Act, 1957 — Section 5(1)
Wealth Tax Rules, 1957 — Rule 2

Citation : (1987) 59 CTR 23 : (1987) 168 ITR 86 : (1986) 29 TAXMAN 524

Hon'ble Judges : Monjula Bose, J; Dipak Kumar Sen, J

Bench : Division Bench

Advocate : R.N. Bajoria and Khaitan, for the Appellant; A.N. Bhattacharji, for the Respondent

Judgement

Dipak Kumar Sen, J.—L. N. Birla, the assessee, was assessed to wealth-tax in the assessment years 1972-73, 1973-74 and 1974-75, the valuation dates being 31st of March of the calendar years 1972, 1973 and 1974. The assessee was a partner of a firm named M/s. Kumaon Orchards. The assessee had 1/5th share in the said firm. The firm owned agricultural lands. In his return of net wealth, the assessee claimed exemption u/s 5(1)(iva) of the Wealth-tax Act, 1957, in respect of his share of the agricultural land of the firm. The Wealth-tax Officer disallowed the claim of the assessee on the ground that the asset to be included in the assessee's net wealth was 1/5th share of the interest of the assessee in the said firm and not the land as such.

2. Being aggrieved, the assessee preferred an appeal against the assessments before the Appellate Assistant Commissioner of Wealth-tax. The Appellate Assistant Commissioner held that in determining the net wealth of the firm, exemption u/s 5(1)(iva) of the Wealth-tax Act should be allowed up to the admissible limit. But the benefit of the said section could not be given to each of the partners separately. He directed the Wealth-tax Officer to revise the assessments accordingly.

3. Both the assessee and the Revenue preferred appeals to the Income Tax Appellate Tribunal against the order of the Appellate Assistant Commissioner. Before the Tribunal, the assessee relied upon an order of the Special Bench of the Madras Income Tax Appellate Tribunal as also the orders of the Calcutta Tribunal in the case of the assessee in earlier years where the assessee was allowed exemption u/s 5(1)(iva) in respect of his 1/5th share of the agricultural land of the firm. The Revenue, on the other hand, relied upon another order of the Tribunal where a different view had been taken in favour of the Revenue. The Revenue also relied upon a decision of this court in *Sarvamangala Properties Ltd. Vs. Commissioner of Income Tax*, and a decision of the Supreme Court in *Commissioner of Wealth Tax, W. Bengal Vs. Bishwanath Chatterjee and Others*, , and contended that in view of the principles laid down in the said decisions, the firm was the owner of the property and as such the assessee was not entitled to exemption under the Wealth-tax Act in respect of his share in the property of the firm.

4. It was also contended that exemption should not have been allowed in favour of the firm inasmuch as the firm was not an assessee for the purpose of wealth-tax.

5. The Tribunal, after considering the decisions cited, held that the assessee was not entitled to exemption u/s 5(1)(iva) of the Wealth-tax Act in his personal assessment of wealth in respect of his share as a partner of the agricultural land belonging to the firm. The Tribunal, however, held, following a decision of the Patna High Court in *Commissioner of Wealth Tax Vs. Nand Lal Jalan*, , that exemption would be taken into account while determining the net wealth of the firm. On this point, the decision of the Appellate Assistant Commissioner was upheld.

6. On applications both by the Revenue and the assessee u/s 27(1) of the Wealth-tax Act, 1957, the Tribunal has referred the following questions, as questions of law arising out of its order, for the opinion of this court:

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was legally justified in holding that exemption u/s 5(1)(iva) of the Wealth-tax Act, 1957, should be allowed up to the admissible limit in determining the net wealth of the partnership firm in which the assessee is a partner ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that exemption u/s 5(1)(iva) of the Wealth-tax Act, 1957, was not allowable to the assessee to the extent of 1/5th of the agricultural land held by the firm, " Kumaon Orchards", in determining his net wealth ?"

7. The above questions in the present reference have been referred as arising from the consolidated order of the Tribunal disposing of both the appeals of the Revenue and the assessee.

8. It is convenient to note at this stage the relevant sections of the Wealth-tax

Act, 1957, and the rules which were in force in the relevant assessment years. The same are set out as follows :

"Section 3. Charge of wealth-tax.--Subject to the other provisions contained in this Act, there shall be charged for every assessment year commencing on and from the first day of April, 1957, a tax (hereinafter referred to as wealth-tax) in respect of the net wealth on the corresponding valuation date of every individual, Hindu undivided family and company at the rate or rates specified in the Schedule."

9. The other sections which are relevant for our purpose are :

"Section 2(c). "assessee" means a person by whom wealth-tax or any other sum of money is payable under this Act, and includes--

(i) every person in respect of whom any proceeding under this Act has been taken for the determination of wealth-tax payable by him or by any other person or the amount of refund due to him or such other person;

(ii) every person who is deemed to be an assessee under this Act;

(iii) every person who is deemed to be an assessee in default under this Act.

Section 2(m). "net wealth " means the amount by which the aggregate value computed in accordance with the provisions of this Act of all the assets, wherever located, belonging to the assessee on the valuation date, including assets required to be included in his net wealth as on that date under this Act, is in excess of the aggregate value of all the debts owed by the assessee on the valuation date other than-

(i) debts which u/s 6 are not to be taken into account;

(ii) debts which are secured on, or which have been incurred in relation to, any property in respect of which wealth-tax is not chargeable under this Act; and

(iii) the amount of the tax, penalty or interest payable in consequence of any order passed under or in pursuance of this Act or any law relating to taxation of income or profits, or the Estate Duty Act, 1933 (34 of 1953), the Expenditure-tax Act, 1957 (29 of 1957) or the Gift-tax Act, 1958 (18 of 1958),--

(a) which is outstanding on the valuation date and is claimed by the assessee in appeal, revision or other proceeding as not being payable by him, or

(b) which, although not claimed by the assessee as not being payable by him, is nevertheless outstanding for a period of more than twelve months on the valuation date.

Section 4. Net wealth to include certain assets.--(1) In computing the net wealth of an individual, there shall be included, as belonging to that individual....

(b) where the assessee is a partner in a firm or a member of an association of

persons (not being a co-operative housing society), the value of his interest in the firm or association determined in the prescribed manner.

Section 5. Exemption in respect of certain assets.--(1) Subject to the provisions of Sub-section (1A), wealth-tax shall not be payable by an assessee in respect of the following assets and such assets shall not be included in the net wealth of the assessee... "

"Rule 2. Valuation of interest in partnership or association of persons.--(1) The value of the interest of a person in a firm of which he is a partner or in an association of persons of which he is a member, shall be determined in the manner provided herein. The net wealth of the firm or the association on the valuation date shall first be determined. That portion of the net wealth of the firm or association as is equal to the amount of its capital shall be allocated among the partners or members in the proportion in which capital has been contributed by them. The residue of the net wealth of the firm or association shall be allocated among the partners or members in accordance with the agreement of partnership or association for the distribution of assets in the event of dissolution of the firm or association, or, in the absence of such agreement, in the proportion in which the partners or members are entitled to share profits. The sum total of the amounts so allocated to a partner or member shall be treated as the value of the interest of that partner or member in the firm or association.

(2) Where the net wealth of a firm or association computed in accordance with sub-rule (1) includes the value of any assets located outside India, the value of the interest of any partner or member in the assets located in India shall be determined having regard to the proportion which the value of the assets located in India diminished by the debts relating to those assets bears to the net wealth of the firm or association.

(3) Where the net wealth of a firm or association computed in accordance with sub-rule (1) includes the value of any assets referred to in Section 5(2) of the Act, the value of the interest of a partner or member shall be deemed to include the value of his proportionate share in the said assets, and the provisions of Section 5(2) of the Act shall be applied to him accordingly."

10. At the hearing of this reference, learned advocate for the assessee submitted that the controversy raised in the questions referred stood covered by two decisions of this court and he cited and relied upon the same.

11. The first is Commissioner of Wealth Tax Vs. Sri Naurangrai Agarwalla, . In this case, the assessee was a partner having a share in a partnership firm. The firm owned a house property which was used by the partners for their residence. In his wealth-tax assessment, the assessee claimed exemption u/s 5(1)(iv) of the Wealth-tax Act in respect of his share in the said house belonging to the partnership. A question arose whether the assessee was entitled to such exemption. A Division Bench of this court, after construing the relevant sections

and the Rules and after considering a number of decisions cited held, inter alia, that the partnership firm was not a distinct legal entity and the property of the partnership in law belonged to, all partners constituting the firm. The firm, as such, had no separate rights of its own in the partnership assets but the partners owned the assets of the partnership jointly or in common. Construing Rule 2 of the Wealth-tax Rules, it was held that if the partnership was treated as an assessee, then the house property would have to be treated as an asset of the assessee and exemption had to be granted u/s 5(1)(iv) for computation of the net wealth of the firm. But it was held that a firm was not an assessee within the meaning of the Wealth-tax Act and it was not required to compute the net wealth of a firm for the purpose of assessment of wealth-tax, though rule 2 of the Wealth-tax Rules referred to the net wealth of a firm. It was noted that rule 2 only laid down a method of ascertaining the value of the , share of an individual in a partnership firm if the individual was a partner. It was held that only after the value of the assessee's interest in a partnership firm had been determined u/s 4 of the Act, the question of granting exemption in respect of assets which have been included in the valuation would arise. It was held that the assessee was entitled to claim exemption from wealth-tax in respect of a part of a house or an asset of the partnership firm of which he was a partner, and that the proportionate value of the assets of the firm was required to be included in the net wealth of the assessee only on the ground that the assets jointly belonged to the partners. In that view, it was held that the assessee would be entitled to claim exemption under the Act in respect of assets of the partnership firm which have been valued and a share of which had been included in the net wealth of the assessee proportionately.

12. The second decision was Commissioner of Wealth Tax Vs. Mira Mehta, . In this case, another Division Bench of this court again held that where the interest of an individual partner in the assets of a firm was chargeable to wealth-tax, the partner would be entitled to claim exemption in respect of his share in a house property of the partnership firm u/s 5(1)(iv) of the Wealth-tax Act, 1957, in the computation of his wealth. In this case, the court considered the decision of the Supreme Court in Juggi Lal Kamalpat Bankers and Another Vs. Wealth Tax Officer, Special Circle C-Ward, Kanpur and Others, , and held that the interest of a partner in a partnership firm would be includible in the expression "asset" and as such the value of his interest represented by the house owned by the firm had to be included in the net wealth of the partner who would be entitled to exemption to the extent allowed by Section 5(1) of the Act.

13. Learned advocate for the assessee also drew our attention to a decision of the Karnataka High Court in Commissioner of Wealth-Tax, Karnataka-I Vs. Christine Cardoza, . In this case, a Division Bench of the Karnataka High Court held that in the assessment of wealth-tax of an assessee where the assessee was a partner in a partnership firm owning agricultural land, exemption u/s 5(1)(iva) of the Wealth-tax Act had to be allowed to the extent permitted in the computation of the net wealth of the assessee and not to the firm. The Karnataka

High Court considered and applied the principles laid down by the Supreme Court in an earlier case, viz., *Dulichand Lakshminarayan Vs. The Commissioner of Income Tax, Nagpur*, where it was observed as follows (at page 541 of 29 ITR):

"It is clear from the foregoing discussion that the law, English as well as Indian, has, for some specific purposes, some of which are referred to above, relaxed its rigid notions and extended a limited personality to a firm. Nevertheless, the general concept of a partnership, firmly established in both systems of law, still is that a firm is not an entity or "person" in law but is merely an association of individuals and a firm name is only a collective name of those individuals who constitute the firm. In other words, a firm name is merely an expression, only a compendious mode of designating the persons who have agreed to carry on business in partnership. According to the principles of English jurisprudence, which we have adopted, for the purposes of determining the legal rights, "there is no such thing as a firm known to the law" as was said by James L.J. in *Ex parte Corbett : In re Shand* [1880] 14 Ch D 122. In these circumstances, to import the definition of the word "person" occurring in Section 3(42) of the General Clauses Act, 1897, into Section 4 of the Indian Partnership Act will, according to lawyers, English or Indian, be totally repugnant to the subject of partnership law as they know and understand it to be."

14. Learned advocate for the assessee also drew our attention to another decision of the Supreme Court in *Commissioner of Income Tax, Madras Vs. R.M. Chidambaram Pillai and Others*, . In this case, a firm which produced and sold tea had partly agricultural and partly non-agricultural income. A partner of the firm used to be paid a salary by the firm and he claimed exemption from Income Tax on the ground that a part of his salary was really his share in the agricultural income of the firm. It was held by the Supreme Court on the facts that a firm was not a legal person even though it had some attributes of personality. It was a unit of assessment under the special provisions of the Income Tax Act and was not a full person. It was further held that there cannot be any contract between a firm and one of its partners and payment of salary to a partner of the firm would represent the special share of the latter of the profits of the firm. As such, the salary retained the same character as that of the income of the firm and, therefore, the partner concerned would be entitled to claim exemption from Income Tax to the extent such salary represented agricultural income within the meaning of Rule 24 of the Indian Income Tax Rules, 1922.

15. Learned advocate for the Revenue contended on the other hand that the law had been clearly laid down by a Division Bench of this court earlier in *Sarvamangala Properties Ltd. Vs. Commissioner of Income Tax*, . After construing the relevant sections of the Income Tax Act, it was held in this case that a firm was an entity recognised by law. It was further observed that the law which recognised and dealt with firms under the Indian Partnership Act also recognised the fact that such an entity known as a firm could have property, both movable and immovable. The position was made clear under Sections 4, 14 and

19 of the Indian Income Tax Act, 1922. It was further held that there was nothing in law which debarred a firm from owning immovable property and if a firm could own immovable property, it would be liable to taxation. It was held that a firm was a person under the Indian Income Tax Act and, therefore, would be liable to tax as the owner of the property.

16. Learned advocate for the Revenue also cited Commissioner of Wealth Tax, W. Bengal Vs. Bishwanath Chatterjee and Others, . In this case, it was held by the Supreme Court that the properties of a Hindu male, governed by the Dayabhaga school of Hindu law, held on his death by his heirs were not assessable to wealth-tax jointly in the status of a Hindu undivided family. It was held further that on the death of such a Hindu male, the coparceners had only unity of possession but not unity of ownership as each coparcener took a definite share of the property as the owner of his own share. Such share only was the net wealth of the coparcener and was liable to wealth-tax. It was held that mere possession or joint possession would not bring such property within the mischief of the Wealth-tax Act as such property would not be an asset belonging to the assessee.

17. Learned advocate for the Revenue also cited Juggilal Kamlatpat Bankers v. WTO [1984] 105 ITR 485. This case has been considered by this court in Commissioner of Wealth Tax Vs. Mira Mehta, . Here, the Supreme Court held that under Sections 2 and 3 of the Wealth-tax Act, 1957, a partner's interest in a firm either in his individual capacity or in his capacity as the karta of a Hindu undivided family was property and includible in the expression "asset" as defined in Section 2(e) of the Act.

18. Learned advocate for the Revenue submitted that the decisions of this court in Commissioner of Wealth Tax Vs. Sri Naurangrai Agarwalla, and Commissioner of Wealth Tax Vs. Mira Mehta, were distinguishable inasmuch as the properties involved in those cases were residential houses in the occupation of the partners. In the instant case, the property involved was agricultural land. On a consideration of the facts and circumstances and the decisions cited before us, it appears to us that the status of a partnership under the Income Tax Act is different from that under the Wealth-tax Act. The Income Tax Act contains special provisions under which a partnership firm is an assessable entity and further, provisions have been made in the Act for assessment of a partnership firm to Income Tax. So far as the Wealth-tax Act is concerned, a partnership firm is not an assessable entity. Therefore, the concept of a partnership in the context of the Income Tax Act cannot be imported into the Wealth-tax Act.

19. The Wealth-tax Act is a separate Act and contains its own scheme for assessment of wealth-tax. A partnership having been excluded from assessment under the Wealth-tax Act and provision having been made for assessment of the properties standing in the name of the firm in the hands of the partners, according to their respective shares, the general concept of the nature of a partnership has to be taken into account. In Dulichand Lakshminarayan Vs. The Commissioner of Income Tax, Nagpur, , the Supreme Court has categorically laid

down that the name of the firm was a compendious name for all the partners and it was not an entity in law. It is on that basis that the shares of the partners in the assets of the firm have to be considered as assets or wealth in the hands of the partners liable to be assessed to wealth-tax. The assessability of a firm to Income Tax under the special provisions of the Income Tax Act, which treats a firm as a distinct assessable unit, cannot be imported into a proceeding under the Wealth-tax Act.

20. In Commissioner of Wealth Tax Vs. Sri Naurangrai Agarwalla, , this court considered the decision of the Karnataka High Court in Commissioner of Wealth-Tax, Karnataka-I Vs. Christine Cardoza, and followed it. The distinction sought to be made on behalf of the Revenue that the property involved in this case is different from the item of property considered in the earlier decisions of this court is of little relevance. We see no reason to differ from the earlier decisions of this court.

21. So far as the question of exemption u/s 5(1)(iva) of the Act in computing the net wealth of the firm is concerned, we hold that inasmuch as the firm is not an assessee within the meaning of the Wealth-tax Act and inasmuch as the properties of the firm are treated as wealth or asset in the hands of its partners to the extent of their respective shares aggregating to their respective interest therein, in computing the net wealth of the firm under rule 2 of the Wealth-tax Rules, there is no question of any exemption being allowed to the firm.

22. For the above reasons, we answer question No. 1 in the negative and in favour of the Revenue. We answer question No. 2 also in the negative and in favour of the assessee.

23. In the facts and circumstances, there will be no order as to costs.

Monjula Bose, J.

24. I agree.